SEVENTY-FIFTH REPORT

OF THE

NORTH CAROLINA

UTILITIES COMMISSION

ORDERS AND DECISIONS

ISSUED FROM
JANUARY 1, 1985 THROUGH DECEMBER 31, 1985

SEVENTY-FIFTH REPORT

of the

NORTH CAROLINA UTILITIES COMMISSION

ORDERS AND DECISIONS

Issued from

January 1, 1985, through December 31, 1985

Robert O. Wells,[1] Chairman

Dr. Robert K. Koger,[2] Commissioner

Sarah Lindsay Tate,[3] Commissioner

Edward B. Hipp, Commissioner

A. Hartwell Campbell, Commissioner

Ruth E. Cook, Commissioner

Charles E. Branford,[4] Commissioner

Hugh A. Crigler, Jr.,[5] Commissioner

Julius A. Wright,[6] Commissioner

North Carolina Utilities Commission
Office of the Chief Clerk
Mrs. Sandra J. Webster
Post Office Box 29510
Raleigh, North Carolina 27626-0510

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.

---

1 Robert O. Wells, appointed July 1, 1985, to 8-year term; appointed Chairman October 1, 1985
2 Dr. Robert K. Koger, term as Chairman ended September 30, 1985
3 Sarah Lindsay Tate, reappointed for another 8-year term
4 Charles E. Branford, term expired June 30, 1985
5 Hugh A. Crigler, Jr., resigned May 10, 1985
6 Julius A. Wright, appointed June 10, 1985, to fill the unexpired term of Hugh A. Crigler, Jr.; reappointed on July 1, 1985, to 8-year term

LETTER OF TRANSMITTAL

December 31, 1985

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, 1985, we hereby present for your consideration the report of the Commission's decisions for the 12-month period beginning January 1, 1985, and ending December 31, 1985.

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

Respectfully submitted,

NORTH CAROLINA UTILITIES COMMISSION

Robert O. Wells, Chairman

Dr. Robert K. Koger, Commissioner

Sarah Lindsay Tate, Commissioner

Edward B. Hipp, Commissioner

A. Hartwell Campbell, Commissioner

Ruth E. Cook, Commissioner

Julius A. Wright, Commissioner

Sandra J. Webster, Chief Clerk

CONTENTS

ORDERS AND DECISIONS PRINTED

1985 ANNUAL REPORT OF ORDERS AND DECISIONS
of the
North Carolina Utilities Commission

Table of Orders and Decisions Printed

NOTE: For General Orders, see Index on page 792

ORDERS AND DECISIONS PRINTED

ORDERS AND DECISIONS PRINTED

ORDERS AND DECISIONS PRINTED

ORDERS AND DECISIONS PRINTED

DOCKET NO. M-100, SUB 105

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Proposed Rule Revision - Request to Amend the Commission's) ORDER AMENDING
Rules and Regulations to Permit Single Source Leasing) RULE R2-2(g)

BY THE COMMISSION: The Commission has received letters from J. P. Stevens & Co., Inc.; Commercial Equipment Company, Inc.; PPG Industries, Inc; Gold Bond Building Products; Westinghouse Electric Corporation; Simmons, U.S.A.; Cone Mills Corporation; Blue Bell Services; The Stroh Brewery Company; Carolina By-Products Company, Inc.; and Lowes' Companies, Inc., wherein it is sought that the Commission amend its Rules and Regulations so as to allow single source leasing; i.e., the lease of equipment and driver from the same source to a private carrier.

Having considered these letters, the Commission concluded that it should initiate a rulemaking investigation to consider whether or not to modify its Rules and regulations so as to permit private carriers operating within North Carolina to lease their equipment and drivers from a single source. In its Order entered on March 22, 1985, the Commission initiated this proceeding and requested that parties desiring to file comments and proposed rules do so by May 1, 1985. The Order of March 22, 1985, was served on all certificated common and contract carriers, as well as other interested parties.

In addition to those letters previously filed in this docket, comments have been received from the Private Carrier Conference, Inc., of the American Trucking Associations, Inc.; the National-American Trucking Associations, Inc.; the National-American Wholesale Grocers' Association; Champion Home Builders Co.; and Tultex Corporation in support of the adoption by the Commission of a rule permitting single source leasing. Wicker Service, Inc., a certificated common carrier, has filed a letter advising of its opposition to the Commission allowing single source leasing.

Commission Rule R2-2(g), which is presently in effect, prohibits single source leasing and reads as follows:

> "The lease of equipment with driver for use in private transportation of property is prohibited."

The Interstate Commerce Commission in allowing single source leasing, announced a list of minimum requirements which, if included in the lease arrangement, would create a presumption that the transportation being performed is private carriage controlled by the shipper. Those minimum requirements are as follows:

> (1) the leased equipment must be exclusively committed to the lessee's use for the term of the lease; (2) the lessee must have exclusive dominion and control over the transportation service during the term of the lease; (3) the lessee must maintain liability insurance for any injury caused in the course of performing the transportation service; (4) the lessee must be responsible for compliance with safety regulations; (5) the lessee must bear the risk

of damage to cargo; and (6) the term of the lease must be for a minimum period of 30 days.

The comments filed in support of the change in the Commission's Rules and Regulations to allow single source leasing reflect that the Interstate Commerce Commission in Ex Parte No. MC-122 (Sub No. 2) permitted single source leasing on an interstate basis which established parity and resulted in equitable treatment for both private and regulated motor carriers as both may now lease trucks and drivers from a single source. The comments further reflect that single source leasing would benefit domestic private carriage in North Carolina and particularly those that operate their proprietary fleets on a dual intrastate and interstate basis and that in the past, private carriers in North Carolina have had to forego interstate single source leasing on many occasions because of the concomitant need to use such trucks and drivers on an intrastate basis in North Carolina. The comments in support of single source leasing also favor the adoption by this Commission, in the event it permits same, the establishment of the six (6) criteria stated above so that there will be complete compatibility on an interstate and intrastate level.

In opposition to the proposal, it is alleged that by permitting single source leasing, existing common carriers, especially the smaller ones, will experience economic hardship by the diversion of traffic and revenues. Further, that shippers desiring to operate private carriage are currently afforded multiple alternatives and do not require the proposed single source lease arrangement.

Upon consideration of all of the comments and the entire record in this matter, the Commission, acting under the power and authority delegated to it for the promulgation of rules and regulations pursuant to G.S. 62-31, concludes that Rule R2-2(g) should be amended as set forth in Exhibit A attached hereto to permit single source leasing within North Carolina so as to eliminate the operational difficulty encountered by private fleets operating on a dual basis and to create uniformity at the State and Federal level.

IT IS, THEREFORE, ORDERED as follows:

1. That Rule R2-2(g) of the Commission's Rules and Regulations is hereby amended as set forth in Exhibit A attached hereto to become effective the date of this Order.

2. That a copy of this Order be served on all parties of record in this matter and shall be published in the next issue of the Commission's Calendar of Hearings.

ISSUED BY ORDER OF THE COMMISSION.
This the 14th day of May, 1985.

NORTH CAROLINA UTILITIES COMMISSION
Sandra J. Webster, Chief Clerk

(SEAL)

EXHIBIT A

Rule R2-2(g) The lease of equipment with driver for use in private transportation of property is prohibited unless the private carrier leases

vehicle(s) from a single source on an intrastate basis and the lease contains the following requirements:

> (1) the leased equipment must be exclusively committed to the lessee's use for the term of the lease; (2) the lessee must have exclusive dominion and control over the transportation service during the term of the lease; (3) the lessee must maintain liability insurance for any injury caused in the course of performing the transportation service; (4) the lessee must be responsible for compliance with safety regulations; (5) the lessee must bear the risk of damage to cargo; and (6) the term of the lease must be for a minimum period of 30 days.

DOCKET NO. M-100, SUB 106

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Request to Determine Whether Ethanol Is Included in Group 3, Petroleum and Petroleum Products, Rule R2-37	)	ORDER AMENDING RULE R2-37, GROUP 3, TO INCLUDE ETHANOL

BY THE COMMISSION: On July 17, 1985, the Commission received a letter from Mr. Ralph McDonald, Bailey, Dixon, Wooten, McDonald, Fountain & Walker, Attorneys at Law, Raleigh, North Carolina, on behalf of a client which holds a certificate authorizing motor carrier transportation of petroleum and petroleum products between certain points in the State of North Carolina, seeking an opinion as to whether ethanol is included in the definition of petroleum and petroleum products as set forth in Group 3 of Rule R2-37 of the Commission's Rules and Regulations.

By Order entered on August 2, 1985, the Commission initiated a rulemaking investigation to consider the amendment of Rule R2-37, Group 3, as to whether or not to include ethanol in the description of petroleum and petroleum products.

The Order of August 2, 1985, was served upon all carriers who have appropriate authority from the Commission to transport petroleum and/or petroleum products, as well as commodities in bulk, in tank vehicles.

The Order further provided that parties desiring to file comments or become formal parties of record should do so on or before September 9, 1985, and that if no substantial protests or petitions to intervene are filed with the Commission on or before September 9, 1985, requesting a hearing, the hearing scheduled on September 19, 1985, will be cancelled and the matter decided on the records on file with the Commission.

No party has requested a hearing in this docket; and, therefore, the Commission is of the opinion that the hearing scheduled on September 19, 1985, should be cancelled and the matter decided on the record.

Comments in support of including ethanol in Group 3, Rule R2-37, were timely filed with the Commission by the North Carolina Trucking Association, Inc., Raleigh, North Carolina, on behalf of carriers participating in its Petroleum Tariff 5-U, N.C.U.C. No. 149; Reliable Tank Line, Winston-Salem, North Carolina; U Fill'er Up, Greensboro, North Carolina; and Chemical Fuels Corporation, Chamblee, Georgia. Also, Comments and Petition to Intervene was filed by counsel on behalf of Transport South, Inc., Atlanta, Georgia, the party which initiated the inquiry in this docket.

Based upon the foresaid comments and the entire record in this docket, the Commission makes the following:

FINDINGS OF FACT

1. Ethanol is a blend of 95% grain alcohol and 5% unleaded gasoline by volume.

2. After grain alcohol and unleaded gasoline are blended to make ethanol, the product can no longer be ingested and is useful only as an octane enhancer. Ethanol is blended with gasoline to make gasohol.

3. Gasohol was included in the definition of petroleum products under Rule R2-37, Group 3, in May 1981, pursuant to Docket No. M-100, Sub 87. Like gasohol, ethanol is to a large extent retailed by persons and firms that also market gasoline.

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

5. There is a demonstrated need to amend Rule R2-37, Group 3, to include ethanol, so as to allow all certificated carriers of petroleum and petroleum products to transport ethanol within their operating territories, thereby allowing more efficient, energy saving and cost effective transportation.

CONCLUSIONS

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

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

IT IS, THEREFORE, ORDERED as follows:

1. That the hearing scheduled in this docket on September 19, 1985, is hereby cancelled.

2. That Commission Rule R2-37, Group 3, be amended by inserting the word "Ethanol" immediately after the term "Drain Oil Drip Oil" and before the term "Ethyl Benzene."

3. That the certificates of existing common carriers of petroleum and petroleum products, in bulk, in tank trucks, be amended to authorize the

transportation of ethanol between all points within their present authorized operating territories.

ISSUED BY ORDER OF THE COMMISSION.
This the 16th day of September 1985.

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

DOCKET NO. E-100, SUB 36

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Consideration of Electric Rates Design and Regulatory Standards Pursuant to the Public Utility Regulatory Policies Act (PURPA)	))))	ORDER AMENDING REPORTING REQUIREMENTS

BY THE COMMISSION: By Order issued February 4, 1981, in the above-captioned matter, the Commission required in ordering paragraph 5 that each electric utility subject to said Order "file, as a part of its annual load forecast, a statement concerning the status of its efforts in obtaining interruptible customers. This statement shall contain the number of customers contacted relative to the rate, sampling of responses from those customers (including negative responses which shall provide specific reasons for refusal), number of customers on the rate, if applicable, and the amount of interruptible load, time, reason, and duration of interruptions during the past year."

The Commission is now of the opinion that portions of the required report are no longer needed, and that the only information still required is that which will enable the Commission to continue its annual reports to the U.S. Department of Energy pursuant to PURPA.

IT IS, THEREFORE, ORDERED as follows:

1. That ordering paragraph 5 of the Commission Order of February 4, 1981, in the above-captioned matter is hereby amended to require each electric utility subject to said Order to file, as a part of its annual load forecast report under NCUC Rule R8-43, a statement containing the number of nonresidential customers eligible for interruptible rates, the number of nonresidential customers served on interruptible rates, and the total nonresidential interruptible load in megawatts.

ISSUED BY ORDER OF THE COMMISSION.
This the 27th day of February 1985.

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

DOCKET NO. E-100, SUB 37

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Establishment of a North Carolina Alternative Energy Corporation	))	ORDER EXTENDING THE LIFE OF THE NORTH CAROLINA ALTERNATIVE ENERGY CORPORATION

HEARD IN: Commission Hearing Room 217, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, November 9, 1984, at 9:30 a.m.

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

APPEARANCES: Senator McNeill Smith, Franklin D. Hart, Jon M. Veigel, Marvin Marshall, Donald H. Denton, Jr., John S. Monroe, Jr., James M. Hubbard, James T. Earwood, Jr., Jack Elam, D. Gray Faulkner, Joyce Anderson, Jane Sharp, Dennis Nightingale, Tom L. Phelps, and Carson D. Culbreth

BY THE COMMISSION: This matter results from earlier actions taken by the North Carolina Utilities Commission in support of the expressed need of North Carolina's major electric utility organizations for assistance in determining appropriate long-term energy system alternatives. Those actions resulted in the establishment of the North Carolina Alternative Energy Corporation (AEC), a nonprofit corporation.

Because the AEC is an organization formed for the intended purpose of serving to the benefit of the electricity ratepayers of North Carolina, the North Carolina Utilities Commission performs an oversight role to ensure that no fundamental changes in the Corporation are made without the approval of the members of the Utilities Commission as representatives of the general public interest. Thus, the seven Commissioners serve as the members of the AEC's nonprofit corporation. The Commissioners' rights and responsibilities as members of the Corporation include approval of (a) changes proposed by the AEC Board of Directors to the Articles of Incorporation, (b) any proposed plan of merger or consolidation, (c) any disposition of all or substantially all of the AEC's property and assets (not including funding of the AEC's normal program activities), (d) dissolution of the AEC, and (e) extension of the life of the Corporation.

In exercising its oversight function, the Commission requires the AEC Board of Directors to (1) appear before the Commission annually for a review of the AEC's activities and progress, (2) have an independent audit annually performed by a certified public accounting firm, and (3) prepare an annual report of AEC activities and programs. These actions have been regularly performed by the Commission in order to ensure that ratepayer funds are expended by the AEC only for proper corporate purposes.

The need for additional research and development efforts to concentrate on finding and implementing specific cost-effective alternative energy technologies and strategies appropriate for North Carolina's environment was first identified in a Duke Power Company rate case in 1979, Docket No. E-7, Sub 262. That docket identified that (1) more efforts were needed to find alternatives suitable for North Carolina's requirements and (2) economies of scale and synergism could be gained if a "consortium effort" of the major electric suppliers was started in this area. Duke's test year expenses were increased by $1,000,000 to cover the cost of increased efforts to find appropriate alternatives to the ways in which the Company and its customers presently produce and use electricity.

On January 3, 1980, the Commission held a formal hearing to explore the effective ways that North Carolina's electric suppliers could assist their ratepayers in both limiting future electricity cost escalation and assuring

adequate supplies of reliable electricity. The response of the public, the regulated electric suppliers, and the unregulated electric suppliers to the idea of joint utility/public participation in the development of their future was a positive one.

Witnesses at the hearing on January 3, 1980, included the Honorable James B. Hunt, Jr., Governor of the State of North Carolina; Dr. James Bresee, Director of the North Carolina Energy Institute; Dr. Henry B. Smith, Dean of Research at North Carolina State University; Dr. Douglas Worf of the North Carolina Consumers Council; Warren Rock, Energy Coordinator for the North Carolina Department of Agriculture; Frank Benford of the Sierra Club; Dr. Jacky Smith of Warren Wilson College; Robert Boone of the Mountain Convergence Coalition; Paul Gallimore of the Long Branch Environmental Center; Robert Eides of SUNREP--The Southern Unit Network for Renewable Energy Resources and Projects; Kitty Boniske of the Mountain Convergency; Roger Weisman of CHANGE; Thomas Gunter and Gary Gumz of North Carolina Coalition for Renewable Energy Resources; Dr. Ben Gravely of the North Carolina Solar Energy Association; Joyce Anderson of the League of Women Voters; Geoffrey Wycoff of the People's Alliance; Jesse Riley of the Carolina Environmental Study Group; Dr. Lavon Page of the Conservation Council of North Carolina; Dr. George Reeves, President of Energy Control Company; Jerome Kohl, a CP&L customer; William L. Gettys, a lecturer in physics; Dr. L. A. Winetrap of Duke Faculty Committee for Alternatives to Nuclear Power; Wells Eddleman of Kudzu Alliance; Donald H. Denton, Vice President--Marketing, Duke Power Company; Dr. Thomas S. Elleman, Vice President--Nuclear Safety and Research, Carolina Power & Light Company; R. D. McIver, Vice President--North Carolina Operations, Virginia Electric and Power Company; Jack Aulis, Manager of Member Relations, ElectriCities of North Carolina; and James M. Hubbard, Executive Vice President, North Carolina Electric Membership Corporation.

These witnesses supported slight variations of the same general theme--the need for an increased and coordinated effort to actively identify, plan, and control North Carolina's future energy opportunities. The evidence indicated that an independent organization with broad public and utility support could increase the attention and effort in identifying and promoting the development and commercialization of cost-effective alternate energy systems, help prevent duplicative efforts, work on a scale larger than that appropriate for individual electric suppliers or consumers, and establish a continuing dialogue between electric suppliers and consumers to the mutual benefit of each.

As a result of the findings and conclusions made by the Commission after the January 3, 1980, hearing, the Commission entered an Order on April 11, 1980, in this docket authorizing the establishment and funding of a North Carolina Alternative Energy Corporation. That Order was not a necessary requirement for the establishment of the AEC, but it was useful in assuring both regulated utility participants and unregulated participants that the Commission would support their efforts in joint participation and funding of the AEC, thus speeding up the initial formation and operation of the AEC.

Representatives of the Commission, the Public Staff, and the Energy Division of the North Carolina Department of Commerce, after consulting with representatives of each of the prospective electric utility members, jointly incorporated the AEC on April 18, 1980. It was promptly joined by the supporting electric suppliers. The AEC Board of Directors, which has full

power over its expenditures and actions, first met during the summer of 1980 after its public members and utility members had been appointed. The Corporation was initially established with a life extending to December 31, 1985.

The AEC has been fortunate during its life to have the services of the following distinguished board members:

Public Members

Dr. Winser E. Alexander of Greensboro, 1980-1982
Joyce Anderson of Raleigh, 1980-1985
Charles T. Byrd, CPA of Greensboro, 1982-1985
Walter Daniels, Esq. of Durham, 1982-1984
Jack Elam, Esq. of Greensboro, 1982-1984
D. Gray Faulkner of Henderson, 1980-1985
Dr. Ben Gravely of Raleigh, 1980-1982
Dr. Franklin D. Hart of Raleigh, 1981-1985
Dr. Richard I. Levin of Chapel Hill, 1985
Charles A. McLendon of Greensboro, 1980-1982
Senator McNeill Smith of Greensboro, 1980-1985
Dr. Jimmie Jack Wortman of Raleigh, 1980-1981

Utility Members

Donald H. Denton, Jr., Duke, 1980-1982
James Earwood, Vepco/North Carolina Power, 1984-1985
Dr. Thomas Elleman, CP&L, 1980-1985
Tom Hatley, Jr., Duke, 1982-1984
Andrew W. Kistler, ElectriCities, 1983-1985
William M. Jontz, Nantahala, 1980-1981
Marvin O. Marshall, NCEMC, 1981-1985
R. D. McIver, Vepco, 1980-1984
H. Neal Stirewalt, Duke, 1984-1985
N. E. Tucker, Nantahala, 1981-1985
Frederick E. Turnage, ElectriCities, 1980-1983
Cecil E. Viverette, NCEMC, 1980-1981

During the AEC's life, it has kept its members, the public, and the Commission fully informed as to its activities. Its board meetings are open to the public and are held in various parts of the State to make them more widely accessible. It provides both quarterly and annual reports on project activities as well as regular updates to the Commission; programs of various lengths for professional, trade and civic organizations; and seminars, television programs, technical bulletins and other means of informing the public of the AEC's progress and of identified opportunities for alternative energy system use. Most importantly, the AEC has achieved consumer/utility joint participation in the identification, development, performance, and review of its project activities. Approximately 200 individuals throughout the State serve and actively participate on the AEC's project and program advisory committees. Most of the AEC projects have been carried out in partnership by participation of industries, consumer or other citizen associations, local or State government units, and/or the utilities serving North Carolina. This

cooperative consumer/utility interaction is serving as a foundation for the AEC's planned future activities.

Members of the AEC Board of Directors represent Board interests on each of the five Program Committees organized by the following energy end-use sectors: Residential/Commercial, Industry, Agriculture, Utility, and State and Local Government/Community. Each Program Committee is also composed of both public and utility members with varied backgrounds especially selected to enhance the team effort. No projects are considered for funding by the Board until reviewed and approved by the relevant Program Committee. The AEC Board formally approved five-year plans for each program area at its July 12, 1984, meeting.

The AEC has carefully selected a small permanent staff with education and experience in engineering, technical sciences, and social science, all of whom have extensive experience in the energy field. AEC programs are managed by this core staff; projects under their program responsibilities are managed or performed either (1) in-house with contract staff hired for specific terms for specific projects or (2) out-of-house with consultant or university personnel, as appropriate for the scope, duration, and technologies employed.

On August 9, 1984, this Commission received a resolution adopted by the Board of Directors of the North Carolina Alternative Energy Corporation on July 12, 1984, requesting that the life of the Alternative Energy Corporation be extended beyond December 31, 1985. On September 11, 1984, the Commission ordered a conference to be held on November 9, 1984, for the purpose of considering the above-referenced resolution.

The conference came on for hearing as scheduled. Representative George W. Miller, Jr., a member of the Utility Review Committee of the North Carolina General Assembly, attended the conference. Statements presented at the conference are summarized below.

Dr. Franklin D. Hart

Dr. Hart, Chairman of the AEC Board since 1981, made an introductory statement concerning the areas to be covered at the conference. He indicated that a brief perspective of the AEC from the viewpoint of individual board members, utilities, and the public would be given. Dr. Hart further stated that the Commission would be given a brief review of results that have been attained by the AEC and that some of the AEC's current and future project opportunities would also be discussed.

As background information, Dr. Hart observed that the AEC was established to provide a mechanism that would ensure that North Carolina citizens have the electricity they need in this State at a reasonable and fair price. The AEC Board is composed of public members appointed by the Governor and members representing the involved utilities. An effort is being made to catalyze the earliest possible use of load management, conservation, and renewable resources. Additionally, the AEC Board is focusing on projects that will stimulate citizens, businesses, and industries across the State to invest their resources in implementing alternative energy systems.

The Board is so structured that it can identify the most pressing needs that can be met by a cost-effective alternative energy system. No project is considered by the Board without first having survived intense scrutiny by at least one of five Program Committees. These committees are composed of AEC Board members, utility company staff, and other experts from the private and public sector.

In the summer of 1984 the Board commissioned an external management audit of the AEC management and operations. The audit found the AEC to be operated in an exemplary manner and the auditors had no major changes to recommend.

Senator McNeill Smith

Senator Smith presented a historical perspective of the concerns involving energy matters as expressed by legislators and other observers statewide dating back to 1975. He observed that during this period conservation of energy became a primary State policy. The General Assembly passed a bill authorizing the North Carolina Utilities Commission to make an investigation and make determinations and, where necessary, impose load management requirements. The purpose of the bill was to eliminate waste and to ensure that the State had a system that would produce enough electricity to serve the economic needs at a cost that people could afford.

Senator Smith described the implementation of AEC as a better way to promote coordination and cooperation among utility companies, electricity distributors, and educational and volunteer groups interested in conservation of energy and development of alternative sources to moderate the demand for electricity and eliminate peaks which necessitate the over-building of generating plants. He stated that the AEC Board has tried to find projects that would be practical for North Carolina and would offer some payout and to demonstrate, through fairs and through local demonstrations where projects have been installed, that farms, plants, commercial buildings, and residential buildings all have within themselves alternative sources of energy and that users of these buildings can practice energy conservation.

Senator Smith emphasized that the AEC is unique and stated that through the AEC the State is making the most efficient use of its resources. He favors keeping in effect the Alternative Energy Corporation.

Dr. Jon M. Veigel, President of the Alternative Energy Corporation

Dr. Veigel stated that the fundamental objective of the AEC is to help improve economic and technical efficiency of the current and future electric energy system so as to benefit both the ratepayers and their utilities. Between 45 percent and 50 percent of the current work of the AEC involves load management.

One of the first examples of work that the AEC has done under the utility analysis category is the service to the EMCs of the State by helping them to assess their needs and appropriate technologies to provide load management and to help them structure cooperative negotiations that lead to agreement with their supplying utilities. As a result of this effort, the EMCs are in the process of installing in their service territories nearly 150,000 switches controlling air conditioners and water heaters, at an installed peak kilowatt

price of $147 per peak kW. This investment of less than $30 million should result in an annual savings of $11 million, certainly a very productive investment to make.

Under the technology assessment on the utilities' side of the meter, the AEC is actively involved in a joint project with Duke Power Company and, with Duke's help, has installed in the basement of Duke's power building in Charlotte, a 20-kW, 80-kilowatt-hour zinc bromine battery energy storage system. This battery, developed in North Carolina and in its second year of testing, is attractive for its potential use for peak shaving. With respect to other utility-scale generation technologies, one manufacturer has offered to finance the installation of a 200-kilowatt wind machine in North Carolina as soon as the right site can be found. The AEC is presently analyzing the economic attractiveness of large wind farms for North Carolina. Another promising technology for North Carolina is photovoltaics, the direct conversion of sunlight into electricity. Investigation involving photovoltaics is being conducted by AEC in a joint project with CP&L at its distribution test facility near the Shearon Harris plant.

On the ratepayers' side of the meter, efforts are being made to persuade individuals that alternative energy sources are at least as reliable and economical as the present conventional technologies.

A key part of the credibility issue is reliable data on technologies applied in North Carolina. Laboratory research sponsored by the AEC is being done at North Carolina State University where research on heat pumps, heat pump water heaters, and solar collectors is being performed. Other work by the AEC for data collection goes on in the field such as a joint effort with CP&L in 23 homes near Raleigh where around-the-clock monitoring is being done to determine the effect of residential solar hot water units on load shape when the solar hot water units and other loads in the house are controlled by the utilities. For example, the AEC measures both the BTUs in the water and the gallons of hot water that are used to derive information that is needed to determine the impact of these systems on the utility.

One project with A&T University in Greensboro addresses the energy concerns of the 70 percent of North Carolina farmers who gross less than $20,000 annually.

The energy options of the nearly 40,000 public housing authority units in the State can be more easily described than put into effect. A particular motivation for AEC work in this area is that public housing units often consume more energy than an equivalently sized private residence. With AEC sponsorship all-electric public housing authorities in Randleman, Selma, and Plymouth are using innovative financing techniques to capitalize energy efficiency improvements, and the AEC is working to educate the tenants in good energy practices.

The more than 20,000 nonprofit agencies in North Carolina account for about 10 percent to 15 percent of the energy used in the commercial sector. The project has led to investment in energy efficiency by a growing number of the larger nonprofit organizations in the State. In addition, the AEC has worked with many smaller nonprofit agencies to train their volunteers to install insulation materials in their buildings for the most efficient energy

conservation achievable. The result has been improved comfort and lowered energy costs.

The AEC has worked with 17 different local governments and succeeded in having local energy officers appointed as staff members of those local governments. Thirty more communities will be selected this year. The proven savings to date in these local communities exceeds $355,000.

The AEC is presently working on private sector financing of energy efficiency improvements in six sites in order to facilitate energy savings contracts between the nonprofit organizations, local governments, schools and colleges, and energy service companies. Contracts are already signed and in place for the Chapel Hill YMCA and for the Friends Home in Greensboro.

Weatherization of the homes of 1310 low income senior citizens was carried out with the aid of 673 volunteers organized by local councils on aging. As a result, North Carolina is one of the first states to organize an Aging and Energy Consortium. Seven counties will weatherize nearly 1,000 additional homes this year, and CP&L has adopted many of the elements of this test project as a part of its ongoing program.

In a joint effort between the Energy Division and the AEC, a 13-part series, entitled "Saving Energy" is being aired on WUNC-TV. The first six parts were shown last winter to an estimated 175,000 North Carolinians plus viewers in 22 other states. The entire series will begin broadcasting on December 6, 1984.

At its June 1984 meeting, the AEC Board approved goals, objectives, and program directions for the future in five program sectors:

(1) In the industry sector cogeneration remains an attractive area for further work by the AEC and the State. The models for process energy use are important. Peak-load shaving in industry via thermal energy storage or computerized load control is another important research area for the AEC. The AEC is working on a project to replace electric intensive textile-processing procedures that are now used.

(2) In the residential/commercial sector, the AEC is increasing the amount of work related to collecting and analyzing data in the building area--in manufactured homes and residential and small scale commercial buildings. Applications of thermal energy storage, energy design, and management of energy effective buildings are being investigated. The AEC is looking at the potentially serious issue of the indoor air quality for residences and commercial office buildings. The AEC intends to continue working with the people that actually have to put alternative energy systems in place; e.g., the North Carolina Home Builders Association.

(3) In the community sector, the AEC is beginning a major effort in the rental housing area. This effort includes the design and financing of energy efficient improvements in the private sector as well as in the nonprofit sector. More time is needed to educate those involved in energy-related professions in the wisdom of investments in innovative ways for accelerating the widespread use of alternative energy systems, such as the aforementioned Energy and Aging Consortium.

(4) In the agriculture sector, the AEC needs more time to work with electric load management in tobacco barns and to look at increasing the efficiency of energy use in poultry, two of the major agriculture areas in the State; to look at on-farm electricity use patterns including the home, especially for the low income farm homes in the State; and to facilitate the use of wood gasifier cogeneration systems by North Carolina farmers.

(5) Finally, in the utility sector, the AEC believes that electricity storage offers good opportunities for the zinc bromine battery project. Undoubtedly, continued research in wind and photovoltaics will pay large benefits for the State. A possible contribution may derive from the AEC's examination of fossil fuel based combustion technologies. New uses for older technologies like low-head hydro, improving customer communication, and control techniques can be carried out in the utility sector.

Marvin Marshall, Vice Chairman, AEC Board of Directors

Mr. Marshall introduced representatives from five of the six electric utilities or organizations that are supporting the North Carolina Alternative Energy Corporation.

Donald H. Denton, Jr., Senior Vice President, Duke Power Company

Mr. Denton indicated that Duke Power Company has been involved with the North Carolina Alternative Energy Corporation since the concept was stated in the Order issued by the North Carolina Utilities Commission in October 1979 in Docket E-7, Sub 262. The Company's testimony in the investigation of the feasibility of establishing such a corporation emphasized its support of the concept of such a corporation and its willingness to cooperate with others involved in the organization to further the purposes for which the AEC was formed. Duke actively participated in the organizational meetings in which the AEC's original structure was set forth and the procedures were adopted.

Numerous Company employees have contributed to the work of the AEC's program committees, the project advisory committees, and its industrial, utility, residential/commercial, agricultural, and community programs.

Approximately 30 employees have responsible assignments on these committees. In addition, other employees have given support through various ways in the individual project activities. Through September 1984, Duke's North Carolina customers have contributed approximately $5.4 million to the AEC since its inception.

Duke continues to feel that the interest of its customers and its stockholders will best be served by minimizing new central generation facilities and therefore believes that the continuation of the AEC to support activities to reduce the growth rate of the peak is necessary. The AEC, as an unbiased source of information from which valued decisions can be made by the energy entities of the State, will continue to be of benefit. Duke also feels that, to the extent possible, efforts should be made to ensure that the benefits from the AEC's activities flow proportionately to the ratepayers who have furnished financial support. The AEC, through the activities of its program committees, brings together the diverse entities and groups to

constitute a decision forum for viewing and discussing problems which in itself is useful.

Duke feels that the activities of the AEC have been beneficial to the people of North Carolina and therefore recommends that the Commission continue the AEC for a new term.

John Monroe, Manager of Conservation Management, Carolina Power & Light Company

Mr. Monroe spoke on behalf of Carolina Power & Light Company. He stated that, through the five major program committees and through the advisory structure, CP&L has many representatives who have opportunities to review the programs and projects of the AEC and to provide input. The work of the AEC in the residential sector has been compatible with, and complementary to, CP&L's residential program. Programs for senior citizens and low-income residents of public housing have benefited from the educational efforts and weatherization efforts of the AEC.

The AEC's leadership role in research and development of new technologies for the residential sector has been especially beneficial to CP&L. The joint ventures in testing solar water heating equipment and the new heat pump technology, the ground coupled heat pump, are examples of the assimilation of valuable information in a more cost-effective manner than if each utility pursued these projects separately.

In the industrial sector, large industrial customers have taken it upon themselves to develop energy management systems, and CP&L has targeted these large industrial customers as primary areas of interest in these first two years, while the AEC has helped CP&L with the smaller industrial customers who certainly had a need for advice. It has been through the work of conferences, workshops, and seminars organized and initiated by the AEC and by the Department of Energy that the needs of these smaller industrial customers are being met.

In the agricultural sector, the AEC has worked directly with CP&L in the bulk tobacco barn program. The on-site farm generation program of the AEC with North Carolina State University is one in which CP&L has much interest and is actively participating.

There are, however, new areas of cooperation and coordination that are needed. For example, there is a need to develop a commercial end-use data base. CP&L is working on that data base in its specific territorial area, while the AEC is working on a statewide commercial data base to provide electric companies with an understanding of how to better serve commercial customers.

The relationship between CP&L and the AEC has been very good, and CP&L believes that the activities, programs, and projects of the AEC are providing very worthwhile benefits to all the users of electricity in North Carolina. For these reasons, CP&L recommends an extension of the AEC program.

James M. Hubbard, Executive Vice President, North Carolina Electric Membership Corporation

Mr. Hubbard spoke on behalf of the North Carolina Electric Membership Corporation. He indicated that the North Carolina Utilities Commission assumed an important leadership role in its efforts in 1980 to provide a catalyst for action to moderate the rate of growth in electric power demand and lower peak demand, to delay the need for additional expensive generating capacity, and to facilitate the more efficient utilization of existing generating resources. He stated that the Alternative Energy Corporation has been of particular assistance to the North Carolina Electric Membership Corporation and its member systems in assessing the benefits load management offers for rural electric systems to exert positive control over system peaks. The EMCs are proceeding at present with the installation of a comprehensive statewide load management system.

The EMCs are the sponsoring organization for a dual fuel test project being conducted under the auspices of the Alternative Energy Corporation at nine sites on five EMC electric systems.

In evaluating its role for the future, North Carolina Electric Membership Corporation believes it important that objectives of both the Energy Division of State Government and the Alternative Energy Corporation continue to be evaluated and coordinated so that each serves as a complement to the other. There is sufficient similarity between the two organizations to suggest that there is an overall common purpose; however, each functions in a different capacity with both making an important contribution to North Carolina's energy future. The EMCs believe that continued coordination of effort to ensure that allocated resources and project endeavors are not duplicated will assure that the ratepayers of the State are receiving full value for the funds invested and will strengthen the State's energy program.

With the creation of the North Carolina Alternative Energy Corporation, North Carolina has progressed in its efforts to provide alternative opportunities for her citizens. The Alternative Energy Corporation is making a significant contribution to efforts to take full advantage of cost-effective alternative energy systems in North Carolina.

James T. Earwood, Jr., Vice President, Virginia Electric and Power Company, North Carolina Power

Mr. Earwood spoke on behalf of Virginia Electric and Power Company (Vepco). Vepco is now doing business in North Carolina as North Carolina Power (NCP). Mr. Earwood stated that Vepco is particularly impressed with the screening effort made by the AEC staff, program area committees, and the Board of Directors to ensure that projects pursued to completion are beneficial to Vepco's North Carolina customers.

He stated that many projects already initiated by the AEC require additional work and continued follow-up which would be jeopardized if the life of the AEC were not extended. In the opinion of Vepco, work of the AEC has led to educating the general public about the need to conserve electricity and moderate costs; shifting load to off-peak hours to diminish the need for new

generating plants; developing supply methods to utilize renewable resources; and utilizing cogeneration to get dual use out of energy supplies.

Vepco believes the North Carolina ratepayers are getting a valuable return on their investment in the AEC, and Vepco is pleased that the Company has been able to make a contribution toward the work that is being done by the AEC.

Jack Elam, Vice President and General Counsel, Cone Mills Corporation

Mr. Elam, who is a member of the Board of Directors of the AEC, made comments from an industry point of view. He indicated that industry throughout the State is receiving cooperation from the State's electric utility suppliers and from other educational and governmental agencies. It is too early for an assessment of the work on a financial or technological basis, primarily because of the long lead times necessary for these projects. In the opinion of industry, however, if the AEC continues to exercise prudent business management in the selection and operation of its projects, the Corporation will meet the challenge set out in its charter. It is Mr. Elam's belief that industry throughout the State supports the continuation of the AEC.

D. Gray Faulkner, Vice President, North Carolina Farm Bureau

Mr. Faulkner is a Board member of the AEC, a farmer, an electrical contractor, and Vice President of the North Carolina Farm Bureau. He made comments concerning the impact of AEC on the agricultural program areas.

Mr. Faulkner discussed the AEC projects that are now underway and the benefits that he believes are being derived as a result of those projects. Since the details of the projects have already been discussed in this Order, those details will not be repeated here. Mr. Faulkner strongly supports the work that is being done by the AEC.

Joyce Anderson, North Carolina League of Women Voters

Mrs. Anderson is an active member of the AEC Board Community Program Committee. Mrs. Anderson stated that the Program Committee consists of volunteer representatives from all over the State.

Board members on this committee are Senator McNeill Smith from Greensboro, Andy Kistler, who is the Mayor or Morganton, and Mrs. Anderson. In addition, there are people from the utility staffs, volunteers from community organizations, local government representatives, and ElectriCity and EMC affiliates working on the committee. Mrs. Anderson repeated favorable comments that had been made by citizens in various parts of the State in support of the work being done by the AEC.

In conclusion, Mrs. Anderson summarized her feelings and the attitudes expressed to her by others in this manner: "We're concerned not only with our electric bills, but we're concerned with quality of life not only for ourselves but for our children. And to have this opportunity to participate positively and taking actions which have a positive impact means a lot to all of us. I have come to believe thoroughly that not only the so-called concerned citizens but everybody in this State, albeit they approach it in different ways, we do share the same dream. And that's for abundant, safe, clean, affordable energy.

And I think with the actions of this sort in establishing this kind of positive corporation that we're on the right track."

Jane Sharp, President of the North Carolina Consumers Council

Mrs. Sharp stated that the AEC has been a particular friend to citizen organizations and individuals in the State who are trying to implement alternative energy possibilities that are not being done as an official part of the AEC agenda. She said that citizens can come to the AEC and get expert advice on how to refine and streamline their proposals so that they will be more effective than they were as originally conceived. She stated that there was a microhydro project and microhydro conference held a couple of years ago under the aegis of the Alternative Energy Corporation that were far more effective than they could have been without the help and support of the AEC.

Additionally, the AEC encourages and supports citizen organizations in becoming much more effective through reporting procedures and budgeting and planning procedures. This assistance, she said, renders a tremendous advantage for those projects which are sometimes dreamed up in a somewhat amorphous state and which come to reality and implementation under AEC guidance and support. Mrs. Sharp said that the strength of the community is in the caring of its citizens and that strength has been greatly enhanced by the efforts of the AEC.

She believes that both the power companies and the citizens have not only been enhanced but have also been brought together by the AEC for mutual benefits.

Dennis Nightingale, Director of Public Staff, Electric Division

Mr. Nightingale stated that the Public Staff is very supportive of the work that the Alternative Energy Corporation is doing and believes that its funding should be extended. The Public Staff is following the work of the AEC, reviewing its periodic progress reports and various technical reports on projects that have been completed. The Public Staff has attended AEC meetings, seminars, and conferences and has participated in some of these projects.

Mr. Nightingale summarized the work of the AEC as follows: The AEC is performing work and contracting work over a broad spectrum of conservation and load management programs. It is determining the economic viability of a number of potential conservation candidates, and for those which are viable, AEC is proposing ways of financing and methods for obtaining high industry and customer participation. Through this means, the AEC is striving to fulfill its charge to take full advantage of cost-effective alternative energy systems to moderate the rate of growth in electric power and demand and lower peak demand and to reduce the need for expensive, additional electric generating capacity.

The AEC is working on some innovative projects for North Carolina. First, the AEC is performing evaluation tests on alternative energy systems such as ground-coupled heat pumps, dual fuel heating systems, and solar domestic water heating systems. These systems, if properly applied, have the potential to save money for both individual homeowners and the electric utilities. The result of the AEC's studies should give a clearer picture of the magnitude of the potential savings here in North Carolina.

Another area where the Public Staff feels the AEC has been innovative is the area of customer education. The AEC, in association with the State Energy Division, is sponsoring a 13-part public television series entitled "Saving Energy." This program is being used to get information before the public on how to use energy wisely.

With the help and cooperation of local groups, the AEC has funded meetings and workshops that enable North Carolina citizens to become better informed about cost-effective alternative energy systems and the wise use of their energy.

In addition, the AEC has worked with various nonprofit organizations training volunteers and performing energy audits and weatherization techniques.

The final area that Mr. Nightingale touched on concerns what AEC is doing for industry in North Carolina. He stated that for the textile industry AEC has developed an energy and peak demand model that identifies which noncritical machinery can be shut down or production rescheduled to reduce on-peak demands. In the field of agriculture, 140 audits of swine and tobacco farms have been carried out to identify low-cost or no-cost improvements in farm operations. In conclusion, he indicated that it is the Public Staff's belief that the Commission should extend the corporate life and funding of the Alternative Energy Corporation in order to continue the flow of effective energy management information to the citizens of North Carolina.

Tom Phelps, Residential/Commerical Program Manager for AEC

Mr. Phelps responded to questions from the Commission and indicated that the AEC works closely with the North Carolina Home Builders Association. This work is not part of the code process per se, but the North Carolina Home Builders have developed with the AEC's assistance a standard for energy efficiency in new home construction which currently exceeds both the State building code standards and equals or exceeds the efficiency standards currently promoted by the electric utilities in the State. He expects that over the next six months to a year this particular standard will begin to have a real beneficial impact on insulation standards in general, particularly in new home construction. The current building code addresses new building construction only.

FINDINGS AND CONCLUSIONS

Based upon the Commission's records, its previous reviews of AEC program activity, and the statements made by the witnesses at the conference held on November 9, 1984, the Commission now makes the following

FINDINGS OF FACT

1. The North Carolina Alternative Energy Corporation is a nonprofit corporation organized under the laws of the State of North Carolina which is voluntarily supported by six major electric supplier organizations in North Carolina for public purposes, as outlined in its Articles of Incorporation.

2. The voluntary cooperation of public and utility personnel through the AEC is providing significant benefits to North Carolina electric ratepayers.

3. The AEC is achieving its intended purposes, has utilized extensive public and utility input in planning its past and future operations to support and augment those of individual electric suppliers and other North Carolina organizations, and is operating in a sound and prudent manner.

WHEREUPON, the Commission reaches the following

CONCLUSIONS

Based upon the foregoing, the Commission concludes that the North Carolina Alternative Energy Corporation is supported by both the public and its electric supplier members and is clearly achieving the following purposes for which it was organized:

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

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

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

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

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

Accordingly, the Commission concludes that the life of the AEC should be extended for five (5) years through December 31, 1990.

IT IS, THEREFORE, ORDERED as follows:

1. That the Articles of Incorporation of the North Carolina Alternative Energy Corporation shall be amended so as to extend the life or duration of the Corporation for five (5) years until December 31, 1990.

2. That the Chief Clerk shall mail a copy of this Order to the members of the Utility Review Committee of the North Carolina General Assembly and their Committee counsel.

ISSUED BY ORDER OF THE COMMISSION.
This the 19th day of February 1985.

NORTH CAROLINA UTILITIES COMMISSION
Sandra J. Webster, Chief Clerk

(SEAL)

DOCKET NO. E-100, SUB 41

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Determination of Rates for Purchase and Sale of Electricity Between Electric Utilities and Qualifying Cogenerators or Small Power Producers	))))	ORDER ON PROCESSING OF REPORTS PURSUANT TO G.S. 62-110.1(g)

BY THE COMMISSION: On August 17, 1983, the Commission issued an Order requiring regulated electric utilities to provide written notification of the certification requirements of G.S. 62-110.1(a) to each potential cogenerator and small power producer which contacts the utility regarding the possible sale of electricity to the utility. By the same Order, the Commission further required each regulated electric utility to institute procedures designed to ensure that a potential cogenerator or small power producer has in fact applied for and been granted a certificate of public convenience and necessity pursuant to G.S. 62-110.1(a) prior to the time the utility enters into a contract to purchase electric power from the facility.

G. S. 62-110.1(g) provides as follows:

> The certification requirements of this section shall not apply to persons who construct an electric generating facility primarily for that person's own use and not for the primary purpose of producing electricity, heat, or steam for sale to or for the public for compensation; provided, however, that such persons shall, nevertheless, be required to report to the Utilities Commission the proposed construction of such a facility before beginning construction thereof.

It has come to the attention of the Commission that the procedures established by the Commission's Order of August 17, 1983, should be clarified to provide for those facilities exempt from certification by G.S. 62-110.1(g).

The Commission finds good cause to require each regulated electric utility subject to this Order to amend the written notification of the certification requirements of G.S. 62-110.1(a) to notify potential cogenerators and small power producers of the exemption provided by G.S. 62-110.1(g).

The Commission further finds good cause to issue an order clarifying for all parties the manner in which it will handle reports filed with the Commission pursuant to G. S. 62-110.1(g). Cogenerators and small power producers who feel that they come within the exemption provided by G.S. 62-110.1(g) should file the report required by that subsection prior to beginning construction of an electric generating facility. The report shall be as provided by Commission Rule R1-37(e), and an original and 17 copies shall be filed with the Chief Clerk. The Chief Clerk shall distribute the copies to the Commission, the Commission staff, and the Public Staff. Any member of the Commission or Public Staff may question the applicability of the exemption provision of G. S. 62-110.1(g) within 10 days after the filing of the report. If the applicability of the exemption is questioned, the Commission will take

appropriate action to determine whether the exemption applies. If the applicability of the exemption is not questioned within 10 days, the Commission will, through its staff, send a letter to the cogenerator or small power producer acknowledging receipt of the report pursuant to the exemption provided by G.S. 62-110.1(g).

Finally, the Commission finds good cause to amend the Order of August 17, 1983, to provide that regulated electric utilities shall institute procedures designed to ensure that a potential cogenerator or small power producer has either applied for and been granted a certificate of public convenience and necessity or filed a report of construction pursuant to G. S. 62-110.1(g) and received a letter acknowledging the same prior to the time the utility enters into a contract for the purchase of electric power from the facility.

IT IS, THEREFORE, ORDERED as follows:

1. That each regulated electric utility subject to this Order be, and is hereby, required to provide written notification of the exemption provided by G. S. 62-110.1(g) to each potential cogenerator and small power producer which contacts the utility regarding the possible sale of electricity to the utility and, further, is hereby required to file with the Commission within 30 days a copy of the written notice to be utilized by the company;

2. That reports of construction pursuant to G.S. 62-110.1(g) shall be processed by the Commission as hereinabove provided; and

3. That each regulated electric utility subject to this Order shall institute procedures designed to ensure that a potential cogenerator or small power producer has either applied for and been granted a certificate of public convenience and necessity or filed a report of construction pursuant to G.S. 62-110.1(g) and received a letter acknowledging the same prior to the time the utility enters into a contract for the purchase of electric power from the facility.

ISSUED BY ORDER OF THE COMMISSION.
This the 16th day of October 1985.

NORTH CAROLINA UTILITIES COMMISSION
Sandra J. Webster, Chief Clerk

(SEAL)

DOCKET NO. E-100, SUB 41A

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Biennial Determination of Rates for Sale and Purchase of Electricity) ORDER
Between Electric Utilities and Qualifying Facilities)

HEARD IN: Commission Hearing Room, 217 Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on October 2-5 and 8-11, 1984

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

APPEARANCES:

For the Respondents:

Robert W. Kaylor, Associate General Counsel, Carolina Power & Light Company, P.O. Box 1551, Raleigh, North Carolina 27602; and John T. Bode, Bode, Bode & Call, Attorneys at Law, 336 Fayetteville Street Mall, Raleigh, North Carolina 27602
For: Carolina Power & Light Company

W. Edward Poe, Jr., Assistant General Counsel, and Ronald L. Gibson, Senior Attorney, Duke Power Company, P.O. Box 33189, Charlotte, North Carolina 28242
For: Duke Power Company

Edgar M. Roach, Jr., Hunton & Williams, Attorneys at Law, P.O. Box 109, Raleigh, North Carolina 27602; and Laurence E. Skinner, Hunton & Williams, P.O. Box 1535, Richmond, Virginia 23212
For: Virginia Electric and Power Company

Edward S. Finley, Jr., Hunton & Williams, Attorneys at Law, P.O. Box 909, Raleigh, North Carolina 27602
For: Nantahala Power and Light Company

For the Public Staff:

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

For the Intervenors:

Joseph W. Eason, Moore, Van Allen, Allen, and Thigpen, Attorneys at Law, P.O. Box 26507, Raleigh, North Carolina 27611 For: Cogentrix of North Carolina, Inc.

Thomas R. Eller, Jr., Attorney At Law, Suite 205 - Crabtree Center, 4600 Mariott Drive, Raleigh, North Carolina 27612
For: Hydro-Energy Association of the Carolinas, Inc. - North Carolina Division

Lucius W. Pullen, Division Counsel and Assistant Secretary, and Carl Younger, Division Counsel, Texasgulf, Inc., P.O. Box 30321, Raleigh, North Carolina 27622
For: Texasgulf, Inc.

John Runkle, Attorney at Law, P.O. Box 4135, Chapel Hill, North Carolina 27515
For: Randolph N. Horner

BY THE COMMISSION: These proceedings are the third biennial proceedings to be held by this Commission pursuant to the provisions of Section 210 of the Public Utility Regulatory Policies Act of 1978 (PURPA) and the Federal Energy Regulatory Commission (FERC) regulations implementing those provisions which delegated responsibilities in that regard to this Commission. These proceedings are also held pursuant to the responsibilities delegated to this Commission pursuant to N.C.G.S. 62-156(b) to establish rates for small power producers as that term is defined in N.C.G.S. 62-3(27a). Finally, as these proceedings relate to Carolina Power & Light Company (CP&L), they are a continuation and consolidation of matters arising upon the petition of that Company filed on December 16, 1983, as subsequently amended and revised, to modify its avoided cost rates which were approved by this Commission as a result of the second biennial proceeding which was held by this Commission pursuant to Section 210 of PURPA.

Section 210 of PURPA and the regulations promulgated pursuant thereto by FERC prescribe the responsibilities of FERC and of State regulatory authorities, such as this Commission, relating to the development of cogeneration and small power production. Section 210 of PURPA requires the FERC to prescribe such rules as it determines necessary to encourage cogeneration and small power production, including rules requiring electric utilities to purchase electric power from, and to sell electric power to, cogeneration and small power production facilities. Under Section 201 of PURPA, cogeneration facilities and small power production facilities which meet certain standards and which are not owned by persons primarily engaged in the generation or sale of electric power can become "qualifying facilities," and thus become eligible for the rates and exemptions to be established in accordance with Section 210 of PURPA.

Each electric utility is required under Section 210 of PURPA to offer to purchase available electric energy from cogeneration and small power production facilities which obtain qualifying status under Section 201 of PURPA. For such purchases, electric utilities are required to pay rates which are just and reasonable to the ratepayers of the utility, which are in the public interest, and which do not discriminate against cogenerators or small power producers. The FERC regulations require that the rates electric utilities pay to purchase electric energy and capacity from qualifying cogenerators and small power producers shall reflect the cost that the purchasing utility can avoid as a result of obtaining energy and capacity from these sources, rather than generating an equivalent amount of energy itself or purchasing the energy or capacity from other suppliers.

The implementation of these rules was delegated to the State regulatory authorities with respect to the electric utilities regulated by them. That implementation may be accomplished by the issuance of regulation on a case-by-case basis or by any other means reasonably designed to give effect to the FERC's rules.

Under Section 210 of PURPA and the related FERC rules, each regulated utility is required to file projections of its incremental energy and capacity

costs and its capacity construction schedules with its state regulatory authority for review and use in setting appropriate rates for purchase and sale of electricity between electric utilities and qualifying facilities. The first filings of such data were required by November 1, 1980, and on a biennial basis thereafter.

This Commission at the outset determined to implement Section 210 of PURPA and the related FERC regulations by holding biennial proceedings to which each of the four affected regulated electric utilities in this jurisdiction are made parties. The instant proceeding is the third such proceeding to be held by this Commission since the enactment of PURPA. In each of the prior two biennial proceedings, the Commission has determined separate avoided cost rates to be paid by each of the four electric utilities to the respective qualifying facilities which are interconnected with them. The Commission has also reviewed and approved other related matters involving the relationship between the electric utilities and the respective qualifying facilities interconnected with them, such as terms and conditions of service, contractual arrangements, and interconnection charges.

This proceeding also involves the carrying out of this Commission's duties under the mandate of N.C.G.S. 62-156, which was enacted by the General Assembly in 1979. N.C.G.S. 62-156 provides that "no later than March 1, 1981, and at least every two years thereafter" this Commission shall determine the rates to be paid by electric utilities for power purchased from small power producers according to certain standards prescribed therein. Those standards generally approximate those which are prescribed in the FERC regulations regarding factors to be considered in the determination of avoided cost rates. The definition of the term small power producer is more restrictive in N.C.G.S. 62-156 than the PURPA definition of that term, in that it includes only hydroelectric facilities of 80 megawatts of less, thus excluding users of other types of renewable resources and users of some other resources such as biomass.

Finally, as these proceedings relate to Carolina Power & Light Company, they are a continuation and consolidation of matters arising from a petition of the Company filed on December 16, 1983, which sought to have its previously approved avoided cost rates modified.

On December 16, 1983, Carolina Power & Light Company filed with the Commission a Petition for an Adjustment to Rate Schedule CSP-6C and Notice of Filing Change of Rate wherein CP&L requested the Commission to institute an immediate freeze on the availability of its approved long-term avoided cost rates and to allow new long-term avoided cost rates to become effective.

On January 13, 1984, the Commission issued an Order temporarily suspending the proposed revisions to its avoided cost rates pending further consideration.

On February 2, 1984, CP&L filed supplemental testimony, revised exhibits, and revised proposed avoided cost rate schedules which were intended to update its December 16, 1983, filing.

By Order issued February 8, 1984, the Commission continued the suspension of CP&L's proposed avoided cost rate revisions pending public notice and public hearings to be held on March 20, 1984; directed CP&L to file additional

testimony addressing the need and justification of the presently approved long-term rate options and possible alternatives thereto; and provided deadlines for other parties to intervene and prefile and serve any expert testimony.

Between February 8, 1984, and the scheduled hearing date of March 20, 1984, CP&L filed additional testimony; various parties conducted discovery; Carolina Utility Customers Association, Inc. (CUCA), and Randolph Horner were allowed to intervene; Cogentrix, the Public Staff, Wells Eddleman (for Kudzu Alliance) and Randolph Horner prefiled testimony; and Cogentrix filed a motion to continue the hearing and to consolidate the same with the biennial proceedings to be held later in the year. The Cogentrix motion was denied by Commission Order issued March 14, 1984.

When the hearings were convened on March 20, 1984, there were certain outstanding motions, and the Commission called for oral argument on those motions. CUCA argued, among other things, its motion to dismiss the proceeding and its alternative motion to continue the hearing and to consolidate it with the 1984 generic investigation into cogeneration and small power production rates. Cogentrix renewed its motion to continue the hearing and to consolidate it with the 1984 generic investigation. Both Kudzu Alliance and the Public Staff joined in the motion to continue and consolidate. Following oral argument of the motions, the Commission granted the motions to continue the hearing and to consolidate it with the 1984 biennial proceeding to be held later during the year. By its Order issued March 23, 1984, the Commission denied the motion of CUCA to dismiss CP&L's petition; reconsidered its previous Order suspending CP&L's proposed avoided cost rate schedules and lifted the suspension of CP&L's proposed Rate Schedule CSP-7 pending further Commission action following the 1984 biennial proceedings; and determined that all other pending motions were moot and would not be ruled upon unless raised again in the 1984 biennial proceeding.

On March 23, 1984, Cogentrix filed a motion to amend or stay the lifting of the suspension of CP&L's proposed Rate Schedule CSP-7. The Commission denied that motion pending oral arguments scheduled for April 2, 1984. Following the oral argument, the Commission Order issued April 4, 1984, directed that its Order issued on March 23, 1984, be amended to provide that potential cogenerators and small power producers who had obtained either a certificate of public convenience and necessity from the Commission or who had obtained a letter of intent from CP&L as of March 23, 1984, would be permitted to negotiate with CP&L for a contract rate between Rate Schedule CSP-6 and CSP-7, and to have the Commission resolve the matter if the negotiating parties failed to reach an agreement. For other potential contracting parties, the Commission determined to leave Rate Schedule CSP-7 in effect and, except as mentioned, affirmed the panel's Order of March 23, 1984.

Subsequently, the third biennial proceedings were specifically implemented by this Commission's Order Establishing Biennial Proceeding, Requiring Data and Scheduling Public Hearing issued May 11, 1984. That Order made Carolina Power & Light Company, Duke Power Company (Duke), Virginia Electric and Power Company (Vepco) and Nantahala Power and Light Company (Nantahala) parties to a proceeding to establish the avoided cost rates to be paid by each to interconnected qualifying facilities as required by Section 210 of PURPA and to

establish the rates to be paid by each to interconnected small power producers as required by G.S. 62-156.

By letter filed June 25, 1984, Nantahala advised the Commission that Nantahala was exempt from the PURPA and FERC data filing requirements, it being an electric utility having annual sales to ultimate customers of less than two billion kilowatt-hours.

By Order issued July 2, 1984, the Commission requested all parties to address the issues which would be raised if cogenerators and small power producers who enter into long-term levelized rate contracts with electric utilities were required to file a surety bond or similar assurance to protect ratepayers against the loss which would occur in the event of a default by the contracting qualifying facility prior to the expiration of the contract term.

On August 9, 1984, Cogentrix of North Carolina, Inc., filed a petition to intervene. An Order issued August 14, 1984, allowed the intervention. By an Order issued August 14, 1984, a pretrial conference was scheduled to be held on September 20, 1984. On August 14, 1984, Texasgulf, Inc., filed a Petition to Intervene. That intervention was allowed by Order issued August 16, 1984. On August 29, 1984, a Petition to Intervene was filed by Lilesville Power Company. This intervention was allowed by Order issued October 9, 1984. On August 30, 1984, Petitions to Intervene were filed by Hydro-Energy Association of the Carolinas, Inc., and the Carolina Industrial Group for Fair Utility Rates (CIGFUR-IV). These petitions were allowed by separate Orders issued September 7, 1984. On September 26, 1984, a pretrial conference was held in this matter. All four utility parties were represented by counsel as well as the following parties: the Public Staff; Cogentrix of North Carolina, Inc.; Hydro-Energy Association of the Carolinas, Inc., - North Carolina Division; Texasgulf, Inc.; and Randolph N. Horner. The usual matters covered at such conferences were discussed and were provided for in the Pre-Trial Order of the Commission issued on October 1, 1984.

In addition to the foregoing there were other motions, orders, and filings not specifically mentioned which the record will adequately reflect.

This matter came on for hearing before the Full Commission on October 2, 1984, as previously noticed and scheduled.

Witness Christopher Turner testified on behalf of the Appalachian Microhydro Association. He asserted that with respect to small projects of under 100 kilowatts capacity precise measurement of capacity was not critical and that expensive demand meters should not be required. He suggested that facilities of 10 kilowatts capacity or less be permitted a series connection which would allow the meter to run backwards with negative readings being paid for at the buyback rate. Witness Turner urged that interconnection policies be made more uniform and easier to understand. He expressed the view that the safety equipment and controls the utilities often insist upon are over designed and overpriced, and that there were wide discrepancies among utilities as to the equipment required and the price thereof.

Jane Sharpe testified as President of the Consumers Council of North Carolina. She cited the advantages of many smaller and more widely dispersed qualifying facility producers, as opposed to large central generating stations,

particularly better reliability in emergencies and national defense considerations. Witness Sharpe urged that competitive rates be set for qualifying facility power and that such rates as applied to cogeneration facilities take into account the thermal efficiency of the project, so as to reward the relatively more thermally efficient projects.

Virginia Electric and Power Company (Vepco) presented the testimony of a panel consisting of its employees as follows: Glenn A. Pierce, Supervisor - Rate Design; Md. Shamsul Huq, Director - Cost Research; G. Patrick Rooney, Supervisor - Power Supply Administrative Services; and Robert W. Carney, Supervisor - Cogeneration and Support Services. Witness Pierce presented a proposed revised Rate Schedule 19 - Power Purchases from Cogeneration and Small Power Production Qualifying Facilities (to be available to all qualifying facilities designated as new capacity rated at 100 kw or less on which construction began before November 9, 1978) and a proposed revised Rate Schedule 19-H - Power Purchases from Hydroelectric Small Power Production Qualifying Facilities, available to any hydroelectric facility and offering long-term levelized rates on a five-, ten-, and fifteen-year basis. Witness Pierce also commented upon long-term levelized rates, which Vepco proposes to offer only to small scale hydro facilities, and the possible use of surety bonds or similar assurances in connection with long-term levelized rate arrangements. Witness Huq presented testimony explaining how Vepco had estimated its long-run avoided generation cost and how it had developed that into the capacity credits which the Company proposed to offer qualifying facilities desiring to contract upon a long-term basis. Mr. Rooney testified regarding how the Company's proposed avoided energy costs had been developed using the PROMOD production costing model and how the Company had developed its proposed short-run avoided capacity costs. Witness Carney described Vepco's experience to date with qualifying facilities and explained certain proposed modifications to Vepco's previously approved standard contracts for use in transactions with qualifying facilities. He also discussed proposed adjustments in the standard contracts to Vepco's Schedule 19 energy prices for line loss savings and variable operation and maintenance expenses.

Duke Power Company presented the testimony of a panel consisting of its employees as follows: Donald H. Denton, Jr., Senior Vice President, Marketing & Rates; John N. Freund, Manager of Rate Design; and Joe M. Price, Industrial Power Specialist in the general office marketing department. Witness Denton's testimony concerned Duke's position regarding customer-owned generation, and the Company's concerns regarding the risks involved in long-term contractual arrangements with qualifying facilities. Witness Freund explained the derivation and calculation of the Company's proposed revised rate options which would be offered to qualifying facilities under its proposed Rate Schedule PP. Witness Price testified regarding Duke's experience with qualifying facilities, its practice regarding interconnection equipment requirements and certain additional language regarding licenses and permits proposed to be included in Duke's proposed standard contract agreement for use in transactions with qualifying facilities.

Carolina Power & Light Company presented the testimony of its employees: Norris L. Edge, Vice President - Rates and Service Practices, and G. Wayne King, Supervisor of Rate Studies. Witness Edge testified regarding CP&L's experience in obtaining qualifying facility generation, the Company's goals and perceived need for such additional generation in the future, the Company's

position on long-term levelized rate options for qualifying facilities, and how the risks involved in such arrangements should be dealt with. Witness King presented the Company's proposed cogeneration and small power production Rate Schedule CSP-9 and explained the derivation and calculation of the proposed rates reflected in it as well as changes in the methodology used from that which had been used in developing avoided cost rates approved in prior proceedings.

Nantahala Power and Light Company presented the testimony of its Vice President - Finance and Treasurer, N. Edward Tucker, Jr. Witness Tucker presented Nantahala's proposed standard rates to be paid for purchases from qualifying facilities and its proposed standard contract for use in such purchase arrangements. He explained how new arrangements which had been entered into between Nantahala and the Tennessee Valley Authority for the provision of Nantahala's power needs in excess of the generating capabilities of its own generating facilities had affected Nantahala's proposed rates and contractual arrangements.

Cogentrix of North Carolina, Inc., presented the testimony of a panel consisting of: Donald A. Dowling, its Senior Vice President and Chief Operating Officer, and William B. Marcus, a consultant with the energy economics and consulting firm of JBS Energy, Inc., based in Broderick, California. Witness Dowling's testimony concerned the following four issues: (1) Duke Power Company's apparent opposition to purchasing power from qualifying facilities which were not Duke customers, (2) the need to prohibit adjustments being made to avoided cost tariffs outside of biennial proceedings, (3) the need for long-term levelized rates or similar alternative rates for nonrenewable resource qualifying facilities, and (4) the need for surety bonds or other similar assurances in order to protect ratepayers from risks arising from early cancellation of long-term levelized rate arrangements. Witness Marcus asserted that none of the respondent utilities could build coal generation at prices at or below those calculated using the method which CP&L and Duke propose for determining rates to be paid to qualifying facilities.

The Public Staff of the North Carolina Utilities Commission presented the testimony of Timothy J. Carrere, Engineer in the Public Staff's Electric Division, and Hsin-Mei C. Hsu, Director of the Economic Research Division of the Public Staff. Witness Carrere discussed the history of the long-term levelized rate options previously approved by the Commission, risks and possible problems involved in such arrangements, and his recommendation regarding what long-term levelized rate options should be offered in the future. Witness Carrere recommended that the utilities should be required to offer long-term levelized rate options to all qualifying facilities under 5 MW in size and to hydroelectric projects which were small power producers covered by G.S. 62-156. He also presented his recommendations regarding the options which the regulated utilities should offer qualifying facilities with respect to how interconnection equipment costs could be paid. Witness Hsu presented testimony regarding the Public Staff's position on how avoided capacity costs should be determined and specific recommendations and changes with respect to the rates proposed by CP&L and Duke.

The Hydro-Energy Association of the Carolinas - North Carolina Division, presented the testimony of the following witnesses: Dr. John W. Wilson, President of J.W. Wilson and Associates, a Washington, D.C. consulting firm;

Ronald B. Powers, a resident of Gastonia, North Carolina, and President of the Hydro-Energy Association of the Carolinas, Inc; Charles W. Pickelsimer, Jr., President and General Manager of Cascade Power Company; Charles B. Mierek, President of Southeastern Hydro-Power, Inc., and the Clifton Corporation. Dr. Wilson testified that regulated utilities were not anxious to encourage qualifying facilities because such qualifying facilities displaced what would otherwise be rate base additions and thus limited the return which the utilities could otherwise earn on said rate base additions. Dr. Wilson also recommended avoided cost rates with respect to Duke and CP&L for energy and capacity over the short term, intermediate term, and long term. He further addressed interconnection charges, and he also recommended that the Commission require wheeling in order to promote competition and efficiency and to combat anticompetitive forces which he contended would exist in the absence of the availability of wheeling. Witness Powers testified regarding problems which existed with respect to the interconnection and extra facilities charges to qualifying facilities. Witness Pickelsimer testified regarding the practical problems which had been encountered in attempting to contract to sell its power to Duke Power Company. He also testified regarding the problems encountered when he attempted to arrange for Duke to wheel his power to CP&L. Witness Mierek testified regarding the Commission's requiring qualifying facilities to obtain certificates of necessity and convenience, regarding an apparent disparity in Duke's PG Schedule rates and its PP Schedule rates, regarding the relative risk to the ratepayer between utility-built generation versus qualifying facilities, regarding the techniques for calculating levelized avoided cost rates, and regarding interconnection policies and wheeling.

The Kudzu Alliance presented the testimony of Wells Eddleman, an energy and pollution control consultant. Witness Eddleman presented proposals for the proper calculation of avoided costs, emphasized the need for fixed price long-term contracts, and criticized various proposals which he perceived as making it more difficult to develop finance and license qualifying facilities as well as the use of the PROMOD production costing model. Additionally, he testified regarding the adverse impacts of the failure to require regulated utilities to wheel the output of qualifying facilities to other utilities.

Intervenor Randolph N. Horner testified that the Commission should be skeptical of cogeneration facilities which make only token use of waste heat in topping-cycle steam plants, that the Commission should set avoided cost rates in the neighborhood of the utilities' admitted busbar costs, and that it should adopt standards which protect society's resources while fostering expedited development of decentralized facilities.

Texasgulf, Inc., presented the testimony of David C. Edmiston, Vice President of Business Evaluation and Research for Texasgulf Chemicals Company. Witness Edmiston's testimony focused on difficulties experienced by the company in negotiating a satisfactory avoided cost rate and contract with CP&L, and a proposal of appropriate avoided cost rates which should be offered by CP&L.

Based upon the foregoing, the testimony and exhibits offered at the hearing and the entire record and body of evidence adduced in this matter, the Commission now makes the following:

FINDINGS OF FACT

1. CP&L, Duke and Vepco should offer long-term levelized rates for 5-year, 10-year and 15-year periods as standard options to qualifying facilities which are either (a) hydroelectric generating facilities of 80 megawatts or less capacity which are owned or operated by a small power producer as that term is defined in G.S. 62-3(27a) or (b) any other qualifying facility which has a generating capacity of five megawatts or less. The long-term levelized rates approved hereinafter for CP&L, Duke and Vepco shall be available as standard rate options only to the qualifying facilities described above. The standard levelized rate options of 10 or more years should include a condition making contracts under those options renewable for subsequent term(s) at the option of the utility on substantially the same terms and provisions and at a rate either (1) mutually agreed upon by the parties negotiating in good faith and taking into consideration the utility's then avoided cost rate and other relevant factors or (2) set by arbitration.

2. CP&L, Duke and Vepco should offer nonhydroelectric qualifying facilities with generating capacities of more than five megawatts the options of contracts at the variable rates set by the Commission or contracts at negotiated rates and terms.

3. Nantahala shall not be required to offer any long-term levelized rate options to qualifying facilities.

4. Proposed Rate Schedule CG for Nantahala Power and Light Company is reasonable and appropriate.

5. Proposed Rate Schedule 19 for Virginia Electric and Power Company is reasonable and appropriate, except the long-term levelized rates contained therein should be available only to nonhydro projects having a capacity of 5 MW or less as discussed herein.

6. Proposed Rate Schedule 19H for Virginia Electric and Power Company is reasonable and appropriate, except Schedule 19H should be available to nonhydro projects having a capacity of 5 MW or less as well as to hydro projects as discussed herein.

7. Proposed Rate Schedule PP for Duke Power Company is reasonable and appropriate, except the long term levelized rates contained therein should be available only to hydro projects and to nonhydro projects having a capacity of 5 MW or less as discussed herein.

8. The standard rates contained in proposed Rate Schedule PP for Duke Power Company should be adjusted to: (a) include an allowance for general plant in the capacity credits; (b) use a 20% reserve margin instead of an 89% availability factor in calculating the capacity credits; (c) include the allowance for fuel inventory in the energy credits instead of in the capacity credits; and (d) include an allowance for cash working capital in the energy credits.

9. Proposed Rate Schedule CSP-9 for Carolina Power and Light Company is reasonable and appropriate, except the long-term levelized rates contained

therein should be available to all qualifying hydro projects as well as to small nonhydro projects having a capacity of 5 MW or less as discussed herein.

10. The interconnection practices of the utilities should not be revised in this proceeding, in view of the fact that such practices are applied to qualifying facilities and to consuming customers alike. Individual complaints regarding such interconnection practices can best be handled on a case-by-case basis under NCUC Rule R1-9.

11. All utilities should, upon request by a qualifying facility, furnish a list of the major items of equipment specified for an interconnect. Said major items should be grouped under functional categories, such as Metering, Transformation, Lines and Services, and Protective Equipment. Installed costs should be given for each functional category.

12. The Utilities Commission has no jurisdiction to set rates for the wheeling of power from qualifying facilities by the utilities involved in this proceeding. Other issues dealing with wheeling will be considered on a case by case base as brought before the Commission in complaint proceedings.

13. The Commission will continue to implement Section 210 of PURPA and G. S. 62-156 by way of biennial proceedings such as the present one, but it will retain sufficient flexibility to consider interim proceedings should circumstances justify such.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 1 AND 2

The evidence supporting this finding is contained in the testimony of CP&L witness Edge, Duke witness Denton, Vepco witnesses Pierce and Carney, and Public Staff witnesses Carrere and Hsu.

A major issue in these proceedings is whether the Commission should require the electric utilities to offer long-term levelized rates to qualifying facilities as standard rate options. Long-term levelized rates are permitted, but not required, by the regulations implementing Section 210 of PURPA. The commentary to the regulations includes the following:

> "A facility which enters into a long-term contract to provide energy or capacity to a utility may wish to receive a greater percentage of the purchase price during the beginning of the obligation. For example, a level payment schedule from the utility to the qualifying facility may be used to match more closely the schedule of debt service of the facility. So long as the total payment over the duration of the contract term does not exceed the estimated avoided costs, nothing in these rules would prohibit a state regulatory authority or nonregulated electric utility from approving such an arrangement."

G.S. 62-156(b)(1), which applies to small power producers as defined by G.S. 62-3(27a), provides, "Long-term contracts for the purchase of electricity by the utility from small power producers shall be encouraged in order to enhance the economic feasibility of small power production facilities." As a result of the past biennial proceedings held by this Commission, CP&L and Duke have been required to offer standard long-term levelized rate options to all qualifying

facilities. Vepco has been required to offer such options only to small power producers as defined in G.S. 62-3(27a), i.e., hydroelectric facilities of 80 megawatts or less capacity. The standard long-term levelized rate options were ordered by this Commission in order to encourage the development of cogeneration and small power production facilities. However, the Public Staff and the utilities have raised concerns in this proceeding with respect to the effect of these options.

Public Staff witness Carrerre testified to the potential problems presented by long-term levelized rates. He testified that there are inherent risks associated with forecasting long-term levelized rates, which include, but are not limited to, the uncertainty with respect to fuel prices and the factors used for forecasting future inflation and utility load growth. To the extent that the assumptions used to establish long-term levelized rates ultimately prove to be inaccurate, overpayments or underpayments of avoided costs could occur. He also cited the risk that a qualifying facility might default after receiving the overpayments which levelization provides during the early part of a long-term contract. If the qualifying facility is insolvent, there is the likelihood that the utility and its ratepayers will be unable to recoup the overpayments. Such a default might also impact on the ability of the utility to serve its load. CP&L witness Edge testified that because long-term rates are based on future cost projections, a large element of financial risk is borne by the ratepayers and by the qualifying facility since the projected avoided cost may differ from the actual avoided cost. The longer the levelized period, the greater is the risk. Witness Edge also testified that standard long-term levelized rate options were encouraging the immediate development of large blocks of generation, much of it coal-fired generation, on CP&L's system and that this could preempt future development of more efficient cogeneration, as well as future development of generation from renewable resources. Duke witness Denton testified to three areas of concern about the impact of standard long-term levelized rate options. The first concern is with the length of long-term contracts. Since a 10- or 15-year contract extends beyond Duke's current corporate planning period, it is difficult to predict avoided costs over the long-term period. Duke's second concern is with the rate design risk. Many assumptions must be made and the risks of these assumptions, in the form of overpayments to a qualifying facility, lies with the ratepayer. Duke's third concern is with an appropriate surety arrangement to protect against default by a qualifying facility after it has received overpayments during the first part of a long-term contract. Vepco witness Pierce testified that the standard long-term levelized rate options are based on the assumptions that the qualifying facility will supply power at the same level over the entire contract term and that inflation and energy costs over the contract term will match projections. Pierce then cited the difficulty in projecting inflation and energy costs over long-term periods and cited the risk of a qualifying facility defaulting on its long-term commitment. He also testified that if standard long-term levelized rates are imposed on Vepco, its customers will pay significantly more in the short-term for the energy supplied by qualifying facilities than energy from any other source.

The General Assembly has clearly indicated in G.S. 62-156 a policy of encouraging hydroelectric facilities. Additionally, we note that many of the risks associated with standard long-term levelized rate options are either not presented or tend to be minimized in the case of hydroelectric facilities. For example, hydroelectric facilities are not subject to the risks associated with

changes in fossil fuel costs or the business risks associated with the heat recovery aspect of cogeneration projects. Further, more of the capital costs involved in a hydroelectric facility tend to be "up front" costs which must be financed. Levelized rates facilitate financing by providing a degree of certainty and by allowing an income stream which more evenly matches the debt payments required by financing. Finally, we note that hydroelectric facilities by their very nature tend to entail a degree of permanency and stability as regards the major components of the facility, such as the dam and powerhouse. In light of the foregoing reasons, we believe and conclude that CP&L, Duke and Vepco should continue to offer long-term levelized rate options to all hydroelectric qualifying facilities as standard rate options.

We also conclude that these three utilities should offer such standard rate options to nonhydroelectric qualifying facilities with generating capacities of five megawatts or less. Both CP&L witness Edge and Public Staff witness Carrere recommended that standard long-term levelized rate options also be made available to qualifying facilities other than hydroelectric facilities if their capacity is of five megawatts or less. The risks associated with a nonhydroelectric qualifying facility of five megawatts or less capacity in the event of a default on a long-term levelized rate contract is relatively small in terms of dollar exposure and impact on supply when contrasted with the risks associated with such a default by a larger project. Two other considerations support our conclusion. Standard long-term levelized rate options for smaller projects will tend to encourage such projects, and such smaller projects would probably not have the resources or the expertise to negotiate a contract with a utility if these standard options were not available.

In ordering Vepco to make standard long-term levelized rate options available to nonhydroelectric qualifying facilities of five megawatts or less capacity, we are expanding the scope of its offering. Formerly, Vepco only offered such options to hydroelectric facilities. The rationale for that former position was that long-term levelized rates would have a severely detrimental impact on Vepco's North Carolina ratepayers due to the large quantity of cogeneration and small power production in Vepco's North Carolina service territory. Vepco witness Pierce testified that if Vepco had to pay levelized rates to a cogenerator with 65 to 100 megawatts of new capacity, "there could be a severe impact on North Carolina ratepayers." Vepco witness Carney pointed out that Vepco has currently committed to buy the output of two facilities in its North Carolina service area with approximately 135 megawatts capacity and that a third facility with an estimated capacity of 50 megawatts is expected to go into operation in Vepco's North Carolina service area. While the payment of levelized rates to projects of such size could adversely impact Vepco's North Carolina ratepayers in the short-term, no such problem is anticipated with the smaller projects of five megawatts or less. The Commission has balanced the advantages discussed hereinabove with the potential impact on Vepco ratepayers and has concluded that standard long-term levelized rate options should be offered to nonhydroelectric qualifying facilities of five megawatts or less in the Vepco service area.

In ordering "long-term" levelized rates, the Commission has in the past set standard rates levelized for five years, ten years, and fifteen years. The fifteen year levelized rate has proved most attractive to developers of qualifying facilities. Of the 18 contracts signed by CP&L since the enactment of PURPA, all but three have been at a fifteen-year levelized rate. The

long-term contract represents a significant advantage to qualifying facilities since it ensures them of a constant income flow during the long term often required to finance their facilities. While advantageous to developers, the long-term contract poses a greater risk to ratepayers. Long-term levelized rates require greater overpayments during the early part of the contract period and they are necessarily more difficult to forecast accurately. Furthermore, should the qualifying facility find a more profitable rate elsewhere and desire to wheel at the end of its contract, the utility could be faced with replacing capacity that it has relied upon to serve its customers for a long time and which it may still need. Although not required to do so, the Commission concludes that it should continue to offer long-term levelized rates as standard rate options to hydroelectric qualifying facilities and nonhydroelectric qualifying facilities of 5 megawatts or less capacity. However, in order to address the possibility of lost capacity, the Commission concludes that those developers who derive the benefits of the standard long-term rates should be required to accept one condition in return therefor, a condition that their contract include a provision making the contract renewable for subsequent term(s) at the option of the utility on substantially the same terms and provisions and at a rate either (1) mutually agreed upon by the parties negotiating in good faith and taking into consideration the utility's then avoided cost rate and other relevant factors or (2) set by arbitration. The Commission orders that all contracts entered into by CP&L, Duke and Vepco at the standard levelized rate options of ten or more years include such a provision. Contracts entered into at the standard variable rate or the five-year levelized rate shall not be required to include such a provision. By this decision, the Commission seeks to address one of the problems posed by long-term levelized rates while at the same time offering the developers the advantages of such rates.

Nonhydroelectric qualifying facilities of greater than five megawatts capacity have the options of contracting at the standard variable rates set by the Commission or of negotiating rates and contract terms with CP&L, Duke and Vepco. The Commission believes that the concerns expressed with respect to long-term levelized rates for such qualifying facilities can best be addressed in the context of free and open negotiations between qualifying facilities and the utilities. Therefore, the Commission will set no guidelines for such negotiations. However, the Commission would expect such negotiations to address such problems as the following:

(a) The appropriate contract duration and the parties' best forecast of avoided capacity and energy credits over that duration;

(b) Capacity credits that reflect the need (or lack of need) for additional capacity at the time deliveries under the contract are actually to be made;

(c) The availability of capacity during the utility's daily and seasonal peak periods;

(d) The utility's ability to dispatch the qualifying facility;

(e) The expected or demonstrated reliability of the qualifying facilities;

(f) The terms and provisions of any applicable contract or other legally enforceable obligation, including the termination notice requirement and sanctions for noncompliance;

(g) The extent to which the scheduled outages of the qualifying facility can be usefully coordinated with scheduled outages of the utility;

(h) The usefulness of capacity supplied from a qualifying facility during system emergencies, including its ability to separate its load from its generation;

(i) The individual and aggregate value of the capacity from qualifying facilities on the utility's system;

(j) The smaller capacity increments and the shorter lead times which might be available with additions of capacity from qualifying facilities;

(k) The costs or savings resulting from variations in line losses from those that would have existed in the absence of purchases from the qualifying facility;

(l) The alternative of long-term rates that are not levelized or only partially levelized;

(m) The alternative of long-term rates that include levelized capacity payments and variable energy payments;

(n) Appropriate notice prior to the expiration of the contract term, the renewability of the contract, and provisions for setting the appropriate rates for such renewed contract;

(o) The appropriate security bond or other protection for the utility if levelized or partially levelized payments are negotiated.

Again, the Commission does not intend to restrict the parties to any formula. Qualifying facilities of more than five megawatts capacity will be of such substance as to have resources and expertise to negotiate with the utilities, and the competing interests of the parties can best be resolved by negotiations. Some hydroelectric qualifying facilities or non-hydroelectrc qualifying facilities of five megawatts or less capacity may desire to negotiate contracts with a utility, rather than to accept the standard contract rates and provisions set by this Commission. Although we have discussed negotiated contracts in terms of nonhydroelectric qualifying facilities of more than five megawatts capacity, this option is of course available to other qualifying facilities as well.

Another concern addressed at these hearings was protection for the utilities against the financial loss they might otherwise suffer if a qualifying facility with a long-term contract at levelized rates defaults after receiving overpayments during the early part of the contract. If such a qualifying facility were bankrupt, the utility might have no means of recouping the amount by which the overpayments exceeded what the facility would have received under the standard variable rate. The posting of a surety bond at the time such a contract is signed would provide such protection; however,

testimony at the hearing was divided as to whether such bonds are currently available. Duke suggested other means to achieve the same protection, including performance insurance, an irrevocable letter of credit, or a suspense or escrow account. The Commission will not require such protection of hydroelectric qualifying facilities or of nonhydroelectric qualifying facilities of five megawatts or less capacity contracting at standard rate options since these projects do not pose the increased risks that justify such guaranties. For nonhydroelectric qualifying facilities of more than five megawatts capacity, the Commission concludes that the appropriate surety or other protection is a matter best left to negotiation.

Negotiated contracts between a utility and a qualifying facility should, upon execution, be submitted to the Commission. The Commission will conduct a general review of such contracts to determine whether they comply with the provisions of this Order. If it appears that they do, such contracts will be approved for filing with the Commission. The Commission may, on its own motion, conduct further, more detailed review of the contracts at that time by way of such hearings or other proceedings as it may order. Further, such contracts, after being approved for filing, shall be subject to review in the context of the utility's next filed general rate case or a complaint proceeding, just as would any other contract by the utility. By this procedure, the Commission seeks to insure that a meaningful and public review is conducted as to such contracts.

EVIDENCE AND CONCLUSION FOR FINDING OF FACT NO. 3

The evidence supporting this finding is contained in the testimony of Nantahala witness Tucker. The Commission concludes that Nantahala should not be required to offer any standard long-term levelized rate options to qualifying facilities because the unique nature and circumstances of Nantahala's power supply arrangements make such options infeasible. Nantahala for many years has been unable to serve its load with its own generating facilities. Consequently, Nantahala has had to purchase capacity and/or energy from TVA. Until recently such purchases were made on rate schedules which were subject to change from time to time and which thus effectively precluded Nantahala from being able to contract for qualifying facility capacity and/or energy on a long-term levelized basis. Nantahala's current power supply arrangements, as described by witness Tucker's testimony in these proceedings, are also such that it would be wholly infeasible for Nantahala to offer any form of long-term levelized rate options. Under the January 1, 1983, Interconnection Agreement between Nantahala and TVA, Nantahala is charged by TVA monthly for energy purchases on an hour by hour cost basis. The amount which Nantahala pays TVA for energy purchases is dependant upon TVA's cost. The Agreement also provides for monthly variations in the amount Nantahala must pay to TVA for capacity purchases based upon commitments Nantahala must make to TVA each month prior to making such capacity purchases. Thus, the Commission concludes that because of Nantahala's contractual arrangements for the purchase of capacity and/or energy from TVA and the inherent uncertainty and monthly variations involved in such arrangements, it is not feasible to require Nantahala to offer any form of standard long-term levelized rate options to qualifying facilities. We will, as hereinafter provided, set a variable rate for Nantahala.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 4

The evidence pertaining to Nantahala's calculations of avoided cost rates is contained in the testimony of Nantahala's witness Tucker. Witness Tucker testified that the provisions in its proposed Rate Schedule CG are designed to exactly parallel the terms of Nantahala's Interconnection Agreement with TVA. Nantahala purchases from TVA the capacity and energy needed to serve that portion of Nantahala's load which is over and above what Nantahala's own generating resources can produce. Since purchases of capacity and/or energy by Nantahala from qualifying facilities would generally reduce what Nantahala would otherwise purchase from TVA under that Interconnection Agreement, the amounts which Nantahala proposes to pay qualifying facilities for capacity and/or energy sold to Nantahala are geared to the savings or costs under that agreement.

The Commission notes that no other party to this proceeding presented an evaluation or took issue with Nantahala's proposed rate schedule or purchase power agreement, and concludes that they should be approved.

EVIDENCE AND CONCLUSION FOR FINDINGS OF FACT NOS. 5 AND 6

The evidence pertaining to Vepco's calculations of avoided costs is contained in the testimony and exhibits of Vepco witnesses Pierce, Huq, Rooney and Carney, Cogentrix witness Marcus and Public Staff witness Carrere.

The Public Staff supported the rates proposed by Vepco, except it recommended that the long-term levelized rates contained in Schedule 19H be extended to include nonhydro projects having a capacity of 5 MW or less.

Cogentrix supported the rates proposed by Vepco, except it objected to the method of allocating long-term capacity credits over the life of the contract. Cogentrix witness Marcus recommended a "real carrying charge rate" methodology instead of the "present value" approach used by Vepco. The Cogentrix methodology would result in high capacity credits in the earlier years of the contract and lower capacity credits in the later years of the contract.

The Commission concludes that the long-term levelized rates proposed by Vepco in Schedule 19H should be approved, except that they should be extended to include nonhydro projects having 5 MW or less capacity. The Commission further concludes that the rates proposed by Vepco in Schedule 19 should be approved, except for the long-term levelized rates contained therein as discussed elsewhere herein.

Vepco proposed modifications to its standard contracts with qualifying facilities which were generally uncontested. Cogentrix objected to provisions in the standard contracts which discount QF capacity if such capacity is provided less than 90% of the time. Cogentrix contended that such provisions were discriminatory because Vepco's own generating units don't operate at least 90% of the time. There was relatively little discussion on the issue.

The Commission notes that other parties did not contest the issue, and is of the opinion that the matter can best be handled outside of this proceeding under NCUC Rule R1-9 if Congentrix desires to pursue the matter. Therefore, the Commission concludes that the modifications should be approved as proposed.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 7 AND 8

The evidence pertaining to Duke's calculations of avoided cost rates is contained in the testimony and exhibits of Duke witnesses Freund and Denton, Public Staff witness Hsu, Cogentrix witness Marcus and Hydro-Energy Association witness Wilson. Other witnesses testified generally with respect to determination of avoided costs but not specifically with respect to Duke's calculations.

Witness Freund explained that the avoided fuel expenses and variable O & M expenses for the 1985 - 1993 period were derived by comparing total system variable costs that would be incurred with and without the presence of 100 MW of hypothetical QF capacity. The comparisons were made utilizing a production cost simulation model (PROMOD), and the addition of 100 MW of QF capacity resulted in the avoidance of certain variable costs during peak and off peak periods.

Witness Freund further explained that the avoided fuel expenses and variable O & M expenses for the 1994 - 1999 period were derived by escalating the 1993 avoided variable costs at the rate of 7% per annum. Duke did not base avoided variable costs for the 1994 - 1999 period on its production cost simulation model because it has no specific plans to add additional generating units after 1993, and the production cost simulation model would not be representative for the 1994 - 1999 period where reserve margins drop below acceptable levels unless additional generating units are added. Rather than add hypothetical undesignated units in its production cost simulation model for the 1994 - 1999 period, as Carolina Power & Light did, Duke simply extrapolated the production cost simulation model results for 1993 to the 1994 - 1999 period using a cost escalation factor.

The Public Staff did not object to Duke's methodology for deriving avoided variable costs or energy credits, except for an adjustment to recognize working capital as discussed below.

Witness Freund explained that the avoided fixed costs (or capacity credits) for the 1985 - 1999 period were derived based on the costs of new combustion turbine (CT) capacity. He contended that if additional generating units are more capital intensive than a CT, they must produce sufficient fuel cost savings to the system to justify the additional capital investment, and that therefore the CT represents the theoretical maximum net capital investment in additional capacity. For example, witness Freund explained that substitution of QF capacity for a base load coal plant would result in (1) avoidance of carrying charges on the coal plant investment, and (2) loss of the fuel cost savings which would have been available from the base load coal plant.

Public Staff witness Hsu supported the use of a CT to calculate capacity credits. She explained that such capacity credits can be determined using either a base load unit or a peaking unit, and that the two methods should yield very similar results if other things remain equal. Cogentrix witness Marcus also conceded that using a CT to calculate capacity credits for the 1985 - 1993 period was not inappropriate, although he objected to such use for the 1994 - 1999 period. Witness Marcus recommended the use of a base load coal plant for calculating capacity credits for the 1994 - 1999 period.

Hydro-Energy Association witness Wilson recommended that capacity credits be determined based on a plant already under construction, either Catawba or Bad Creek, as a proxy for future avoided capacity. However, Duke witnesses Denton & Freund testified that the Catawba nuclear plant is nearing completion and cannot be avoided, and that the Bad Creek pumped storage plant cannot be deferred because of its federal licensing as a hydro facility. They also testified that Duke might be able to refurbish generating units which are currently in cold shutdown status if the cost should prove to be lower than a new generating unit.

The Commission is of the opinion that capacity credits may appropriately be based on CT generating units, and that the advantages of using a CT for such calculations outweigh the disadvantages. Use of a CT provides a more accurate measure of capacity cost per KW in current dollars than generating units requiring longer construction lead times and more complex facilities subject to greater regulatory and environmental uncertainties. A CT is an appropriate proxy for the capacity related portion of the total costs of a generating unit, whether such unit is a base load unit or a peaking unit.

The Commission is further of the opinion that the avoided cost of a utility system is not necessarily unit specific. For example, the avoided energy costs derived from the various scenarios simulated by PROMOD reflect the differences in generation mix between the various scenarios. If a new generating unit is added to the system, the dispatch and overall operation of each pre-existing generating unit is affected. Any change in generation mix results from a different dispatch of all generating units together as a whole, and not from dispatching the new generating unit alone.

The Commission concludes that there is no inconsistency between the use a CT for calculating capacity credits, the use of PROMOD for calculating energy credits for 1985 - 1993, and the use of an extrapolation of PROMOD for calculating energy credits for 1994 - 1999. The PROMOD model includes additional fuel costs for CT units as well as for base load units, and the resulting fuel mix still approximates base load fuel costs because the resulting generation mix is predominantly base load, regardless of what type of generating unit is the latest unit added (or avoided). The CT investment cost is a proxy for the additional capacity related portion of the predominantly base load generation mix in current dollars, and the 1994 - 1999 extrapolation of PROMOD represents a predominantly base load generation mix which still includes an appropriate amount of CT generation.

Public Staff witness Hsu proposed an adjustment to Duke's energy credit calculations. She pointed out that Duke failed to include an allowance for working capital in its calculation of avoided variable costs (or energy credits). She recommended an adjustment to said energy credits which would recognize a 4% working capital allowance, based on the same methodology used by Carolina Power and Light. The 4% working capital allowance recommended by witness Hsu includes recognition of the fuel inventory which witness Hsu eliminated from the capacity credit calculations discussed below.

The Commission concludes that the recommended adjustment by witness Hsu to apply the fuel inventory carrying costs as energy related costs instead of capacity related costs is appropriate, particularly in view of the above discussion that capacity related expenses are not necessarily unit specific

anyway. The Commission also adopts the methodology recommended by witness Hsu for calculating energy related working capital for Duke, which includes fuel inventory carrying costs and cash working capital at an overall rate of 4%.

Public Staff witness Hsu also proposed three additional refinements or adjustments to Duke's capacity credit calculations. First, she pointed out that Duke failed to reflect any general plant associated with avoided generating plant in its capacity credit calculations, and she utilized the Carolina Power and Light method to derive her proposed adjustment to Duke's capacity credits in order to recognize the effects of avoided general plant.

Next, as discussed earlier, witness Hsu removed fuel inventory carrying costs from the capacity credit calculations and instead included such fuel inventory carrying costs in the working capital component of the energy credit calculations. She determined that fuel inventory carrying costs are not capacity related, but rather are energy related and should be included in the energy credits.

Finally, witness Hsu utilized a 20% reserve margin instead of the 89.1% availability factor utilized by Duke in calculating the capacity credits. She pointed out that the 20% reserve margin is one which has been repeatedly used and approved by this Commission.

The Commission notes that the adjustments recommended by witness Hsu are consistent with the Commission's treatment of Duke's capacity credit calculations in the previous avoided cost proceeding, and are also consistent with such calculations by Carolina Power and Light. The Commission concludes that the recommendations by witness Hsu should be adopted.

Duke also proposed a modification to its Purchased Power Agreement which emphasizes to the power producer the need to obtain all necessary licenses and permits, including a Certificate of Public Convenience and Necessity from the North Carolina Utilities Commission. The Commission concludes that the modification should be approved as proposed. In this connection, the Commission reminds all utilities of its October 25, 1984 Order requiring them to ensure that qualifying facilities obtain a certificate of public convenience and necessity from this Commission prior to the time a contract for the sale and purchase of electricity is signed.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 9

The evidence pertaining to CP&L's calculations of avoided cost rates is contained primarily in the testimony and exhibits of CP&L witnesses Edge and King, Public Staff witness Hsu, Cogentrix witness Marcus, Hydro-Energy Association witness Wilson, Texasgulf witness Edmiston, and Kudzu witness Eddleman.

Witness King explained that the avoided energy costs for the 1985-1993 period was derived utilizing a production cost simulation model (PROMOD) which reflected the generating units either existing or specifically planned for the system. He explained that the avoided energy costs for the 1994-1999 period were derived from PROMOD which reflected three undesignated base load coal generating units added after 1993.

Witness King explained that the avoided capacity costs for the 1985-1999 period were derived based on the costs of a new combustion turbine (CT). He testified that using a CT or peaking unit as the basis for calculating the capacity credits had many advantages over using a baseload unit as the basis for such calculation. Among these he asserted were rate stability over time, support by economic theory, the provision of correct long-term price signals, the avoidance of controversy or confusion regarding which baseload unit should be used as the "avoidable" unit and the associated problem of accurately computing the fuel savings to be subtracted from the cost of such avoidable unit.

Public Staff witness Hsu testified that she did not oppose the use of a CT as the basis for calculating the capacity credits. However, she insisted that if a CT were to be used for calculating avoided capacity costs then the determination of the avoided energy costs should be made in a manner consistent with that approach. She contended that using PROMOD to produce energy credits for the 1994-1999 period (reflecting three undesignated base load coal units) while using a CT to produce capacity credits for the 1994-1999 period was inconsistent.

Cogentrix witness Marcus, Hydro-Energy Association witness Wilson, and Texasgulf witness Edmiston all objected to using a CT to calculate capacity credits while using additional base load coal units to calculate energy credits. They all agreed that the capacity credits should be calculated using a baseload coal plant under such circumstances. Witness Marcus proposed that capacity credits be based on a CT for the 1985-1993 period, and on an undesignated base load coal plant for the 1994-1999 period. Witness Wilson proposed that a minimum 6¢ per kwh rate be established based on Mayo 2 at a 60% capacity factor. Witness Edmiston also proposed using Mayo 2 to calculate capacity credits for the 1994-1999 period.

Kudzu witness Eddleman contended that Harris I was CP&L's avoided cost unit, that Harris I should be cancelled, and that the avoided cost of cancelling Harris I would be approximately 17¢ per kwh.

As discussed earlier herein regarding the capacity credit calculations for Duke Power Company, the Commission is of the opinion that the advantages of using a CT generating unit for making capacity credit calculations outweigh the disadvantages, and that capacity credits may appropriately be based on a CT.

Furthermore, as discussed earlier herein regarding avoided cost calculations for Duke, the Commission does not see any "mix or match" problem with using a CT to calculate capacity credits while using a predominately base load generation mix to calculate energy credits. The capacity credits and the energy credits are not generating unit specific, but are based on variations in the overall generation mix which result from adding capacity.

The energy credits recognize increased amounts of CT generation as well as increased amounts of base load generation, even through the overall generation mix remains predominately base load.

The capacity credits are based on the capacity related portion of the fixed costs of generation; i.e., that portion of the fixed costs which is not offset by fuel cost savings due to using a base load unit instead of a peaking

unit. The capacity credits recognize an increased amount of such capacity related portion of the fixed costs of generation.

The Commission concludes that proposed Rate Schedule CSP-9 for CP&L is reasonable and should be approved, except for the availability of standard long-term levelized rate options as discussed elsewhere herein.

CP&L also proposed to exclude future changes due to general rate increases or fuel charge adjustments from its calculations for variable energy credits, since such credits are based on estimated future costs and not on historic or normalized costs as in general rate cases or fuel charge adjustment proceedings. No party contested the proposal, and the Commission concludes that it should be approved.

CP&L further proposed certain modifications of its Terms and Conditions for Purchase of Electric Power which were uncontroversial and uncontested in the proceeding. The Commission concludes that they should be approved as proposed.

Each major utility in this proceeding has modeled its avoided energy costs by using a production cost simulation model known as PROMOD. PROMOD is a state-of-the-art computer program commonly used for such purposes. The primary controversy concerning the use of PROMOD was the contention by several intervenors that the input assumptions were controlled by the utilities. Witness Wilson contended that the developer of a potential qualifying facility and the Commission should have access to data that is needed to fully assess the accuracy and validity of the results from any production cost simulation model used by a utility to calculate avoided costs.

The Commission Order of May 11, 1984, in this docket required extensive documentation of input data and output summaries of all production cost simulations to be filed by each utility as part of the Company's response to the Commission's Cogeneration Data Request contained in said Order. The Commission is of the opinion that the reporting requirements associated with the Cogeneration Data Request provided sufficient documentation of PROMOD inputs and outputs used in this proceeding. The Date Request included results of PROMOD runs used in the proposed rate designs along with other PROMOD scenarios which were not used but were provided for informational purposes. During the course of this proceeding, all parties had the opportunity to avail themselves of such information.

The Commission notes that no intervenor party presented its own calculations utilizing an alternative production cost simulation model in conjunction with the input data and output summaries contained in the various Company responses to the Cogeneration Data Request. However, the Commission is more than willing to consider calculations based on alternative production cost simulation models in the future, especially those production cost simulation models which might be in the public domain so that all parties would have equal access to the inner mechanics of the model as well as to the input data and output summaries.

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

The evidence pertaining to interconnection practices is contained in the testimony and exhibits of Duke witnesses Denton and Price; CP&L witness Edge; Vepco witnesses Pierce, Carney and Rooney; Public Staff witness Carrere; Hydro-Energy witnesses Wilson, Powers, Mierek and Pickelsimer; and Microhydro witness Turner.

The discussion of interconnection practices involved primarily three issues: (a) the type of equipment reasonably required for interconnections; (b) the reasonable cost of such equipment; and (c) the methods of payment by qualifying facilities for interconnects.

Witness Turner contended that small projects should be allowed to forego demand meters or other equipment which rendered the cost of interconnections too high for such small projects. He contended that the equipment required by the utilities for interconnections was over-designed and over-priced, with wide disparities between companies as to the equipment and prices specified.

Hydro-Energy witnesses Powers, Pickelsimer and Mierek all testified to problems they encountered in attempting to contract with Duke, such problems being primarily related to disputes over the cost and type of equipment required by Duke for interconnection. Witness Wilson also suggested that the utilities were maintaining very strict interconnection standards as a way of discouraging qualifying facilities. Hydro-Energy contends that interconnection facilities for qualifying facilities are not the same as extra facilities for consuming customers, and that they should be subject to different standards. In particular, Hydro-Energy recommends that the QF be allowed to specify and own the interconnection equipment.

The Public Staff recommended that a QF be allowed to specify and purchase its own interconnection equipment subject to the utilities review and approval based on reasonable standards.

The utility witnesses all pointed out that interconnection practices are required by FERC to be the same for a QF as for a consuming customer, and that the utilities adhere to such a policy. Witness Carrere also conceded this point. The witnesses further pointed out that the utilities are all subject to the requirements of the ANSI National Electric Safety Code whereas a QF is not.

The Commission is of the opinion that interconnection practices which treat qualifying facilities and consuming customers alike would seem reasonable and proper. The Commission also notes that under the current North Carolina Utilities Commission rules, if a QF does not agree with the equipment specified by a utility for interconnects, the QF can seek relief by filing a formal complaint under North Carolina Utilities Commission Rule R1-9. Furthermore, it is unclear why the approach recommended by the Public Staff would be more equitable or efficient than the present approach, since the Commission would have to arbitrate disagreements between the QF and the utility anyway.

Generally speaking, the Commission is of the opinion that the utility should install and own the interconnection facilities on the utility side of the interconnect, and that specifications for such interconnect facilities

should conform to the standard practices of the utility. The utility may provide, under mutual agreement with a QF, facilities and equipment on the QF side of the interconnect, and in such cases the costs and payments for the interconnect should be computed on the same basis as for other customers of the utility.

The Commission concludes that the current practices of the utilities regarding the type of equipment specified for interconnects should not be revised in this proceeding, and that any disagreements regarding such practices can best be handled on a case-by-case basis under North Carolina Utilities Commission Rule R1-9.

In a closely related issue, the various intervenor witnesses also contended that the cost of interconnects was unreasonably high and was arbitrarily established regardless of what type equipment was used. In particular, the testimony cited Duke's refusal to supply a list of equipment and prices for each item of equipment comprising the overall interconnect charge assessed by Duke to a QF.

Duke objected to making the detailed interconnect information available publicly, contending that Duke is able to purchase such equipment at quantity discounts resulting in a savings for all of its ratepayers, and that such ability to command quantity discounts would be jeopardized if itemized price information were released to the public. Duke stated its willingness to disclose to the Commission the equipment price information broken down into four broad categories: metering, transformation, lines and services, and protective equipment.

Public Staff witness Carrere recommended that the utilities be required to provide a QF with a list of the equipment specified for an interconnect in such detail as will allow an independent evaluation of the reasonableness of the interconnect charge by the QF. Such a proposal seems reasonable, provided such detail does not include individualized price information which would compromise the utility's ability to obtain quantity discounts in its equipment purchases.

The Commission is of the opinion that a list of the major items of equipment specified for an interconnect should be furnished to each applicable QF upon request. Said major items of equipment should be grouped under functional categories such as Metering, Transformation, Lines and Services, and Protective Equipment. Installed costs should be given for each functional category.

Certain intervenors contended that the method of payments Duke required from QFs was unreasonable. CP&L and Vepco both allow a QF to pay the cost of the interconnect "up front", rather than pay monthly carrying charges on such cost. Duke does not.

The Public Staff recommended that each utility be required to offer two options for payment of interconnect costs by a QF: (a) the utility to purchase and install the interconnect equipment, with payment "up front" by the QF; and (b) the QF to purchase the interconnect equipment and donate said equipment to the utility as a contribution in aid of construction.

The Commission is of the opinion that the current practices of the utilities regarding interconnect practices should not be revised generically in this proceeding since such practices are applied equally to a QF and to a consuming customer alike. Such practices can best be handled on a case-by-case basis under North Carolina Utilities Commission Rule R1-9. The Commission notes that there have been no formal complaints filed recently under North Carolina Utilities Commission Rule R1-9 addressing interconnection practices.

EVIDENCE AND CONCLUSION FOR FINDING OF FACT NO. 12

The support for this finding of fact is found in the Commission's Order on Wheeling of Power issued on January 11, 1982, in Docket E-100, Sub 41 and the FERC Order of October 31, 1984, in Docket No. EL84-27-000, both of which the Commission judicially notices.

Both Hydro-Energy witness Wilson and KUDZU witness Eddleman recommended that the Commission set wheeling rates for the utilities involved in this proceeding. However, the Federal Energy Regulatory Commission recently issued an Order in Docket No. EL84-27-000 holding that it has exclusive jurisdiction to set rates for the wheeling of power generated by qualifying facilities where the system over which the power is wheeled is interconnected and capable of transmitting energy across a state boundary even though a particular wheeling is within a single state. Since it is undisputed that all four utilities involved in this proceeding are connected to interstate transmission facilities, the FERC has sole authority to set wheeling rates for these utilities, and this Commission has no such authority. In addition to its authority over wheeling rates, FERC has limited authority under PURPA to order a utility to wheel power.

In this Commission's 1982 Order on Wheeling Power, the Commission encouraged the utilities in this state to work with qualifying facilities on a case-by-case basis as requests for wheeling services arise. The Commission noted, "Where agreement can not be reached, it would be appropriate for this Commission or the FERC, as appropriate, to consider appropriate action in a complaint proceeding initiated under applicable rules." The Commission now reaffirms this approach. Should there arise issues that cannot be resolved by negotiations between the utilities and the qualifying facilities involved and that are within the jurisdiction of this Commission, such issues should be presented to this Commission by way of a complaint proceeding.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 13

Several witnesses--including CP&L witness Edge, Vepco witnesses Pierce and Huq, Public Staff witness Hsu, Cogentrix witness Dowling, and Texasgulf witness Edmiston--testified as to whether the Commission should consider interim adjustments to the rates set during biennial proceedings.

FERC Regulation Section 292.302(b) requires electric utilities to make available data from which avoided costs may be derived "not less often than every two years . . ." G. S. 62-156(b) requires this Commission to determine avoided cost rates to be paid by electric utilities to small power producers "at least every two years . . ." Thus, two years is a maximum, not a minimum, time for review of avoided cost rates. In the past, the Commission has held biennial proceedings to set avoided cost rates pursuant to Section 210 of PURPA

and G. S. 62-156. In December of 1983, CP&L filed a petition with the Commission seeking a freeze on the availability on its previously approved long-term avoided cost rate options and approval of new long-term avoided cost rates. The Commission set a hearing on the petition; however, it subsequently continued that hearing and consolidated proceedings on CP&L's petition with the present biennial proceedings. The Commission allowed CP&L's proposed new long-term avoided cost rates into effect pending these proceedings.

Most of the witnesses who testified on this subject in the present proceedings opposed Commission consideration of requests for interim adjustments of avoided cost rates. They cited the need for certainty in the rates and the regulatory burden on the Commission and the parties resulting from more frequent proceedings.

The Commission continues to feel that PURPA and G. S. 62-156 should be implemented by biennial proceedings such as the present one. Still, nothing in the federal or state statutes prohibits utilities from seeking to change avoided cost rates more frequently, and we believe that it would be premature for us either to forbid such filings or to define the circumstances that might justify such filings. Thus, we will continue the practice of biennial proceedings while retaining sufficient flexibility to consider interim proceedings should circumstances justify such in the particular case.

IT IS, THEREFORE, ORDERED as follows:

1. That CP&L, Duke and Vepco should, and are hereby ordered to, offer long-term levelized rates for five-year, ten-year and 15-year periods as standard options to qualifying facilities which are either (a) hydroelectric generating facilities of 80 megawatts or less capacity which are owned or operated by a small power producer as that term is defined in G.S. 62-3(27a) or (b) any other qualifying facility which has a generating capacity of five megawatts or less; that the standard levelized rate options of ten or more years should include a condition making contracts at those options renewable for subsequent term(s) at the option of the utility on substantially the same terms and provisions and at a rate either (1) mutually agreed upon by the parties negotiating in good faith and taking into consideration the utility's then avoided cost rate and other relevant factors or (2) set by arbritation; that CP&L, Duke and Vepco should offer nonhydroelectric qualifying facilities with generating capacities of more than five megawatts the options of contracts at variable rates set by the Commission or contracts at negotiated rates and terms; and that Nantahala should not be required to offer any long-term levelized rate options to qualifying facilities;

2. That the rate schedules, contracts, and terms and conditions proposed in this proceeding by Carolina Power & Light Company, Nantahala Power and Light Company, and Virginia Electric and Power Company and summarized as to rates on Appendices B, C and D, respectively, are hereby approved, subject to those modifications required by ordering paragraph 1 above;

3. That the rate schedules, contracts and terms and conditions proposed in this proceeding by Duke Power Company are hereby approved, subject to the modifications as to rates as discussed herein and shown on Appendix A attached hereto and further subject to those modifications required by ordering paragraph 1 above;

4. That Carolina Power & Light Company, Duke Power Company, Nantahala Power and Light Company, and Virginia Electric and Power Company shall within 10 days after the date of this Order file rate schedules, contracts and terms and conditions implementing the findings, conclusions and ordering paragraphs herein; and

5. That all utilities shall, upon request by a qualifying facility, furnish a list of the major items of equipment specified for an interconnect; that said major items should be grouped under functional categories, such as Metering, Transformation, Lines and Services, and Protective Equipment; and that installed costs shall be given for each functional category.

ISSUED BY ORDER OF THE COMMISSION.
This the 22nd day of January 1985.

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

APPENDIX A
DUKE POWER COMPANY
Avoided Cost Rates

		Variable Rate	Fixed Long-Term Rates 5-Year	10-Year	15-Year
I.	Capacity Credit				
	a. All On-Peak Energy per On-Peak Month per KWH:	1.50¢	1.61¢	1.79¢	1.96¢
	b. All On-Peak Energy per Off-Peak Month per KWH:	0.89¢	0.96¢	1.07¢	1.17¢
II.	Energy Credit				
	a. All On-Peak per Month per KWH:	2.89¢	3.13¢	3.67¢	4.18¢
	b. All Off-Peak Energy per Month per KWH:	2.16¢	2.36¢	2.75¢	3.15¢

APPENDIX B
CAROLINA POWER AND LIGHT COMPANY
Avoided Cost Rates

		Variable Rate	Fixed Long-Term Rates 5-Year	10-Year	15-Year
I.	Capacity Credit				
	a. On-Peak KWH (¢/kwh) Summer	1.440	1.407	1.516	1.644
	b. On-PeaK KWH (¢/kwh) Non-Summer	1.238	1.209	1.303	1.413
II.	Energy Credit				
	a. On-Peak KWH (¢/kwh)	3.484	3.908	4.707	5.513
	b. Off-Peak KWH (¢/kwh)	2.800	3.200	3.753	4.374

APPENDIX C
NANTAHALA POWER & LIGHT COMPANY
Avoided Cost Rate

I. Capacity Credit
Rate in $/kw paid by Nantahala to TVA as a capacity (normal term power) charge for purchases during the month as determined from Nantahala's TVA billing. (Currently estimated to be $7.56/kw)

II. Energy Credit
Average rate in ¢/kwh paid by Nantahala to TVA as an energy charge for purchases during the billing month as determined from Nantahala's TVA billing. (Currently estimated to be from 2.7¢/kwh to 3.3¢/kwh)

APPENDIX D
VIRGINIA ELECTRIC AND POWER COMPANY
Avoided Cost Rates

A. Schedule 19H

	Fixed Long-Term Rates		
	5-Year	10-Year	15-Year
I. Capacity Credit			
All On-Peak Energy per kwh	0.844¢	0.957¢	1.242¢
II. Energy Credit			
a. All On-Peak Energy per kwh	4.742¢	5.799¢	6.562¢
b. All Off-Peak Energy per kwh	2.890¢	3.363¢	3.781¢

B. Schedule 19

I. Capacity Credit
All On-Peak Energy per kwh:

FIXED LONG TERM RATES

YRS	RATE	YRS	RATE	YRS	RATE	YRS	RATE
1-9	0.844¢	17	1.339¢	25	1.701¢	33	2.058¢
10	0.957¢	18	1.386¢	26	1.745¢	34	2.103¢
11	1.022¢	19	1.432¢	27	1.789¢	35	2.149¢
12	1.082¢	20	1.477¢	28	1.834¢	36	2.195¢
13	1.138¢	21	1.522¢	29	1.878¢	37	2.241¢
14	1.191¢	22	1.567¢	30	1.923¢	38	2.287¢
15	1.242¢	23	1.612¢	31	1.968¢	39	2.333¢
16	1.291¢	24	1.656	32	2.013¢		

II. Energy Credit

	Variable Rate
A. All On-Peak Energy per kwh	4.023¢
B. All Off-Peak Energy per kwh	2.476¢

DOCKET NO. E-100, Sub 41A

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Biennial Determination of Rates for Sale and Purchase of Electricity Between Electric Utilities and Qualifying Facilities	)))	ORDER APPROVING RATE SCHEDULES

BY THE COMMISSION: On January 22, 1985, the Commission issued its Order in this proceeding establishing the rates and contract terms and conditions for the sale of electricity by qualifying facilities to the public utilities involved in this proceeding. That Order requires Carolina Power & Light Company, Duke Power Company, Virginia Electric and Power Company, and Nantahala Power and Light Company to file rate schedules and contracts implementing the terms of the Order.

On January 30, 1984, Nantahala filed its rate schedule and standard contract with the Commission. The rate schedule provides for an effective date of January 22, 1985. On February 1, 1985, CP&L, Duke, and Vepco filed their rate schedules and standard contracts, each indicating an effective date of February 1, 1985. On February 5, 1985, CP&L filed a corrected copy of its terms and conditions correcting certain typographical errors.

The Commission, having reviewed the filings, finds good cause to approve the rate schedules and standard contracts filed by the utilities herein.

IT IS, THEREFORE, ORDERED that the rate schedule and standard contract form filed in this cause by Nantahala on January 30, 1985, and the rate schedules and standard contract forms filed by CP&L (as corrected on February 5, 1985), Duke, and Vepco on February 1, 1985, should be, and the same hereby are, approved as of the effective dates stated therein.

ISSUED BY ORDER OF THE COMMISSION.
This the 6th day of February 1985.

NORTH CAROLINA UTILITIES COMMISSION
Sandra J. Webster, Chief Clerk

(SEAL)

DOCKET NO. E-100, SUB 41A

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Filing by Western Carolina University of Proposed Rates and Contract Terms and Conditions to be Offered to Small Power Producers and Cogenerators	))))	RECOMMENDED ORDER ESTABLISHING RATES AND CONTRACT TERMS FOR WESTERN CAROLINA UNIVERSITY

HEARD IN: SWAIN COUNTY COURTHOUSE, Sylva, North Carolina on Thursday, November 8, 1984, at 8:30 a.m.

BEFORE: David F. Creasy, Hearing Examiner

APPEARANCES:

For the Applicant:

Diane K.McDonald, Legal Counsel, 530 H. F. Robinson Building, Western Carolina University, Cullowhee, North Carolina 28723

For the Public Staff:

Gisele L. Rankin, Staff Attorney, Public Staff-North Carolina Utilities Commission, Post Office Box 29520, Raleigh, North Carolina 27626-0520
For: The Using and Consuming Public

BY THE HEARING EXAMINER: These proceedings are related to the third biennial proceedings held by this Commission pursuant to the provisions of Section 210 of the Public Utility Regulatory Policies Act of 1978 (PURPA) and the Federal Energy Regulatory Commission (FERC) regulations implementing those provisions which delegated responsibilities in that regard to this Commission. Said biennial proceedings were also held pursuant to the responsibilities delegated to this Commission pursuant to N.C.G.S. 62-156(b) to establish rates for small power producers as that term is defined in N.C.G.S. 62-3(27a).

Section 210 of PURPA and the regulations promulgated pursuant thereto by FERC prescribe the responsibilities of FERC and of State regulatory authorities, such as this Commission, relating to the development of cogeneration and small power production. Section 210 of PURPA requires the FERC to prescribe such rules as it determines necessary to encourage cogeneration and small power production, including rules requiring electric utilities to purchase electric power from, and to sell electric power to, cogeneration and small power production facilities. Under Section 201 of PURPA, cogeneration facilities and small power production facilities which meet certain standards and which are not owned by persons primarily engaged in the generation or sale of electric power can become "qualifying facilities", and thus become eligible for the rates and exemptions to be established in accordance with Section 210 of PURPA.

Cogeneration facilities are generally those which simultaneously produce two forms of useful energy, such as electric power and steam. The dual use of such energy has the obvious potential of producing substantial and significant savings in the cost of producing electricity, and also the potential for reducing the cost of electricity to ratepayers if such savings can be passed on to the ratepayers.

Small power production facilities, by definition in the pertinent statutes and FERC regulations, include electric generating facilities which use waste, biomass, or "renewable resources" for energy. Such "renewable resources" are specifically defined to include wind, solar, and water energy.

Each electric utility is required under Section 210 of PURPA to offer to purchase available electric energy from cogeneration and small power production facilities which obtain qualifying status under Section 201 of PURPA. For such

purchases, electric utilities are required to pay rates which are just and reasonable to the ratepayers of the utility, which are in the public interest, and which do not discriminate against cogenerators or small power producers. The FERC regulations require that the rates electric utilities pay to purchase electric energy and capacity from qualifying cogenerators and small power producers shall reflect the cost that the purchasing utility can avoid as a result of obtaining energy and capacity from these sources, rather than generating an equivalent amount of energy itself or purchasing the energy or capacity from other suppliers.

The implementation of these rules was delegated to the State regulatory authorities with respect to the electric utilities regulated by them. That implementation may be accomplished by the issuance of regulation on a case-by-case basis or by any other means reasonably designed to give effect to the FERC's rules.

This Commission at the outset determined to implement Section 210 of PURPA and the related FERC regulations by holding biennial proceedings. The current generic proceeding was the third such proceeding to be held by this Commission since the enactment of PURPA. In each of the prior two generic proceedings, the Commission had determined separate avoided cost rates to be paid by each of the affected electric utilities to the respective qualifying facilities which are interconnected with them. The Commission had also reviewed and approved other related matters involving the relationship between the electric utilities and the respective qualifying facilities interconnected with them, such as terms and conditions of service, contractual arrangements, and interconnection charges.

The third biennial proceeding also involved the carrying out of this Commission's duties under the mandate of N.C.G.S. 62-156, which was enacted by the General Assembly in 1979. N.C.G.S. 62-156 provides that "no later than March 1, 1981, and at least every two years thereafter" this Commission shall determine the rates to be paid by electric utilities for power purchased from small power producers according to certain standards prescribed therein. Those standards generally approximate those which are prescribed in the FERC regulations regarding factors to be considered in the determination of avoided cost rates. The definition of the term small power producer is more restrictive in N.C.G.S. 62-156 than the PURPA definition of that term, in that it includes only hydroelectric facilities of 80 megawatts of less, thus excluding users of other types of renewable resources and users of some other resources such as biomass.

On or about February 6, 1984, Western Carolina University filed with the North Carolina Utilities Commission an application setting forth proposed rates, terms and conditions to be offered to small power producers and cogenerators. An order setting a hearing in this matter was issued by the Commission on April 16, 1984. On April 27, 1984, an order was issued rescheduling that hearing to May 1984. On May 11, 1984, a Motion to Intervene was filed by Richard L. and Lynn C. Hotaling. An Order allowing the intervention was issued on May 14, 1984, and on the same date an order rescheduling the hearing to July 1984 was issued. The testimony of witnesses Jana K. Hemric and Gregory Booth was filed by Western Carolina University on May 24, 1984. An amendment to the proposed rates was filed by Western Carolina University on June 6, 1984. On June 19, 1984, the Commission issued an order

rescheduling the hearing once again to October 1984. On July 6, 1984, Western Carolina University filed an Amendment to the testimony of Jana K. Hemric. On October 29, 1984, the Commission issued an order rescheduling the hearing once again to November 8, 1984.

Concurrently, the third biennial proceeding was specifically implemented by this Commission's Order Establishing Biennial Proceeding, Requiring Data and Scheduling Public Hearing issued May 11, 1984. That Order made Carolina Power and Light Company, Duke Power Company (Duke), Virginia Electric and Power Company (Vepco) and Nantahala Power and Light Company (Nantahala) parties to a proceeding to establish the avoided cost rates to be paid by each to interconnected qualifying facilities as required by Section 210 of PURPA and to establish the rates to be paid by each to interconnected small power producers as required by G.S. 62-156.

The third biennial proceeding was heard before the Full Commission on October 2-11, 1984 and the Commission's final order relating to the affected electric utilities was issued January 22, 1985.

On November 8, 1984, the above captioned matter regarding Western Carolina University came on for hearing before a Commission Hearing Examiner as scheduled.

There were no public witnesses at the November 8, 1984 hearing.

Western Carolina University presented the direct testimony of Jana K. Hemric, CPA, and Gregory Booth, Electrical Engineer, both with Booth and Associates, Inc.

The Public Staff presented the direct testimony of Timothy Carrere.

Richard L. Hotaling, Intervenor, presented his own testimony.

Based on the evidence adduced at the November 8, 1984, hearing and the entire record in this matter, the Commission now makes the following:

FINDINGS OF FACT

1. Western Carolina University (WCU) owns and operates an electric distribution system and sells electricity to a portion of the using and consuming public in western North Carolina, and is therefore defined as an electric utility within the purview of G.S. 62-156.

2. WCU does not generate its own electricity but buys its power wholesale from Nantahala Power and Light Company at rates approved by the F.E.R.C.

3. WCU is an electric utility within the purview of PURPA, and is therefore subject to the jurisdiction of this Commission with respect to the setting of avoided cost rates and the terms and conditions of service between WCU and qualifying facilities.

4. The avoided cost formula proposed by WCU would reimburse a qualifying facility based on the rates charged to WCU by Nantahala Power and Light at any point in time,and, being similar to the arrangement approved for Nantahala

Power and Light Company in the third biennial proceeding, is concluded to be just and reasonable herein.

5. The General Requirements for Parallel Generator Operation proposed by WCU would provide for the qualifying facility to have full responsibility for the costs of interconnection, including the costs of maintaining proper voltage, frequency, harmonics and power factor on the WCU system together with appropriate protective equipment. Such General Requirements would assure that the other ratepayers will not bear the costs of interconnecting with a qualifying facility, and would be fair and reasonable to the extent that such requirements are the same for other consuming customers as they are for qualifying facilities under similar operating conditions.

6. If a qualifying facility is willing to forego capacity credits and thereby enable WCU to eliminate demand metering from the interconnect requirements with said qualifying facility, then it would be reasonable for WCU to forego the entire account service charge in order to recognize that the qualifying facility will probably deliver power to WCU during peak periods at least part of the time.

7. Where demand metering is required for interconnects with a qualifying facility, the demand metering equipment proposed by WCU would be reasonable to the extent that it is the same demand metering equipment required for other customers of WCU under similar operating conditions.

8. Interconnection practices should be the same for a qualifying facility as they are for a consuming customer. Individual complaints regarding such interconnection practices can best be handled on a case by case basis under NCUC Rule R1-9.

9. WCU should not be required to pay Richard Hotaling for Kwh deliver to the WCU system unless such kwh were metered by WCU in a manner consistent with the way WCU meters its KWH deliveries to its other ratepayers.

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

These findings are essentially informational, procedural and uncontested.

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

The evidence regarding the avoided cost formula and the general requirements for service are contained primarily in the testimony and exhibits of company witnesses Hemric & Booth.

The avoided cost formula proposed by WCU would reimburse a qualifying facility based on the rates charged to WCU by Nantahala Power and Light Company at any point in time. As the Commission discussed fully in its order of January 22, 1985 in the third biennial proceeding, Nantahala's avoided cost rates are designed to parallel the terms of Nantahala's purchases of power from TVA, and were concluded to be just and reasonable. Therefore, the similar arrangements proposed by WCU are also concluded to be just and reasonable.

The General Requirements for Parallel Generator Operation proposed by WCU would provide for the qualifying facility to have full responsibility for the costs of interconnection, including the costs of maintaining proper voltage, frequency, harmonics and power factor on the WCU system together with appropriate protective equipment. While there was generally no opposition to the need for protecting the reliability and integrity of the system, there was opposition to those aspects of the General Requirements affecting the cost of interconnection, as discussed elsewhere herein. The Commission has concluded elsewhere that interconnection practices should be the same for a qualifying facility as they are for a consuming customer, and that individual complaints regarding such interconnection practices can best be handled on a case by case basis under NCUC Rule R1-9.

The Commission continues to be of the opinion that where the general requirements for service assure that other ratepayers will not bear the costs of interconnecting the WCU system with qualifying facilities, and where such requirements are the same for other ratepayers as they are for qualifying facilities under similar operating conditions, they are concluded to be just and reasonable.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 6-8

The evidence regarding the requirements for interconnections with qualifying facilities is contained in the testimony and exhibits of company witnesses Hemric & Booth, Public Staff witness Carrere, and Intervenor witness Hotaling.

Company witness Hemric testified that a qualifying facility's account must be determined in part manually, resulting in an account service charge of $5.00 per month for each qualifying facility. She also testified that if a qualifying facility required that it be paid capacity credits, then an additional cost of $25 to $61 per month must be added to each account service charge for translating the information from the time-of-day demand meter into usable data.

Witness Carrere contended that a qualifying facility interconnected with the WCU system would be generating power during peak periods at least part of the time, and that some of the demand requirements of the WCU system would thereby be offset by the qualifying facility. He contended that the qualifying facility should be compensated for such peak period generation by some means such as the foregoing of the account service charge where there was no demand meter. Witness Hemric testified that WCU agreed to forego the account service charge if the qualifying facility were willing to forego capacity credits.

Witness Carrere further recommended that the demand meter proposed by Booth & Associates on behalf of WCU not be installed at Mr. Hotaling's site because his project is not of sufficient size to justify the investment that type of meter would require. He contended that requiring a sophisticated meter, such as the E-MAX recommended by Booth & Associates, would have the effect of discouraging the development of small power production facilities, particularly micro hydro projects. He suggested that a paper chart recording demand meter would be sufficient.

While the Public Utilities Regulatory Policies Act of 1978 (PURPA) was enacted with the intent to encourage the development of small power producers and cogenerators, such was not promulgated without Congress's recognition that the safety and well-being of the public must be protected. Furthermore, the North Carolina Public Utilities Act provides that the public health and safety must be protected and the general welfare of the citizenry promoted. Recognizing these mandates and its own responsibility to protect the public from unnecessary and unreasonable risk, Western Carolina University filed with the Commission its General Requirements for Parallel Generation Operation. Such requirements are not meant to be barriers to the independent development of power, but rather to balance the desires of the cogenerator or small power producer against the risk and dangers inherent in the production and transmission of electricity from several independent sources. As set out in the requirements, the cogenerator or small power producer would have the responsibility for all parallel interconnection, including voltage, frequency, harmonics, and power factor during operation together with proper isolation provisions in the event of a fault and the necessity for line clearing, and protection of all generator equipment and Western Carolina University equipment in the event of an abnormal condition on either the generator's side of the interconnect or on Western Carolina University's side of the interconnect. These procedures assure that the other customers of Western Carolina University will not bear any of the costs associated with a cogenerator or small power producer's desire to sell electricity to a utility.

The Commission pointed out in its order of January 22, 1985, in the third biennial proceeding that interconnection practices which treat qualifying facilities and consuming customers alike would seem reasonable and proper, and that interconnection practices are required by FERC to be the same for a qualifying facility as for a consuming customer. Furthermore, if a qualifying facility contends that it is being treated differently or more harshly than a consuming customer, the qualifying facility can seek relief by filing a formal complaint under NCUC Rule R1-9.

The Commission concludes that if a qualifying facility is willing to forego capacity credits and thereby enable WCU to eliminate demand metering from the interconnect requirements with said qualifying facility, then it will be reasonable for WCU to forego the entire account service charge in order to recognize that the qualifying facility will probably deliver power to WCU during peak periods at least part of the time. The Commission further concludes that where demand metering is required for interconnects with a qualifying facility, the demand metering equipment proposed by WCU is reasonable to the extent that it is the same demand metering equipment required for other customers of WCU under similar operating conditions.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 9

The evidence regarding the claim by Richard Hotaling for payments from WCU is found in the testimony and exhibits of Intervenor witness Hotaling, Public Staff witness Carrere, and company witnesses Hemric & Booth.

It is undisputed that Richard Hotaling interconnected his 10 KW hydroelectric generating facility to the WCU system and began delivering excess power to the WCU system in January 1982; that he did so without first reaching an agreement with WCU regarding the type of interconnection needed; that he

delivered his excess power through the same meter which WCU had installed to measure its kwh deliveries to his house, thereby causing the meter to run backwards; that WCU subsequently installed a meter in March 1983 which would not run backwards; that Mr. Hotaling continued delivering excess power to the WCU system after March 1983; that no agreement has been reached between Mr. Hotaling and WCU since March 1983 regarding interconnection equipment which would enable WCU to separately meter the kwh delivered to its system by the Hotaling generating facility; that WCU has not paid Mr. Hotaling anything for the power delivered to its system by the Hotaling generating facility; and that Mr. Hotaling has not filed a formal complaint concerning his claim for payment pursuant to NCUC Rule R1-9. Mr. Hotaling's intervention in this proceeding was for the purpose of addressing the generic issues involved, although he does seek relief in the matter of his claim for payment. The Public Staff also took the position that WCU should be required to pay Mr. Hotaling for the excess power he delivered to the WCU system since January 1982.

First of all, the evidence indicates that the only records on which to base any calculations of a payment by WCU to Mr. Hotaling are readings from a house meter which was run backwards, or generator logs maintained by Mr. Hotaling without verification by or participation of WCU. Witness Booth testified that running a meter backwards in order to measure electric generation was not very accurate. He also pointed out that the power delivered to WCU by Hotaling must be metered separately from the power delivered to Hotaling by WCU in order to prevent subsidization of Mr. Hotaling by the other ratepayers. For example, the power delivered to WCU by Mr. Hotaling is payable by WCU at the avoided cost rate (approx. 0.9¢ per kwh at the time of the hearing) while the power delivered to Mr. Hotaling by WCU is payable by Mr. Hotaling at the retail rate (approx. 5¢ per kwh at the time of the hearing).

It is apparent that by causing the house meter to run backwards, Mr. Hotaling was thereby tampering with the WCU equipment and denying WCU the ability to meter its own deliveries to Mr. Hotaling's house. The net meter reading at Mr. Hotaling's house would shortchange WCU, and in effect the other ratepayers of WCU, because it would substitute kwh payable at the avoided cost rate for kwh payable at the retail rate.

It is also apparent that by failing to consent to some arrangement with WCU whereby his deliveries of power to WCU would be separately metered by a meter installed and maintained by WCU, Mr. Hotaling has denied WCU the opportunity to measure the power delivered to its system by the Hotaling generating facility. The logs kept by Mr. Hotaling of his generator performance are still unverifiable by WCU, and would be the same as allowing each ratepayer to purchase, install and read his own electric meter.

Witness Hotaling contends that WCU has been unreasonably slow and unresponsive to his attempts to reach an agreement for interconnecting his generating facility with the WCU system. Nevertheless, he has not filed a formal complaint concerning the matter pursuant to NCUC Rule R1-9, and has proceeded to deliver power to the WCU system anyway in the absence of an agreement and in the absence of acceptable metering of the power involved.

Further complicating the claim for payment was the legal argument by WCU that Mr. Hotaling failed to obtain a proper certificate of public convenience

and necessity to operate a generation facility until February 1984. WCU contended that although the failure to obtain a certificate may have been partially attributable to misunderstandings as to the requirement for obtaining such certificate, WCU had no role in such misunderstandings and it should not be penalized by being required to purchase power from an uncertificated generating facility. WCU pointed out that Mr. Hotaling's ignorance of the law does not excuse him from compliance, and that no one has authority to waive the requirements for certification established by the General Assembly.

The Public Staff pointed out that WCU failed to comply with the Commission's order of August 17, 1983 requiring utilities to notify potential qualifying facilities of the certification requirements, and that neither the order of August 17, 1983 nor G. S. 62-110.1 prohibited WCU from at least entering into an agreement with Mr. Hotaling prior to his obtaining a certificate. The Public Staff also pointed out that the misunderstandings concerning the certification requirements affecting qualifying facilities were largely due to the fact that the requirements were new and unfamiliar to everyone involved, and that the situation would probably not arise again.

The Commission tends to agree with the Public Staff that the failure to obtain a certificate in this instance should not be controlling. Nevertheless, the legal question is essentially rendered moot by the fact that measurement of the kwh in dispute cannot be established satisfactorily. The Commission is of the opinion that metering of any kwh sold to a ratepayer and metering of any kwh purchased from a qualifying facility must be under the control of the utility and under comparable circumstances for both the ratepayer and the qualifying facility.

Although the Commision might have resolved the matter of interconnection requirements in a timely manner if the matter had been brought to its attention earlier in a Rule R1-9 proceeding, thereby establishing a basis for measuring the kwh for which Mr. Hotaling was entitled to be compensated, it is now too late for such kwh to be measured in a manner acceptable to the company and compatible with measurement of kwh deliveries to the other ratepayers. Therefore, the Commission concludes that WCU should not be required to pay Mr. Hotaling for kwh delivered to the WCU system unless such kwh were metered by WCU in a manner consistent with the way WCU meters Kwh deliveries to its other ratepayers.

IT IS, THEREFORE, ORDERED as follows:

1. That the avoided cost formula and rates proposed by Western Carolina University (WCU) are hereby approved as filed, except as specifically modified herein.

2. That the General Requirements for Parallel Generator Operation proposed by WCU, and the rates and charges for interconnecting and servicing accounts with qualifying facilities, are hereby approved to the extent they are the same for qualifying facilities as for the other ratepayers of WCU under similar operating conditions.

3. That WCU is hereby required to forego the entire account servicing charge to a qualifying facility where such qualifying facility foregoes capacity credits.

ISSUED BY ORDER OF THE COMMISSION.
This the 20th day of February 1985.

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

DOCKET NO. E-100, SUB 41A

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Filing by Western Carolina University of Proposed Rates and)
Contract Terms and Conditions to Be Offered to Small Power) ORDER
Producers and Cogenerators)

BY THE COMMISSION: On February 20, 1985, a Recommended Order Establishing Rates and Contract Terms for Western Carolina University was issued in this proceeding by Hearing Examiner David F. Creasy. The Recommended Order established avoided cost rates and terms and conditions to be offered by Western Carolina to qualifying small power producers and cogenerators under Section 210 of PURPA and G. S. 62-156(b). The Recommended Order also dealt with whether Western Carolina should be required to pay Richard Hotaling for electricity delivered to Western Carolina from Mr. Hotaling's small power production facility in the past.

On March 6, 1985, the Public Staff filed its Exception to the Recommended Order. The sole exception raised by the Public Staff is to Finding of Fact No. 9 and the related discussion of Evidence and Conclusions, which relate to whether Western Carolina should be required to pay Richard Hotaling for electricity delivered to Western Carolina in the past.

Oral argument was held on March 25, 1985, on the Public Staff's Exception. At that time the Commission requested the Public Staff to file an affidavit setting forth its methodology for calculating the amount which it contends to be due Mr. Hotaling

On March 27, 1985, the Public Staff filed two Motions in this proceeding. By one Motion (hereinafter designated the First Motion), the Public Staff asks that the Recommended Order be declared a final order except for the one finding of fact and related discussion to which exception has been taken. By its other Motion (hereinafter designated the Second Motion), the Public Staff asks that Western Carolina be required to provide certain data to be used by the Public Staff in computing the amount of compensation which it contends to be due Mr. Hotaling. The Public Staff asserts that the information should be readily available to Western Carolina and that it will help avoid confusion and limit controversy over the Public Staff's proposed computation.

On April 5, 1985, Western Carolina filed Responses. As to the First Motion, Western Carolina responds that it does not object to declaring the Recommended Order final except as to the Public Staff's Exception. In its Response to the Second Motion, Western Carolina asserts that some of the information requested by the Public Staff would be unduly burdensome to collect.

As to the First Motion, the Commission finds good cause to declare the Recommended Order final except as to the one finding of fact and the related discussion to which exception has been taken. As to the Second Motion, the Commission finds good cause to deny the request for additional data at this time. The Public Staff should file an explanation of its proposed methodology in such detail as will enable the Commission to understand and weigh the merits of the methodology. If the Commission, in passing upon the Public Staff's Exception, rules that compensation is due for electricity delivered to Western Carolina in the past, the Commission will reconsider at that time what data may be necessary in order to compute the compensation more accurately.

IT IS, THEREFORE, ORDERED as follows:

1. That the Recommended Order Establishing Rates and Contract Terms for Western Carolina University issued in this proceeding by Hearing Examiner David F. Creasy on February 20, 1985, should be, and the same hereby is, declared a final Order of the Commission except for Finding of Fact No. 9 and the related discussion of Evidence and Conclusions as to which the Public Staff has filed a Exception;

2. That the Public Staff shall, within five working days from the date of this Order, file with the Commission and serve upon Western Carolina an affidavit setting forth its proposed methodology for calculating the compensation which it contends to be due Richard Hotaling for electricity delivered to Western Carolina in the past and, if possible, an approximate computation of such compensation based upon the information now available to the Public Staff;

3. That Western Carolina may file a counteraffidavit addressing the Public Staff's proposed methodology within seven working days following the filing of the Public Staff's affidavit; and

4. That the Commission will rule on the Public Staff's Exception after receiving the affidavit of the Public Staff and any counteraffidavit Western Carolina may file.

ISSUED BY ORDER OF THE COMMISSION.
This the 12th day of April 1985.

NORTH CAROLINA UTILITIES COMMISSION
Sandra J. Webster, Chief Clerk

(SEAL)

DOCKET NO. E-100, SUB 49

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Admendment of North Carolina Utilities Commission Form E-1 Rate Case Information Report	)	ORDER APPROVING MODIFICATION TO THE NORTH CAROLINA UTILITIES COMMISSION FORM E-1 RATE CASE INFORMATION REPORT

BY THE COMMISSION: On May 10, 1984, the Commission issued "Order Requesting Comments On Proposed Modification In The NCUC Form E-1 Rate Case Information Report" wherein the Commission included proposed changes to Section C of the North Carolina Utilities Commission Form E-1. The Order of May 10, 1984, allowed interested parties to file comments on the proposed revisions. Based on the proposed revisions included in the Order of May 10, 1984, and the comments filed by the parties, the Commission concludes that Section C of the Form E-1 should be revised as shown on Appendix 1 attached hereto. The total number of sets to be filed is 30. The number of copies of each individual data response item and the organization of each set of data are shown in Appendix 2, attached hereto.

IT IS, THEREFORE, ORDERED as follows:

1. That the North Carolina Utilities Commission Form E-1 Rate Case Information Report be, and hereby is, revised as shown on Appendix I attached hereto.

2. That the number of sets of the Form E-1 to be filed be, and hereby is ordered to be 30.

3. That the number of copies of each data response item and the organization of each set of data shall be that shown on Appendix 2.

4. That a copy of this Order shall be served upon each electric utility regulated by this Commission, the Public Staff, the Attorney General, and any other intervenor which was a party in the most recent Carolina Power and Light Company, Duke Power Company, or Virginia Electric and Power Company general rate case proceeding.

ISSUED BY ORDER OF THE COMMISSION.
This the 21st day of May 1985.

NORTH CAROLINA UTILITIES COMMISSION
Sandra J. Webster, Chief Clerk

NOTE: For Appendices 1 and 2, see the official file in the Office of the Chief Clerk.

DOCKET NO. G-100, SUB 44

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Amendment of North Carolina) Utilities Commission Form G-1) Rate Case Information Report)	ORDER APPROVING MODIFICATION TO THE NORTH CAROLINA UTILITIES COMMISSION FORM G-1 RATE CASE INFORMATION REPORT

BY THE COMMISSION: On January 25, 1985, the Commission issued "Order Requesting Comments on Proposed Modification to The North Carolina Utilities Commission Form G-1 Rate Case Information Report" wherein the Commission included proposed charges to Section C of the North Carolina Utilities Commission Form G-1. The Order of January 25, 1985, allowed all parties in this docket to file comments on the proposed revisions. Piedmont Natural Gas Company, Inc., Public Service Company of North Carolina, Inc., North Carolina Natural Gas Corporation, and the Public Staff - North Carolina Utilities Commission filed said comments. Based on the proposed revisions included in the Order of January 25, 1985, and the comments filed thereto, the Commission concludes that Section C of the Form G-1 should be revised as shown on Appendix 1 attached hereto. The total number of sets to be filed remains twenty-seven (27). The number of copies of each individual data response item and the organization of each set of data are shown in Appendix 2, attached hereto.

Consistent with the comments of the parties, the Commission concludes that the revisions to the Form G-1 should not be applicable to a utility that has given notice of its intent to file a rate case prior to the adoption of the revised G-1.

IT IS, THEREFORE, ORDERED as follows:

1. That the North Carolina Utilities Commission Form G-1 Rate Case Information Report be, and hereby is, revised as shown on Appendix 1 attached hereto.

2. That the number of sets of the Form G-1 to be filed be, and hereby is, not changed and is shown on Appendix 2 attached hereto.

3. That the number of copies of each data response item and the organization of each set of data shall be that shown on Appendix 2.

4. That a copy of this Order shall be served upon each natural gas utility regulated by this Commission, the Public Staff, the Attorney General, and any other intervenor who was a party in either of the most recent Piedmont Natural Gas, Public Service Company of North Carolina, and North Carolina Natural Gas general rate case proceedings.

ISSUED BY ORDER OF THE COMMISSION.
This the 3rd day of April 1985.

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

For Appendix 1, see the official Order in the Office of the Chief Clerk.

DOCKET NO. P-100, SUB 65

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Investigation to Consider the Implementation of a Plan for Intrastate Access Charges for All Telephone Companies Under the Jurisdiction of the North Carolina Utilities Commission	ORDER GRANTING REDUCTION OF INTRASTATE CARRIER ACCESS CHARGES AND DENYING ORAL ARGUMENT

BY THE COMMISSION: On August 2, 1985, AT&T filed a Motion for Immediate Reduction of Intrastate Carrier Access Charges. AT&T requested that the Commission amend its Orders of April 2, 1984, and March 28, 1985, pursuant to G.S. 62-80. The April 2, 1984, Order which established intrastate access charges attempted to keep the local exchange companies whole based on the toll revenue attributable to interLATA services prior to divestiture. To this end, the Commission established a 5.64¢ per minute of use Carrier Common Line Charge (CCLC).

Subsequently, the Commission determined the approved access rates produced revenues in excess of what had been expected. Therefore, on March 28, 1985, the Commission approved a stipulated reduction in access and billing collection charges amounting to $16,984,000 annually. The carrier common line charge was reduced from the original 5.64¢ per minute to 5.19¢ per minute.

The August 2, 1985, Motion for Immediate Reduction of Intrastate Carrier Access Charges alleged that Southern Bell and other local exchange companies have rendered additional 1984 back bills to AT&T and that the LECs are overrecovering 1984 access revenues by $9,048,000 annually. AT&T requests that the carrier common line charge be reduced from the current 5.19¢ per minute to 4.97¢ per minute in order to reduce the over recovery by $4,142,000.

Subsequently, AT&T filed various documents for review by the Public Staff, Attorney General, and the LECs. The Commission delayed action on AT&T's motion to allow time for review and response by the various parties.

On September 4, 1985, AT&T and the LECs filed a Joint Motion to Stipulate which stated that in an effort to compromise and settle the issue raised by AT&T's August 2 motion, most LECs met with AT&T individually and collectively and made the following agreement subject to approval by the Commission.

1. Revise LEC access tariffs to reduce annual billing to AT&T by $3.377 million annually effective September 1, 1985. To accomplish this reduction it was agreed that the intrastate CCLC should be reduced from 5.19¢ per minute to 5.01¢ per minute.

2. The parties agreed to other stipulations which are clearly enunciated in the joint motion and, therefore, are not repeated here.

On September 4, 1985, Carolina Utility Customers Association (C.U.C.A.) filed a response requesting that the Commission consider elimination of the Special Access Surcharge on WATS, Foreign Exchange and Private Line services if the Commission determined that AT&T is in fact entitled to $4,412,000.

On September 9, 1985, the Public Staff filed a response recommending that the joint motion be approved.

On September 11, 1985, the Attorney General filed a response which neither supports nor opposes the joint motion.

On September 13, 1985, MCI filed a Response in Opposition to the Joint Motion to Stipulate and requested a hearing or oral argument. MCI suggests inter alia that the Commission should reexamine the basis for its Intrastate Access Tariff Order and its February 22, 1985, Order in Docket No. P-100, Sub 72, regarding the differential for Feature Group A access.

Our September 17, 1985, GTE Sprint filed a Response In Opposition To Joint Motion To Stipulate and Request For Hearing Or Oral Argument. In essence, the GTE Sprint filing supports the request filed by MCI for the same or similar reasons.

The Commission has carefully reviewed all the filings in this matter and concludes the joint motion should be approved and that the requests made by MCI and GTE Sprint in their responses should be denied. Contrary to the contentions of MCI and GTE Sprint, Docket No. P-100, Sub 65 is not the appropriate docket to relitigate matters that were decided in Docket No. P-100, Sub 72. In this regard, the Commission notes that MCI and GTE Sprint previously filed motions for reconsideration in Docket No. P-100, Sub 72 on March 20, 1985, and April 2, 1985, respectively, whereby the Commission was requested to (1) reconsider the differential in access charges for intrastate long-distance telephone services established by the Commission Order dated February 22, 1985, and (2) grant a 55% access charge differential on both the originating and terminating ends of intrastate long-distance telephone calls. The Commission denied those motions for reconsideration by Order dated April 11, 1985. Neither MCI nor GTE Sprint appealed either the original Commission Order or the Order denying reconsideration. Thus, the Commission concludes that it is appropriate to deny the pending requests for hearing or oral argument. It should also be noted that the reduction in access charges approved by this Order will benefit MCI, GTE Sprint and those other companies in addition to AT&T who will provide interLATA telecommunications services in North Carolina in the competitive environment authorized in Docket No. P-100, Sub 72.

IT IS, THEREFORE, ORDERED as follows:

1. That the provisions included in the Joint Motion to Stipulate filed by AT&T and the LECs on September 4, 1985, are approved.

2. That the request for hearing or oral argument relating to Docket No. P-100, Sub 72, filed by MCI on September 13, 1985, is denied.

3. That the request for hearing or oral argument filed by GTE Sprint on September 17, 1985, is denied.

4. That within five (5) days from the issuance of this Order, Southern Bell shall file tariffs consistent with this Order.

ISSUED BY ORDER OF THE COMMISSION.

This the 18th day of September 1985.

NORTH CAROLINA UTILITIES COMMISSION
Gail L. Mount, Deputy Clerk

DOCKET NO. P-100, SUB 65
DOCKET NO. P-140, SUB 5

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Investigation to Consider the Implementation of a Plan for Intrastate Access Charges for all Telephone Companies Under the Jurisdiction of the North Carolina Utilities Commission	)	ORDER APPROVING PERMANENT REDUCTION IN INTRASTATE ACCESS CHARGES, DISMISSING FX TARIFF FILING WITHOUT PREJUDICE, AND CANCELLING HEARINGS
and	)	
Application of AT&T Communications of the Southern States, Inc., to Restructure Foreign Exchange Service Rates	)	

BY THE COMMISSION: On April 2, 1984, the North Carolina Utilities Commission entered an Order in Docket No. P-100, Sub 65, entitled "Order Establishing Intrastate InterLATA Access Charge Tariffs."

By Order entered in Docket No. P-100, Sub 65, on October 8, 1984, the Commission scheduled a hearing to begin January 2, 1985, to consider a motion filed by AT&T Communications of the Southern States, Inc. (AT&T), on September 11, 1984, pursuant to G.S. 62-80 whereby the Commission was requested to alter or amend the "Order Establishing Intrastate InterLATA Access Charge Tariffs" heretofore entered in this proceeding on April 2, 1984, by reducing the carrier common line access charge approved in that Order from 5.64 cents per minute to 4.48 cents per minute.

On October 17, 1984, AT&T filed an emergency petition in Docket No. P-100, Sub 65, seeking both interim and permanent reductions in intrastate carrier access charges as follows:

1. An immediate reduction on an interim basis, subject to appropriate accounting and refund or reimbursement requirements, in the level of intrastate access charges payable by AT&T to the local exchange companies by a reduction in the carrier common line charge from 5.64 cents per minute to 4.48 cents per minute; and

2. A permanent reduction in the level of intrastate access charges payable by AT&T after hearing and further deliberation by the Commission.

AT&T also submitted the affidavits of Marion R. McTyre and Robert A. Friedlander in support of the Company's emergency petition for an interim reduction in intrastate carrier access charges. On October 22, 1984, AT&T filed the supplemental affidavit of Marion R. McTyre.

On November 11, 1984, the Commission entered an Order in Docket No. P-100, Sub 65, entitled "Order Authorizing Interim Reduction in Intrastate Carrier

Access Charges Subject to Undertaking to Refund with Interest and Rescheduling Hearing." By this Order, the Commission concluded that, pending hearing as rescheduled to begin on April 10, 1984, the intrastate access charges paid by AT&T should be restructured by the local exchange companies (LECs) on an interim basis in the following manner in order to reduce such charges by approximately $11 million on an annual basis:

1. A reduction in the carrier common line charge from 5.64 cents per minute to 5.24 cents per minute; and

2. A reduction in the access charge for directory assistance from 49.63 cents per call to 25 cents per call.

On November 19, 1984, the Commission entered a further Order in Docket No. P-100, Sub 65, whereby the interim reduction in the carrier common line access charge was further reduced to 5.19 cents per minute.

On November 19, 1984, AT&T filed certain tariffs in Docket No. P-140, Sub 5, whereby the Company proposed to increase the rates applicable to the open-end portion of intrastate interLATA foreign exchange (FX) service. Currently, the rates being charged customers of AT&T for the open-end portion of FX service are either flat rate individual line main station service, flat rate PBX service, or Centrex type service. By its tariff filing, AT&T proposed to discontinue such flat rate charges and instead bill its customers the rates for switched access service on the open-end portion of FX service as provided for in the local exchange carriers' access service tariffs. This tariff filing proposes to treat the open-end portion of intrastate interLATA FX service in a similar manner to the treatment accorded the open-end portion of interstate interLATA FX service. AT&T estimated that this rate change would increase average monthly customer costs by 32%.

By Order dated January 22, 1985, in Docket No. P-140, Sub 5, the Commission suspended AT&T's proposed FX tariff filing, denied a motion to dismiss filed by the Public Staff, scheduled the matter for hearing as a complaint proceeding beginning April 10, 1985, in conjunction with the hearing in Docket No. P-100, Sub 65, and required the Company to give public notice of such tariff filing to its affected customers.

On March 14, 1985, AT&T, ALLTEL-Carolina, Inc. (ALLTEL), Carolina Telephone and Telegraph Company (Carolina), Central Telephone Company (Central), Continental Telephone Company of North Carolina (Continental), General Telephone Company of the Southeast (General), and Southern Bell Telephone and Telegraph Company (Southern Bell) filed a joint motion in these dockets entitled "Motion to Stipulate Order and Close Complaint Proceeding" whereby the parties to such motion agreed as follows:

> "a. The interim reduction in charges set forth in Commission's Orders of November 2, 1984, and November 19, 1984, shall be made permanent and the rates set forth therein shall remain in effect until modified by subsequent Commission proceedings;
>
> "b. AT&T shall be released from its Undertaking to Refund;

"c. The following telephone companies will file tariffs to reduce their billing and collection tariff charges assessable to AT&T effective as of the date of a Commission Order approving this settlement and having the annual dollar effect at 1984 volume levels as shown below:

1.	ALLTEL	$ 240,000
2.	Carolina	1,900,000
3.	Central	200,000
4.	Continental	85,000
5.	General	360,000
6.	Southern Bell	2,300,000
	Total	$ 5,085,000*

* The total amount resulting from these reductions of billing and collection charges will have no effect on existing pooling arrangements.

"d. Except for the matters relating to AT&T's proposed FX tariff in Docket No. P-140, Sub 5, AT&T's request for reduction of access charges in excess of that provided for herein shall be deemed to be deferred;

"e. The parties hereto, and other telephone companies and all parties to the proceedings in P-100, Sub 65, are relieved of further filing of testimony in this complaint proceeding;

"f. The hearing in P-140, Sub 5, regarding AT&T's tariff filing to change FX billing may go forward as scheduled, provided that testimony supporting same previously filed by AT&T and relevant to this issue may be introduced at hearing, and testimony previously filed relating solely to its Petition to reduce access charges shall be disregarded;

"g. It is agreed by all the parties that the proposed settlement herein is a good faith effort to negotiate and settle disputed issues in a timely manner and shall not be cited as an admission or concession by the parties regarding the merits of their respective positions in this or subsequent proceedings;

"h. Upon approval of this settlement by the Commission, AT&T's complaint, as set forth in its September 11 and October 17 filings, shall be deemed satisfied and the issues raised therein resolved; however, Docket No., P-100, Sub 65, shall remain open to consider the more comprehensive and generic issues relating to access charges, including but not limited to the appropriate structure and level of same."

By this joint motion, the Commission has been requested to enter an Order approving the proposed settlement agreement and cancelling the hearing in Docket No. P-100, Sub 65.

On March 22, 1985, the Attorney General filed a response in these dockets in opposition to the above-referenced "Motion to Stipulate Order and Close Complaint Proceeding." On March 27, 1985, the Attorney General filed a further response stating, in pertinent part, as follows:

> "2. Now, as in its original response, the Attorney General's primary concern has been the possibility of changes in FX tariffs falling directly on the end-user in this proceeding absent the procedural safeguards of a general rate case, which include adequate notice, extensive hearing and the applicant's production of information in compliance with minimum filing requirements.
>
> "3. The Attorney General believes at this point that because of the proposed settlement of the access charge docket, no party is prepared to explore fully all of the issues relating to access charges at the hearing currently scheduled for April 10, 1985. Until all access charge issues can be considered and resolved in a generic proceeding not limited to a complaint proceeding, the Attorney General will not oppose the proposed settlement.
>
> "4. The Attorney General continues to believe, however, that AT&T's requested treatment of the open end of FX service is in fact an end-user tariff of such magnitude that it cannot be imposed absent a general rate case.
>
> "IN VIEW of the foregoing, the Attorney General states to this Commission that it does not oppose the settlement offered by the companies. The Attorney General further moves this Commission to dismiss the complaint in P-140, Sub 5, regarding FX tariffs without prejudice to AT&T to refile this proposed end user FX tariff as part of a general rate case."

On March 22, 1985, the Carolina Utility Customers Association, Inc. (C.U.C.A.), also filed a response in opposition to the "Motion to Stipulate Order and Close Complaint Proceeding."

On March 25, 1985, the Public Staff filed its response to the joint motion to stipulate stating, in pertinent part, as follows:

> "3. The Public Staff does not oppose the Commission's making permanent the interim relief granted to AT&T by Order of November 2, 1984, or the reduction in billing and collection charges proposed by the six LECs as a means of settling the complaint and resolving the issues raised in the petitions filed by AT&T on September 11 and October 17, 1984. The Public Staff doubts that the hearings scheduled in Docket P-100, Sub 65, would enable the Commission to reach a more reasonable settlement regarding the level of access charges, since the data on intrastate access charges and interLATA revenues continues to reflect a high degree of confusion and uncertainty among the parties. Furthermore, the Public Staff is informed and believes that further changes in the level and structure of access charges will be proposed in 1985. Under these conditions, the access tariff adjustments cited in the stipulation would

constitute a reasonable settlement of the issue of the appropriate level of access charges raised by AT&T's complaint.

"4. The remaining matter which is scheduled for hearing on April 10, 1985, is a proposal by AT&T in Docket No. P-140, Sub 5, to increase its FX subscribers' rates by a substantial amount in an effort to increase its overall rate of return. The Public Staff continues to believe that AT&T's proposal to increase FX rates may lawfully be considered only in the context of a general rate case and not in a complaint proceeding.

"WHEREFORE, the Public Staff moves that the Motion to Stipulate be granted except that, with respect to the provision to go forward with hearings in Docket No. P-140, Sub 5, the Public Staff renews its 'Motion to Dismiss Tariff Filing' as filed in Docket No. P-140, Sub 5, on January 18, 1985."

On March 26, 1985, MCI Telecommunications Corporation (MCI) filed a motion in Docket No. P-100, Sub 65, whereby the Commission was requested to enter an Order requiring "the parties to the settlement agreement to submit such information as they have which tends to justify the portion of their proposed settlement effecting a reduction in their tariff for billing and collection."

On March 26, 1985, AT&T filed a reply to the responses in opposition to the motion to stipulate filed herein by the Attorney General and C.U.C.A. The Commission was again requested by AT&T to approve the proposed settlement agreement.

Based upon a careful consideration of the foregoing and the entire record in this proceeding, the Commission concludes that good cause exists to (1) enter an Order in these dockets approving certain reductions in intrastate access charges on a permanent basis in Docket No. P-100, Sub 65, as requested by AT&T in the "Motion to Stipulate Order and Close Complaint Proceeding" and (2) dismissing without prejudice AT&T's proposed FX tariff filing in Docket No. P-140, Sub 5. The Commission concludes that such action is fair and reasonable to all parties under the facts and circumstances present in these proceedings. In this regard, the Commission notes that AT&T will realize a permanent reduction in the intrastate access charges it must pay to the local exchange telephone companies of approximately $17 million on an annual basis as proposed in the joint motion to stipulate filed in these dockets by AT&T and the six signatory LECs on March 14, 1985. The benefits of such access charge reductions will also be applicable to those companies, such as MCI, ultimately granted certificates of public convenience and necessity to provide interLATA telecommunications services in North Carolina. The Commission further concludes that dismissal without prejudice of AT&T's proposed FX tariff filing in Docket No. P-140, Sub 5, will serve to completely satisfy the objections to the joint motion to stipulate expressed herein by the Public Staff and the Attorney General and should satisfy, in large part if not completely, the objections to such joint motion expressed by C.U.C.A. In conclusion, the Commission is of the opinion that all parties to these proceedings have been treated equitably by entry of this Order.

Specifically, the Commission hereby approves the following permanent reductions in access charges in Docket No. P-100, Sub 65:

1. The interim access charge reductions heretofore authorized by the Commission in Docket No. P-100, Sub 65, pursuant to Orders entered on November 2, 1984, and November 19, 1984, will be approved on a permanent basis and shall remain in effect until and unless modified in subsequent Commission proceedings. Said access charge reductions are as follows:

(a) A reduction in the carrier common line access charge from 5.64 cents per minute to 5.19 cents per minute; and

(b) A reduction in the access charge for directory assistance from 49.63 cents per call to 25 cents per call.

2. The following local exchange companies will be required to file tariffs for Commission approval designed to reduce their billing and collection tariff charges to AT&T in conformity with the joint motion to stipulate as follows:

(a)	ALLTEL	$ 240,000
(b)	Carolina	1,900,000
(c)	Central	200,000
(d)	Continental	85,000
(e)	General	360,000
(f)	Southern Bell	2,300,000
		$ 5,085,000

By this Order, AT&T will also be relieved of any potential refund responsibility with respect to the interim access charge reductions covered by its approved undertaking to refund in Docket No. P-100, Sub 65. The Commission thus considers AT&T's pending complaint in Docket No. P-100, Sub 65, to be satisfied and resolved in all material respects by this Order in view of the permanent reduction of $17 million in intrastate access charges to AT&T approved herein. Under the facts of this case, such level of reduction in access charges is clearly just and reasonable to AT&T.

The Commission further concludes that good cause exists to dismiss AT&T's proposed FX tariff filing in Docket No. P-140, Sub 5, without prejudice for the following reasons. First, the Commission is of the opinion, after reconsideration, that as a general rule a tariff filing of such revenue magnitude should only be considered in the context of either a full-blown generic intrastate access charge case or in a general rate case. Obviously, the hearing presently scheduled in Docket No. P-100, Sub 65, is not by nature and has not been declared by the Commission to be a generic access charge case. Nor has Docket No. P-140, Sub 5, been declared by the Commission to be a general rate case. The effect of AT&T's proposed FX tariff filing, if approved by the Commission, could result in the imposition of an end-user access charge on business customers subscribing to such service. At the present time, the Commission feels compelled to reaffirm its previous decisions to deny implementation of end-user access charges with the caveat that any party, such as AT&T, will certainly be free to raise such an issue in the context of the next generic access charge case to be heard by the Commission.

The Commission further concludes that its decision to dismiss AT&T's proposed FX tariff filing in Docket No. P-140, Sub 5, is also correct for the reason that AT&T is not really seeking to restructure the actual rate for such service as could clearly be accomplished in the context of a general rate case and perhaps even in a properly structured complaint proceeding, but is in effect seeking approval to implement an end-user access charge. Furthermore, the expressed purpose of AT&T's proposed FX tariff filing is to improve the revenue to access charge relationship for only the exchange access (or open-end) portion of FX service. By its proposed tariff filing, AT&T has not, however, presented for consideration by the Commission the overall revenue to cost relationship of the total FX service provided to its customers. Thus, the Commission is concerned that Docket No. P-140, Sub 5 as presently structured would not provide an adequate basis upon which to determine the magnitude, if any, of the revenue to cost deficiency which may exist with respect to the provision of FX services by AT&T. AT&T also seeks to justify the necessity of its proposed FX tariff filing on the theory that the Company is earning less than a reasonable rate of return on its investment in public utility property in North Carolina. However, the permanent reduction in intrastate access charges of approximately $17 million approved by this Order will clearly serve to substantially improve the earnings position of AT&T in North Carolina. On this basis, the Commission concludes that further relief should not be granted to AT&T through Docket No. P-140, Sub 5, for the reason that the proposed tariff filing in such docket should clearly be considered only in the context of either a generic access charge proceeding or a general rate case.

Thus, considering the fact that AT&T will actually realize an annual reduction of $17 million in the access charges which it must pay to the LECs as a result of this Order, the Commission does not believe that the Company will be significantly prejudiced by dismissal of its proposed FX tariff filing. Furthermore, the Commission takes judicial notice of Docket No. P-100, Sub 72, wherein Southern Bell has recently filed proposed tariffs which contemplate application of a 25% differential or discount for originating Feature Group A and B access. Southern Bell's proposed tariffs would apply the 25% differential or discount to originating traffic on the open-end or exchange access portion of foreign exchange service. Thus, if Southern Bell's proposed tariffs are approved, AT&T will in fact receive some further measure of relief in addition to that granted by this Order by a reduction in the access charges paid on the open-end or exchange access portion of FX service.

IT IS, THEREFORE, ORDERED as follows:

1. That the local exchange companies subject to the provisions of this Order shall file appropriate access charge tariffs in Docket No. P-100, Sub 65, not later than Friday, April 5, 1985, in conformity with the provisions of this Order and "Motion to Stipulate Order and Close Complaint Proceeding." The access charge reductions to be reflected in such tariffs shall be effective as of the date of this Order.

2. That the FX tariff filing made by AT&T in Docket No. P-140, Sub 5, on November 19, 1984, be, and the same is hereby, dismissed without prejudice and said docket is hereby closed.

3. That AT&T is hereby released from the provisions of the undertaking to refund interim access charge reductions filed in Docket No. P-100, Sub 65, and such undertaking to refund is hereby dissolved.

4. That the hearings presently scheduled to begin in Docket Nos. P-100, Sub 65, and P-140, Sub 5, on Wednesday, April 10, 1985, be, and the same are hereby, cancelled.

5. That any motions pending in Docket Nos. P-100, Sub 65, and P-140, Sub 5, not granted in whole or in part by this Order are hereby denied.

ISSUED BY ORDER OF THE COMMISSION.
This the 28th day of March 1985.

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

DOCKET NO. P-140, SUB 9
DOCKET NO. P-100, SUB 65

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Application of AT&T Communications of the Southern States, Inc., for an Adjustment in Its Rates and Charges Applicable to Intrastate Telephone Service in North Carolina and Request for Interim Relief and Expedited Hearings and Investigation to Consider the Implementation of a Plan for Intrastate Access Charges for All Telephone Companies Under the Jurisdiction of the North Carolina Utilities Commission	)	ORDER GRANTING INTERIM RELIEF THROUGH SUSPENSION OF $25 ACCESS SURCHARGE ON WATS AND 800 SERVICE

ORAL ARGUMENT
HEARD IN: Commission Hearing Room 217, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on Friday, December 13, 1985, at 9:00 a.m.

BEFORE: Commissioner Edward B. Hipp, Presiding; and Chairman Robert O. Wells and Commissioners Sarah Lindsay Tate, A. Hartwell Campbell, Ruth E. Cook, and Julius A. Wright

APPEARANCES:

For the Local Exchange Telephone Companies:

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

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

Dale E. Sporleder, Vice President - General Counsel, General Telephone Company of the Southeast, P. O. Box 1412, Durham, North Carolina 27704
For: General Telephone Company of the Southeast

J. Billie Ray, Jr., General Attorney, Southern Bell Telephone and Telegraph Company, 1012 Southern National Center, Charlotte, North Carolina 28230
For: Southern Bell Telephone and Telegraph Company

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

Wade H. Hargrove, Tharrington, Smith & Hargrove, Attorneys at Law, 209 Fayetteville Street Mall, Raleigh, North Carolina 27601

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

For the Public Staff:

Theodore C. Brown, Jr., Staff Attorney, Public Staff - North Carolina Utilities Commission, P. O. Box 29520, Raleigh, North Carolina 27626-0520
For: The Using and Consuming Public

For the Attorney General:

Karen E. Long, Assistant Attorney General, North Carolina Department of Justice, P. O. Box 629, Raleigh, North Carolina 27602
For: The Using and Consuming Public

For MCI Telecommunications Corporation:

Charles C. Meeker, Sanford, Adams, McCullough & Beard, Attorneys at Law, P. O. Box 389, Raleigh, North Carolina 27602

For the North Carolina Long Distance Association:

Robert F. Page, Crisp, Davis, Schwentker, Page & Currin, Attorneys at Law, P. O. Box 751, Raleigh, North Carolina 27602

For the Carolina Utility Customers Association, Inc.:

Jerry B. Fruitt, Fruitt & Austin, Attorneys at Law, P. O. Box 12547, Raleigh, North Carolina 27605

BY THE COMMISSION: On October 28, 1985, AT&T Communications of the Southern States, Inc. (AT&T or Company), filed an application with the North

Carolina Utilities Commission in Docket No. P-140, Sub 9, seeking permanent authority to adjust and increase the Company's rates and charges for intrastate long-distance telephone services provided to its customers in North Carolina effective November 27, 1985. In conjunction with its application for permanent rate relief, AT&T also filed a request for emergency interim rate relief pursuant to G.S. § 62-134 whereby the Commission was requested to grant immediate interim relief to the Company by allowing AT&T to increase the price of its WATS and 800 Service access lines by $25.85 per month or, in the alternative, to allow and direct the local exchange companies (LECs) to bill the existing $25 access surcharge on such lines directly to the customers subscribing to those services.

On November 25, 1985, the Public Staff filed a motion whereby the Commission was requested to deny AT&T's request for emergency interim rate relief and to suspend the Company's proposed permanent tariffs.

On November 25, 1985, the Attorney General filed a reply in opposition to AT&T's request for emergency interim rate relief requesting the Commission to deny the Company's petition.

On November 25, 1985, Carolina Utility Customers Association, Inc. (C.U.C.A.), filed a motion whereby the Commission was requested to deny AT&T's request for emergency interim rate relief or, in the alternative, to abolish the $25 special access surcharge on WATS, 800 Service, and Channel Services if the Commission decided to grant AT&T some form of interim rate relief.

On November 25, 1985, the North Carolina Long Distance Association (NCLDA) filed a response to AT&T's request for emergency interim rate relief and a motion whereby the Commission was requested to suspend the Company's proposed MTS and WATS tariffs.

On November 25, 1985, the Commission entered an Order in Docket No. P-140, Sub 9, declaring AT&T's application for permanent rate relief to constitute a general rate case pursuant to G.S. § 62-137 and suspending the Company's proposed rates and charges for up to 270 days from their proposed effective date pursuant to G.S. § 62-134 pending investigation and hearing. The Commission further concluded that AT&T's request for emergency interim rate relief should also be suspended pending oral argument and final ruling by the Commission. The Commission scheduled an oral argument to consider AT&T's petition for emergency interim rate relief for Tuesday, December 3, 1985, at 9:30 a.m. The Order also authorized and allowed the parties to present relevant affidavits for consideration by the Commission regarding AT&T's request for emergency interim rate relief at the time of the oral argument.

On December 2, 1985, AT&T filed a response to the pleadings filed by the Public Staff and Attorney General on November 25, 1985.

On December 6, 1985, the Commission entered an Order in Docket No. P-140, Sub 9, granting AT&T interim relief of approximately $6.3 million on an annual basis and proposing to structure the interim relief in the form of an interim suspension of the $25 access surcharge on WATS and 800 Service effective January 1, 1986. The Commission further concluded that Docket No. P-100, Sub 65, should be consolidated with Docket No. P-140, Sub 9, for purposes of oral argument and hearing to consider the limited issue as to why the

Commission should not suspend the $25 access surcharge on WATS and 800 Service effective January 1, 1986, on an interim basis and scheduled oral argument in these consolidated dockets for Friday, December 13, 1985, at 9:00 a.m. The Order also required that notice of the decision in this matter should be given to all the local exchange telephone companies operating in North Carolina and all of the parties to Docket Nos. P-140, Sub 9, and P-100, Sub 65, including the Public Staff, Attorney General, C.U.C.A., and NCLDA and allowed the parties to present relevant affidavits for consideration by the Commission regarding the interim suspension of the $25 access surcharge on WATS and 800 Service at the time of the oral argument.

Upon call of the matter for oral argument at the appointed time and place, the following parties were present and represented by counsel: Carolina Telephone and Telegraph Company; Central Telephone Company; General Telephone Company of the Southeast; Southern Bell Telephone and Telegraph Company; AT&T Communications of the Southern States, Inc.; the Public Staff; the Attorney General; MCI Telecommunications Corporation; North Carolina Long Distance Association; and Carolina Utility Customers Association, Inc. Each of these parties presented oral argument for consideration by the Commission regarding the interim suspension of the $25 access surcharge on WATS and 800 Service effective January 1, 1986. The Commission also received in evidence certain affidavits as offered by General Telephone Company of the Southeast and Southern Bell Telephone and Telegraph Company regarding this matter as follows:

1. Affidavit of Alfred A. Banzer, Pricing and Tariffs Manager for General Telephone Company of the Southeast (General); and

2. Affidavit of B. A. Rudisill, Segment Manager - Bell Independent Company Relations with Southern Bell Telephone and Telegraph Company (Southern Bell).

As stated in the Commission Order of December 6, 1985, the oral argument of December 13, 1985, was limited in scope to consider the issue as to why the Commission should not, on an interim basis, suspend the $25 access surcharge on WATS and 800 Service. Based upon a careful consideration of the entire record in this proceeding, including the oral argument and affidavits offered by the parties, the Commission finds and concludes that there has been no showing of compelling facts or circumstances sufficient to cause the Commission to reconsider the decision reflected in the Order of December 6, 1985, to grant interim relief to AT&T through suspension of the $25 WATS and 800 Service access surcharge. The Commission therefore concludes that the $25 surcharge should be temporarily suspended effective January 1, 1986, pending hearing on AT&T's request for permanent rate relief and that the Commission will thereafter consider as an issue in the general rate case whether to permanently abolish the access surcharge in question. In making this determination, the Commission has taken judicial notice of certain financial and operational reports filed by the LECs which are as follows: (1) N.C.U.C. Form T.S. 1 (telephone surveillance reports) - filed quarterly; (2) financial and operating reports (F&O) - filed monthly; (3) toll settlement reports in Docket No. P-100, Sub 34 - filed monthly; and (4) the last general rate case Orders issued for each local exchange company. The decision reached herein will result in interim relief to AT&T of approximately $6.3 million on an annual basis based upon the test year level of operations (12 months ended June 30, 1985) and will, in effect, reduce access charge payments to the LECs on an interim basis

by approximately $2.6 million between January 1, 1986, and May 30, 1986, based upon the test year level of operations. Due to the structure of this action, AT&T's current customer rates will remain unchanged, as the Commission is effectuating this interim relief by reducing AT&T's costs rather than by increasing its rates. The Commission finds and concludes that the interim suspension of the $25 access surcharge tariff on WATS and 800 Service will not be unfair under the instant factual circumstances presented by AT&T and will not significantly impact the earnings levels of the LECs in an adverse manner.

The Commission has also given careful consideration to the procedural due process objections raised during oral argument by counsel for and on behalf of Central Telephone Company. The Commission believes that the parties to these proceedings have in fact been afforded reasonable notice and opportunity to be heard regarding interim suspension of the $25 access surcharge. The Commission notes that Central and all other parties will be allowed to present additional evidence and argument concerning the $25 surcharge during hearings in the AT&T general rate case, since Docket No. P-100, Sub 65, has been consolidated with Docket No. P-140, Sub 9, for the further limited purpose of considering whether to permanently abolish such access surcharge. Thus, the Commission concludes that no party has been denied due process by the procedures heretofore followed regarding this matter.

The last matter to be addressed in this Order is the consensus of many of the parties in this proceeding that the Commission should hold new hearings for reviewing all access charges. In the affidavit filed by Alfred A. Banzer on behalf of General, a proposal was made that, in lieu of the interim suspension of the $25 surcharge, the Commission should hold further proceedings in the access case (Docket No. P-100, Sub 65) and follow the precedent of the Alabama Public Service Commission as published in Re Telephone Companies That Charge Access Charges, 68 PUR 4th 341 (July 19, 1985). The Alabama Commission allowed the local exchange companies (LECs) to increase their local exchange rates up to 85 cents per month and to lower their respective carrier common line charge (CCLC) to the then Federal CCLC of .0471 cents per minute of use. The North Carolina mandatory CCLC is .0501 cents per minute of use compared to the present Federal CCLC of .0433 cents per minute of use. Thus, General's proposal would be to allow the Company to increase its access line charge up to 85 cents per month and to lower its CCLC to .0433 cents per minute of use. Several other intervenors in this proceeding expressed a desire for the Commission to hold further proceedings to reexamine the current levels of all access charges, not just the $25 surcharge. The Commission agrees with the parties that there is a definite need for a hearing into the appropriateness of the current levels of all access charges and is committed to having a generic proceeding on access charges during 1986.

IT IS, THEREFORE, ORDERED as follows:

1. That AT&T be, and is hereby, granted interim relief of approximately $6.3 million on an annual basis based upon the test year level of operations (12 months ended June 30, 1985).

2. That Southern Bell Telephone and Telegraph Company be, and is hereby, required to file a revised access service tariff on behalf of the LECs consistent with the Commission decision to suspend the $25 access surcharge on WATS and 800 Service on an interim basis.

3. That the interim suspension of the $25 access surcharge on WATS and 800 Service be, and is hereby, effective on January 1, 1986.

4. That the Commission Order entered in these dockets on December 6, 1985, be, and is hereby, affirmed.

5. That the Chief Clerk shall mail a copy of this Order to each of the local exchange telephone companies operating in North Carolina and all of the parties to Docket Nos. P-140, Sub 9, and P-100, Sub 65.

ISSUED BY ORDER OF THE COMMISSION.
This the 18th day of December 1985.

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

DOCKET NO. P-100, SUB 72

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Investigation to Consider Whether Competitive Intrastate Offerings of Long-Distance Telephone Service Should Be Allowed in North Carolina and What Rules and Regulations Should Be Applicable to Such Competition, if Authorized	)))))	ORDER AUTHORIZING INTRASTATE LONG-DISTANCE COMPETITION

HEARD IN:

Asheville: Monday, October 15, 1984, at 7:00 p.m., Superior Courtroom, Fifth Floor, Buncombe County Courthouse, Courthouse Plaza, Asheville, North Carolina

Charlotte: Monday, October 15, 1984, at 7:00 p.m., Commissioner's Board Room, Fourth Floor, County Office Building, 720 East Fourth Street, Charlotte, North Carolina

Wilmington: Monday, October 15, 1984, at 7:00 p.m., Courtroom 317, Courthouse Annex, Corner of Fourth and Princess Streets, Wilmington, North Carolina

Rocky Mount: Monday, October 22, 1984, at 7:00 p.m., Council Chambers, Third Floor, Administrative Offices Complex, One Governmental Plaza, Rocky Mount, North Carolina

Greensboro: Monday, October 22, 1984, at 7:00 p.m., Courtroom 2-A, Guilford County Courthouse, No. 2 Governmental Plaza, Greensboro, North Carolina

Raleigh: Monday, October 22, 1984, at 7:00 p.m., Commission Hearing Room 217, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina

Raleigh: Tuesday, October 23, 1984, beginning 10:00 a.m., Commission Hearing Room 217, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, and continuing through November 2, 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 AT&T Communications of the Southern States, Inc.:

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

and

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

For Carolina Telephone and Telegraph Company:

Dwight W. Allen, Vice President - General Counsel and Secretary, Jack H. Derrick, General Attorney, and Robert Carl Voigt, Senior Attorney, Carolina Telephone and Telegraph Company, 720 Western Boulevard, Tarboro, North Carolina 27886

For Carolina Utility Customers Association, Inc.:

Jerry B. Fruitt, Attorney at Law, 1042 Washington Street, P. O. Box 12547, Raleigh, North Carolina 27605-2547

For Central Telephone Company:

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

For Continental Telephone Company and ALLTEL Carolina, Inc.:

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

For GTE Sprint Communications Corporation:

Larry B. Sitton and McNeill Smith, Smith, Moore, Smith, Schell and Hunter, Attorneys at Law, Box 21927, Greensboro, North Carolina 27420

and

Mark D. Wilkerson, Hooper, Gallion, and Wilkerson, Attorneys at Law, 509 S. Court Street, Montgomery, Alabama 36104

For General Telephone Company of the Southeast:

Franklin H. Deak and Mary U. Musacclia, Attorneys, General Telephone Company of the Southeast, 4100 Roxboro Road, Durham, North Carolina 27704

For MCI Telecommunications Corporation:

Charles C. Meeker and H. Hugh Stevens, Jr., Sanford, Adams, McCullough & Beard, Attorneys at Law, P.O. Box 389, Raleigh, North Carolina 27602

John M. Scource, Esq., Senior Regulatory Attorney, MCI Telecommunications Corporation, 1133 19th Street, N.W., Washington, D.C. 20036

For North Carolina Long Distance Association:

Phillip A. Baddour, Jr., Baddour, Lancaster, Parker and Hines, Attorneys at Law, Goldsboro, North Carolina 27530
and
Walter E. Daniels, Attorney at Law, P.O. Box 13039, Research Triangle Park, North Carolina 27709
and
John R. Jordan, Jr., and Joseph E. Wall, Jordan, Brown, Price & Wall, Attorneys at Law, P. O. Box 709, Raleigh, North Carolina 27602
and
Robert F. Page, Crisp, Davis, Schwentker, and Page, Attorneys at Law, P.O. Box 751, Raleigh, North Carolina 27602

For Southern Bell Telephone and Telegraph Company:

J. Billie Ray, Jr., General Attorney, Southern Bell Telephone and Telegraph Company, 1012 Southern National Center, Charlotte, North Carolina 28230
and
Edward L. Rankin, III, Attorney, Southern Bell Telephone and Telegraph Company, P.O. Box 30188, Charlotte, North Carolina 28210
and
Lawrence E. Gill and R. Douglas Lackey, Attorneys, Southern Bell Telephone and Telegraph Company, 4300 Southern Bell Center, Atlanta, Georgia 30375

For SouthernTel, Inc.:

Ben E. Roney, Jr., Attorney at Law, 1042 Washington Street, Raleigh, North Carolina 27605

For Telecommunications Systems, Inc.:

James E. Holshouser, Jr., Brown, Holshouser, Pate and Burke, Attorneys at Law, P. O. Box 116, Southern Pines, North Carolina 28387

and

Mitchell Willoughby, Kneece, Kneece, Willoughby, Ashley and Gibbons, Attorneys at Law, 1430 Blanding Street, Columbia, South Carolina 29201

For United States Transmission Systems, Inc.:

Sam Behrends, IV, LeBoeuf, Lamb, Leiby & MacRae, Attorneys at Law, P.O. Box 750, Raleigh, North Carolina 27602

For the Public Staff:

Michael L. Ball, Theodore C. Brown, Jr., James D. Little, and Antoinette R. Wike, Staff Attorneys, Public Staff, North Carolina Utilities Commission, P.O. Box 29529, Raleigh, North Carolina 27626-0520
For: The Using and Consuming Public

For the North Carolina Department of Justice:

Steve Bryant, Karen E. Long, Angeline M. Maletto, and Robert Cansler, Attorneys, North Carolina Department of Justice, P.O. Box 629, Raleigh, North Carolina 27602
For: The Using and Consuming Public

BY THE COMMISSION: This matter arose as a result of enactment by the North Carolina General Assembly of legislation on June 29, 1984, which amended Chapter 62 of the North Carolina Public Utilities Law. (House Bill 1365, 1983 Sess. L. Ch. 1043 (Reg. Session, 1984), amending G.S. 62-2 and 62-110.)

The General Assembly declared as a matter of policy in the amended portions that competitive offerings of long-distance telephone service in North Carolina may be in the public interest. Further, the General Assembly vested authority in the North Carolina Utilities Commission to allow competitive offerings of long-distance services by public utilities as defined in G.S. 62-3 (23)a.6. The legislation authorized the Commission to issue a certificate to any person applying to offer long-distance telephone services as a public utility provided that such person is found to be fit, capable, and financially able to render such services; that such additional service is required to serve the public interest effectively and adequately; and that such additional service will not jeopardize reasonably affordable local exchange service.

In response to the action of the North Carolina General Assembly which expanded the powers and duties of the Commission with regard to long-distance service, the Commission on July 24, 1984, issued an Order instituting an investigation, scheduling hearing, and requiring public notice.

The Commission ruled that the investigation should consider whether, and to what extent, competitive offerings of long-distance telephone service should be allowed in North Carolina and what rules and procedures should be established for authorizing such competition if it were found to be in the public interest.

The Commission further concluded that the issues to be considered in the investigation should include, but not be limited to, the following:

(a) Are competitive offerings of long-distance service required to serve the public interest effectively and adequately?

(b) Will competitive long-distance jeopardize reasonably affordable local exchange telephone service?

(c) Are both intraLATA and interLATA long-distance competition in the public interest? If not, what restrictions should be applicable and are those restrictions enforceable?

(d) If the authorization of competitive long-distance service is found by the Commission to be in the public interest:

1. What filing and certification requirements should apply to applicants for long-distance authority?

2. Should both resale and facilities-based carriers be allowed to provide competitive long-distance services?

3. Is the uniform application of rules and interconnection rates to all competitive long-distance carriers consistent with the public interest?

4. What degree of regulation should be applicable to competitive long-distance carriers? Should tariff filings be required and, if so, should there be a notice period and cost justification filed for rate changes?

5. Should all certified competitive carriers be required to provide statewide service?

6. What level and structure of charges should apply to competitive long-distance carriers for interLATA or intraLATA access to the local exchange? Are the present access charges appropriate for a competitive environment?

7. Should the existing tariff rates and charges for services such as WATS, private line, and foreign exchange (FX) which potentially may be leased from existing telephone companies for resale purposes be modified and, if so, how?

8. Will the existing uniform intrastate toll rates have to be changed if interLATA and/or intraLATA competition is authorized?

9. What will be the impact of interLATA and/or intraLATA competition on the existing intraLATA toll pooling arrangment?

10. What will be the impact of interLATA and/or intraLATA competition on the revenues of local exchange telephone companies?

11. Should the Commission's existing telephone rules and regulations apply to competitive long-distance carriers?

12. Should quality of service objectives be established for competitive long-distance carriers?

13. Should depreciation rates be prescribed for competitive long-distance carriers?

14. Should applications be granted for the provision of intrastate long-distance service through coin-operated telephones owned by the applicant?

15. What changes in the existing telephone tariffs on file with the Commission are necessary to accommodate long-distance competition?

16. Should long-distance competition be authorized between two or more central offices if such central offices were connected after July 1, 1983, by extended area service, local measured service, or other local calling arrangment?

17. Should competitive services offered by the independent telephone companies be allowed? If so, what restrictions, if any, should be placed on these services?

The Commission also required in its Order of July 24, 1984, that Southern Bell Telephone and Telegraph Company(Southern Bell), AT&T Communications of the Southern States, Inc. (AT&T-C), and the independent telephone companies subject to the jurisdiction of the Commission should be made parties to the proceeding and that each should, prior to the hearing date, give notice by bill insert to its subscribers of the hearing dates and places of hearings.

The following intervened in this docket: Carolina Utility Customers Association, Inc. (CUCA); GTE Sprint Communications Corporation (GTE Sprint); MCI Telecommunications Corporation (MCI); North Carolina Long Distance Association (NCLDA); SouthernTel, Inc.; Telecommunications Systems, Inc.; United States Transmission Systems, Inc. (USTS); the Public Staff; and the North Carolina Attorney General.

On October 18, 1984, in the Commission Hearing Room, Dobbs Building, Raleigh, North Carolina, the Commission conducted a pretrial conference at which time the parties were allowed to submit their respective estimates of the time needed for cross-examination of the various witnesses. On October 19, 1984, the Commission issued its Pre-Trial Order stating the order in which the parties would offer testimony and cross-examine witnesses.

As ordered, a hearing was held in Asheville, North Carolina, on October 15, 1984, and the following public witnesses offered testimony: Norman Eric Jergensen (Phone America, Inc.), Tom Drury, Sam Tucker, David Wall, Vernon Clark, Jim Entwisle, James F. Brown, and Fred Sealy.

At the hearing in Charlotte, North Carolina, on October 15, 1984, the following public witnesses offered testimony: Freda Scoggins, Fenzi D. Akbay, Mike Kane, Ken Stoner, Lawrence Beren, George McAleese, Dick Helbein, and John R. Hoffman, Sr.

At the hearing in Wilmington, North Carolina, on October 15, 1984, the following public witnesses offered testimony: James R. Pridemore and Susan A. Bondurant.

At the hearing in Raleigh, North Carolina, on October 22, 1984, the following public witness offered testimony: Rex Cammamn.

At the hearing in Rocky Mount, North Carolina, on October 22, 1984, the following public witness offered testimony: Jim Gardner.

On October 22, 1984, in Greensboro, North Carolina, the following public witnesses offered testimony: Edward Crone, Tom Slaughter, Barbara Purray, Martha Martovich, Margie Dunlap, Leis Weaver, and Merle Kosier.

The matter came on for hearing in Raleigh on October 23, 1984, and the following witnesses offered testimony in behalf of their respective companies and organizations: Dr. John T. Wenders, AT&T-C; Oliver W. Porter, Jr., AT&T-C; Robert L. Deveraux, AT&T-C; Robert A. Friedlander, AT&T-C; Robert E. Fortenberry, AT&T-C; James E. Heins, SouthernTel of North Carolina; William B. Garrison, SouthernTel of North Carolina; Dr. Nina W. Cornell, MCI, GTE Sprint, and USTS; Michael A. Beach, MCI; John A. Beall, GTE Sprint; Jerome Stern, USTS; Victor J. Toth, NCLDA; Nicholas L. Kottyan, Tel-America Communications, Inc., and NCLDA; Oscie O. Brown, III, Telecommunications Systems, Inc.; Louis R. Jones, CUCA and Burlington Industries; John W. Edwards, CUCA and J. P. Stevens & Company; T. P. Williamson, Carolina Telephone and Telegraph Company; R. Chris Harris, Central Telephone Company; Cherie A. Lucke, Continental Telephone Company of North Carolina; Allan K. Price, Southern Bell; Ann M. Barkley, Southern Bell; Raymond B. Vogel, Southern Bell; and Hugh L. Gerringer, Jr., North Carolina Public Staff.

On October 30, 1984, during the hearing in Raleigh, W. B. Jenkins, Assistant to the President of North Carolina Farm Bureau Federation, offered testimony as a public witness.

On November 1, 1984, the testimony of Joseph W. Wareham of General Telephone Company was allowed to be admitted into the record without objection.

On November 2, 1984, the Commission visited the downtown exchange office of Southern Bell, wherein a tour of the facilities was conducted. Attorneys for the parties were also in attendance, and a discussion of the various facilities and the various types (i.e., feature groups) of local access connections was held after the tour. During the course of the discussion sworn testimony was offered by Donald Eargle, Southern Bell; James A. Tamplin, Jr., AT&T Communications; Wallace O. Powers, Carolina Telephone Company; Oscie

Brown, Telecommunications Systems, Inc.; and Ron Havens, GTE Sprint. After this discussion the hearing was adjourned.

Based upon all the testimony and exhibits received at the hearing and the record as a whole of this proceeding, the Commission, having carefully reviewed same and all of the proposed orders and briefs filed by the various parties, now makes the following

FINDINGS OF FACT

1. Intrastate telecommunications services in North Carolina are presently provided by certificated public utilities, each of which legally has a monopoly within its respective service area.

2. The presently certificated telecommunications utilities are providing adequate service.

3. Under the decisions of the federal courts and the Federal Communications Commission (FCC), a national policy has emerged which favors the promotion of competition in the provision of telecommunications services in the interstate jurisdiction.

4. Pursuant to the antitrust decree known as the Modified Final Judgment (MFJ) in United States v. American Telephone and Telegraph Company, 552 F. Supp. 131 (D.D.C. 1982), aff'd per curiam sub. Maryland v. United States, ____ U.S. ____, 103 S.Ct. 1240 (1983), long-distance telecommunications service areas in North Carolina have been divided into five (5) Local Access Transport Areas (LATAs), which are the respective regional geographical limits beyond which Southern Bell may not offer telecommunications services. Under the decision of the Federal District Court in that action and the subsequent decisions of this Commission, interLATA services in North Carolina may presently be offered only by AT&T-C or by an independent (i.e., non-Bell) telephone company within its respective service area.

5. Under the decision of this Commission in the access charge case, Docket No. P-100, Sub 65, the service areas of all independent telephone companies in North Carolina are either associated with a Southern Bell LATA or organized into geographical market areas that are the equivalent of LATAs for purposes of administering the North Carolina access charge tariff. Those geographical market areas are hereinafter subsumed under the generic term "LATA." Therefore, all long-distance services in North Carolina may be categorized as intraLATA or interLATA.

6. On June 29, 1984, the North Carolina General Assembly enacted certain amendments to the North Carolina Public Utilities Law (1983 Sess. L. Ch. 1043, amending G.S. 62-2 and 62-110), which gives this Commission the discretion to authorize competitive offerings of long-distance service in North Carolina, provided that allowing such competitive offerings will not jeopardize reasonably affordable local service.

7. Under the auspices of the interstate jurisdiction, there are presently a number of interexchange carriers (ICs) in competition with AT&T-C; i.e., long-distance common carriers, known generically as "other common carriers" or "OCCs."

8. In addition to competition from OCCs, who rely largely on their own transmission facilities, there exists the potential for competition in the long-distance market from resellers, who use their switching facilities to resell telecommunications services obtained from other carriers.

9. A number of OCCs and resellers are presently doing business in North Carolina, ostensibly offering interstate long-distance services pursuant to authority received from the FCC.

10. Of those OCCs and resellers now doing business in North Carolina, most, if not all, are carrying intrastate traffic, despite the fact that none has a certificate from this Commission. Thus, most, if not all, OCCs and resellers now doing business in North Carolina are operating as de facto public utilities.

11. The authorization of intrastate interLATA competition by OCCs and resellers in North Carolina is in the public interest and will not jeopardize reasonably affordable local service.

12. IntraLATA competition will be in the public interest, subject to the resolution of certain important issues which were raised during the hearings in this docket. IntraLATA resale competition will be permitted no later than January 1, 1986. Competition by intraLATA facilities-based carriers will be allowed after a transition period of approximately two years on January 1, 1987.

13. It is in the public interest that interLATA competition through resale should be limited to resale of WATS and MTS services at this time. In addition, AT&T-C will be permitted to file a new WATS Resale Tariff, if necessary, to reflect its cost of providing service to resellers.

14. Intrastate interLATA Feature Group A (FGA) and Feature Group B (FGB) access charges will be discounted by 25% from Feature Group C (FGC) or premium access on an originating basis only. The access charges for FGA/FGB on the terminating end will be the same as for FGC. Proposed access charges for resellers will be submitted by the LECs for Commission approval.

15. It is not in the public interest or practical to require blocking or rerouting of intraLATA calls placed over the network of an OCC or reseller unless equal access connections are provided.

16. It is in the public interest to require OCCs and resellers to compensate LECs for revenue losses resulting from the completion of unauthorized intraLATA calls by OCCs or resellers.

17. The public interest requires that all interLATA carriers be regulated on at least a streamlined basis during the intial phases of intrastate long-distance competition.

18. The imposition of certification requirements for new interLATA carriers is in the public interest.

19. It is in the public interest at this time to require interLATA carriers to maintain carrier specific toll rates which are available to all of

their North Carolina customers on a nondiscriminatory basis. Any deviation from carrier specific toll rates will require Commission approval after hearing.

20. The offering of interLATA long-distance services by local exchange companies (LECs) requires the imposition of safeguards to ensure that such offerings do not jeopardize the provision of reasonably affordable local service by local exchange companies.

21. It is in the public interest at this time to impose restrictions on all interLATA carriers to prevent those carriers from constructing facilities to bypass the LECs.

22. The provision of intrastate long-distance service through customer owned coin- or card-operated telephones is more appropriately addressed in Docket No. P-100, Sub 73, and will be deferred to that proceeding.

23. The tariffs of AT&T-C and the local exchange access tariff must be modified to reflect the authorization of interLATA long-distance competition.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 1-6

Findings of Fact Nos. 1 through 6 are uncontested and set forth the factual and legal framework in which this matter arises. These findings of fact are amply supported by the record, or by reported decisions of the federal courts and FCC, the published laws of North Carolina, and the decisions of this Commission, of which the Commission takes judicial notice.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 7-9

Findings of Fact Nos. 7 through 9 are supported by the testimony of all the witnesses presented by the OCCs and resellers. The term "Other Common Carrier" (OCC) has its genesis in the interstate jurisdiction and refers to long-distance carriers (other than AT&T-C) who own all or most of their long-distance network, rather than leasing long-distance facilities from other carriers. Witnesses for the OCCs and for the resellers and their industry association (NCLDA) presented a substantial amount of testimony describing the nature and operations of their respective businesses and their views of their roles in a competitive marketplace. All of the OCC and reseller witnesses expressed a desire for intrastate operating authority in North Carolina.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 10

With respect to Finding of Fact No. 10, the evidence indicates that most, if not all, of the OCCs and resellers appearing in this proceeding are presently carrying intrastate traffic. The OCC and reseller witnesses generally indicated that they do not actively market intrastate services but that intrastate calls nevertheless occurred on their networks. The OCC witnesses indicated that in states such as North Carolina, where intrastate certification has not been received, their intrastate traffic is reported to the local exchange companies and/or the FCC as interstate traffic for purposes of paying access charges.

The Commission notes that NCLDA, the resellers' industry association, has contended that the business of reselling telecommunications services is not a public utility service under North Carolina law. The Commission relies on and reaffirms its previous decisions in this regard and rejects this argument.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 11

With respect to Finding of Fact No. 11, the record amply supports the finding that the authorization of interLATA competition is in the public interest provided that reasonably affordable local service is not jeopardized. Generally, the OCC and reseller witnesses set forth their views that the authorization of competition was unqualifiedly in the public interest, whether on an interLATA basis or intraLATA basis. Their witnesses, including MCI/GTE Sprint/USTS witness Nina Cornell, asserted that the benefits of competition would include lower prices and greater consumer choices and would provide incentives for innovation and superior service.

No witness opposed the authorization of interLATA competition, although Lexington Telephone Company did file a Statement of Position on September 28, 1984, suggesting that competitive offerings of long-distance services are not required to serve the public interest effectively and adequately.

Public Staff witness Gerringer recommended specific safeguards which the Public Staff considers necessary to help ensure that the authorization of interLATA competition would not jeopardize reasonably affordable local service. The Public Staff contends that, insofar as possible, long-distance competition should not be allowed to put any upward pressure on local rates. The Public Staff's recommended safeguards are that intraLATA competition should not be authorized at this time, that unauthorized intraLATA calling should be blocked or adequate compensation therefor paid to the authorized intraLATA carriers, and that newly authorized competitors should pay the same access charges as are paid by the presently authorized interLATA carrier, AT&T-C.

The Commission agrees that the public interest will be served by realizing the benefits ascribed to competition, if they can be realized without adverse effects on other aspects of telephone service in North Carolina. However, the transition from a fully regulated and monopolistic industry to one that is partially competitive and partially regulated is a transition that poses risks to all segments of the industry and must be accomplished in an orderly manner with the necessary safeguards to minimize those risks. Thus, the Commission has concluded that while interLATA competition should be authorized at this time a transition period is necessary before intraLATA competition is implemented.

The duty of the Commission in this regard is circumscribed by the terms of the new legislation which prompted this proceeding. That legislation allows, but does not require, the Commission to authorize competitive offerings and further requires the Commission to act so as to protect reasonably affordable local telephone service. While "reasonably affordable" is not a readily quantifiable term, clearly the General Assembly intended that basic local rates should be explicitly protected if competition is authorized.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 12

Finding of Fact No. 12 deals with the question of intraLATA competition and whether it should be authorized at this time for either OCCs and/or resellers.

Generally, the witnesses for the OCCs and resellers argued that the same considerations applying to interLATA competition should apply to intraLATA competition and that intraLATA competition should also be authorized. The NCLDA further stated that, if the Commission does not allow intraLATA facilities-based competition at this time, it should permit intraLATA resale competition because resale would be a means of fostering competition and would not adversely affect the local exchange companies. Generally, the local exchange companies (with the exception of Carolina Telephone) argued that intraLATA competition should not be authorized without a transition period to implement a number of steps which must be taken to allow the local exchange companies to compete on the same level as the new competitors. Southern Bell further stated that it was not opposed to intraLATA resale of MTS and WATS as long as the access to these services is priced on a usage sensitive basis. The Public Staff argued that intraLATA competition should not be allowed because of the threat such competition would pose to basic local rates. Public Staff witness Gerringer pointed out that, with intraLATA toll competition, not only are access revenues at risk but also substantial cost support for the local exchange companies' intraLATA toll network is at risk. Witnesses for all parties agreed that the authorization of intraLATA toll competition would necessitate an end to the current access charge and toll pooling arrangements.

The Commission recognizes that a clear public policy has emerged in this country to the effect that communication services are to be provided through a competitively structured industry. However, timeliness and impact of these changes must be carefully weighed in order to make a valid public interest determination.

The Commission concludes that there are difficulties with implementation of intraLATA competition at this time and that a transition period is necessary to fully address the problems. The Commission believes that the creation of the artificial LATA boundaries, although necessary as a result of divestiture, should not be utilized as a permanent means of preventing full competition in the intrastate long-distance market. However, the Commission recognizes that the situation exists where different considerations apply when assessing the potential impact of interLATA competition and intraLATA competition, particularly the possible impact on local exchange service. The Commission must be concerned not only about the initial effects of competition; it must also ensure that the long-term relationship between monopolistic (i.e., local exchange) and competitive (i.e., long distance) segments of the industry is structured properly. While the Commission does perceive the potential risks to be a greater factor with the authorization of intraLATA competition, it concludes that such risks can be minimized if implemented through a transition period and that intraLATA competition will then be in the public interest.

In this regard, the Commission believes that a distinction can be made between intraLATA competition on a resale only basis and intraLATA competition for facilities-based carriers and that the implementation of intraLATA resale competition can be authorized after a shorter transition period. The

Commission is concerned about the proper level of access charges and rates to apply to resellers to fully compensate the local exchange companies. The Commission concludes that intraLATA competition on a resale only basis should be authorized after a hearing to determine the proper compensation level and that such intraLATA competition will be permitted no later than January 1, 1986. Thus, the Commission will soon enter a separate Order in this docket scheduling a hearing to consider all of the relevant issues related to the authorization and implementation of intraLATA competition by resale no later than January 1, 1986.

The Commission recognizes that a longer transition period will be necessary to implement facilities-based intraLATA competition. The Commission concludes that in order to allow all competitors, including the LECs, to compete in the intraLATA market and to maintain reasonably affordable local exchange service, a thorough examination of the current access charge and toll pooling mechanisms, as well as the system of uniform toll rates, is necessary. In addition, it will be necessary to develop access charges for intraLATA carriers. Thus, the Commission concludes that approximately a two-year transition period to January 1, 1987, is required before implementation of full intraLATA competition can be authorized.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 13

With respect to Finding of Fact No. 13, various parties expressed different views as to what services should be subject to resale. The Public Staff, through witness Gerringer, recommended that resale of only interLATA WATS and MTS long-distance services should be permitted at this time. Southern Bell generally agreed with the Public Staff but further stated that the Company would not be opposed to resale of intraLATA MTS and WATS if the access to these services was priced on a usage-sensitive basis. AT&T-C's position concerning the resale of MTS and WATS was that the interLATA WATS and 800 service rate schedules must be revised so that AT&T-C could recover its costs from the services being sold. The witnesses for NCLDA argued that resale of all services should be permitted.

With respect to whether services other than MTS and WATS should be available for resale, the Public Staff, Southern Bell, and AT&T-C presented testimony that the current rates for private line and FX services are not covering the direct costs of providing those services, and until those rates are restructured to cover their costs, resale should not be permitted. Moreover, their evidence indicated that this problem is exacerbated by the flat rates currently in effect for those services because of the heavier than average usage expected on lines used by a reseller. In contrast, WATS and MTS are currently offered under a usage-sensitive rate structure. Therefore, the Public Staff and Southern Bell recommended limiting long-distance competition through resale to WATS and MTS services until the tariffs for other services can be examined and restructured to accommodate resale. The NCLDA argued that such a limitation would constitute unlawful discrimination against resellers as a class of telecommunications users and, in any event, would be bad public policy because, if resale of all services was permitted, the underlying carriers would have more incentive to restructure their tariffs on a cost-justified basis.

The Commission concludes that at this time resale of intrastate interLATA long-distance services in North Carolina should be limited to resale of MTS and WATS. The tariffs for other services, such as FX and private line services, will require a more detailed examination before they can be made available for resale. It is the intention of this Commission that, during the transition period, resale of FX and private line services will be considered after a thorough analysis of such services is completed and after the rates for such services are restructured, if necessary. In addition, AT&T-C will be permitted, if necessary, to immediately file a new tariff applicable to the resale of WATS which reflects the costs of AT&T-C, including associated access charges paid to the LECs. The Commission does not believe that such action would constitute unlawful discrimination, since resellers are not ordinary telephone customers but are providers of a public utility service, and, as such, their offerings and operations may be regulated by the Commission in the public interest.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 14

Finding of Fact No. 14 deals with one of the most controverted issues at the hearing. A great part of the evidence in the record deals with whether or not a discount or differential in the access charges levied on newly authorized competitors should be given, as compared with the access charges paid by AT&T-C. The OCCs argued that they are currently forced to take a Feature Group A (FGA) or Feature Group B (FGB) access connection to the local exchange, which is inferior in quality to the Feature Group C (FGC) access connection afforded to AT&T-C. Consequently, the OCCs argued that they should be charged much lower rates for access than AT&T-C. In response, AT&T-C argued that to grant what it terms a "discount" to its competitors would be to unduly favor those competitors.

The evidence presented by the OCCs and resellers emphasizes the differences between a FGA access connection and a FGC access connection. These include automatic number identification (ANI); answer and disconnect supervision; echo, noise, and transmission loss; and access to customers having rotary dial telephones. In addition, the OCC witnesses generally argued that FGB access is not a viable option for their companies, because converting to FGB as an intermediate step on the way to equal access would require an additional engineering conversion on their networks and an additional customer education effort. The OCCs argued that these problems with FGA and FGB require an access charge differential comparable to the 55% allowed by the FCC for interstate access.

The Public Staff initially opposed any differential for access charges applicable to long-distance carriers. The Public Staff argued that such a differential would unduly increase the risk that local rates will be jeopardized by the introduction of competition in the interLATA market. The Public Staff pointed out that with interLATA competition, some of the traffic formerly carried by AT&T-C, the only presently authorized interLATA carrier, will become competitive carrier traffic as customers choose to utilize the services of the newly authorized competitive carriers. Thus, to help ensure that local exchange companies receive the same approximate level of access revenues if interLATA competition is established, all interLATA carriers should pay the same access charges. The Public Staff position was that, unless the access charges applicable to new intrastate long-distance carriers are set at the level now paid by AT&T-C, the local exchange revenues will be at risk and

reasonably affordable local service rates may be jeopardized. However, during oral argument, the Public Staff stated that a 35% differential in the local switching element (LS1 vs LS2) which is embodied in the current access charge tariff is a sufficient differential to recognize the difference between FGA/FGB and FGC switched access.

Southern Bell stated that a discount in access charges to the OCCs should not be implemented because there is no cost basis for a difference in access charges to competing carriers. On the other hand, Carolina Telephone Company took the position that a discount is warranted to the OCCs because there are cost differences in providing FGC or premium access and FGA. In addition, Carolina Telephone Company stated that the 1+ dialing capability of premium access made it inherently more valuable and that a differential would help promote competition in North Carolina and also provide an economic incentive for LECs to provide equal access.

In response to the potential risk to the local exchange revenues associated with a FGA access rate differential, the OCCs and Carolina Telephone Company argued generally that it is erroneous to view the difference in access revenue realized per minute as "lost" revenue, because the Commission is capable of establishing an access revenue requirement and structuring differential access charges to meet that overall revenue requirement. However, the Public Staff, Southern Bell, and AT&T-C stated that, if the overall access charge revenue requirement is to be met while giving OCCs and resellers a differential, the access charge rates for AT&T-C would have to be greater than they are presently. Their concern is that, in a competitive environment, AT&T-C would not be able to increase its rates to produce the additional revenues required to pay the increased access charges.

Evidence presented by Southern Bell witness Price in this proceeding indicates that, even if the access charge tariff rates are the same for all carriers, the application of the local transport rate element (measured in mileage bands between the end office serving the carrier and the end office serving the customer) will be different for FGA access compared to FGC access. For FGA access, the end office in a local calling area serving the customer cannot be identified and, thus, it is assumed that the customer is served out of the same office serving the carrier. This results in the application of the minimum local transport rate element (0-1 miles). For the FGC access of AT&T-C, the end office serving the customer is identified. Therefore, the full distance between the customer's end office and the end office serving AT&T-C is used to determine the local transport rate element. Thus, even if the access charge rate elements are the same for all carriers, there is an inequity associated with application of the local transport rate element for FGA and FGC. Therefore, the local exchange company would receive less access revenues from an OCC than from AT&T-C for a customer formerly using AT&T-C as its carrier.

Based on the evidence presented in this proceeding, the Commission concludes that, if too large a differential is established, there is a risk that reasonably affordable local service will be jeopardized. The Commission further believes, however, that some differential in the access charge tariff is justified to recognize the difference between FGA/FGB switched access and FGC switched access and to encourage competitors to provide service to all North Carolina consumers. Many of the advantages of premium access enumerated

by the OCCs, such as answer supervision, automatic number identification, ability to use rotary dial telephones, and especially 1+ dialing, are a function of the originating access connections. Therefore, it is appropriate that any differential established should be limited to originating access. In addition, a differential on only the originating end will hopefully encourage competitors to extend their originating networks in North Carolina to areas of the State they may not initially intend to serve to the benefit of additional North Carolina consumers. The OCCs have stated that they are currently providing statewide terminating service and the Commission does not believe that a differential in terminating access connections is warranted. The Commission concludes that a 25% differential or discount in the carrier common line charge (CCLC) and other switched access elements from FGC or premium access charges on originating access only is a sufficient differential to recognize the differences between FGA/FGB and FGC access. FGA/FGB access charges for terminating access will be the same as those for FGC.

The question of what access charges, if any, should be paid by resellers for access to the local exchange was treated in some detail at the hearing. The NCLDA through its witnesses and cross-examination of other witnesses contended that no access charges should be paid by resellers, because such access charges are (or should be) paid by the underlying carrier whose service is resold. The Public Staff, Southern Bell, and AT&T-C stated that access charges should apply to resellers. The Public Staff contended that, under the present North Carolina access charge structure, access charges are paid by the underlying carrier for WATS access at the terminating end, but they are not so paid for WATS access at the originating end. The Public Staff further stated that while some access charges are paid by the underlying WATS carrier for the Dedicated Access Line and associated services on the originating end of the WATS line, these charges do not cover any of the costs of access to the local exchange from the reseller's switch. Thus, even though the reseller's customers use local exchange facilities to access the reseller, the current North Carolina access tariff does not apply local exchange access charges at the originating end for the calls placed to the reseller.

The NCLDA further contended at the hearing on this matter that to apply access charges to resellers under North Carolina's Access Tariff, as opposed to charging for such service on a flat (PBX trunk) business line rate, would constitute unlawful discrimination, because the reseller's usage of the local exchange and its access thereto would be similar to the usage and access provided to a large business customer such as IBM over its PBX trunk connection. The Commission rejects this argument. The new legislation which vests the Commission with the discretion to consider competitive offerings also states that "(n)otwithstanding any other provision of law, the terms, conditions, rates, and interconnections for long distance service offered on a competitive basis shall be regulated by the Commission in accordance with the public interest." Inasmuch as that legislation defines "long distance services" in such a way as to include resellers (whose service offerings to their customers include, in the words of the statute, the "transmission of messages... between two or more central offices," albeit over leased facilities), it is clear that the legislation explicitly distinguishes long-distance carriers from regular customers and vests the Commission with the authority to regulate long-distance carrier access charges in the public interest. Moreover, if taken to its logical conclusion, NCLDA's argument would mean that access charges could not be levied against facilities-based OCCs at

this time, since the lineside (FGA) local access connections currently available to OCCs are the same as are available to resellers. This would be an unreasonable result, and it points up the fundamental flaw in NCLDA's argument. OCCs and resellers are in the business of providing telecommunications services to the public; ordinary business line customers are not. Thus, it is appropriate to levy access charges against those who use their access to the local network as part of the provision of telecommunications services to the public.

The Commission recognizes that a reseller utilizes the local switched network and other local exchange facilities in a similar manner as when a call is placed to any long-distance carrier and such usage may well not be fully accounted for in the current North Carolina access charge tariffs. Thus, some level of access charges for resellers is clearly appropriate. Nevertheless, the Commission is concerned that, if access charges assessed on resellers are too restrictive or high, resellers may be inappropriately priced out of this new competitive market.

Based on the evidence of record, the Commission is itself presently unable to specify and devise the exact level of access charges which should be applied to resellers. For this reason, the Commission will require the LECs to jointly prepare and file proposed access charges for application to resellers to be implemented in North Carolina on a provisional basis pending hearing and final Commission approval. Such provisional access charges shall be paid by resellers in the interim pending hearing and final Commission approval, but will be subject to being refunded to the resellers by the LECs plus interest to the extent the Commission ultimately finds, after hearing, that such provisional access charges, or any part thereof, were unjust, unreasonable, and excessive. This interim procedure adequately protects the interests of both resellers and local exchange companies and their customers. Upon the filing by the LECs of the proposed access charge tariffs for resellers, the Commission will schedule a public hearing by further Order to consider said tariffs.

The evidence has shown that sufficient access charges are paid by the underlying carrier on MTS calls; therefore, access charges should not also be imposed on a reseller of MTS.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 15

With respect to Finding of Fact No. 15, all witnesses who testified on the subject agreed that, because of the lineside (FGA/FGB) connection currently used by OCCs and resellers, it is not practical for the local exchange companies to block unauthorized intraLATA calls placed over the network of an OCC or reseller or to reroute such calls automatically over the authorized intraLATA network (as is currently done for AT&T-C under its FGC access connection), until such time as equal access connections are provided.

The Commission concludes that blocking unauthorized intraLATA calls would not be in the public interest not only because it is impractical but also because it would cause customer confusion and dissatisfaction.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 16

Having previously concluded that intraLATA competition will be in the public interest but should not be fully implemented in North Carolina during the transition period and that it is not in the public interest or practical for local exchange companies or OCCs to block or reroute intraLATA calls placed over the network of an OCC or reseller unless equal access connections are provided, the Commission must now address the question of what measures should be undertaken to ensure that reasonably affordable local exchange service is not jeopardized due to unauthorized intraLATA calling over the networks of OCCs and resellers. The OCCs and resellers contended in this proceeding that the revenue loss to the local exchange companies due to the unauthorized intraLATA calling would be adequately compensated for by payment of interLATA access charges for these calls. The Public Staff, Southern Bell, and several of the independent telephone companies testified that, if blocking of unauthorized intraLATA calls is not feasible, then the OCCs and resellers should provide appropriate compensation to the local exchange companies. The Continental Telephone Company witness presented the compensation plan adopted by the Virginia State Corporation Commission and recommended that the Commission adopt a similar plan.

After reviewing and evaluating the evidence presented in this proceeding, the Commission concludes that LECs should be compensated for loss of revenues due to unauthorized intraLATA calling over the networks of the OCCs.

At this juncture, it is not clear whether resellers should be included in the compensation plan because the level of access charges for resellers has not yet been determined. As stated in Finding of Fact No. 14, the LECs will be required to file access charges applicable to resellers which reimburse the LECs for the use of the switched network. The Commission concludes that resellers should not be required to provide any additional compensation for unauthorized calls routed over resold services at this time but that this finding will be reevaluated, if necessary, when the level of access charges for resellers is determined.

On an interim basis, the Commission will apply the compensation plan to OCCs which the Public Staff presented in its proposed order adapted for the differential. This compensation plan intends for an OCC to pay a LEC for an intraLATA call completed over the OCCs' facilities by determining the difference between the amount the LEC would have received had the subscriber placed the call over the LEC's intraLATA system less the amount of access revenue received by the LEC for the call. While the Commission concludes that this plan appears to be fair and reasonable, it is concerned that the other parties, especially the LECs, were not able to comment on it during the hearings and, thus, a further hearing will be held to allow all parties to comment on the Public Staff's compensation plan or present alternatives. Accordingly, this compensation plan is being established on an interim basis until further proceedings are held.

Under this compensation plan, the OCCs will be required to pay the LECs 5.87 cents per minute on all conversation minutes for unauthorized intraLATA calls made over the OCCs' networks. It is reasonable to base the compensation on conversation minutes rather than access minutes, since the LECs' toll revenue is a function of conversation minutes rather than access minutes. In

addition, for purposes of applying the compensation amount, conversation minutes will be easier to monitor since they can be determined from OCC customer bills.

The 5.87 cents per minute of conversation is based on the following:

1. Testimony of Southern Bell witness Vogel indicates that the average revenue per minute for intraLATA toll calls in North Carolina is 21 cents and that the average conversation time of an intraLATA toll call is 4 minutes.

2. The current North Carolina intrastate access charge for premium access or FGC is 7.8085 cents per minute. The 7.8085 cents per minute access reflects the current CCLC of 5.19 cents per minute; a local switching rate of .90 cents per minute; and a local transport rate of 1.01 cents per minute for the 1 to 8 mileage range. In addition there is a .70 cents and .0085 cents per minute charge for line termination and intercept, respectively.

3. In Finding of Fact No. 14, the Commission concluded that OCCs should receive a 25% differential from FGC for originating access and no differential on terminating access connections. This results in an access charge of 5.8564 cents per minute applied to originating minutes and 7.8085 cents per minute to terminating minutes.

4. A conclusion that originating access minutes associated with a call will be approximately 1.25 times the originating conversation minutes associated with an average 4-minute call and that terminating access minutes and conversation minutes are approximately equal. This takes into account the fact that originating access minutes include setup time as well as conversation minutes. To arrive at the 1.25 factor, one minute of setup time is considered reasonable for an average call consisting of 4 minutes of total conversation time. Therefore, the ratio of access minutes to conversation minutes for a 4-minute call is calculated as follows:

$$\frac{\text{Originating access minutes } (4+1)}{\text{Originating conversation minutes } (4)} = 1.25$$

$$\frac{\text{Terminating access minutes } (4)}{\text{Terminating conversation minutes } (4)} = 1.0$$

5. Multiply the 5.8564 cents per access minute by 1.25 and the 7.8085 cents per minute by 1.0 and then add together to convert to an equivalent cents per conversation minute of 15.1290. This number subtracted from the 21 cents per minute average revenue for an intraLATA toll call in North Carolina results in a compensation amount of 5.87 cents (rounded) per conversation minute

The Commission recognizes that there are other factors that could be considered in determining this compensation amount - some that would make it greater and some that would make it less. For example, there may be some avoidable cost on the part of the local exchange companies associated with not having to bill and collect for an unauthorized intraLATA call, causing the required compensation to be smaller. On the other hand, the average cents per minute of lost LEC revenue associated with an unauthorized intraLATA call may be higher than the statewide intraLATA average of 21 cents per minute used in the calculation of the compensation amount. This conclusion is based on the

evidence indicating that, initially, OCC customers are largely business customers, who can be expected to make most of their unauthorized intraLATA toll calls during the premium (nondiscounted) day period. Therefore, the average cents per minute for such calls would be greater than the 21 cents per minute for all intraLATA calls since the latter average includes a large portion of residential calling during the discounted evening, night, and weekend periods. In addition, the compensation amount was calculated using projected access charges based on the local transport rate element for the 1 to 8 mileage range even though other evidence tends to indicate that the 0 to 1 mileage range may be more likely for FGA access connections. This results in higher projected access charges and, therefore, a lower compensation amount that would have been true had the 0 to 1 mileage band been used.

Based on the evidence presented in this proceeding, the Commission concludes that, at this time, it is in the public interest for the OCCs to compensate the local exchange companies at the rate of 5.87 cents per conversation minute for revenue losses resulting from completion of incidental intraLATA toll calls by their customers over the network facilities of the OCCs. The Commission also concludes that the revenues resulting from the compensation plan should be reported to the interLATA access and intraLATA toll pool for distribution among the local exchange companies. The Commission concludes that further hearings will be held for parties to comment on this interim compensation plan.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 17

The recommendations from the various witnesses relating to the degree of regulation that should apply to interLATA carriers during the initial phases of long-distance competition ranged from proposals by the OCCs for a "dominant/nondominant" classification of carriers to the proposal by AT&T-C for a general approach of regulatory forbearance. Under the OCC proposal, which is similar to the scheme adopted by the FCC, the dominant carrier (AT&T-C) would be subjected to traditional rate regulation, whereas the nondominant carriers (OCCs and resellers) would enjoy minimal regulation. Under AT&T-C's recommended approach, all ICs would be regulated in an identical fashion, which would generally be minimal regulation.

The recommendations of the Public Staff with respect to the appropriate degree of regulation were based on a belief that not all interLATA service areas in North Carolina will be competitive market areas and that initially a set of rules and regulations which provide a measure of protection to the general public should be established during the formative stages of a competitive environment. The Commission believes that the recommendations of the Public Staff offer a reasonable balance between the ideas presented by the OCCs and resellers and by AT&T-C and therefore concludes that the following guidelines should be established regarding regulation of interLATA carriers during the initial phases of long-distance competition:

1. Tariff Filings and Rate Changes:

   -Rates presently on file by AT&T-C will constitute the Company's capped or ceiling rates and those rates may be reduced by AT&T-C upon two weeks' notice given to subscribers with copies filed with the Commission and the Public Staff.

-All new carriers seeking authority to provide interLATA competition shall file tariffs with the application reflecting the proposed immediate service area, regulations, rates, and charges. The filed rates shall become the individual carrier's capped or ceiling rates effective upon certification of the carrier by this Commission.

-All rate changes (up or down) not exceeding the capped rates or rate ceilings may go into effect after two weeks' notice given to subscribers with copies filed with the Commission and the Public Staff. No cost basis will be required to support these changes.

-To add new rates, increase ceiling rates, and add or delete a service, the Commission's existing rules covering tariff changes and general rate increases will apply.

-No carrier may abandon or discontinue service in its certified service area without the approval of the Commission.

2. Establishing Credit, Deposits, and Disconnects for Customers of OCCs and Resellers:

-The existing rules and regulations of the Commission will apply regarding these matters.

3. Financial Report Filing and Accounting Procedures:

-Filing of annual reports (not necessarily Form M) will be required in the early stages of developing interLATA competition by all new carriers. Such financial statements should include a North Carolina intrastate Statement of Operating Income.

-AT&T-C is required to file a Form M Annual Report for North Carolina operations.

-Use of generally accepted accounting principles in lieu of the Uniform System of Accounts for all new competitive carriers will be adequate. However, the new competitive carriers are required to maintain accounting records in a manner such that the North Carolina intrastate jurisdictional operating results of the company may be provided to the Commission and the Public Staff.

-A&T-C shall use the Uniform System of Accounts.

4. Service Evaluation:

-The service of all competitive long-distance carriers will be subject to Commission evaluation and corrective action based on customer complaints.

-Competitive carriers will not be required to meet specific service objectives or file reports at this time.

5. Depreciation Rates:

-Depreciation rates will be prescribed for and required to be filed by AT&T-C only.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 18

The question of what certification requirements should be imposed on newly authorized competitive long-distance carriers was treated by a number of witnesses. After a careful review of the evidence, the positions of the parties, and the statutory certification requirements in light of the new telecommunications environment which is legally established in North Carolina under this Order, the Commission concludes that OCCs and resellers seeking certification to provide interLATA service should file with their applications documentation which establishes the following:

1. Fitness;

2. Financial stability;

3. Technical ability to offer the proposed service;

4. The nature of the proposed service to be offered;

5. A clear definition of the geographical area and routes to be initially served;

6. Tariffs reflecting services to be offered, including rates and regulations applicable to each service;

7. Minimal rate justification to the extent necessary to establish that the proposed rates are competitive;

8. A plan detailing the applicant's proposed methodology for determin-ing the monthly quantity of intrastate (interLATA and intraLATA) access minutes on its system in North Carolina;

9. A nonresale applicant shall file its proposed plan for determining the unauthorized intraLATA conversation minutes occurring on its facilities each month;

10. A plan detailing the applicant's proposed accounting methodology and necessary allocation procedures required to provide to the Commission the North Carolina intrastate jurisdictional financial operating results of the Company;

11. A statement that the applicant agrees to abide by all applicable rules and regulations of the Commission and the findings, conclusions, terms, and conditions set forth in this and other pertinent Commission orders; and

12. The application shall be verified and sponsored by an appropriate officer or representative of the applicant who is familiar with the information set forth therein.

An applicant for interLATA long-distance operating authority will not be required to offer documentation to establish that its proposed service will be required to serve the public interest effectively and adequately as required by G.S. 62-110 for the reason that the Commission has found and concluded in this Order that authorization of interLATA competition is in the public interest and will not jeopardize reasonably affordable local service.

With regard to item #5 above, certificated competitive long-distance carriers will not be required to provide statewide originating service at this time. AT&T-C has clearly expressed its intention to continue to provide originating service to all areas and telephone customers in North Carolina. The Commission reserves the right, however, to revisit this issue at a later time if it becomes clear that the benefits of long-distance competition are not in fact being made available throughout the State to all telephone customers by the competitive carriers. To this end, the Commission encourages, but will not initially require, competitive carriers seeking a certificate of public convenience and necessity to offer statewide originating service. In addition, the Commission believes that the new competitors should make good faith efforts to serve each central office in the State as equal access becomes available.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 19

With respect to Finding of Fact No. 19, most parties stated that in a competitive situation, it is the market that will determine the price of a service and a uniform system of toll rates could not be maintained. The Public Staff and several of the LECs stated that if only interLATA competition is authorized then a uniform system of intraLATA toll rates could continue. AT&T also presented testimony that it had no plans to deaverage its statewide toll rates at this time.

The Commission concludes that in a fully competitive environment, uniform statewide toll rates cannot continue in perpetuity. However, competitive interLATA carriers will initially be required to maintain carrier specific toll rates which will be available to all their customers on a nondiscriminatory basis. The Commission also recognizes that toll rate deaveraging may be an unavoidable consequence in the future as a result of competition, but a carrier must first obtain approval from this Commission after public hearing to deaverage its rates.

The Commission concludes that the system of uniform intraLATA toll rates and pooling procedures for local exchange companies will at least continue in the transition period until the Commission addresses these issues.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 20

In Finding of Fact No. 20, the Commission found that the offering of interLATA long-distance by local exchange companies will require safeguards to ensure that such offerings will not jeopardize the provision of reasonably affordable local service by LECs. The very existence of this proceeding and the nature of this Order mean that the long-distance business is becoming a riskier one with the advent of competition. Local exchange service, however, remains a regulated monopoly, and customers of that monopoly service should be insulated from any competitive risks undertaken by the utility. Therefore, the Commission concludes that any new ventures in the interLATA market by LECs in

North Carolina would best be conducted through a separate subsidiary company. In the alternative, should any LEC wish to present to the Commission in its application for interLATA authority a detailed proposal for the implementation of accounting procedures (in lieu of establishing a separate subsidiary) to ensure that local exchange revenues do not support the competitive long-distance portion of the business, the Commission will consider such a proposal.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 21

With reference to Finding of Fact No. 21, the Commission concludes that the new competitive long-distance carriers should be subject to the same bypass restrictions currently applied to AT&T-C in order to prevent those carriers from constructing facilities to bypass the facilities of the LECs.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 22

Regarding Finding of Fact No. 22, substantial evidence was presented by witnesses for AT&T-C, Southern Bell, MCI, and the Public Staff. Witnesses for the independent companies recommended that the customer ownership of coin terminal equipment should be addressed under a separate local service competition docket such as Docket No. P-100, Sub 73.

Southern Bell's witness stated that applications should be granted for the provision of intrastate long-distance service through coin- and coinless-operated telephones owned by the applicant pursuant to an approved tariff filing by the local exchange company. Under this arrangement, Southern Bell believes that all intraLATA calling would be provided by the LECs while interLATA and interstate traffic would be handled by the authorized interexchange carriers.

AT&T-C's witness indicated that AT&T-C is proposing to offer a card-caller (coinless) telephone for placing interLATA, intraLATA, and local calls. However, he stated that AT&T-C would not function as a reseller of intraLATA services since the intraLATA (toll and local) calls would be carried over the local companies' networks and handled in the same manner as the same type calls placed from other business or residence telephone in the local exchange company area. The revenues for such calls would stay with the local companies. Thus, AT&T-C contended that it would not be reselling intraLATA services and should not be required to file an application for additional authority to install AT&T-C owned coinless telephones.

MCI's witness stated that, although MCI does not currently provide coin-operated telephones for access to its long-distance service, there is no reason to restrict entry to that part of the market. Whenever possible, MCI prefers to participate as a carrier on public phones installed and operated by the local exchange companies which offer both credit card reading and calling card capabilities.

The Public Staff's position was that the new legislation did not include customer-owned coin-operated (COCO) telephones within the definition of long-distance service. The legislation defines long-distance service as the transmission of messages or other communications between two or more central offices. In contrast, a COCO telephone is terminal equipment, and not a

facility for providing communications between two or more central offices. It simply provides the user interface at the end of the local loop.

The Commission concludes that customer-owned coin- or card-operated telephones do not constitute long-distance service as defined by the new legislation. Therefore, it is not appropriate to consider in this proceeding whether connection of such telephones to the facilities of LECs should be permitted. This issue is being more appropriately addressed in Docket No. P-100, Sub 73, dealing with local service competition and resale.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 23

With respect to Finding of Fact No. 23, tariff changes will need to be made in AT&T-C's General Services Tariffs to allow carriers authorized by the Commission to extend the use of their services to their customers and to allow them to receive compensation for those services. Changes will be required in the Access Service Tariff to reflect the access charges applicable to OCCs which account for the 25% differential from premium access for originating access connections and no differential for terminating connections. Changes in the Access Service Tariff will also be required to make resellers subject to access charges as may be established hereafter and to reflect the interim compensation plan applicable to unauthorized intraLATA calls.

IT IS, THEREFORE, ORDERED as follows:

1. That intrastate interLATA long-distance competition be, and the same is hereby, authorized in North Carolina subject to the findings, conclusions, terms, and conditions set forth in this Order.

2. That intrastate intraLATA long-distance competition is not presently authorized; provided further that, subject to the resolution of certain issues raised during the hearings in this case, intraLATA competition by resellers will be permitted no later than January 1, 1986, and intraLATA competition by facilities-based carriers will be authorized after a transition period on or about January 1, 1987.

3. That any person other than AT&T-C now providing intrastate interLATA long-distance service in North Carolina shall immediately file an application with this Commission pursuant to G.S. 62-110 seeking an appropriate certificate of public convenience and necessity or forthwith cease and desist from offering or providing such service.

4. That any person hereafter proposing to offer intrastate interLATA long-distance telephone service in North Carolina shall first apply for and receive a certificate of public convenience and necessity from this Commission pursuant to G.S. 62-110.

5. That the LECs shall jointly prepare and file, not later than 20 days from the date of this Order, proposed access charge tariffs for application to resellers in North Carolina to be implemented on a provisional basis pending hearing and final Commission approval. Provided, further, that such provisional access charges shall be implemented by the LECs subject to an undertaking to refund same plus 10% interest to the extent the Commission ultimately finds, after hearing, that such provisional access charges, or any

part thereof, were unjust, unreasonable, and excessive. The LECs shall file an appropriate undertaking to refund with respect to such provisional access charges for Commission approval not later than 20 days from the date of this Order.

6. That the tariff modifications specified in Finding of Fact No. 23 of this Order shall be filed by AT&T-C and Southern Bell not later than 20 days from the date hereof. The other parties to this proceeding shall then have five working days to file written comments, if any there be, with respect to such tariffs. The Commission will thereafter enter a further Order in this docket either modifying or approving such tariffs.

7. That the Chief Clerk shall mail a copy of this Order to the members of the Utility Review Committee of the North Carolina General Assembly and their Committee counsel.

ISSUED BY ORDER OF THE COMMISSION.
This the day 22nd day of February 1985.

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

DOCKET NO. P-100, SUB 72

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Investigation to Consider Whether Competitive Intrastate Offerings of Long-Distance Telephone Service Should Be Allowed in North Carolina and What Rules and Regulations Should Be Applicable to Such Competition if Authorized	) ORDER APPROVING INTRALATA COMPENSATION PLAN; APPROVING INTERLATA ACCESS CHARGES FOR RESELLERS; AND SUSPENDING INTERLATA ONLY AND INTERLATA ADD-ON WATS TARIFFS

HEARD IN: Commission Hearing Room 217, Dobbs Building, 430 N. Salisbury Street, Raleigh, North Carolina, on Monday, June 24, 1985, through June 27, 1985

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

APPEARANCES:

For Southern Bell Telephone and Telegraph Company:

J. Billie Ray, Jr., General Attorney, Southern Bell Telephone and Telegraph Company, 1012 Southern National Center, Charlotte, North Carolina 28230

Shirley A. Ransom, Attorney, Southern Bell Telephone and Telegraph Company, Legal Department, 4300 Southern Bell Center, Atlanta, Georgia 30375

For AT&T Communications, Inc.:

Wade H. Hargrove, Tharrington, Smith & Hargrove, Attorneys at Law, 209 Fayetteville Street Mall, Raleigh, North Carolina 27601

Gene V. Coker, General Attorney, AT&T Communications, 1200 Peachtree, N.E., Atlanta, Georgia 30357

For Central Telephone Company:

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

For Alltel Carolina, Inc.:

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

For GTE Sprint Communications Corporation:

McNeill Smith, Smith, Moore, Smith, Schell & Hunter, Attorneys at Law, P.O. Box 21927, Greensboro, North Carolina 27420

Phyllis A. Whitten, Attorney, GTE Sprint Communications Corporation, 1828 L. Street, N.W., Suite 500, Washington, D.C. 20036

For General Telephone Company of the Southeast:

Joe W. Foster, Senior Attorney, and Frank Deak, Attorney, General Telephone Company of the Southeast, P.O. Box 1412, Durham, North Carolina 27712

For Carolina Telephone and Telegraph Company:

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

Jack H. Derrick, General Attorney, Carolina Telephone Company, 720 Western Boulevard, Tarboro, North Carolina 27886

For Telecommunications Systems, Inc.:

C. Dukes Scott, Willoughby & Scott, Attorneys at Law, P.O. Box 8416, Columbia, South Carolina 29202-8416

James E. Holshouser, Jr., (Attorney of Record); Brown, Holshouser, Pate and Burke, 175 New Hampshire Avenue, P.O. Box 116, Southern Pines, North Carolina 28387

For MCI Telecommunications Corporation:

Charles C. Meeker, Sanford, Adams, McCullough & Beard, Attorneys at Law, P.O. Box 389, Raleigh, North Carolina 27602

Pamela Wisne, MCI Telecommunications Corporation, 1133 19th Street, N.W., Washington, D.C. 20036

For Carolina Utility Customers Association, Inc.:

Jerry B. Fruitt, Attorney at Law, P.O. Box 12547, Raleigh, North Carolina 27605

For the North Carolina Long Distance Association:

Walter E. Daniels, Attorney at Law, 200 Park Offices, Suite 200, P. O. Box 13039, Research Triangle Park, North Carolina 27709

Joseph E. Wall, and John R. Jordan, Jr., Jordan, Brown, Price & Wall, Attorneys at Law, 1414 Branch Banking & Trust Building, P. O. Box 709, Raleigh, North Carolina 27602

For North Carolina Department of Justice:

Karen E. Long, 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:

Michael L. Ball, Staff Attorney, and Theodore C. Brown, Jr., Staff Attorney, Public Staff - North Carolina Utilities Commission, P.O. Box 29529, Raleigh, North Carolina 27626-0520
For: The Using and Consuming Public

BY THE COMMISSION: This matter arose as a result of enactment by the North Carolina General Assembly of legislation effective June 29, 1984, which amended Chapter 62 of the North Carolina Public Utilities Act. (House Bill 1365, 1983 Sess. L. Ch. 1043 (Reg. Session, 1984), amending G.S. § 62-2 and § 62-110.)

The General Assembly declared as a matter of policy in ratified House Bill 1365 that competitive offerings of long-distance telephone service in North Carolina may be in the public interest. Further, the General Assembly vested authority in the North Carolina Utilities Commission to allow competitive offerings of long-distance services by public utilities as defined in G.S. § 62-3(23)a.6. The legislation authorized the Commission to issue a certificate to any person applying to offer long-distance telephone service as

a public utility provided that such person is found to be fit, capable, and financially able to render such service; that such additional service is required to serve the public interest effectively and adequately; and that such additional service will not jeopardize reasonably affordable local exchange service.

In response to the action of the North Carolina General Assembly which expanded the powers and duties of the Commission with regard to long-distance service, the Commission on July 24, 1984, issued an Order instituting an investigation, scheduling hearing, and requiring public notice.

The Commission ruled that the investigation should consider whether, and to what extent, competitive offerings of long-distance telephone service should be allowed in North Carolina and what rules and procedures should be established for authorizing such competition if it were found to be in the public interest.

The following parties intervened in this docket: Carolina Utility Customers Association, Inc. (C.U.C.A.); GTE Sprint Communications Corporation (GTE Sprint); MCI Telecommunications Corporation (MCI); North Carolina Long Distance Association (NCLDA); SouthernTel, Inc.; Telecommunications Systems, Inc.,(TSI); United States Transmission Systems, Inc. (USTS); the Public Staff; and the North Carolina Attorney General.

On February 22, 1985, the North Carolina Utilities Commission entered an Order in this docket entitled "Order Authorizing Intrastate Long-Distance Competition."

On March 14, 1985, Southern Bell Telephone and Telegraph Company (Southern Bell) filed certain proposed access charge tariffs on behalf of all local exchange telephone companies in response to Finding of Fact No. 14 and decretal paragraphs 5 and 6 of the above-referenced Commission Order.

On March 15, 1985, AT&T Communications of the Southern States, Inc. (AT&T-C), filed certain proposed interLATA WATS resale tariffs for Commission consideration and approval in response to Finding of Fact No. 13 of the "Order Authorizing Intrastate Long-Distance Competition" entered in this docket on February 22, 1985.

On March 20, 1985, MCI Telecommunications Corporation filed a petition for reconsideration in this docket whereby the Commission was requested to (1) reconsider the differential in access charges for intrastate long-distance telephone services established by the above-referenced Commission Order and (2) grant a 55% access charge differential on both the originating and terminating ends of intrastate long-distance telephone calls.

On March 21, 1985, the Public Staff filed certain comments and recommendations in this docket in response to the proposed access charge tariffs filed herein by Southern Bell on March 14, 1985.

On March 21, 1985, the North Carolina Long Distance Association filed certain motions in this docket entitled "Petition of the North Carolina Long Distance Association for Emergency Relief" and "Petition of the North Carolina Long Distance Association for Partial Reconsideration."

On March 29, 1985, MCI submitted comments and recommendations with respect to the proposed tariff revisions filed in this docket by Southern Bell and AT&T-C on March 14, 1985, and March 15, 1985, respectively.

On April 1, 1985, Southern Bell filed a response in opposition to the petitions for emergency relief and partial reconsideration filed in this proceeding by NCLDA.

On April 2, 1985, GTE Sprint Communications Corporation filed a motion in this docket whereby the Commission was requested to amend the Order previously entered herein on February 22, 1985, by establishing a 55% access charge differential on both the originating and terminating ends of intrastate long-distance calls.

On April 4, 1985, United States Transmission Systems, Inc., filed comments in support of the petition for reconsideration filed herein by MCI on March 20, 1985.

On April 4, 1985, NCLDA filed certain reply comments in response to Southern Bell's response in opposition to NCLDA's petitions for emergency relief and partial reconsideration.

On April 4, 1985, AT&T-C filed responses in this docket in opposition to MCI's petition for reconsideration and NCLDA's petitions for emergency relief and partial reconsideration.

On April 4, 1985, the Public Staff filed a response in opposition to those portions of MCI's petition for reconsideration and NCLDA's petition for emergency relief pertaining to the access charge provisions of the Commission Order entered herein on February 22, 1985.

On April 9, 1985, SouthernTel, Inc., filed a response in this docket in support of MCI's petition for reconsideration and NCLDA's petition for emergency relief.

On April 11, 1985, NCLDA filed a response in this docket setting forth answers to certain interrogatories which had been served on NCLDA by Southern Bell.

On April 11, 1985, the Commission issued an Order ruling on petitions and motions and scheduling a hearing for June 24, 1985, to consider the following:

a. The proposed access charge tariffs for resellers filed by Southern Bell and the other local exchange companies on March 14, 1985;

b. The proposed interLATA WATS resale tariffs filed by AT&T-C on March 15, 1985; and

c. The compensation plan for incidental intraLATA calls adopted by the Commission in the "Order Authorizing Intrastate Long-Distance Competition."

On May 10, 1985, a statement of position was filed by Lexington Telephone Company.

On May 10, 1985, the testimony of Joseph W. Wareham was filed by Carolina Telephone and Telegraph Company.

On May 11, 1985, a statement of position was filed by Central Telephone Company of North Carolina.

On May 13, 1985, a statement of position and comments was filed by ALLTEL Carolina, Inc., and Sandhill Telephone Company.

On May 13, 1985, the testimony of Hugh L. Gerringer, Jr., was filed on behalf of the Public Staff.

On May 13, 1985, the testimony of David B. Denton was filed by Southern Bell.

On May 13, 1985, the testimony of Robert A. Friedlander was filed by AT&T Communications of the Southern States, Inc.

On May 13, 1985, the testimony of Alfred A. Banzer was filed by General Telephone Company of the Southeast.

On May 13, 1985, and May 14, 1985, AT&T-C filed certain revised interLATA WATS add-on tariffs and a motion requesting that during the hearing scheduled to commence on June 24, 1985, the Commission consider the WATS add-on tariffs. The motion also requested that the Commission require the local exchange companies to prepare and file corresponding intraLATA WATS tariffs for consideration by the Commission at the same hearing.

On May 22, 1985, Southern Bell filed a reply in opposition to the motion of AT&T-C.

On May 23, 1985, the Public Staff filed a Motion to Dismiss Tariff Filing and to Deny Motion of AT&T Communications.

On May 30, 1985, Carolina Telephone and Telegraph Company filed its response to the first information request of MCI.

On June 3, 1985, the Supplemental Direct Testimony of John A. Beall was filed on behalf of GTE Sprint Communications Corporation.

On June 4, 1985, response of AT&T Communications of the Southern States, Inc., to the Motion to Dismiss Tariff Filing was filed.

On June 5, 1985, an Order denying the motion of AT&T and suspending the tariff filing was issued by the Commission.

The matter came on for hearing in Raleigh on June 24, 1985, and the following witnesses offered testimony on behalf of their respective companies and organizations: John A. Beall, GTE Sprint; Hugh L. Gerringer, Public Staff; David Denton, Southern Bell; Joseph Wareham, Carolina Telephone; Harry Miller, MCI; Alfred Banzer, GTE; Peter Loftin, NCLDA; Victor Toth, NCLDA; Thomas Houlihan, NCLDA; Robert Friedlander, AT&T-C; and Oscie Brown, Telecommunications Systems, Inc.

On July 16, 1985, the Attorney General requested deferment of the briefing schedule until the conclusion of the Duke Power Company rate case. On July 25, 1985, the Commission entered an Order granting an extension of time until August 9, 1985, for the submission of briefs and proposed orders. The Commission subsequently extended the deadline to August 13, 1985.

Based upon all the testimony and exhibits received at the hearing and the record as a whole of this proceeding, the Commission, having carefully reviewed same and all of the proposed orders and briefs filed by the various parties, now makes the following

FINDINGS OF FACT

1. It is in the public interest for Local Exchange Companies (LECs) to be compensated for lost revenue associated with the unauthorized transmittal of intraLATA long-distance traffic by Other Common Carriers (OCCs) during the transition period pending the authorization of intraLATA competition by OCCs as of January 1, 1987.

2. Resellers should not be required to provide any additional compensation for the unauthorized transmittal of intraLATA long-distance traffic over resold services of the local exchange companies over and above the access charges found to be appropriate elsewhere herein.

3. The intraLATA compensation plan heretofore adopted by this Commission on an interim basis should be modified to recognize cost savings to the LECs as well as other mitigating factors.

4. Switched access charges (including the carrier common line charge) discounted 45% shall be applicable to pure resellers of long-distance service for access to the local exchange companies' network in lieu of a flat rate local service charge.

5. The Commission takes judicial notice of a letter filed on September 23, 1985, in Docket No. P-140, Sub 9, wherein AT&T Communications informed the Commission of its intent to file a general rate application on or about October 23, 1985.

6. It is in the public interest that the interLATA-Only WATS tariffs filed by AT&T-C on March 15, 1985, and interLATA WATS add-on tariffs filed May 13, 1985, be suspended and consolidated into AT&T-C's general rate increase application.

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

The Commission previously concluded in its Order of February 22, 1985, in this docket that intraLATA competition will be in the public interest but should not be fully implemented in North Carolina during the transition period. The Commission also concluded that it is not in the public interest or practical for LECs or OCCs to block or reroute intraLATA calls placed over the network of an OCC or reseller unless equal access connections are provided. Having reached these conclusions, the Commission then addressed the question of what measures should be undertaken to ensure that reasonably affordable local

exchange service is not jeopardized due to unauthorized intraLATA calling over the networks of OCCs and resellers.

Based on the testimony and evidence in the record at the time, the Commission concluded that LECs should be compensated for loss of revenues due to unauthorized intraLATA calling over the networks of OCCs. The Commission also concluded that resellers should not be required to provide any additional compensation for unauthorized calls routed over resold services at that time, but stated that the decision would be reevaluated, if necessary, when the level of access charges for resellers was determined.

The Commission established on an interim basis a compensation plan which intended for an OCC to pay a LEC for an intraLATA call completed over the OCCs' facilities by determining the difference between the amount of toll revenue the LEC would have received had the subscriber placed the call over the LECs' intraLATA system and the amount of access charge revenue received by the LEC for the call.

The compensation plan was adopted on an interim basis until further hearings could be held to allow parties to comment on the plan. Further hearings were held on June 24 through June 27, 1985. The issues to be decided in this proceeding as a result of evidence received at those hearings are:

1. Should the interim compensation plan be adopted on a permanent basis; and

2. Should resellers be required to pay compensation to the LECs for unauthorized intraLATA calls routed over resold facilities.

Public Staff witness Gerringer testified as to the rationale and derivation of the interim intraLATA compensation plan which required the OCCs to pay the LECs 5.87¢ per minute on all conversation minutes for unauthorized intraLATA calls made over the OCCs' network. The derivation of 5.87¢ per minute of conversation was based on an average revenue per minute for intraLATA toll calls of 21¢ and an average conversation time of 4 minutes. It was also based on an intrastate access charge for premium access of 7.8085¢ per minute. The Public Staff recommended that the compensation plan be adopted on a permanent basis. Witness Gerringer did testify that "(i)f in other future proceedings for some reason the access charges are changed, ...that would have to be reflected in the compensation plan."

Witnesses for Southern Bell, General Telephone, and Carolina Telephone also presented testimony supporting adoption of the compensation plan on a permanent basis.

GTE Sprint and MCI both through testimony of their witnesses and in their proposed orders and briefs strongly opposed adoption of the compensation plan on a permanent basis. They argued that no such plan is necessary because the application of interLATA access charges to intraLATA calls would adequately compensate the LECs. They further argued that such a plan is unfair and inequitable.

As discussed previously, the General Assembly enacted legislation which gives this Commission the discretion to authorize competitive offerings of

long-distance service in North Carolina, provided that allowing such competitive offerings will not jeopardize reasonably affordable local service. In view of such a mandate, the Commission concludes that an intraLATA compensation plan is neither unfair nor inequitable.

The fundamental concern of the Commission is that basic local service should continue to be provided at affordable rates. The introduction of long-distance competition poses risks to reasonably affordable local service because local rates are the residual revenue source for the LECs, and the Commission is obligated, by the express terms of N.C.G.S. § 62-110, as amended, to ensure that such reasonably affordable local service is not jeopardized. The local exchange customers remain subject to a monopoly provider, and they should not be required to pay higher rates simply because of the introduction of long-distance competition. During the transition to intraLATA competition, the LECs must be protected from unauthorized intraLATA competition, so that they and the Commission may plan for its authorization and the inevitable financial impacts associated with it. Such planning is necessary in order to ensure that basic local rates are not detrimentally impacted when intraLATA competition is finally authorized, and the Commission has therefore announced its intention to hold further hearings before intraLATA competition is allowed. In view of these circumstances, the Commission concludes that an intraLATA compensation plan is necessary at this time as a transitional measure in order to ensure that reasonably affordable local service is not jeopardized and further concludes that such a plan is therefore in the public interest.

Having concluded that an intraLATA compensation plan is in the public interest, the Commission must now consider whether the interim intraLATA compensation plan adopted previously by the Commission should be modified, or adopted as it now exists. This requires an analysis of the methodology and data on which the interim plan was based.

The compensation plan was proposed by the Public Staff in its proposed order following the previous hearings in this docket and was adopted by the Commission on an interim basis in the "Order Authorizing Intrastate Long-Distance Competition" entered in this docket on February 22, 1985. The Commission in that Order expressed a concern that the plan should not be adopted on a permanent basis before the parties had a chance to comment on it, and the Commission therefore set the plan for hearing to determine whether it should be adopted on a permanent basis.

Having carefully considered the evidence relating to the interim compensation plan, the Commission concludes that the existing plan should be modified to recognize cost savings to the LECs as well as other mitigating factors.

Several parties to this proceeding pointed out factors which they believed would mitigate the loss to the LECs and should be considered in determining the appropriate amount of compensation due. Indeed, the Commission in its February 22, 1985, "Order Authorizing Intrastate Long-Distance Competition" recognized that there were other factors that could have been considered in determining the compensation amount, some that would make it greater and some that would make it less.

AT&T-C recommended that the compensation plan not be adopted on a permanent basis. AT&T-C pointed out that the plan did not take into consideration uncollectibles or billing and collection savings.

The Attorney General, on the other hand, supports a compensation plan but believes that it must take into account any avoided costs of the LECs.

MCI argued that the compensation plan did not give any consideration to the possible stimulation of total long-distance calling due to competition. MCI also noted that the interim compensation plan makes no allowance for expenses incurred or losses sustained by an OCC in carrying intraLATA traffic.

GTE Sprint presented several arguments against requiring any compensation to LECs other than access charges. As to the derivation of the compensation amount due, GTE Sprint argued that the average revenue per minute of 21¢ is overinflated since it reflects only MTS revenues. GTE Sprint also commented that the administrative costs of the plan and the relatively short period of duration make the plan impractical.

Based on the arguments and evidence presented by all of the parties, the Commission concludes that once the difference between the average lost revenue of 21¢ per minute and the average access charge revenues received per conversation minute has been determined the resulting compensation amount due should be reduced by 1.5¢ per minute.

Since the Commission issued an Order September 18, 1985, in Docket No. P-100, Sub 65, reducing the carrier common line charge portion of the intrastate access charges from 5.19¢ per minute to 5.01¢ per minute, the previously determined average access charge payment of 15.129¢ per minute must be recalculated in order to determine the appropriate compensation amount. Using the same formula as set out in the February 22, 1985, Order, the average access charge per minute for an OCC is 14.780¢ per minute. When the average access charge per minute is subtracted from the average revenue of 21¢ per minute, the resulting compensation amount is 6.22¢ per minute.

Many factors were considered and weighed in reaching the conclusion to reduce the compensation amount determined using the methodology adopted in the interim plan by 1.5¢ per minute. Just as the interim compensation plan was based on assumptions which required a certain amount of judgment so is the permanent plan adopted for use herein.

As discussed previously, several parties argued that there were factors to be considered which would tend to mitigate the impact of lost intraLATA toll revenues to the LECs. The average toll revenue per minute of 21¢ was criticized by GTE Sprint as being overinflated because it represents only MTS revenues. Evidence presented by Southern Bell indicates that its average WATS revenue per minute is 18¢.

Several parties raised the question of avoided costs on the part of the LECs for not carrying the unauthorized intraLATA toll calls. This is certainly a valid argument. Southern Bell filed Denton Late Filed Exhibit No. 1 on July 10, 1985. This exhibit presented Southern Bell's calculated total cost per DDD message of .95¢ and the total cost per operator handled message of 1.45¢. Also on this exhibit Southern Bell calculated that the avoidable costs

would be .23¢ and .37¢ per DDD message and operator handled message, respectively. On the same exhibit Southern Bell stated that its intrastate intraLATA toll revenue uncollectibles rate was .22%.

Similarly, Carolina Telephone filed a late filed exhibit which set forth tariffed billing charges per message of 1.6¢ for recording, editing, assembly, and rating and 4¢ for message billed services. Carolina Telephone did not indicate whether any or all of these costs were avoidable. As in the case of Southern Bell, it is certainly reasonable to assume that a portion of the costs would be avoidable.

One argument made by MCI is that the interim compensation plan makes no allowance for expenses other than access charges to the OCC for carrying the intraLATA call. Several parties argued that any such costs were irrelevant since the OCCs were carrying calls which they are not authorized to carry. The Commission agrees that these costs should not be considered. As discussed previously, the purpose of the plan is to compensate the LECs for lost intraLATA toll revenues.

The argument presented by MCI that competition stimulates long-distance calling would be hard to quantify, and indeed no party attempted to do so. The argument, however, should not be ignored.

Based on the evidence presented in this proceeding, the Commission concludes that it is in the public interest for the OCCs to compensate the LECs at the rate of 4.72¢ per conversation minute for revenue losses resulting from completion of intraLATA calls by their customers over the network facilities of the OCCs. As in the February 22, 1985, Order the Commission concludes that the revenues resulting from the compensation plan should be reported to the interLATA access and intraLATA toll pool for distribution among the local exchange companies.

The question of whether resellers should also be required to pay compensation needs to be resolved in this proceeding. Based on the evidence presented by the various parties, the Commission concludes that "pure" resellers as defined elsewhere herein should not be required to pay compensation to the LECs over and above the level of access charges for resold services found to be appropriate in Finding of Fact No. 4. Although the resellers' access charges approved herein are interLATA access charges they are applicable to all resold WATS and MTS calls whether they are interLATA or intraLATA until such time as the Commission approves intraLATA access charges. The interim plan is not currently applicable to resellers. The Commission feels it would be impractical to impose a compensation plan now since the Commission determined in its February 22, 1985, Order to authorize intraLATA competition on a resale basis as of January 1, 1986. Additionally, if a reseller routes an intraLATA call over resold WATS or MTS services of a LEC, in addition to paying access charges the reseller would also pay the applicable WATS or MTS rate. The Commission further concludes that as to situations in which a facilities-based carrier acts as a "carrier's carrier", and provides services to a reseller who provides service to the public, it is the reseller, and not the facilities-based carrier, who should be responsible for paying compensation.

The Commission reaffirms its previous decision to deny the motion of the Public Staff to require Southern Bell and the other local exchange companies operating in North Carolina to include the compensation plan for incidental intraLATA calls in their access charge tariffs. The Commission is of the opinion that it is reasonable and legally sufficient to make the application of such compensation plan a provision of all Orders granting certificates of public convenience and necessity to competing long-distance carriers in North Carolina.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 4

The Commission in its February 22, 1985 Order, stated the following with regard to the appropriate access charges applicable to resellers of long-distance services for use of local exchange companies local switched network.

> "The Commission recognizes that a reseller utilizes the local switched network and other local exchange facilities in a similar manner as when a call is placed to any long-distance carrier and such usage may well not be fully accounted for in the current North Carolina access charge tariff. Thus some level of access charges for resellers is clearly appropriate. Nevertheless, the Commission is concerned that, if access charges assessed on resellers are too restrictive or high resellers may be inappropriately priced out of this new competitive market."

The Commission further stated that based upon the evidence of record it was unable to specify and devise the exact level of access charges which should be applied to resellers. For this reason the Commission requested the LECs to jointly prepare and file proposed access charges for application to resellers. The charges agreed upon by the LECs were to be implemented in North Carolina on a provisional basis pending hearing and final Commission approval subject to being refunded with interest. Pursuant to the Order, the LECs jointly filed proposed provisional access charges consisting of the North Carolina intrastate switched access charges plus the Carrier Common Line Charge (CCLC). The LECs further proposed a credit to the resellers of the $25 special access surcharge applicable to WATS service.

Under the LECs' proposal, switched access charges plus the CCLC of approximately 7.6285¢ per access minute of use (assuming a 1-8 local transport mileage band) would be charged in offices where premium access is appropriate (equal access offices) and 5.7214¢ per access minute of use where nonpremium access is appropriate. Similarly, premium switched access charges would be applicable on the terminating end of resold 800 service. The LECs further proposed to offer a credit of $25 for the special access surcharge applicable to WATS services utilized by resellers.

The issue to be resolved in this proceeding is the propriety of the LECs' proposed access charge structure relative to resale of long-distance services. Pure resellers represent those providers of long-distance service who use their switching facilities strictly to resell telecommunications services obtained from the LECs and other carriers. The precise manner in which resellers use the LECs' network to originate calls (out-WATS service) and terminate calls (in-WATS service) was discussed by various parties to the proceeding.

Specifically, the local exchange companies assert that the resellers' use of the local network is identical to the usage of the network by the interexchange carriers and thus similar charges should be imposed on the resellers.

The Public Staff concurs in the LECs' proposed access tariff. However the Public Staff recommended that access charges be implemented for calls routed via MTS facilities as well as WATS facilities. It was the Public Staff's position that costs are imposed on the local switched network regardless of the manner in which the call is ultimately routed.

The Attorney General proposes that a South Carolina reseller access type plan be implemented in North Carolina. Under the South Carolina plan a flat rated local service charge such as a PBX trunk rate is charged for usage under 4500 minutes per month and switched access charges plus the CCLC are imposed for usage in excess of 4500 minutes of use per month.

Alternatively, the North Carolina Long Distance Association opposes implementation of access charges for use of the local network in connection with resold services. The NCLDA alleges that the present rates resellers and their customers are paying for use of the local network fully cover the costs of such services. The NCLDA proposed the following three alternatives to the LECs' proposed tariff. The alternatives are presented in the NCLDA's order of preference.

1. The charges remain in present form (a flat rate local service charge is applied).

2. The charges remain in present form and the reseller pays the additional $25 surcharge.

3. The traffic sensitive switched access charges (exclusive of the CCLC) are applied.

The interexchange carriers were in disagreement as to the appropriateness of the LECs' proposed reseller access charges. TSI and AT&T-C generally support the access charge tariff recommended by the local exchange companies. AT&T-C further asserts that the interexchange carriers should not be required to make up any shortfall in revenues experienced by the local exchange companies due to failure to impose access charges on resellers. In contrast, MCI opposes the LECs' proposed access charge tariff for resellers and asserts that resellers should be treated as WATS customers not as facility based carriers. GTE Sprint did not address this issue.

Based upon the evidence presented in the case the Commission is of the opinion that the resellers' use of the local switched network is quite similar to the interexchange carriers' use of the local network. However there is clearly a difference in the pure resellers' approach to providing long-distance service when compared to an interexchange carrier. The pure reseller utilizes facilities of other carriers to complete long-distance calls for its customers and has no plans to become facility based. In the case of intraLATA traffic the pure reseller utilizes WATS or MTS facilities of the LECs exclusively in the provision of its service. Thus, it seems evident that the reseller is providing some contribution to the local network through the payment of WATS or MTS rates to the local exchange companies. Alternatively, interexchange carriers route

telephone traffic via their own facilities. The evidence indicates that some interexchange carriers are mixed mode carriers utilizing their own facilities as well as rented facilities of other carriers. However, it is clear that the intent of such mixed mode carriers is to become facility based at some point in the future. Thus, any contributions to the local exchange company resulting from a mixed mode carrier leasing LECs' toll facilities are perhaps short-lived at best.

After careful consideration of the foregoing the Commission concludes that it is clearly appropriate to employ usage sensitive access charges for resellers' use of the local switched network. However, the Commission is concerned that the implementation of full switched access charges including the CCLC at this time will result in the resellers being priced out of the intrastate market in the beginning phase of long-distance competition in North Carolina. It is the Commission's opinion that such an event may not be beneficial to the using and consuming public of North Carolina. Therefore, on an interim basis the Commission will authorize the local exchange companies to implement switched access charges plus the CCLC discounted 45% for a period up until December 31, 1985, or until issuance of a further Order on the matter by the Commission. The 45% discount would apply to both premium and nonpremium originating access depending upon the status of the resellers' interconnecting end office regarding equal access. Premium switched access charges plus the CCLC discounted 45% should also apply on the terminating end of resold 800 service. The interim discounted premium switched access charges plus the CCLC applicable to resellers authorized herein amount to approximately 4.1957¢ per access minute of use (assuming a 1 to 8 local transport mileage charge) and the discounted nonpremium switched access charges plus the CCLC amount to approximately 3.1468¢ per access minute of use (1 to 8 local transport mileage band). The Commission believes that the 45% discount found appropriate is equitable and reflects a proper weighting of the interest of all parties involved in the matter. Approval of the 45% discount is predicated heavily upon the assumption that pure resellers utilize the WATS and MTS facilities of the LECs exclusively for intraLATA calling.

As discussed above, the 45% discount on access charges is being ordered on the basis that resellers make a monetary contribution to the LECs' intraLATA WATS and MTS facilities. Therefore, the 45% discount established for the interim period previously defined will apply only to pure resellers. During this interim period, the operations of all other resellers will be deemed to more closely coincide with the operation of interexchange carriers and, consequently, the nonpure reseller will be required to pay the same access fees established for the interexchange carriers.

For definition purposes, a reseller will not be defined as a pure reseller if it bypasses the LECs' facilities in contravention of the Commission's February 22, 1985, Order by (1) building its own intraLATA facilities; (2) leasing intraLATA facilities (normally available for lease to resellers from the LECs) from interexchange carriers; or (3) connecting to a customer who bypasses the LEC by building its own facilities to the resellers' facilities. Resellers will have 45 days from the date of this Order to realign, if they desire, their operations to conform with the concept of a pure reseller. However, the applicable access charges as finally determined after the 45 day period will begin on the date specified in this Order. As stated previously in Evidence and Conclusions for Findings of Fact Nos. 1-3 such companies are

likewise subject to the compensation plan for unauthorized intraLATA calling. Although the Commission has authorized intrastate resale strictly of WATS and MTS services at this time, evidence would seem to indicate that intrastate calls are now being routed via alternative modes of transmission. The Commission is uncertain based upon the evidence presented in this case how best to address this issue. The Commission therefore calls upon the parties of record having interest in this issue to address the matter in the upcoming intraLATA resale hearing beginning October 2, 1985. The Commission is putting the LECs on notice that they are expected to monitor whenever possible the status of local exchange bypass and to report such findings for appropriate disposition by the Commission.

The Commission further finds that the LECs' proposal regarding the special access surcharge credit of $25.00 should not be approved at this time. The Commission concludes that access charges should be applicable to traffic routed via resold WATS service and resold MTS service. Although the Commission in its February 22, 1985 Order specifically stated that access charges should not be applicable to calls ultimately routed via MTS facilities, the Commission believes that the 45% discount approved herein gives appropriate consideration to this matter. Further the Commission believes that implementation of the credit mechanism proposed by the LECs would result in unnecessary additional accounting and auditing expenditures being incurred by the resellers and the LECs.

It should be made very clear that the Commission is concerned with the impact of its decision on the local exchange companies' financial operating results and that the Commission expects the LECs to monitor the impact of this decision upon their operations. The North Carolina General Assembly in House Bill 1365 established that competition in the long-distance telecommunication market should be authorized by the Commission subject to such competition being in the public interest and not jeopardizing reasonably affordable local service rates. The Commission believes that the interim approach taken on this issue in this case will not jeopardize local service rates in North Carolina and that the decision rendered is in the long run overall best interest of the consumers of North Carolina. However, the Commission will consider comments of the parties on its decision in the upcoming hearing beginning October 2, 1985 in this docket dealing with issues to be resolved prior to authorization of intraLATA resale competition.

Access charges levied by the local exchange companies on resellers certified in North Carolina prior to the date of this Order in excess of that approved herein shall be refunded with interest to the affected resellers. The LECs are called upon to file tariffs reflective of the decision contained herein within 10 days from the date of this Order for Commission approval.

The Commission is concerned that there may exist uncertified resellers operating in the state handling intrastate calls that are postponing certification in order to avoid paying the access charges authorized herein. These resellers should be put on notice that the ultimate certification of such companies will be conditional upon payment of applicable access charges for the use of local exchange facilities utilized on and after November 1, 1985.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 5 AND 6

AT&T-C presented the testimony of witness Friedlander in support of its proposed InterLATA-Only WATS tariff. Mr. Friedlander testified that AT&T-C is presently losing money on its WATS offering and that an increase in WATS rates was therefore necessary. In support of his statement that the WATS tariff did not cover its costs, Mr. Friedlander presented an exhibit comparing WATS revenues with the associated costs (access costs and other costs, which were asserted to be understated for purposes of protecting allegedly proprietary cost data) for various usage bands, showing that as usage of a WATS line increases, it ceases to be profitable to AT&T-C and becomes a progressively greater "loser." He further testified that the InterLATA-Only WATS tariff would be the one available to resellers until intraLATA resale competition is allowed, while other customers would have a choice between it and the existing tariff.

Public Staff witness Gerringer testified on cross-examination that the Public Staff had previously considered that WATS was appropriate for resale under the present rate structure, and that the Public Staff had not yet changed that position.

The OCC and reseller witnesses generally testified that WATS rates should remain the same for WATS offered to end users and for WATS offered for resale, so that no increase should be given to any WATS customers. In addition, NCLDA witness Loftin testified that the combination of access charges and increased WATS rates would impose a severe financial burden on his company, which is engaged in the resale business.

TSI witness Brown testified on cross-examination that although attempting to maintain different WATS rates for resellers and end-users on a long term basis might constitute a discrimination problem, he believed that as an interim and transitional step, WATS rates for resale could be set at a higher level than WATS rates for end-users.

The Attorney General asserts that suspending the laws of this jurisdiction, even for a short-term policy solution as suggested by TSI, is an improper way to meet the problem. The solution is a proceeding where all AT&T-C's WATS tariffs are examined closely and any difference between WATS service to resellers and WATS service to other customers could be adequately addressed. The Attorney General further asserts that despite the Commission's language in its February 22, 1985, Order inviting AT&T-C to file separate WATS tariffs for resellers, approval of such tariffs would be a violation of G.S. 62-140 in the absence of a fully developed record indicating there are substantial differences in the conditions of WATS service offered resellers and WATS service offered other customers.

The Commission has a number of concerns about the proposed InterLATA-Only WATS tariff. Foremost among them is the fact that, while AT&T-C presented evidence to show that its WATS rates do not cover their costs when viewed in isolation, there is no detailed evidence in the record as to what the impact of the proposed offering would be on AT&T-C's cost/revenue situation as a whole. Conceivably, if the proposed tariff is viewed as a new service, its consideration would not require general rate case treatment under the statutes; however, it is clear that since the proposed offering would replace some

existing services, it would have an impact on AT&T-C's overall financial situation. This is especially significant in view of the fact that the Commission has approved two permanent reductions in the level of intrastate access charges paid by AT&T-C since March 1985, in Docket No. P-100, Sub 65, totaling more than $20 million on an annual basis. Such access charge reductions have obviously served to significantly improve the earnings of AT&T-C. In addition, the question of discrimination between resellers and other customers is a significant one. While approval of the tariff might not constitute unreasonable discrimination, particularly in view of the broad discretion over the rates, services, and interconnections of competitive long distance carriers given to the Commission by the G.S. 62-110, as amended, the Commission concludes that there is insufficient evidence in this record to support a definitive finding that no unreasonable discrimination would exist if the tariffs were allowed to become effective in this generic proceeding.

For these reasons, the Commission concludes that it is in the public interest to defer ruling on the Company's proposed InterLATA-Only WATS tariff in this proceeding and to consolidate the InterLATA-Only and InterLATA add-on WATS tariff filings of AT&T-C into the general rate case which that Company intends to file on or about October 23, 1985, in Docket No. P-140, Sub 9. Said tariffs are hereby suspended pending further Order.

IT IS THEREFORE, ORDERED as follows:

1. That other common carriers and resellers using the services of other common carriers shall pay compensation of 4.72¢ per conversation minute to the local exchange companies for the unauthorized transmittal of intraLATA long-distance traffic.

2. That the Local Exchange Companies shall jointly prepare and file, not later than 10 days from the date of this Order, interim access charges for application to resellers in North Carolina in conformity with the decisions rendered in Finding of Fact No. 4 contained herein. Access charges levied on certified resellers pursuant to the Commission's March 14, 1985 Order in excess of the amount authorized herein shall be refunded with interest at the rate of 10% per annum to the certified reseller involved. The Commission will allow five days for comments by the parties on LECs' tariffs filed pursuant to this Order and will issue a further Order approving the tariffs.

3. That the InterLATA-Only and InterLATA add-on WATS tariffs filed in this docket by AT&T-C be, and the same are hereby, suspended and consolidated into the general rate case to be filed by AT&T-C in Docket No. P-140, Sub 9.

ISSUED BY ORDER OF THE COMMISSION.
This the 30th day of September 1985.

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

DOCKET NO. P-100, SUB 72

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Investigation to Consider Whether Competitive Intrastate Offerings of Long-Distance Telephone Service Should be Allowed in North Carolina and What Rules and Regulations Should be Applicable to Such Competition if Authorized	)))))	ORDER APPROVING ACCESS SERVICE TARIFF AS MODIFIED

BY THE COMMISSION: On September 30, 1985, the Commission entered an Order in this docket entitled "Order Approving IntraLATA Compensation Plan; Approving InterLATA Access Charges for Resellers; and Suspending InterLATA Only and InterLATA Add-On WATS Tariffs." Decretal paragraph number 2 of said Order provided that the local exchange companies (LECs) should jointly prepare and file interim access charge tariffs for application to resellers in North Carolina in conformity with the decisions rendered in conjunction with finding of fact number 4 and the evidence and conclusions in support thereof.

On October 10, 1985, Southern Bell filed certain Access Service Tariff revisions on behalf of the local exchange companies in response to the above-referenced Commission Order.

On October 17, 1985, the North Carolina Long Distance Association (NCLDA) filed comments with respect to the Access Service Tariff revisions filed by Southern Bell on behalf of the LECs, and a motion to suspend said tariff filing. NCLDA's comments chiefly concerned the definition of "Non Facility Based Interexchange Carrier" set forth in the proposed revisions to the Access Service Tariff and the application of access charges to terminating minutes as described therein.

On October 25, 1985, Southern Bell filed comments in support of its tariff filing of October 10, 1985, and a response in opposition to the comments and motion to suspend filed in this docket by NCLDA.

On October 28, 1985, the Public Staff filed a response in opposition to the comments and motion to suspend filed in this docket by NCLDA.

Based upon a careful consideration of the foregoing and the entire record in this proceeding, the Commission concludes that Southern Bell has properly structured its proposed Access Service Tariff to reflect the appropriate definition of "pure reseller" as such concept was used and defined by the Commission in the Order entered in this docket on September 30, 1985. The comments offered by the NCLDA regarding such definition are thus without merit for the reasons given by Southern Bell and the Public Staff in their responses filed on October 25, 1985, and October 28, 1985, respectively. The Commission further concludes, however, that it is appropriate to make certain revisions to the Access Service Tariff for purposes of clarification and to indicate that terminating access charges should only apply whenever 800 service is resold as requested by NCLDA. Thus, the Commission concludes that the Access Service Tariff revisions filed herein by Southern Bell on October 10, 1985, should be

approved as filed subject to the following technical modifications, clarifications, and revisions:

1. The definition of "Facility Based Interexchange Carrier" set forth in Section E2.6 of the Access Service Tariff shall be modified to read as follows:

> "The term 'Facility Based Interexchange Carrier' denotes a certified Interexchange Carrier that completes/terminates calls utilizing owned and/or leased facilities and/or resold local exchange company services in lieu of or in addition to resold MTS/WATS or interLATA MTS/WATS type services."

2. The definition of "Non Facility Based Interexchange Carrier" set forth in Section E2.6 of the Access Service Tariff shall be modified to read as follows:

> "The term 'Non Facility Based Interexchange Carrier' denotes a certified Interexchange Carrier that completes/terminates calls solely utilizing resold MTS/WATS or interLATA MTS/WATS type services."

3. Section E6.7.14 (subsections B., E.1., E.2., and E.3.e) of the Access Service Tariff shall be clarified and revised to read as follows:

> "B. Non Facility Based Interexchange Carriers originating and terminating (associated with 800 service originated calls) access minutes of use shall be discounted by 45 percent.
>
> "E.1. All access minutes for a Facility Based Interexchange Carrier that originate or terminate in a local calling area where all end offices are equipped for equal access will be billed at premium rates. (Access Minutes x Premium Rate)
>
> "All access minutes for a Non Facility Based Interexchange Carrier that originate or terminate (associated with 800 service originated calls) in a local calling area where all the end offices are equipped for equal access will be multiplied by .55 and then the premium rate applied. (Access Minutes x .55 x Premium Rate).
>
> "E.2. Access minutes for a Facility Based Interexchange Carrier that originate in a local calling area where no end offices are equipped for equal access will be billed at non-premium rates. (Originating Access Minutes x (Premium Rate x Discount Percentage))
>
> "Access minutes for a Non Facility Based Interexchange Carrier that originate in a local calling area where no end offices are equipped for equal access will be multiplied by .55 then the non-premium rate applied. (Originating Access Minutes x .55 x (Premium Rates x Discount Percentage)).
>
> "E.3.e. All terminating (associated with 800 service originated calls) access minutes for Non Facility Based Interexchange Carriers will be multiplied by .55, then by the premium rate."

IT IS, THEREFORE, ORDERED as follows:

1. That the Access Service Tariff revisions filed in this docket by Southern Bell on October 10, 1985, be, and the same are hereby, approved subject to the modifications, clarifications, and revisions set forth hereinabove.

2. That Southern Bell shall revise its Access Service Tariff in conformity with the provisions of this Order and shall refile said tariff as so revised on behalf of the LECs not later than ten days from the date of this Order.

3. That, except to the limited extent granted herein, the comments and motion to suspend filed by NCLDA on October 17, 1985, be, and the same are hereby, denied.

ISSUED BY ORDER OF THE COMMISSION.
This the 31st day of October 1985.

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

DOCKET NO. P-100, SUB 72

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Investigation to Consider Whether Competitive Intrastate Offerings of Long-Distance Telephone Service Should Be Allowed in North Carolina and What Rules and Regulations Should Be Applicable to Such Competition if Authorized	))))	ORDER ON RECONSIDERATION REGARDING INTERLATA ACCESS CHARGES FOR RESELLERS

BY THE COMMISSION: On February 22, 1985, the North Carolina Utilities Commission entered an Order in this docket entitled "Order Authorizing Intrastate Long-Distance Competition." By this Order, the Commission found that the authorization of intrastate interLATA competition by other common carriers (OCCs) and resellers in North Carolina was then in the public interest and would not jeopardize reasonably affordable local telephone service. The Commission further found that intraLATA competition would be in the public interest, subject to the resolution of certain important issues related thereto during a transition period; that intraLATA resale competition would be authorized no later than January 1, 1986; that intraLATA facilities-based competition would be authorized after a transition period of approximately two years on or about January 1, 1987; that the public interest then required that interLATA competition through resale should be limited to resale of WATS and MTS services; that intrastate interLATA Feature Group A (FGA) and Feature Group B (FGB) access charges should be discounted by 25% from Feature Group C (FGC) or premium access on an originating basis only; and that access charges for FGA/FGB on the terminating end would be the same as for FGC.

The Commission required the local exchange companies (LECs) to jointly prepare and file proposed access charge tariffs for application to resellers to

be implemented on a provisional basis pending hearing and final Commission approval. The Commission made the following relevant statements in its Order of February 22, 1985, regarding access charges for resellers:

"The question of what access charges, if any, should be paid by resellers for access to the local exchange was treated in some detail at the hearing. The NCLDA through its witnesses and cross-examination of other witnesses contended that no access charges should be paid by resellers, because such access charges are (or should be) paid by the underlying carrier whose service is resold. The Public Staff, Southern Bell, and AT&T-C stated that access charges should apply to resellers. The Public Staff contended that, under the present North Carolina access charge structure, access charges are paid by the underlying carrier for WATS access at the terminating end, but they are not so paid for WATS access at the originating end. The Public Staff further stated that while some access charges are paid by the underlying WATS carrier for the Dedicated Access Line and associated services on the originating end of the WATS line, these charges do not cover any of the costs of access to the local exchange from the reseller's switch. Thus, even though the reseller's customers use local exchange facilities to access the reseller, the current North Carolina access tariff does not apply local exchange access charges at the originating end for the calls placed to the reseller.

"The Commission recognizes that a reseller utilizes the local switched network and other local exchange facilities in a similar manner as when a call is placed to any long-distance carrier and such usage may well not be fully accounted for in the current North Carolina access charge tariffs. Thus, some level of access charges for resellers is clearly appropriate. Nevertheless, the Commission is concerned that, if access charges assessed on resellers are too restrictive or high, resellers may be inappropriately priced out of this new competitive market.

"Based on the evidence of record, the Commission is itself presently unable to specify and devise the exact level of access charges which should be applied to resellers. For this reason, the Commission will require the LECs to jointly prepare and file proposed access charges for application to resellers to be implemented in North Carolina on a provisional basis pending hearing and final Commission approval. Such provisional access charges shall be paid by resellers in the interim pending hearing and final Commission approval, but will be subject to being refunded to the resellers by the LECs plus interest to the extent the Commission ultimately finds, after hearing, that such provisional access charges, or any part thereof, were unjust, unreasonable, and excessive. This interim procedure adequately protects the interests of both resellers and local exchange companies and their customers. Upon the filing by the LECs of the proposed access charge tariffs for resellers, the Commission will schedule a public hearing by further Order to consider said tariffs.

"The evidence has shown that sufficient access charges are paid by the underlying carrier on MTS calls; therefore, access charges should not also be imposed on a reseller of MTS."

On March 14, 1985, Southern Bell Telephone and Telegraph Company (Southern Bell) filed proposed interLATA access charge tariffs on behalf of the LECs for application to resellers as required by decretal paragraph number 5 of the "Order Authorizing Intrastate Long-Distance Competition."

On April 11, 1985, the Commission entered an Order in this docket approving the proposed access charge tariffs pending hearing and scheduling a public hearing beginning June 24, 1985, to consider, among other issues, the proposed interLATA access charge tariffs for resellers filed by Southern Bell and the other LECs on March 14, 1985.

On September 30, 1985, the Commission entered a further Order in this docket entitled "Order Approving IntraLATA Compensation Plan; Approving InterLATA Access Charges for Resellers; and Suspending InterLATA Only and InterLATA Add-On WATS Tariffs." By this Order, the Commission found that switched access charges (including the carrier common line charge) discounted 45% should be applicable to pure resellers of long distance service for access to the networks of the LECs in lieu of a flat rate local service charge. The LECs were required to jointly prepare and file interim interLATA access charges for application to resellers in conformity with the provisions of the Order entered on September 30, 1985.

On October 10, 1985, Southern Bell filed certain interLATA Access Service Tariff revisions on behalf of the LECs for application to resellers. By Order dated October 31, 1985, the Commission approved these tariffs subject to certain modifications, clarifications, and revisions.

In the Order of September 30, 1985, the Commission concluded that it should authorize the LECs to implement interLATA access charges for pure resellers discounted by 45% on an interim basis for a period up until December 31, 1985, or until issuance of a further Order on the matter. Nevertheless, the Commission made the following statements regarding the 45% interLATA access charge discount for pure resellers:

"It should be made very clear that the Commission is concerned with the impact of its decision on the local exchange companies' financial operating results and that the Commission expects the LECs to monitor the impact of this decision upon their operations. The North Carolina General Assembly in House Bill 1365 established that competition in the long-distance telecommunication market should be authorized by the Commission subject to such competition being in the public interest and not jeopardizing reasonably affordable local service rates. The Commission believes that the interim approach taken on this issue in this case will not jeopardize local service rates in North Carolina and that the decision rendered is in the long run overall best interest of the consumers of North Carolina. However, the Commission will consider comments of the parties on its decision in the upcoming hearing beginning October 2, 1985, in this docket dealing with issues to be resolved prior to authorization of intraLATA resale competition." (Emphasis added).

The Commission held hearings beginning October 2, 1985, in this docket to consider the issues related to authorization of intraLATA competition by resellers. During the course of this hearing, most of the parties offered testimony and comments with respect to the decision made by the Commission in the Order entered herein on September 30, 1985, authorizing a 45% discount on interLATA access charges for pure resellers on an interim basis. At the conclusion of this hearing, the parties were also requested to file written comments regarding the 45% interim interLATA discount for pure resellers. Written comments concerning this issue were subsequently filed by Southern Bell, Carolina Telephone and Telegraph Company (Carolina Telephone), General Telephone Company of the Southeast (General), the Public Staff, the Attorney General, Telecommunications Systems, Inc. (TSI), AT&T Communications of the Southern States, Inc. (AT&T), MCI Telecommunications Corporation (MCI), GTE Sprint Communications Corporation (GTE Sprint), and the North Carolina Long Distance Association (NCLDA).

COMMENTS OF SOUTHERN BELL

In its comments filed on November 8, 1985, Southern Bell asserted that the Company continues to believe that the access charges for resellers should be the same as those charged other interexchange carriers. Specifically, Southern Bell commented on the Order of September 30, 1985, in pertinent part, as follows:

> "The discounted access charge for pure resellers approved by the Commission was not the charge proposed by Southern Bell. The Company continues to believe that the access charge for resellers should be the same as that charged other interexchange carriers. However, for the reasons stated in its Order, the Commission did provide for this discounted rate for an interim period for pure resellers. Given this decision, this interim period should not be extended and the rates should be revised to conform with rates charged to other carriers which access and use the facilities of the LECs in the same manner.
>
> "The discounted access charge rate should be strictly limited to pure resellers as described in the Commission's September 30, 1985, Order and as further clarified in the October 31, 1985, Order which approved the interLATA reseller access tariff with minor modifications. The discount rate should not be extended to resellers which resell unauthorized services nor should it be extended to other carriers which may on occasion resell services of the LECs. If the Commission were to extend the discount without providing for a shift of this revenue stream (e.g., to end users), the LECs would experience shortfalls.
>
> * * * *
>
> "The burden of determining the status of a reseller as a pure reseller or otherwise should not be placed on the LEC providing access service. The LEC has no way of determining the manner in which a reseller utilizes its services. The Commission should designate the status of a reseller as a pure reseller or otherwise in some formal manner such as the order of certification or in

subsequent orders upon investigation or requiring the filing of explanatory affidavits by resellers."

COMMENTS OF CAROLINA TELEPHONE

In comments filed on November 12, 1985, Carolina Telephone recommended that the 45% discount for pure resellers approved in the Order of September 30, 1985, be rescinded for the following reasons:

"The special treatment given 'pure resellers' in the September 30, 1985, Order creates both legal and administrative problems. Unreasonable discrimination is prohibited by G.S. 62-140. As previously noted, numerous witnesses testified that the 'pure reseller', or any reseller for that matter, uses the same access, the same network, and the same facilities in the same manner as any OCC. Thus, the costs of providing the access are the same without regard to whom the access is being provided. The OCCs would, therefore, appear to be on reasonably firm ground when they complain of unreasonable discrimination. The practical effect of the discount on the OCCs is to hamper the ability of those carriers to compete.

"Carolina also questions whether the Commission's decision to grant a preferential rate to 'pure resellers' complies with the legislative mandate of not jeopardizing reasonably affordable local service rates. It seems clear that the Commission's decision to give a greater discount to 'pure resellers' than OCCs will result in local rates which will likely be higher than otherwise necessary. Public Staff Witness Gerringer expressed concern that the 45% discount could result in potential risks to basic local rates, and this concern was shared by at least one witness for the LECs. Clearly, the PBX trunk rate charged to the customer of the reseller does not recover any costs allocated to intrastate toll and the dedicated access line surcharge for WATS access does not cover the cost associated with calls on the originating side of the reseller's switch.

"The administrative problems which arise from the creation of a 'pure reseller' class and the 45% discount to be applied to that class are of equal concern to Carolina and other LECs as the legal issues discussed above. The 'pure reseller' must be identified and proper billing arranged. This is extremely difficult to accomplish.

* * * *

"The need for policing can be avoided altogether by rescinding the 45% discount and adopting the same access charges for both OCCs and resellers. Such a rescission would also eliminate the unreasonable discrimination in favor of resellers and, as stated by TSI Witness Brown, assure '...that everybody should pay the same thing for the same service and that the same access service should be available to all carriers.'" (Transcript references deleted).

COMMENTS OF THE PUBLIC STAFF

The Public Staff filed certain comments on November 12, 1985, in opposition to the 45% discount to pure resellers, in pertinent part, as follows:

> "1. The Public Staff does not believe that the 45% discount granted to 'pure resellers' for interLATA access is justified. Given the level of access revenues required by this Commission in Docket No. P-100, Sub 65, combined with the dynamic nature of the competitive toll market, the Public Staff believes that such a discount poses a potential risk to basic local rates. To the extent that the competitors receiving such a discount gain market share over time at the expense of those carriers that do not enjoy a discount, then the local exchange companies will receive less access revenues than they otherwise would have, putting upward pressure on basic local rates.
>
> "2. In addition to the potential risk to local rates, the Public Staff does not believe that the 45% discount is supported by the evidence in this proceeding. No cost information supports it, and indeed such cost support would be impossible to provide, since the evidence conclusively proves that the access used by a reseller is exactly the same as the access received by any other long-distance carrier. The identical nature of the access received is highlighted by the fact that the discount apparently is contemplated to remain in place forever, even after Feature Group D 'equal access' becomes available."

COMMENTS OF THE ATTORNEY GENERAL

Comments filed by the Attorney General on November 12, 1985, assert that few if any resellers currently meet the definition of "pure reseller" contained in the Order of September 30, 1985, and that the Commission should consider either (1) making the 45% discount available to any entity including OCCs who complete calls over resold WATS or MTS in order to circumvent allegations of undue discrimination among classes of long distance providers in violation of G.S. 62-140 or (2) allow resale of FX and FGA on an intraLATA basis for all carriers with appropriate adjustments in FX and FGA tariffs by the underlying carriers.

COMMENTS OF AT&T

AT&T filed its comments regarding the Order of September 30, 1985, on November 12, 1985. AT&T takes the position that there is no basis for the establishment or continuation of the 45% discount granted to pure resellers and that such discount should be terminated immediately or in any event no later than December 31, 1985. AT&T further asserts that any extension of the 45% interLATA access charge discount to any or all of its other interexchange competitors such as the OCCs would place AT&T in an untenable competitive position, would constitute blatantly unlawful discrimination, would result in an unwarranted and arbitrary windfall to a select class of competitors, and would not advance the goals of competition in North Carolina.

COMMENTS OF MCI

In comments filed on November 12, 1985, MCI requested the Commission to reconsider the concept of pure resellers set forth in the Order of September 30, 1985, and to apply the 45% access charge discount to every carrier that resells WATS and MTS services. MCI supports its position with the following statements, in pertinent part:

> "4. Since the MTS and WATS access provided to a reseller is the same regardless of whether a reseller is defined as being 'pure' or otherwise, the proposed 'pure' reseller distinction is based solely on the character or nature of the consumer of MTS and WATS service. That is, the proposal is to price the same service at one rate to one category of customers and to price that same service at a different rate to another category of customers.
>
> "5. As this Commission is well aware, G.S. § 62-140(a) provides, in part, the following:
>
> > No public utility shall, as to rates or services, make or grant any unreasonable preference or advantage to any person or subject any person to any unreasonable prejudice or disadvantage. No public utility shall establish or maintain any unreasonable difference as to rates or services either as between localities or as between classes of service....
>
> "6. The proposed different treatment of 'pure' resellers from other carriers which resell constitutes illegal discrimination. Since the access service to be provided to resellers is identical, any difference in charge is inherently unreasonable and discriminatory. Further, MCI believes that the proposed distinction for 'pure' resellers has no basis in public policy in that such distinction is patently unfair and obviously anti-competitive. Indeed, the OCCs facilities-based operations are already at a very substantial disadvantage to AT&T because they are required to use Feature Group A access in many areas of North Carolina, and now the Commission proposes to charge higher rates to the OCCs in their resale operations than those charged to 'pure' resellers. How and where are the OCCs supposed to compete? Obviously, the proposed 'pure' reseller distinction would put the OCCs at an extremely unfair disadvantage on the resale aspects of their business."

COMMENTS OF GTE SPRINT

In comments filed on November 12, 1985, GTE Sprint states that the preferential treatment accorded to pure resellers by the Commission in relation to OCCs is unreasonable and unlawful for the following reasons, in pertinent part:

> "GTE Sprint currently has facilities in place in the State of North Carolina. These facilities, constructed pursuant to authority obtained from the Federal Communications Commission, have been used in the provision of interstate service to customers in North Carolina

and elsewhere. GTE Sprint's North Carolina facilities are essential to and inseparable from the conduct of its interstate communications business. Because GTE Sprint owns facilities, under the Commission's 'Order' it would be required to pay higher access charges than pure resellers for the same inferior type of access, i.e., Feature Groups A and B. For the same reason, GTE Sprint would be forced to render additional 'intraLATA compensation' while the so-called 'pure resellers' would be exempted from that requirement. The Commission's definition of a pure reseller thus substantially burdens GTE Sprint's interstate operations.

"The Commission's 'Order' actively discourages interexchange carriers from constructing their own facilities. That policy is clearly in conflict with federal grants of operating and construction authority. The Commission's proposed definition is thus an impermissible interference with the operation of federal law and policy. See New York Telephone Co. v. FCC, 631 F.2d 1059 (2nd Cir. 1982); North Carolina Utilities Commission v. FCC, 552 F.2d 1036 (4th Cir.), cert. denied, 434 U.S. 874 (1977); California v. FCC, 567 F.2d 84 (D.C. Cir. 1977), cert. denied, 434 U.S. 1010 (1978); and North Carolina's Utilities Commission v. FCC, 537 F.2d 787 (4th Cir.), cert. denied, 429 U.S. 1027 (1976). For the same reason, the Commission cannot discriminate against 'carriers connecting to a customer who bypasses the LEC by building its own facilities to the resellers' facilities.' 'Order' at 14.

"Finally, the 'Order' creates a classification which denies equal protection of the law to carriers receiving inferior access but excluded from the 'pure reseller' category. The Fourteenth Amendment to the United States Constitution and Article 1, Section 19 of the North Carolina Constitution guarantee the right to equal protection under the law. As articulated by the Court in State v. Greenwood, 280 N.C. 651, 656 (1972), '[t]he equal protection clauses of the United States and North Carolina Constitutions impose upon law-making bodies the requirement that any legislative classification 'be based on differences that are reasonably related to the purposes of the act in which it is found.' Morey v. Doud, 354 U.S. 457, 465, 1 Law Ed.2d 1485, 1491, 77 S.Ct. 1344, 1350 (1957).' The Court in State v. Greenwood indicated that the relevant inquiry involves scrutinizing both the purpose of the state action and the classification involved. Id.

"The legality of a classification rests upon whether it is 'reasonable, not arbitrary, and...rests on some ground of difference having a fair and substantial relation to the object of the legislation so that all persons similarly circumstanced shall be treated alike.' Ass'n of Licensed Detectives v. Morgan, 17 N.C.App. 701, 705 (1973). Insofar as differences in rates are concerned, the law 'in this jurisdiction [is] that '[t]here must be substantial differences in service or conditions to justify difference in rates.' State ex rel. Utilities Comm. v. Mead Corp., 238 N.C. at 462, 78 S.E.2d at 298; accord, State ex rel. Utilities Comm. v. Municipal Corps., 243 N.C. 193, 203, 90 S.E.2d 519, 527 (1955). State of North Carolina ex rel. Utilities Commission v. Bird Oil

Company, 302 N.C. 14, 24 (1981). The Court in State v. Bird Oil, listed several factors which justify a rate differential: '(1) quantity of use, (2) time of use, (3) manner of service, and (4) costs of rendering the two services.' Id.

* * * *

"Many OCCs make extensive use of WATS resale in order to complete their customers' calls. The existence and extent of such usage can be readily identified. In addition, WATS charges cannot be characterized as pure contribution, but rather constitute payment for services received. Thus, it is unreasonable to assume that 'pure resellers' make a greater net monetary contribution to LECs than that made by mixed mode carriers through a combination of access charges and WATS payments. Indeed, affording 'pure resellers' a larger premium differential merely because they purchase additional services from the LECs amounts to the very sort of preferential and discriminatory treatment forbidden by the public utility statutes of North Carolina."

COMMENTS OF TSI

TSI filed certain comments on November 12, 1985, wherein the Company took the basic position that access charges for resellers and mixed mode carriers such as OCCs who resell MTS and WATS should be uniform for the same quality of access and that if an access charge discount is approved it should be granted to all such carriers and not just pure resellers. TSI further stated that if the Commission provides for a 45% discount to only pure resellers, such discount should not be extended beyond December 31, 1985.

COMMENTS OF NCLDA

The NCLDA filed extensive comments regarding the 45% discount for pure resellers which were summarized in an Executive Summary in pertinent part as follows:

"The members of the North Carolina Long Distance Association, all of which are resellers, are extremely concerned about the Orders issued on September 30 and October 31, 1985. The cumulative affect of these Orders is to place the resellers in a worse position than they were in March 1985 when they filed their petition for emergency relief and most probably to drive some, if not all, of the resellers out of the market if the Order stands as issued. The Commission has determined that resale competition is in the public interest and the public appears to agree as many members of the using and consuming public have applied for and use the services of resellers. Nevertheless competition will not exist and the public will not have any opportunities to benefit from it if artificial access charges are not in line with the ability of resellers to pay those charges.

"As explained in more detail below, the access charges determined by the Commission in the September Order are so high that they eliminate all profit for some resellers. It is essential that

the Commission consider the impact on the resellers (and competition) prior to allowing the rate set forth in that order to stand. The resellers have presented evidence showing what they can pay but the local exchange carriers have never presented any evidence to justify the amount of subsidy they are requesting. We believe that it is incumbent upon this Commission, especially in light of the fact that the Order may put some resellers out of business, to require Southern Bell and the other LECs to prove that they need subsidies at a level which eliminates competition in order to prevent jeopardy to affordable local rates.

"The September and October Orders, when read together, provide that there is a theoretical class of telecommunications providers denominated 'pure resellers.' To this class the Commission has granted a discount of 45% on access charges and an exemption from the compensation plan. However, should a reseller which owns no facilities and leases all facilities from the underlying LEC complete any intrastate call over its interstate private lines then that reseller may not receive the discount on the access charges for any of its calls. Moreover, this reseller which completes calls using the private lines is not exempt from the compensation plan (although the Order does not then make it subject to the compensation plan for the OCCs so a question remains as to whether compensation is required for completion of intrastate calls over private lines). It is possible that one reseller in North Carolina could be classified as a 'pure reseller' under the October 31 definition, but it is more likely that no resellers in North Carolina will qualify as a pure reseller. We do not believe that the Commission intended to provide discounts for resellers and then take them away one month later without any further hearing on the issues!"

CONCLUSIONS ON RECONSIDERATION

Based upon a careful consideration of the foregoing comments and the entire evidence of record in this proceeding, the Commission concludes that good cause exists to reconsider and eliminate all references to pure resellers and the 45% interLATA access charge discount for pure resellers authorized in the Order previously entered in this docket on September 30, 1985. The Commission agrees with the legal contentions raised by most of the parties to this proceeding that the special treatment accorded pure resellers results in unlawful discrimination and preference and that such treatment is also affected by inherent administrative difficulties of a severe nature. The Commission notes that no party to this proceeding, including NCLDA, initially proposed or fully supports the interim 45% discount for pure resellers adopted in the Order of September 30, 1985. The Commission now concludes, after reconsideration, that a 45% discount limited to pure resellers is not justified by the evidence in this docket since resellers use the local switched network in the same manner as OCCs and that such discount, being unreasonably discriminatory, is unlawful. The Commission further concludes that the evidence does not support or justify extending such discount to all resellers and OCCs who resell interLATA WATS and MTS in view of the fact that many parties assert that such an extension of the discount at this time might have an unreasonable impact on and jeopardize reasonably affordable local rates. Therefore, the Commission hereby rescinds finding of fact number 4, the evidence and conclusions set

forth in support thereof, and decretal paragraph 2 in the Order of September 30, 1985, and adopts the following finding of fact, conclusions, decretal paragrah in place thereof:

FINDING OF FACT

4. Switched access charges (including the carrier common line charge) shall be applicable to resellers of long-distance service (other than MTS) for access to the local exchange companies' network in lieu of a flat rate local service charge. A credit for the $25.00 special access surcharge shall also be applicable.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 4

The Commission in its February 22, 1985, Order stated the following with regard to the appropriate access charges applicable to resellers of long-distance services for use of local exchange companies local switched network.

> "The Commission recognizes that a reseller utilizes the local switched network and other local exchange facilities in a similar manner as when a call is placed to any long-distance carrier and such usage may well not be fully accounted for in the current North Carolina access charge tariff. Thus, some level of access charges for resellers is clearly appropriate. Nevertheless, the Commission is concerned that if access charges assessed on resellers are too restrictive or high resellers may be inappropriately priced out of this new competitive market."

The Commission further stated that based upon the evidence of record it was unable to specify and devise the exact level of access charges which should be applied to resellers. For this reason, the Commission requested the LECs to jointly prepare and file proposed interLATA access charges for application to resellers. The charges agreed upon by the LECs were to be implemented in North Carolina on a provisional basis pending hearing and final Commission approval subject to being refunded with interest. Pursuant to the Order, the LECs jointly filed proposed provisional access charges applicable to resellers of WATS or WATS-like services consisting of the North Carolina intrastate switched access charges plus the Carrier Common Line Charge (CCLC). The provisional tariff did not provide for the application of access charges to resellers of MTS or MTS-type services consistent with the Commission's decision in the February 22, 1985, Order.

Under the LECs' proposal, switched access charges plus the CCLC of approximately 7.6285¢ per access minute of use (assuming a 1-8 local transport mileage band) would be charged in offices where premium access is appropriate (equal access offices) and 5.7214¢ per access minute of use where nonpremium access is appropriate. (These charges reflect the reduction in the CCLC from 5.19¢/minute to 5.01¢/minute approved by the Commission in Docket No. P-100, Sub 65, by Order issued on September 18, 1985.) Similarly, premium switched access charges would be applicable on the terminating end of resold 800 service. The LECs further proposed to offer a credit of $25 for the special access surcharge applicable to WATS services utilized by resellers.

The issue to be resolved in this proceeding is the propriety of the LECs' proposed access charge structure relative to resale of long-distance services. Resellers represent those providers of long-distance service who use their switching facilities strictly to resell telecommunications services obtained from the LECs and other carriers. The precise manner in which resellers use the LECs' network to originate calls (out-WATS service) and terminate calls (in-WATS service) was discussed by various parties to the proceeding. Specifically, the local exchange companies assert that the resellers' use of the local network is identical to the usage of the network by the interexchange carriers and thus similar charges should be imposed on the resellers.

The Public Staff concurs in the LECs' proposed access tariff. However, the Public Staff recommended that access charges be implemented for calls routed via MTS facilities as well as WATS facilities. It was the position of the Public Staff that costs are imposed on the local switched network regardless of the manner in which the call is ultimately routed.

The Attorney General proposes that a South Carolina reseller access type plan be implemented in North Carolina. Under the South Carolina plan, a flat rated local service charge such as a PBX trunk rate is charged for usage under 4500 minutes per month and switched access charges plus the CCLC are imposed for usage in excess of 4500 minutes of use per month.

Alternatively, the North Carolina Long Distance Association opposes implementation of access charges for use of the local network in connection with resold services. The NCLDA alleges that the present rates resellers and their customers are paying for use of the local network fully cover the costs of such services. The NCLDA proposed the following three alternatives to the LECs' proposed tariff. The alternatives are presented in the NCLDA's order of preference.

1. The charges remain in present form (a flat rate local service charge is applied).

2. The charges remain in present form and the reseller pays the additional $25 surcharge.

3. The traffic sensitive switched access charges (exclusive of the CCLC) are applied.

The interexchange carriers were in disagreement as to the appropriateness of the LECs' proposed reseller access charges. TSI and AT&T-C generally support the access charge tariff recommended by the local exchange companies. AT&T-C further asserts that the interexchange carriers should not be required to make up any shortfall in revenues experienced by the local exchange companies due to failure to impose access charges on resellers. In contrast, MCI opposes the LECs' proposed access charge tariff for resellers and asserts that resellers should be treated as WATS customers, not as facility based carriers. GTE Sprint did not address this issue.

Based upon the evidence presented in this case, the Commission is of the opinion that the resellers' use of the local switched network is the same as the interexchange carriers' use of the local network. Thus, the Commission concludes that it is clearly appropriate to employ usage sensitive access

charges for the resellers' use of the local switched network. Therefore, the Commission will authorize the local exchange companies to implement their proposed interLATA switched access charges plus the CCLC on originating access. Premium switched access charges plus the CCLC should also apply on the terminating end of resold 800 service.

The Commission further finds that the LECs' proposal regarding the special access surcharge credit of $25.00 should be approved at this time. The Commission also reaffirms its decision in the February 22, 1985, Order and concludes that access charges should not be applicable to traffic routed via resold MTS services.

The Commission recognizes that the $25.00 per access line surcharge imposed on AT&T is an issue in their current rate case, Docket No. P-140, Sub 9. AT&T has requested emergency interim rate relief. AT&T requested to be allowed to increase the prices for its WATS and 800 service access lines by $25.85 ($25 surcharge plus gross receipts tax) or, in the alternative, proposed that the LECs be authorized to bill the $25.00 surcharge directly to the WATS and 800 service customers. Pending the outcome of the AT&T case, the granting of the $25.00 credit to resellers may be subject to change.

The LECs are called upon to file tariffs for Commission approval reflective of the decision contained herein within five (5) days from the date of this Order on Reconsideration.

The Commission is concerned that there may exist uncertified resellers operating in the State handling intrastate calls that are postponing certification in order to avoid paying the access charges authorized herein. These resellers should be put on notice that the ultimate certification of such companies will be conditional upon payment of applicable access charges for the use of local exchange facilities utilized on and after November 1, 1985.

DECRETAL PARAGRAPH

2. That the local exchange companies shall jointly prepare and file, not later than five (5) days from the date of this Order on Reconsideration, interLATA access charges for application to resellers in conformity with the provisions of this Order. The Commission will allow the parties to this proceeding five (5) additional days to file comments on the tariffs to be filed by the LECs pursuant to this Order on Reconsideration and will thereafter issue a further Order approving tariffs.

FURTHER CONCLUSIONS ON RECONSIDERATION

Based upon our decision to reconsider and eliminate all references to pure resellers and the 45% discount granted to pure resellers in the Order of September 30, 1985, the Commission further concludes that Finding of Fact No. 2 in said Order regarding the applicability of the compensation plan to resellers for unauthorized intraLATA calls should be amended to read as follows:

2. Resellers should not be required to provide any additional compensation for the completion of intraLATA long-distance traffic over resold WATS and MTS services of the local exchange companies over and above the access charges found to be appropriate elsewhere herein. Resellers shall be required

to provide compensation to the LECs for unauthorized intraLATA traffic routed via alternate services of the LECs or services of OCCs.

The Commission also concludes on reconsideration that the Evidence and Conclusions for Findings of Fact Nos. 1 through 3 in the Order of September 30, 1985, should also be amended to read at page 11, paragraph 4 as follows:

The question of whether resellers should also be required to pay compensation needs to be resolved in this proceeding. Based on the evidence presented by the various parties, the Commission concludes that resellers who complete intraLATA calls over resold WATS and MTS of the LECs should not be required to pay compensation to the LECs over and above the level of access charges found to be appropriate in Finding of Fact No. 4 for such resold services. However, if a reseller completes an intraLATA call over facilities other than resold WATS or MTS of the LECs (other than those originated over 800 service), the Commission concludes that such reseller should pay compensation to the LECs at the rate of 4.72¢ per conversation minute. The Commission further concludes that as to situations in which a facilities-based carrier acts as a "carrier's carrier", and provides services to a reseller who provides service to the public, it is the reseller, and not the facilities-based carrier, who should be responsible for paying compensation.

Likewise, the Commission further concludes on reconsideration that decretal paragraph 1 of the September 30, 1985, Order should be amended to read as follows:

1. That other common carriers and resellers using either the services of other common carriers or LEC facilities other than WATS and MTS shall pay compensation of 4.72¢ per conversation minute to the local exchange companies for the unauthorized transmittal of intraLATA long-distance traffic.

NCLDA MOTION FOR HEARING

One additional issue which the Commission needs to address is the Motion for Hearing filed in this docket on November 12, 1985, by NCLDA. The NCLDA requested that "the Commission issue an order that a hearing on authorizing the resale of FX and private lines and the appropriate access charges for resale will be held in this docket at a date no later than February 15, 1986."

The Commission requests that all interested parties file comments in response to the motion of the NCLDA within ten (10) days from the date of this Order on Reconsideration.

IT IS, THEREFORE, ORDERED as follows:

1. That the Order previously entered in this docket on September 30, 1985, be, and the same is hereby, revised, amended, and clarified in conformity with the provisions and language set forth hereinabove in this Order on Reconsideration.

2. That the parties to this proceeding be, and the same are hereby, requested to file comments in this docket not later than Thursday, December 5, 1985, in response to the Motion for Hearing filed by NCLDA on November 12, 1985.

ISSUED BY ORDER OF THE COMMISSION.
This the 25th day of November 1985.

(SEAL)

NORTH CAROLINA UTILITIES COMMISSION
Sandra J. Webster, Chief Clerk

DOCKET NO. P-100, SUB 72

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Investigation to Consider Whether Competitive Intrastate Offerings of Long-Distance Telephone Service Should Be Allowed in North Carolina and What Rules and Regulations Should Be Applicable to Such Competition if Authorized	)	ORDER AUTHORIZING INTRALATA RESALE COMPETITION; AND APPROVING INTRALATA ACCESS CHARGES FOR RESELLERS

HEARD IN: Commission Hearing Room 217, Dobbs Building, 430 N. Salisbury Street, Raleigh, North Carolina, on Wednesday, October 2, 1985, through October 4, 1985

BEFORE: Commissioner Edward B. Hipp, Presiding; and Chairman Robert O. Wells and Commissioners Robert K. Koger, Sarah Lindsay Tate, A. Hartwell Campbell, Ruth E. Cook, and Julius A. Wright

APPEARANCES:

For Southern Bell Telephone and Telegraph Company:

J. Billie Ray, Jr., General Attorney, Southern Bell Telephone and Telegraph Company, 1012 Southern National Center, Charlotte, North Carolina 28230

Shirley A. Ransom, Attorney, Southern Bell Telephone and Telegraph Company, Legal Department, 4300 Southern Bell Center, Atlanta, Georgia 30375

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

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

For Central Telephone Company:

Russell W. Roten, Kimzey, Smith, McMillan & Roten, Attorneys at Law, P.O. Box 150, Raleigh, North Carolina 27602

For Alltel Carolina, Inc.:

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

For General Telephone Company of the Southeast:

Joe W. Foster, Senior Attorney, General Telephone Company of the Southeast, P.O. Box 1412, Durham, North Carolina 27712

For Carolina Telephone and Telegraph Company:

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

Jack H. Derrick, General Attorney, Carolina Telephone and Telegraph Company, 720 Western Boulevard, Tarboro, North Carolina 27886

For Telecommunications Systems, Inc.:

C. Dukes Scott, Willoughby & Scott, Attorneys at Law, P.O. Box 8416, Columbia, South Carolina 29202-8416

James E. Holshouser, Jr. (Attorney of Record), Brown, Holshouser, Pate and Burke, 175 New Hampshire Avenue, P.O. Box 116, Southern Pines, North Carolina 28387

For MCI Telecommunications Corporation:

Charles C. Meeker, Sanford, Adams, McCullough & Beard, Attorneys at Law, P.O. Box 389, Raleigh, North Carolina 27602

For the North Carolina Long Distance Association:

Walter E. Daniels and Linda M. Daniels, Walter E. Daniels, P.A., Attorneys at Law, P. O. Box 13039, Research Triangle Park, North Carolina 27709

For North Carolina Department of Justice:

Karen E. Long, 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:

Michael L. Ball and Theodore C. Brown, Jr., Staff Attorneys, Public Staff - North Carolina Utilities Commission, P.O. Box 29529, Raleigh, North Carolina 27626-0520
For: The Using and Consuming Public

BY THE COMMISSION: This matter arose as a result of enactment by the North Carolina General Assembly of legislation effective June 29, 1984, which amended Chapter 62 of the North Carolina Public Utilities Act. (House Bill 1365, 1983 Sess. L. Ch. 1043 (Reg. Session, 1984), amending G.S. § 62-2 and § 62-110.)

The General Assembly declared as a matter of policy in ratified House Bill 1365 that competitive offerings of long-distance telephone service in North Carolina may be in the public interest. Further, the General Assembly vested authority in the North Carolina Utilities Commission to allow competitive offerings of long-distance services by public utilities as defined in G.S. § 62-3(23)a.6. The legislation authorized the Commission to issue a certificate to any person applying to offer long-distance telephone service as a public utility provided that such person is found to be fit, capable, and financially able to render such service; that such additional service is required to serve the public interest effectively and adequately; and that such additional service will not jeopardize reasonably affordable local exchange service.

In response to the action of the North Carolina General Assembly which expanded the powers and duties of the Commission with regard to long-distance service, the Commission on July 24, 1984, issued an Order instituting an investigation, scheduling hearing, and requiring public notice.

The Commission ruled that the investigation should consider whether, and to what extent, competitive offerings of long-distance telephone service should be allowed in North Carolina and what rules and procedures should be established for authorizing such competition if it were found to be in the public interest.

The following parties intervened in this docket: Carolina Utility Customers Association, Inc. (C.U.C.A); GTE Sprint Communications Corporation (GTE Sprint); MCI Telecommunications Corporation (MCI); North Carolina Long Distance Association (NCLDA); SouthernTel, Inc.; Telecommunications Systems, Inc., (TSI); United States Transmission Systems, Inc. (USTS); the Public Staff; and the North Carolina Attorney General.

On February 22, 1985, the Commission issued an Order Authorizing Intrastate Long-Distance Competition. In the Order, the Commission concluded, among other things, that different considerations apply when assessing the potential impact of interLATA competition and intraLATA competition on local exchange service. The Commission concluded that a distinction can be made between intraLATA competition on a resale only basis and intraLATA competition via facilities-based carriers and that the implementation of intraLATA resale competition should be authorized "after a hearing to determine the proper compensation level and that such intraLATA competition will be permitted no later than January 1, 1986." The Commission further recognized that a longer transition period would be necessary to implement facilities-based intraLATA competition, in order to allow all competitors, including the Local Exchange Companies (LECs), to compete in the intraLATA market and maintain reasonably affordable local exchange service and that a thorough examination of the current access charge and toll pooling mechanisms as well as the system of uniform toll rates is necessary. Thus, the Commission concluded that approximately a two-year transition period to January 1, 1987, is required before full intraLATA competition can be authorized.

Based on its expressed intention to authorize intraLATA competition on a resale basis by January 1, 1986, the Commission on June 25, 1985, issued an Order Scheduling Hearing on IntraLATA Resale, for the express purpose of receiving evidence on the level of intraLATA access charges which should apply

to resellers of WATS and MTS in order to fully compensate the local exchange companies. The hearing was scheduled for October 1, 1985, in the Commission Hearing Room. On July 8, 1985, the Commission issued an Order Rescheduling Hearing, whereby the hearing was rescheduled for October 2, 1985.

On September 30, 1985, the Commission issued its Order Approving IntraLATA Compensation Plan; Approving InterLATA Access Charges for Resellers; and Suspending InterLATA Only and InterLATA Add-On WATS Tariffs. In that Order, which was based on hearings held in this docket in June 1985, the Commission approved interLATA access charges for pure resellers which were discounted 45% from the access charges approved for Other Common Carriers (OCCs) in the Commission's February 22, 1985, Order. Also in the September 30, 1985, Order, the Commission invited the parties to offer comments as to the reseller access charge provisions approved therein in the upcoming hearings beginning on October 2, 1985.

The matter came on for hearing as scheduled, and the following witnesses testified on behalf of their respective parties: Joseph W. Wareham, Carolina Telephone and Telegraph; R. Chris Harris, Central Telephone; Norman L. Farmer, General Telephone; Harry Miller (MCI); David B. Denton (Southern Bell); Raymond L. Slazyk, AT&T Communications of the Southern States, Inc. (AT&T); Oscie O. Brown, III (TSI); Thomas Houlihan and Peter T. Loftin (NCLDA); and Hugh L. Gerringer (Public Staff).

Subsequent to the hearings the parties filed written comments on the September 30, 1985, Order, and briefs and proposed orders.

On November 25, 1985, the Commission issued an Order on Reconsideration Regarding InterLATA Access Charges For Resellers. In that Order, the Commission rescinded its decision to grant a 45% discount on access charges to pure resellers. The Commission also amended the September 30, 1985, Order in regard to the intraLATA compensation plan to clarify that while resellers are not required to pay additional compensation for unauthorized intraLATA calls routed via WATS and MTS of the LECs, they are required to provide compensation to the LECs for unauthorized intraLATA traffic routed via alternative services of the LECs or services of OCCs.

The Commission in its November 25, 1985, Order, also requested all interested parties to file comments on a motion by the NCLDA requesting the Commission to issue an Order to schedule a hearing on authorizing the resale of FX and private lines and to determine the appropriate access charges.

Based upon all the testimony and exhibits received at the hearing, subsequent comments received, and the record as a whole of this proceeding, the Commission, having carefully reviewed same and all of the proposed orders and briefs filed by the various parties, now makes the following

FINDINGS OF FACT

1. The Commission has previously ruled that intraLATA long-distance competition will be allowed on a resale basis beginning January 1, 1986. It is appropriate and in the public interest that intraLATA resale competition through resale of intrastate intraLATA LEC WATS and MTS be allowed effective

January 1, 1986. Such intraLATA competition by resellers will not jeopardize reasonably affordable local exchange service.

2. It is in the public interest that the intraLATA compensation plan continue in effect as to intraLATA calls completed by long-distance carriers (other than LECs) over facilities other than resold intrastate WATS and MTS of the LECs.

3. It is appropriate and in the public interest for switched access charges (including the carrier common line charge) to apply to intraLATA access minutes and said access charges should be set at the same level as interLATA access charges.

4. It is in the public interest that a hearing or hearings should be held no earlier than May 1986, to consider the following issues:

a. The appropriate level of all access charges,

b. The existing toll pooling and settlement procedures and toll deaveraging,

c. IntraLATA resale of FX and private lines, and

d. IntraLATA competition by facilities-based carriers.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 1

In its February 22, 1985, Order the Commission announced its intention to allow intraLATA resale competition through resale of LEC intraLATA WATS and MTS effective January 1, 1986. That being the case, the parties generally confined their testimony to the issue of the appropriate level of access charges associated with intraLATA resale. No party presented any evidence in opposition to such intraLATA resale authority. Therefore, in keeping with the Commission's prior rulings and with the uniform evidence herein, the Commission finds and concludes that intraLATA competition through resale of LEC intraLATA WATS and MTS should be authorized effective January 1, 1986, on the terms and conditions set forth herein, and that such competition will not jeopardize reasonably affordable local exchange service.

The Public Staff proposed that intraLATA certification at this time should be limited to those carriers which route intraLATA calls (other than those originated over 800 service) exclusively over LEC WATS and MTS. They proposed that a carrier may satisfy the requirements for intraLATA certification in one of two ways: (1) the carrier may submit a sworn statement that its switching equipment is programmed to route intraLATA calls (other than those originated over 800 service) only over resold LEC WATS or MTS; or (2) the carrier may submit a sworn statement that it possesses no facilities capable of completing intraLATA calls (other than those originated over 800 service) except LEC WATS or MTS. Based on the evidence presented in this proceeding, the Commission concludes that it would be inappropriate to deny intraLATA certification to those resellers who may complete incidental intraLATA calls over facilities other than resold WATS and MTS of the LECs. The Commission concludes that as long as the previously approved intraLATA compensation plan remains in effect,

the LECs will be adequately compensated through the payment of access charges and compensation by the resellers for any unauthorized intraLATA traffic.

The Commission further notes that the suggestion of the Public Staff in essence attempts to limit intraLATA certification to only those carriers who would qualify as pure resellers as defined in the Commission's September 30, 1985, Order. As discussed in the November 25, 1985, Order on Reconsideration, the Commission rescinded parts of the September 30, 1985, Order and eliminated all references to pure resellers. As stated in the Order on Reconsideration, the Commission found that the attempt to treat a certain class of resellers as pure resellers was affected by inherent administrative difficulties of a severe nature.

The Commission further concludes that if any company which has previously been certified by the Commission to provide interLATA telecommunications services on a resale basis now desires to also provide intraLATA service as a reseller, such company should file a verified application or motion with the Commission requesting that its certificate of public convenience and necessity be amended to authorize intraLATA resale, including proposed tariffs and supporting documentation showing that the company is fit, capable, and financially able to render such intraLATA service and describing the nature of the proposed service to be offered. Such companies should also file a proposed plan for determining unauthorized intraLATA conversation minutes occurring on their facilities each month or if any company completes, or plans to complete intraLATA calls only over resold WATS and MTS of the LECs, it can file an affidavit to the effect that either (1) its switching equipment is programmed to route intraLATA calls (other than those originated over 800 service) only over resold MTS or WATS leased from the LECs, or (2) that it possesses no facilities capable of completing intraLATA calls (other than those originated over 800 service) except MTS or WATS leased from the LECs.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 2

The Commission found in its September 30, 1985, Order that "it is in the public interest for Local Exchange Companies (LECs) to be compensated for lost revenue associated with the unauthorized transmittal of intraLATA long-distance traffic by Other Common Carriers (OCCs) during the transition period pending the authorization of intraLATA competition by OCCs as of January 1, 1987." The Commission also found in its November 25, 1985, Order on Reconsideration that "resellers should not be required to provide any additional compensation for the completion of intraLATA long-distance traffic over resold WATS and MTS services of the local exchange companies over and above the access charges found to be appropriate elsewhere herein. Resellers shall be required to provide compensation to the LECs for unauthorized intraLATA traffic routed via alternate services of the LECs or services of OCCs."

While the intraLATA compensation plan was not specifically an issue to be addressed in the hearings held in October regarding appropriate intraLATA access charges, certain questions were raised during the hearings and in the comments, briefs, and proposed orders filed subsequent to the close of the hearings.

TSI, in its comments on the September 30, 1985, Order, observed that regarding the payment of compensation, the Order seemed to leave a gap in the

instances where OCCs complete calls over resold MTS or WATS of the LECs. The Commission stated in its September 30, 1985, Order "that LECs should be compensated for loss of revenues due to unauthorized intraLATA calling over the networks of OCCs." (emphasis added) Although the Commission did not clearly state, it was certainly intended that OCCs, as well as resellers, should not be required to pay compensation for unauthorized intraLATA calls routed via MTS and WATS of the LECs. Therefore, the Commission concludes that OCCs should not be required to provide any additional compensation, over and above the appropriate access charges, for the unauthorized transmittal of intraLATA long-distance traffic via resold LEC WATS and MTS.

The NCLDA stated in its comments on the September 30, 1985, Order that "some parties to this Docket have indicated a desire to expand the Commission's simple definition of unauthorized intraLATA calls from any intraLATA call made prior to authorization of competitive intraLATA service to any intraLATA call which is incidentally terminated over other than MTS or WATS." The Commission sees no need for any party to "expand" the definition of unauthorized intraLATA calls. The definition has always included all intraLATA calls routed via services other than resold LEC WATS and MTS. Not only are intraLATA calls routed by means other than LEC WATS and MTS unauthorized, but interLATA calls routed via services other than resold MTS and WATS of AT&T or services of OCCs are also unauthorized. In the case of interLATA calls, the Commission notes that the resale of services other than WATS and MTS will be addressed subsequent to AT&T's general rate case proceeding in Docket No. P-140, Sub 9, after the rates for FX and private line services have been reviewed and restructured, if necessary.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 3

The Commission, in its February 22, 1985, Order, required the LECs to jointly prepare and file proposed access charge tariffs for application to resellers to be implemented on a provisional basis pending hearing and final Commission approval. The access charges which the LECs proposed to apply to resellers were the same access charges which were then in effect for application to OCCs. The prefiled testimony addressing the appropriate level of intraLATA access charges for resellers was filed prior to the issuance of the Commission's September 30, 1985, Order Approving InterLATA Access Charges. The LECs and the Public Staff proposed that the same access charges which were in effect on a provisional basis for interLATA access should also be applied to intraLATA access. The LECs and the Public Staff argued that the resellers' use of the local exchange network for the collection of traffic to resell intraLATA MTS and WATS is identical to their use in the resale of interLATA MTS and WATS.

MCI agrees that the same access charges should apply to interLATA and intraLATA access, but it does not agree that resellers should be charged a full access charge. MCI suggested that resellers should be treated like other customers of WATS service.

The NCLDA agrees that the resellers' use of the local network is the same for both interLATA and intraLATA calls, but it does not believe that the access charges for each should be the same. The NCLDA made the following argument:

> "The LECs argue that intraLATA access charges should be consistent with interLATA charges because the use of the network in either case

is the same. This foundation for the argument presented by the LECs is correct-- the use of the network by the reseller for an intraLATA and interLATA purpose is the same. However, it does not follow that all components of 'access charges' should be the same. The reason is that all of the elements of the access charges which are proposed by the LECs are not related to usage even though they may be billed on a usage sensitive basis. Those elements which have associated costs that are usage sensitive--intercept, line termination, local switching, and local transport--should be treated the same with respect to resale of intraLATA WATS as for resale of interLATA WATS. However, the carrier common line charge is merely a subsidy and is not based on usage. Consequently, the argument that all access charges for interLATA and intraLATA access should be the same because the usage of the network is the same does not apply to the carrier common line charge."

There is no validity to this argument of the NCLDA. It is entirely reasonable and proper that since the resellers' use of the network is the same regardless of whether the call is interLATA or intraLATA, the access charges for each should be the same. It is appropriate that resellers of interLATA and intraLATA WATS be required to pay access charges to the LECs in order to fully compensate the LECs for the resellers' use of the local network. A reseller, by its very nature, places use on the local network of the LECs over and above the use that a WATS customer of the LEC places on the local network and it is just and reasonable that they pay for that use.

Based on the foregoing, the Commission concludes that switched access charges (including the carrier common line charge) shall be applicable to intraLATA resellers of long-distance service (other that MTS) for access to the local exchange companies' network. The Commission further concludes that such access charges shall be set at the same level as those applicable to interLATA access service.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 4

Several issues, in addition to the appropriate level of reseller intraLATA access charges, were addressed in the October hearings and also in various comments, motions, requests, briefs and proposed orders filed by the parties subsequent to the close of the hearings.

On November 12, 1985, MCI filed a request for implementation of a 55% access charge differential on the originating and terminating ends of long-distance calls effective January 1, 1986.

In response, AT&T argued that it would be unlawful for the Commission to order such an increase in the differential without first providing adequate notice to the affected parties and allowing those parties an opportunity to present evidence and cross-examine MCI's witnesses. AT&T suggested that the proper course of action is to correct the level of access charges and impose reasonable charges on all who make use of LEC facilities in providing their services to the public. Further, AT&T suggested that the Commission should convene a separate hearing to consider all access charge related issues in one proceeding.

MCI has argued several times in the past for implementation of a 55% access charge differential. The Commission, for various reasons, has previously declined to implement the proposed 55% differential. The Commission does not believe that MCI, or any other party, has presented any new evidence to warrant adoption of a 55% access charge differential at this time.

Several parties to this proceeding have suggested that a generic hearing should be held to address the appropriateness of the current level of access charges for all carriers. The Commission agrees and concludes that a hearing will be scheduled during 1986, to address the appropriate level of all access charges. Such a hearing will give MCI, and all interested parties, the opportunity to further address the implementation of a 55% access charge differential and all other relevant issues related to a generic review of access charges.

Several of the LECs, in their testimony, briefs, and proposed orders, urged the Commission to institute a proceeding to address the issues surrounding the settlements process and uniform toll rates and toll revenue pooling.

The Public Staff urged the Commission not to deaverage toll rates or do away with intraLATA toll pooling at this time. The Public Staff did, however, acknowledge that it would expect the Commission to institute a proceeding addressing all of the issues pertinent to the provision of total intraLATA toll competition prior to the next phase of intraLATA competition, that is, facilities-based competition.

The Commission agrees with the parties that prior to the implementation of total intraLATA competition, the issue of uniform toll rates and toll pooling needs to be addressed.

On November 12, 1985, the NCLDA filed a Motion for Hearing and requested the Commission to issue an Order scheduling a hearing in this Docket no later than February 15, 1986, to address authorizing the resale of FX and private lines and the appropriate access charges for such resale. Subsequently, the Commission in its November 25, 1985, Order on Reconsideration, requested all interested parties to file comments on NCLDA's motion.

The following parties filed comments in response to NCLDA's Motion for Hearing: Central Telephone; General Telephone; the Public Staff; MCI; AT&T; Southern Bell; and the Attorney General.

The parties generally agreed in theory that a hearing should be held to address authorization of the resale of FX and private lines. The parties did differ as to the specific details of such a hearing. Central Telephone recommended that the entire access charge issue be addressed. General Telephone suggested that, rather than granting a speedy hearing as requested by the NCLDA, adequate time frames should be set to allow proper analysis of the issues by all involved parties. Likewise, the Attorney General believes that the timing for the hearing requested by the NCLDA provides an inadequate amount of time for all parties to prepare, and suggests a hearing sometime in May. MCI filed comments supporting the NCLDA's motion. Southern Bell filed comments stating that it is not opposed to the resale of FX and private line services as long as the rate levels and rate structures for such services are set to fully

recover cost and appropriate levels of contribution. Southern Bell further stated that if the Commission determines that hearings should be held to consider resale of FX and private lines, it is prepared to file appropriate tariffs during the first quarter of 1986. AT&T filed comments in support of the NCLDA's motion. AT&T also pointed out that it has proposed changes in its private line and FX rates in its general rate case and has requested that upon approval of those rates, the resale prohibition be removed. The Public Staff filed comments in which it also noted that the opportunity to consider interLATA resale of FX and private line has been afforded by the general rate case application of AT&T. As to the intraLATA resale of FX and private line services, the Public Staff recommended that the Commission address this issue in conjunction with proceedings to consider intraLATA facilities-based competition.

Based on the foregoing, the Commission concludes that a hearing should be held to consider the issue of intraLATA resale of FX and private line services. The Commission further concludes that such hearing should be held in conjunction with or in addition to a hearing or hearings to consider the following: the appropriate level of all access charges; toll deaveraging and the existing toll pooling and settlement procedures; and intraLATA competition by facilities-based carriers. As noted previously, the rate structure of interLATA FX and private line services will be addressed in AT&T's pending general rate case in Docket No. P-140, Sub 9. The Commission anticipates that upon the determination of the appropriate rates and charges for such services, the prohibition on interLATA resale will be removed.

The Commission requests that all interested parties file comments on how best to proceed with hearings to address the aforementioned issues. The Commission concludes that a hearing or hearings may not be scheduled before May 1986; therefore, the parties should make recommendations accordingly. The Commission will welcome suggestions as to whether all issues should be addressed in one generic hearing, or whether some issues should logically be addressed in a separate hearing or hearings.

One additional question was raised by the NCLDA in its comments on the September 30, 1985, Order. The September 30, Order, which has now been rescinded, required pure resellers to pay discounted premium or nonpremium access charges "depending upon the status of the resellers' interconnecting end office regarding equal access." The November 25, 1985, Order on Reconsideration eliminated all references to the 45% discount; however, the level of access charges is dependent on the status of end offices regarding equal access in a local calling area. The access charge rate is determined based upon a ratio of how many end offices in a local calling area are equipped for equal access. The specifics of how that ratio is determined are set forth in Southern Bell's access service tariff section E6.7.14.E.3.

IT IS, THEREFORE, ORDERED as follows:

1. That intrastate intraLATA competition through resale of intraLATA LEC WATS and MTS be, and the same is hereby, authorized in North Carolina effective January 1, 1986, subject to the findings, conclusions, terms, and conditions set forth in this Order.

2. That the intraLATA compensation plan shall continue in effect as previously determined so that any long-distance carrier completing an intraLATA call over any facilities other than resold intraLATA WATS and MTS of the LECS shall be required to pay compensation at the rate of 4.72¢ per conversation minute.

3. That the Local Exchange Companies shall jointly prepare and file, by January 6, 1986, revised access tariffs in conformity with the provisions set forth herein to allow the intraLATA resale of WATS and MTS effective January 1, 1986.

4. That if any company which has previously been certified by the Commission to provide interLATA telecommunications services on a resale basis now desires to also provide intraLATA service as a reseller, such company should file a verified application or motion with the Commission requesting that its certificate of public convenience and necessity be amended to authorize intraLATA resale, including proposed tariffs and supporting documentation showing that the company is fit, capable, and financially able to render such intraLATA service and describing the nature of the proposed service to be offered. Such companies should also file a proposed plan for determining unauthorized intraLATA conversation minutes occurring on their facilites each month or if any company completes, or plans to complete intraLATA calls only over resold WATS and MTS of the LECs, it can file an affidavit to the effect that either (1) its switching equipment is programmed to route intraLATA calls (other than those originated over 800 service) only over resold MTS or WATS leased from the LECs, or (2) that it possesses no facilites capable of completing intraLATA calls (other than those orginated over 800 service) except MTS or WATS leased from the LECs.

5. That all interested parties be, and the same are hereby, requested to file comments, not later than 20 days from the date of this Order, on the appropriate steps and procedures to follow in scheduling a hearing or hearings to address the following issues:

a. The appropriate level of all access charges,

b. The existing toll pooling and settlement procedures and toll deaveraging,

c. IntraLATA resale of FX and private lines, and

d. IntraLATA competition by facilities-based carriers.

ISSUED BY ORDER OF THE COMMISSION
This the 19th day of December 1985.

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

DOCKET NO. P-100, SUB 73

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Investigation in the Matter of Sharing and Resale of Local Exchange Service, Including Public Telephone Access Service	)	ORDER DISMISSING CERTAIN TARIFFS AND APPROVING OTHER TARIFFS

HEARD IN: Commission Hearing Room, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on December 10, 1984, at 1:30 p.m.

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

APPEARANCES:

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

Michael W. Tye, AT&T Communications of the Southern States, Inc., P. O. Box 7800, Atlanta, Georgia 30352

For AT&T Information Systems, Inc.:

Thomas C. Cartwright, General Attorney, AT&T Information Systems, Inc., P. O. Box 7000, Tucker, Georgia 30084

For Carolina Telephone and Telegraph Company:

Robert C. Voigt, Senior Attorney, Carolina Telephone and Telegraph Company, 720 Western Boulevard, Tarboro, North Carolina 27886

For Central Telephone and Telegraph Company:

James M. Kimzey, Kimzey, Smith, McMillan and Rotan, P. O. Box 150, Raleigh, North Carolina 27602

For Cointel Communications, Inc.:

Terry C. Smith, Langlais, Smith, Mooney, Geck, Gilbert & Lattimore, Attorneys at Law, 2222 No. Central Life Tower, St. Paul, Minnesota 55101

For Continental Telephone Company of North Carolina, Inc., and ALLTEL Carolina, Inc.:

F. Kent Burns, Boyce, Mitchell, Burns and Smith, P. A., P. O. Box 2479, Raleigh, North Carolina 27602

For General Telephone Company of the Southeast:

Joe W. Foster, Senior Attorney and Mary U. Musacchia, General Telephone Company of the Southeast, 4100 North Roxboro Road, Durham, North Carolina 27702

For the North Carolina Department of Justice:

Karen E. Long, 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:

Antoinette R. Wike and Paul L. Lassiter, Staff Attorneys, Public Staff, P. O. Box 29520, Raleigh, North Carolina 27626-0520
For: The Using and Consuming Public

For Southern Bell Telephone and Telegraph Company:

J. Billie Ray, Jr., General Attorney, Southern Bell Telephone and Telegraph Company, Legal Department, 1012 Southern National Center, Charlotte, North Carolina 28230 and Lawrence E. Gill, Attorney, Southern Bell Telephone and Telegraph Company, 4300 Southern Bell Center, Atlanta, Georgia

For United Business Communications:

Robert F. Page, Crisp, Davis, Schwentker and Page, Attorneys at Law, P. O. Box 751, Raleigh, North Carolina 27602

BY THE COMMISSION: On June 27, 1984, Southern Bell Telephone and Telegraph Company (Southern Bell) filed a tariff with the Commission which would allow the sharing and resale of local exchange service. The tariff was suspended for a period of 270 days by Commission Order issued July 31, 1984. The tariff raised legal and policy issues affecting not only Southern Bell but also the other regulated local exchange telephone companies in the State, and on August 7, 1984, the Commission issued an Order Instituting Investigation, Scheduling Hearing, and Requiring Public Notice.

On October 11, 1984, Southern Bell filed a second tariff which would establish Public Telephone Access Service (PTAS) whereby subscribers would be allowed to connect registered coin operated or coinless stations to measured rate local exchange lines. By Order issued October 17, 1984, the Commission suspended the PTAS tariff and consolidated it into the above-captioned docket for investigation and hearing to commence December 11, 1984.

SHARING AND RESALE OF EXCHANGE SERVICE

The initial paragraph in the proposed tariff points out that "For the purposes of this tariff section (A23.1) 'sharing' of basic local exchange service is considered to be synonymous with 'resale' of basic local exchange service."

Basically, the tariff would permit resale within the confines of specifically identified continuous property areas under the control of a single owner. The resale service area would necessarily be within the confines of existing wire centers and/or exchange boundaries. Southern Bell would require written applications for the resale privilege, including layout maps defining the resale service area and an anticipated development plan in terms of new building construction. On the other hand, Southern Bell would reserve the right to deny any resale application on the basis of geographic size and scope of development and would limit each resale configuration to a combined total of 500 PBX trunks. Local exchange service would be available from Southern Bell on a measured or message rate basis only. A reseller client charge would apply to the reseller in addition to the basic exchange rates.

PUBLIC TELEPHONE ACCESS SERVICE FOR CUSTOMER PROVIDED EQUIPMENT (CPE)

This tariff filing, referred to as the PTAS or Coin Telephone Service Tariff, would permit the connection of registered coin operated or coinless station to measured rate local exchange lines for use by the general public subject to the availability of central office facilities. Thus, Southern Bell is proposing to permit the connection of privately owned or credit card telephones to the network and to bill the subscriber for local exchange on a measured service or usage-based rate structure.

No attempt has been made to present herein a detailed restatement of each and every aspect of the proposed tariffs, but instead to capsulize the fundamental features of those tariffs.

The matter came on for hearing as scheduled and the aforementioned parties made their appearances and were represented by able counsel. Although the parties presented evidence relating to the desirability of the proposed services, the Commission is required first to resolve the issue of whether the proposed tariff offerings are legal under current North Carolina law.

IS RESALE OF LOCAL EXCHANGE SERVICE LEGAL UNDER CURRENT NORTH CAROLINA LAW?

Under N.C.G.S. Subsection 62-3(23)a.6., any person offering resale of local exchange service to the public for compensation would be a "public utility."

> "(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:
>
> .
>
> .
>
> 6. 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."

Furthermore, N.C.G.S. Subsection 62-110 requires that every "public utility" obtain a certificate of public convenience and necessity before providing service to the public:

> "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..."

Finally, the North Carolina Supreme Court has specifically ruled that the Utilities Commission is without authority to grant a certificate of public convenience and necessity to a competitor when the existing utility is providing adequate service. Utilities Commission v. Carolina Telephone and Telegraph Company, 267 N.C. 257, at 271 (1966).

Collectively, these three points of law dictate that the Commission is without authority to allow resale of local service[1] in competition with the existing utility. (The recent enactment of House Bill 1365, ratified June 29, 1984, does not alter or affect the law as to resale of local service; House bill 1365 is specifically limited to "competitive offerings of long distance service" only). Under North Carolina law, a certificate of public convenience and necessity imposes an exclusive right and obligation on the existing telephone company to provide local exchange service within the franchised territory; therefore, resale of local exchange service would constitute an illegal infringement upon the rights and obligations conferred under the utility franchise.

Since any business engaged in resale of local exchange service "to the public" would be a "public utility" (and since the Commission is without authority to grant a certificate to a competitor when the existing utility is providing the service in question), much of the testimony and cross-examination at the hearings was directed at the following issues:

---

1 N.C.G.S. Subsection 62-3(23)g sets forth a specific exception to the general prohibition on resale of local service; that subsection allows hotels and motels to resell local service by specifically excluding them from the definition of a "public utility." At the time subsection g was enacted, the North Carolina General Assembly clearly recognized that existing law generally prohibited resale of local service, and that a specific legislative enactment would be needed to create an exception.

1. Whether local exchange service would actually be "resold" in certain situations involving employers and landlords;[2] and

2. Whether resale of local exchange service should be considered as available to the "public" if only a few customers are affected in any particular situation.

The definition of a "public utility" under Subsection 62-3(23) includes an exemption for utility service provided to "employees or tenants" when such service is not resold to or or used by others" (Subsection 62-3(23)d.). This legislative exemption prompted a number of hypothetical questions during the hearings about whether telephone service furnished by a landlord to tenants of an office building or apartment complex would constitute a "public utility" if the tenants were not charged for the service (in other words, if the service was not "resold to" the tenants). The Commission is mindful of the fact that even if the owner-tenant relationship were applied, under the proposed tariff provisions the owner would be billed for the PBX trunks on a message rate or measured basis and the Commission believes that prudent business practice would necessitate some metering by the owner to account for usage among the various tenants. Any such metering arrangement would bring the service back within the definition of a "public utility" (and thus subject to Commission regulation) as provided in Subsection 62-3(23)d.

The argument was also made that service to a small number of persons sharing a common interest does not constitute service to the "public" (and therefore the entity providing the service is not a "public utility"). This argument is very questionable in view of the decision of the North Carolina Supreme Court in Utilities Commission v. Simpson, 295 N.C. 519 (1978). In that case, the Supreme Court held that a two-way radio service provided to a group of ten physicians for compensation was a "public" utility (and thus subject to Commission regulation) in spite of the fact that only a small number of persons subscribed to the service. WHile the Court cited a number of factors to be cited a number of factors to be considered in deciding whether service is offered to the "public," the end result was that a service provided to a small number of persons sharing a common professional interest was held to be the "public" within the meaning of the Statute. In view of this decision, any argument that service to a small number of people sharing a common interest is not service to the "public" under the Statute is groundless.

Conclusion: Based on the foregoing statutory and case law, the Commission concludes that it lacks the authority to authorize resale of local exchange

---

2 Under N.C.G.S. Subsection 62-3(23)d, the definition of a "public utility" excludes "...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," unless such person "...distributes or provides utility service to his employees or tenants by individual meters or by other coin-operated devices with a charge for metered or coin-operated utility service" (in which case the person or entity providing such metered service is considered to be a "public utility").

service (except for hotels and motels where resale is allowed under a specific legislative enactment), therefore, the Sharing and Resale of Exchange Service Tariff filed by Southern Bell on June 27, 1984, must be dismissed.

JOINT USER TARIFF

Evidence in the proceeding presented by Southern Bell tended to show that the current joint user tariff of the Company was being misinterpreted to be applicable to sharing and resale situations. Southern Bell indicated that application of the joint user tariff to the sharing and resale market would be detrimental to the Company's general ratepayers. Consistent with such concerns Southern Bell has requested that it be allowed to obsolete the joint user tariff. The Commission concludes that Southern Bell's request to obsolete the joint user tariff should be granted and that the tariff should be grandfathered for existing customers currently operating under such tariff. The Commission further concludes that other local exchange companies operating in this State with comparable joint user tariffs should likewise obsolete such tariffs.

MAY A PRIVATELY-OWNED COIN TELEPHONE BE USED TO RESELL LOCAL SERVICE?

Because of the broad, inclusive definition of a "public utility" under North Carolina law, the prohibition against resale of local service extends even to resale on a relatively small scale such as would be expected through use of a privately-owned pay telephone. Because of recent action by the FCC, it is now permissible to connect a registered, privately-owned pay telephone to the network[3]; however, the FCC was careful to note that its action was not necessarily intended to pre-empt or invalidate any state law against resale of service:

> "... the Commission's decision to register instrument implemented coin telephones does not necessarily affect state policies or regulations governing the resale of intrastate toll and local exchange services..." (FCC Docket 80-270; page 12; adopted June 15, 1984.)

It is generally recognized that many of the pay telephones available in today's market are technically capable of providing resale service without the knowledge of the local telephone company. Because such telephones can now be registered under Part 68 of the FCC Rules and Regulations, there is a definite possibility of misuse of such telephones to resell service in violation of

---

3 The action of the FCC in Docket 80-270 (adopted June 15, 1984) allows registration of "instrument implemented" pay telephones (i.e., pay telephones which contain all of the circuitry necessary to execute coin acceptance and other coin-related functions in the telephone instrument itself, without the necessity of central office involvement). FCC registration permits the interconnection of the registered equipment with the public telephone network under the terms and conditions prescribed by Part 68 of the FCC Rules and Regulations. (See Section III, Paragraph 12, "State Authority;" Page 11, Memorandum Opinion and Order, adopted June 15, 1984; FCC Docket 84-270).

North Carolina law. However, the North Carolina Commission must distinguish between the problems of identifying and policing against misuse of privately-owned pay telephones and the question of legality. As previously explained, under existing North Carolina law resale of local service by any device is prohibited except for hotels and motels.

Conclusion: The Commission is of the opinion that the statutory and case law which was discussed regarding the Sharing and Resale tariff provisions are equally dispositive here. Thus, the Commission concludes that under current law, it lacks the authority to authorize implementation of the coin operated tariff which was filed by Southern Bell on October 11, 1984.

COINLESS PUBLIC TELEPHONES

On February 5, 1985, this Commission issued an Order in the abovecaptioned docket authorizing AT&T Communications of the Southern States, Inc., to immediately connect its coinless public telephones to the telephone network of Southern Bell Telephone and Telegraph Company. On February 15, 1985, AT&T Communications and Southern Bell filed tariffs to enable AT&T to connect its coinless public telephones to the Southern Bell network. By Order issued February 27, 1985, the Commission approved AT&T Communications' and Southern Bell's February 15, 1985, Coinless Public telephones Tariffs on an interim basis subject to conditions and limitations as set forth in the tariff and subject to further order of this Commission in this docket.

The request by AT&T Communications to be allowed to connect its coinless public telephones differs substantially from the proposal by Southern Bell to allow the connection of private coin phones. AT&T is a certificated interLATA carrier and is, therefore, allowed by this Commission to provide interLATA toll service. AT&T's proposal to offer interLATA service from its coinless public telephones is consistent with its existing authority to offer interLATA service. The real question is whether AT&T becomes a reseller if local and intraLATA calls are made from AT&T coinless telephones. Under the interim tariffs now in effect, when AT&T credit cards or the local telephone company's credit cards are used, the local telephone company bills the customer/user directly for the calls. Since customers will be billed directly by the local telephone company for making the local and intraLATA calls, the Commission concludes that no resale would occur.

Conclusion: Based on the foregoing, the Commission concludes that AT&T Communications and Southern Bell's Coinless Public Telephone Tariffs filed February 15, 1985, effective on an interim basis February 27, 1985, is herein approved and shall remain in full force and effect.

SUMMARY

Although substantial testimony was presented regarding the merits of the Sharing and Resale Tariff and Coin Operated Telephone Tariff, the Commission makes no findings or conclusions regarding the merits of the proposed services. Regardless of how the Commission may feel about the evidence presented, the Commission's power cannot rightfully exceed that which was vested in it by the Legislature. The laws governing the proposed tariffs were written during a period when public utilities operated as monopolies. The Commission acknowledges that public utilities are functioning in a more competitive

environment; nevertheless, the Commission's rulings must be based on existing North Carolina law. If and when the law in this State is changed the Commission will investigate new filings under the terms set forth in the new law.

IT IS, THEREFORE, ORDERED as follows:

1. That the Sharing and Resale of Basic Local Exchange Service Tariffs filed by Southern Bell on June 27, 1984, are hereby dismissed.

2. That Southern Bell's request to obsolete the joint user tariff is granted and those customers currently operating under the tariff shall be grandfathered in. Moreover, that other local exchange companies with comparable joint user tariffs should likewise obsolete such tariffs and grandfather those customers currently operating under the tariffs.

3. That the Coin Telephone Service Tariff filed by Southern Bell on October 8, 1984, is hereby dismissed.

4. That the Coinless Public Telephone Tariffs filed by AT&T Communications and Southern Bell on February 15, 1985, now effective on an interim basis are hereby approved and shall remain in full force and effect.

ISSUED BY ORDER OF THE COMMISSION.
This the 26th day of March 1985.

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

DOCKET NO. P-100, SUB 73

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Sharing and Resale of Local Exchange Service) ORDER DENYING PETITION

BY THE COMMISSION: On May 6, 1985, AT&T Communications of the Southern States, Inc. (AT&T), filed a Petition for Clarification of the Coinless Telephone section of the Commission's March 26, 1985, Order in the above-captioned docket. The following excerpt is taken from the March 26, 1985, Order.

Coinless Public Telephones

"The request by AT&T Communications to be allowed to connect its coinless public telephones differs substantially from the proposal by Southern Bell to allow the connection of private coin phones. AT&T is a certificated interLATA carrier and is, therefore, allowed by this Commission to provide interLATA toll service. AT&T's proposal to offer interLATA service from its coinless public telephones is consistent with its existing authority to offer interLATA service. The real question is whether AT&T becomes a reseller if local and intraLATA calls are made from AT&T coinless telephones. Under the

interim tariffs now in effect, when AT&T credit cards or the local telephone company's credit cards are used, the local telephone company bills the customer/user directly for the calls. Since customers will be billed directly by the local telephone company for making the local and intraLATA calls, the Commission concludes that no resale would occur.

"Conclusion: Based on the foregoing, the Commission concludes that AT&T Communications and Southern Bell's Coinless Public Telephone Tariffs filed February 15, 1985, effective on an interim basis February 27, 1985, is herein approved and shall remain in full force and effect."

It is the opinion of this Commission that AT&T's Petition for Clarification is in reality a motion to amend Southern Bell's Public Telephone Access Service Tariff. AT&T in its "Petition for Clarification" seeks to have the Commission amend its March 26, 1985, Order in three ways.

1. AT&T would like the Commission to require all North Carolina local exchange companies to concur in Southern Bell's tariff or file similar tariffs of their own.

2. AT&T would like customers to be able to use commercial credit cards.

3. AT&T would like not to pay Directory Assistance charges when customers request local and intraLATA Directory Assistance while using AT&T's Coinless Public Telephones.

In their Response to Petition for Clarification, Southern Bell and the Attorney General addressed only the question relating to Directory Assistance charges whereas the Public Staff's Response addressed each question in the Petition.

The first issue is whether all North Carolina LECs should be required to offer service similar to Southern Bell's.

The Public Staff stated that AT&T has not shown it is in the public interest to require all telephone companies to permit the connection of AT&T's paystations. Southern Bell was allowed to permit the connection of AT&T's paystations. The Public Staff did not oppose the Southern Bell tariff principally because it was viewed as not having a negative impact on Southern Bell's customers or on Southern Bell itself. The Southern Bell tariff calls for lines terminated in AT&T's coinless paystations to be furnished as either measured rates or message rates. The Public Staff indicated that most companies in North Carolina do not have the facilities to provide measured or message service in all exchanges. Thus, the conditions under which the AT&T tariff was approved for Southern Bell's service area do not necessarily apply for all other local exchange companies.

The Public Staff's position is that AT&T's request that all North Carolina LECs be required to file tariffs for connection of AT&T coinless paystations should be denied, but that these companies should be allowed to file tariffs for that purpose under reasonable terms.

The second issue is whether calls made on AT&T coinless phones should be billed to commercial credit cards.

The Public Staff opposes AT&T's request to be allowed to use commercial credit cards in their coinless paystations. The Public Staff alleges that the use of commercial credit cards as proposed by AT&T would make AT&T a reseller of local and intraLATA service. Under AT&T's proposal a credit card company, e.g. American Express will bill for the local and intraLATA service as the agent for AT&T and not as the agent of the local exchange company. AT&T would be the responsible party when a customer fails to pay his credit card bill. The Public Staff believes that this practice constitutes the prohibited resale of local exchange and intraLATA service.

The Public Staff's position is that the requests to bill calls to commercial credit cards be denied.

The third issue is whether Southern Bell should charge AT&T for local and intraLATA Directory Assistance calls placed from AT&T coinless paystations.

The Public Staff asserts that its original recommendation that AT&T be allowed to furnish its interLATA coinless paystation service was based upon the view that Southern Bell's expenses, including directory assistance, would be adequately covered by charges to AT&T and that the paystations would operate much like Southern Bell's coinless paystations, i.e., directory assistance would be available without a charge to the paystation user. The Public Staff indicates that to waive the charge to AT&T would require Southern Bell, and indirectly the ratepayers, to support the AT&T service offering, and that such support is not in the public interest.

The Public Staff also opposes AT&T's alternate motion that a directory assistance charge be applied to all public paystations and charged to the customer making the directory assistance request. First, it is the Public Staff's belief that few, if any, local exchange companies presently have the capability of charging for directory assistance requests from paystations users. Second, it has been the Commission's policy, as reflected in tariffs of all local exchange companies and of AT&T, that a directory assistance charge should not be imposed upon the users of local exchange company paystations. AT&T has not presented any compelling reasons why the Commission should change that policy. Such a change would require public notice and a new hearing.

The Attorney General does not believe that Southern Bell should underwrite AT&T's service offerings and that to require that directory assistance charges be paid by all end users of the paystations would represent a departure from current Commission policy without public hearing to explore the implications of such a change.

Southern Bell's tariff provides that: "A charge equivalent to that charged on business individual line service is applicable for Directory Assistance Services.... Listings in connection with Public Telephone Access Service for CPE are furnished under the same rates and regulations as other business service." Thus, Southern Bell regards the access line provided to AT&T as merely another type of business service for which AT&T should pay.

Furthermore, Southern Bell asserts that AT&T has demonstrated their intent to provide these coinless telephones for the purpose of maintaining AT&T market presence in locations where high volume interLATA calling exists, i.e., locations frequented by the travel-oriented customer. Having made this choice for its own benefit, Southern Bell contends that it is only fair that AT&T be charged for directory assistance so that the general subscriber body of North Carolina will not have to subsidize this service.

Southern Bell believes that in the near future legislation will permit connection of non-carrier private pay telephones in North Carolina. All companies providing such pay telephones, AT&T included, should be charged the same. These phones may properly be viewed as any other business phone attached by an access line to the network. As such, directory assistance charges whether for local, intraLATA or interLATA calling should be charged to the subscriber to that line. To do otherwise would require that the general ratepayer bear this increasing expense.

The position of Southern Bell, the Public Staff and the Attorney General is that AT&T should continue to pay directory assistance charges for calls placed from AT&T's coinless paystations.

The Commission is of the opinion that good cause exists to allow, but not require all regulated telephone companies to concur in local exchange companies to file proposed tariffs for connection of AT&T coinless stations in their respective service areas. The Commission is of the opinion that good cause does not exist to allow the use of commercial credit cards as proposed by AT&T, nor does good cause exist to waive the charge payable by AT&T for directory assistance requests.

IT IS, THEREFORE, ORDERED as follows:

1. That all North Carolina local exchange companies are allowed to file proposed tariffs for connection of AT&T coinless stations in their respective service areas.

2. That the use of commercial credit cards as proposed by AT&T is denied.

3. That the request to waive the charge payable by AT&T to Southern Bell for directory assistance is denied.

4. That the request made by AT&T that a directory assistance charge be applied to all public paystations and charged to the customer making the directory assistance request is denied.

ISSUED BY ORDER OF THE COMMISSION.
This the 31st day of May 1985.

NORTH CAROLINA UTILITIES COMMISSION
Sandra J. Webster, Chief Clerk

(SEAL)

DOCKET NO. P-100, SUB 81

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Deregulation of Embedded Customer Premises Equipment Owned by the Independent Telephone Companies and Tariffed by the State of North Carolina	)	FINAL ORDER ESTABLISHING DEREGULATION PLAN CERTIFIED TO THE FEDERAL COMMUNICATIONS COMMISSION

BY THE COMMISSION: In its Third Report and Order in CC Docket No. 81-893 the Federal Communications Commission (FCC) required that all embedded customer premises equipment (CPE) owned by independent telephone companies (ITCs) be detariffed and removed from regulated service by December 31, 1987. The FCC required the states to develop a plan for deregulation and to certify that plan with the FCC by September 1, 1985. The ITCs operating in those states which do not submit certifications by September 1, 1985, must follow the requirements of the AT&T Plan (specified in the FCC Report and Order in CC Docket No. 81-893 released on December 15, 1983), for detariffing of embedded CPE, effective January 1, 1986. The plan presented to the FCC by the Commission must satisfy the ratepayer versus investor balancing test established in the Democratic Central Committee v. Washington Metro Area Transit Commission 485 F.2d 786 (D.C. Cir. 1973), Cert. denied sub nom. D.C. Transit System v. Democratic Central Committee 415 U.S. 935 (1974) (hereinafter, together with companion cases, referred to as "Democratic Central Committee"). The plan must also follow accounting and tax procedures outlined by the FCC in its Third Report and Order and its Fifth Report and Order in CC Docket No. 81-893, provide the opportunity for full capital recovery, and include a statement of the Commission's position on sales plans and its requirements, if any, for further sales plans or other transitional programs.

Pursuant to these requirements the Commission developed a Baseline Deregulation Plan as set forth in Appendix A and issued an Order on April 10, 1985, requesting comments on this plan and requiring each ITC to furnish information concerning the gross investment, depreciation reserve, and net investment in embedded CPE; the amount of deferred taxes and unamortized investment tax credits, associated with the investment; and net investment adjusted for these deferred taxes and investment tax credits. The Commission also requested comments and/or proposed orders from all parties to be filed by June 7, 1985.

After reviewing the comments filed on June 7, 1985, by the parties in this proceeding the Commission issued an Order on July 1, 1985, setting forth its revised deregulation plan as set forth in Appendix B. The Commission again requested that comments be filed with the Commission; the comments of the independent telephone companies and requests for oral argument had to be filed by July 17, 1985, and the Public Staff was allowed to file its comments on or before July 24, 1985, in response to the comments of the independent telephone companies. A brief discussion of the comments, filed in response to the Commission Orders issued on April 10, 1985, and July 1, 1985, follows.

DISCUSSION OF COMMENTS FILED IN RESPONSE TO COMMISSION ORDER OF APRIL 10, 1985

The companies' responses to the original deregulation plan (Appendix A) set forth in the Commission Order of April 10, 1985, varied considerably. General Telephone Company of the Southeast (General), for example, strongly endorsed the "Notice to Subscribers," and in relation to the timetable for detariffing at December 31, 1987, stated that it could support that date or an extension until December 31, 1990. It disagreed, however, with the proposed deregulation plan of using net book cost as the floor sales price to be used when disposing of the existing embedded CPE base.

General's interpretation of the FCC's Third Report and Order in CC Docket No. 81-893 is that any remaining investment in CPE, for which an offsetting reserve has not already been accrued, must be recovered through regulated rates prior to the deregulation deadline. General's proposed plan for full capital recovery of its investment in embedded CPE is twofold. It involves (1) the sale of CPE to existing customers at market value during the period prior to deregulation and (2) establishment of surcharges to customers designed to recover the embedded CPE investment which will not be recovered through regular depreciation charges at the deregulation deadline (December 31, 1987). To determine the economic value of the CPE remaining at deregulation, General proposed the use of a capital budgeting model. The model would require a forecast of the future revenue and expenses that could be generated by these assets to determine the net present value of the future cashflows. The net present value amount adjusted to recognize depreciation which will be accrued prior to deregulation would be amortized beginning January 1, 1986. As an alternative to the surcharge, General recommended extension of the deregulation deadline to December 31, 1990. Such an extension would allow full capital recovery under existing depreciation rates; therefore, no further amortization would be required.

General recognized in its comments the need for the Commission to have maximum flexibility in establishing detariffing mechanisms and valuation standards consistent with the Democratic Central Committee.

Carolina Telephone and Telegraph Company (CT&T or Carolina) proposed to detariff its CPE on January 1, 1986, at adjusted net book which it stated was the most appropriate method of valuing embedded CPE investments. The Company prefaced its plans by reviewing the present status of its CPE marketplace. Carolina stated that it had begun an aggressive in-place sales program for embedded CPE during April 1983 and that through mid-1984 the sales program was very successful in reducing its investment in CPE. In late 1984, CT&T indicated that it observed increased customer resistance to purchase embedded CPE. In an effort to evaluate the nature of this resistance, the Company conducted a survey involving residential customers who have continued to lease terminal equipment. The results of the survey indicated that 90% of the customers surveyed knew terminal equipment could be purchased from CT&T or another source. Moreover these customers indicated their desire to continue renting their equipment, and 80% of them were willing to accept a rate increase of $.50 per month in order to continue their rental.

According to Carolina it has had to refuse to lease telephone sets to new customers because of the limited availability of used telephone instruments and

the inability to purchase new telephone instruments for regulated lease. It is Carolina's position that neither new nor existing customers should be denied the opportunity to lease terminal equipment because of regulatory constraints which remove the economic incentive to provide the lease option or deny the ability to provide the lease option. Carolina indicated that the operational complexities of offering both regulated and nonregulated leasing of terminal equipment until December 31, 1987, make that option prohibitive. Carolina believes it could better utilize its present economies of scale to minimize the cost of providing the service by offering CPE on a nonregulated basis only. Carolina states that if deregulation takes place on December 31, 1987, its present economics of scale may disappear, due to attrition of the current regulated base.

Central Telephone Company (Central) proposed immediate deregulation of customer premises equipment. Central believes submission of an initial plan with a 60-day notice to the Commission containing the detailed plans for deregulation of such equipment should be mandatory. According to Central this plan should establish a transitional period of no more than one year, during which time each company would provide administrative notice on any changes in price or conditions.

Central stated that it believes the appropriate value at which to transfer an asset, such as CPE, is market value. It relates, however, that the telephone industry has not reached agreement on an accepted methodology for determining market value. In view of this circumstance, Central endorses the transfer of the embedded CPE at net book value adjusted for the appropriate accrued investment tax credits and deferred taxes. It believes that its customers should have the option to purchase in-place equipment at net book value plus associated sales expenses. With respect to setting up a separate subsidiary versus below-the-line accounting procedures, Central considers that below-the-line accounting is sufficient to accommodate the deregulation of CPE equipment. It is its position that its current below-the-line accounting methods used over the last several years are acceptable and provide sufficient and observable safeguards against cross-subsidization.

In its comments Continental Telephone Company of North Carolina (Continental) stated its belief that embedded customer premises equipment should be fully recovered under regulation either by sale of the equipment or through its depreciation or amortization expense. Continental further commented that upon full recovery, if not sooner, ownership of the remaining investment should pass to the subscribers.

In addition, Continental believes there are situations especially with key and PBX equipment where current market value is less than the net book value. In these situations Continental feels it may be necessary for the sales price to be less than net book value. Continental stated that, if a customer may obtain comparable equipment from an alternative source for less than net book value, it would be in the best interest of its existing ratepayers to recover some value for the investment even if that value is less than net book value.

The remaining responding telephone companies either duplicated or addressed one or more of the above comments; therefore, no further annotations will be expressed.

DISCUSSION OF COMMENTS FILED IN RESPONSE TO COMMISSION ORDER OF JULY 1, 1985

The companies' responses to the revised deregulation plan (Appendix B) set forth in the Commission Order of July 1, 1985, generally followed the thoughts expressed in the previously discussed comments submitted in response to the Commission Order of April 10, 1985. General expressed its disagreement with the requirement of the plan that CPE be transferred at the value that is the higher of net book value or the measure of value determined through a capital budgeting analysis. It is the opinion of General that economic value should be used to transfer CPE to unregulated operations and that the companies should be permitted to use any valuation method identified by the FCC to determine the economic value. Further, General believes that when full capital recovery of the original investment cannot be obtained by December 31, 1987, the Commission should seek FCC approval of an extension of the deadline and/or allow the companies to implement an amortization program to obtain full capital recovery.

As to the section of the plan labeled Sales Option, which allows the Commission to consider, on an exception basis, sales at below net book value for specific items or types of terminal equipment, General disagrees that the use of a market value which is below net book value should be restricted to specific items or types of equipment. General believes it will be administratively impractical to have specific product pricing for an individual customer approved by the Commission and thus concludes that sales prices for all embedded terminal equipment should be set at market value.

Carolina believes that the Commission's revised deregulation plan is deficient in three areas. First, Carolina submits that the plan does not provide a mechanism for full capital recovery from regulated operations by December 31, 1987. Carolina recommends that the CPE assets be transferred at net book value to unregulated operations on January 1, 1986, without full capital recovery, since the transfer would be made at net book value prior to the deregulation date of December 31, 1987, and thus the risk of loss and the potential for gain would be borne by the investor. Second, Carolina states that the provision of the plan which provides for the transfer of CPE at the larger of the economic value or net book value violates the ratepayer versus investor balancing test established in Democratic Central Committee by assuring that any gain will be realized by the ratepayer and any loss will be borne by the investor. Third, Carolina asserts that the plan provides no economic incentive to Carolina for continued leasing of CPE in the deregulated environment. Carolina states that its originally proposed plan to transfer CPE assets to unregulated operations on January 1, 1986, at net book value offered an economic incentive to implement an unregulated leasing program since Carolina's investors could benefit from any potential gain in the value of the assets. According to Carolina, the revised deregulation plan virtually assures that unregulated leasing ventures will not be attempted since regulated capital recovery is not assured and the potential for any gain in the value of the assets is reserved exclusively for the regulated ratepayer.

As stated in Central's previously mentioned comments, Central believes that customers have been conditioned to competition in the CPE marketplace and that deregulation of embedded CPE could be accomplished with no harmful effects on customers prior to the FCC deadline of December 31, 1987. Central believes changes and new technological innovations in the CPE marketplace could place investment in embedded CPE at further risk. Therefore, Central urges the

Commission to move the deregulation of CPE to a date prior to December 31, 1987.

Central continues to endorse the transfer of embedded CPE at net book value adjusted for the appropriate accrued investment tax credits and deferred taxes. As a primary means of capital recovery, Central will encourage customers to purchase in-place equipment at sale prices based on net book value.

Central requests the Commission to clarify the language in the revised deregulation plan under Valuation and Transfer Requirements wherein the following statement appears: "All embedded terminal equipment, with the exception of CPE needed by the disabled, and associated reserves will be transferred to unregulated operations..." Central questions whether "all embedded terminal equipment" includes company use equipment which should become deregulated and removed from the rate base. Central interprets the revised plan to exclude deregulation of company use telephones similar to that done in Docket No. P-100, Sub 78, which deregulated mobile and paging terminal equipment.

Central does not concur with the Commission's position in the revised deregulation plan concerning CPE needed by the disabled. Central believes the competitive marketplace will provide terminal equipment for the disabled and that there is no need for telephone companies to provide such equipment under regulation.

Continental restates its position that the it should be assured of full capital recovery of investments in CPE. Continental believes that the Commission should allow the investment in embedded CPE to be recovered by allowing accelerated depreciation rates on embedded CPE or by structuring an amortization plan so that the net book value of embedded CPE is zero before transfer. Absent such provisions, Continental believes the principles stated in Democratic Central Committee will be violated. Furthermore, Continental believes that a forecast of future revenues available from leases of embedded CPE is virtually impossible; therefore, Continental states that a capital budgeting process for determining economic value of embedded equipment is not an appropriate valuation method for the company.

In its comments the Public Staff concurred with the revised deregulation plan except the portion of the plan entitled Accounting and Tax Treatment. The Public Staff believes for the purpose of clarification that the language as follows should be added to the accounting section of the plan.

> Proceeds from CPE sold under regulation will be treated as gross salvage and credited to depreciation reserve. Transaction costs associated with the sale of embedded CPE will be treated as cost of removal and charged to depreciation reserve.
>
> Items of station apparatus in inventory at the transfer date will be treated the same as items of station apparatus in service. Items of large PBX equipment in inventory at the deregulation date will be transferred at the net value at which it is recorded on the books. In addition, any items in stock that are included in expense accounts will be transferred at their recorded value at that time.

Land and buildings, if any, will be transferred at appraised value. Costs of appraisal will be charged to the regulated operations, Account 675, pending transfer of the assets and then transferred to Account 360 in the case of land and depreciation reserve in the case of buildings to offset the gain.

Other supporting assets, including motor vehicles, computers, furnitures, fixtures, and machinery, will be transferred at net book value. Common costs, that is, costs associated with both regulated and nonregulated operations, will be allocated on a fully distributed costing basis and the companies shall keep records to support their allocations.

With regard to the issue of full capital recovery, the Public Staff believes the revised deregulation plan is proper in that it provides the opportunity for full capital recovery under regulation. The Public Staff agrees with the Commission that the assurance of full capital recovery under regulation is neither required nor justified.

Further, the Public Staff agrees that it is proper to value the equipment at the time of transfer at the larger of net book value or at the value determined using the capital budgeting process. According to the Public Staff, such valuation is proper in light of the loss of contribution to basic rates which early deregulation will cause. The Public Staff states that this shift in revenue requirements to basic local rates when deregulation occurs will occur even if there is no gain or loss due to valuation, that is, even if net book value is used in the valuation process. The Public Staff states that there is a need for a better approximation of economic value than net book value and demonstrates such need by stating the following information about Citizens Telephone Company (Citizens). Citizens currently has a zero net book value for station apparatus, yet it has approximately 10,000 telephones which are in service and revenue producing. When those telephones are deregulated, the rental revenue and the associated contribution will be lost; in such a case valuation at net book value is not necessarily appropriate.

In closing the discussion of comments, the Commission notes that although there were differences of opinion as to what the proper plan for deregulation of CPE should be, there were no requests for oral argument by any of the parties to this proceeding.

The Commission has given careful consideration to all comments filed herein and has developed a plan based on these recommendations and the FCC's requirements. The Final Deregulation Plan is attached as Appendix C to this Order. A discussion of the major issues considered by the Commission in the development of the Plan follows.

FULL CAPITAL RECOVERY

Several companies expressed concern over their ability to achieve full capital recovery through the use of the plans for detariffing proposed by the Commission in its Orders of April 10, 1985, and July 1, 1985. The Commission concludes that the FCC's requirement that the plan allow the companies the opportunity for full capital recovery does not require that the equipment be fully depreciated and/or amortized by the deregulation date. This is obvious

from the fact that the FCC indicated in its Third Report and Order that the plan which it adopted for deregulation of AT&T's CPE could serve as a model for the states in deregulation of the ITCs embedded CPE. The AT&T plan consisted of a sales option to existing customers, coupled with a transfer plan wherein the equipment which was transferred was valued at adjusted net book value as a surrogate for economic value. Obviously, there was no requirement for full depreciation and/or amortization in the AT&T plan; instead, the sales option at net book value plus transaction costs satisfied the requirement to provide the opportunity for full capital recovery alluded to by the ITCs. Furthermore, if the embedded base was fully recovered under regulation, through depreciation rates and/or amortization charges, then there would be no gain or loss on the transfer if the property was valued at net book value since the value at transfer would be zero. The FCC however, discussed at length the appropriate treatment of a gain or loss on the transfer and the need to balance the interests of the ratepayers and investors in assigning that gain or loss. The Commission rejects the assertion by several of the ITCs that the equipment must be fully depreciated and/or amortized under regulation with the attendant surcharges or increases in local rates. The Commission concludes that assurance of full capital recovery under regulation is simply not required by the FCC.

IMPLEMENTATION TIMETABLE

It is clear from the data filed by the ITCs that revenue from embedded terminal equipment continues to be a significant part of the ITCs' total local revenue. Carolina's annual revenues from lease of regulated equipment amounts to $18,076,664, based upon units in service at March 31, 1985. This level of CPE revenue is approximately 12% of Carolina's total local revenues for the 12 months ended March 31, 1985. North State Telephone Company's annual embedded CPE revenue amounts to $2,321,108 which is approximately 24.4% of its total local revenue, based upon revenue data from the same time periods as the Carolina data above. The Commission is greatly concerned about the impact that removal of these lease revenues from the regulated operations will have upon the basic local rates. Any contribution from these lease revenues which is flowing to basic local rates will be lost at the time of deregulation.

The Commission believes that there is significant contribution flowing from these lease revenues to the basic rates. Historically, rates for terminal equipment have been fixed so that the lease rates fully support the entire unallocated investment; i.e., for purposes of fixing these rates no portion of the investment was allocated to interstate toll operations. In rate proceedings, allocations of investment and expenses associated with terminal equipment are made to interstate operations (this is true except for the standard contract companies), but all terminal equipment revenue is treated as intrastate. Thus, revenue from terminal equipment will somewhat exceed the associated intrastate revenue requirement. Since basic rates are fixed on a residual basis, the contribution from terminal equipment reduces the revenue requirement from basic rates.

Another factor causing the Commission concern over the loss of regulated revenue from lease of embedded terminal equipment is that rates for terminal equipment are based upon engineering economic analyses which by design spread revenue requirements from each type of terminal equipment item evenly over the estimated revenue-producing life of that item. Due to this characteristic of

the studies, terminal equipment rates are not compensatory during the first portion (approximate one-half) of the life of the associated equipment item, but cover more than the associated cost during the remainder of the life. As net investment decreases from the gross investment level present when the item goes into service, the rates, deficient at first, become increasingly compensatory until, near the end of the item's life, the net investment approaches zero and the rate of return on the item becomes very high. However, due to the deregulation deadline imposed by the FCC, terminal equipment will not be allowed to reach maturity (i.e., become fully depreciated) under regulation and will therefore neither meet its designed return requirement nor provide the contribution to basic rates which was expected of it when it was put into service. The resulting shift in revenue requirements to basic local rates will have a negative impact on ratepayers and will occur even if net book value is used as the valuation at transfer which eliminates any gain or loss due to valuation.

In addition to these concerns over the loss of return and contribution from terminal equipment and the resulting impact on basic local rates, the Commission is concerned that, when the equipment is deregulated, subscribers may be denied the ability to lease their telephones and obtain dependable maintenance service. The survey done by Carolina, which was cited previously in this Order, indicates that there is strong preference among existing rental customers for continued rental of telephones even though 90% of the customers surveyed knew that terminal equipment could be purchased from Carolina or other sources.

Carolina, General, and other telephone companies have offered embedded equipment for sale for several years. General has an established deregulated lease program, prices of which are substantially above its regulated rental prices. In contrast, Carolina has indicated interest in a deregulated lease program only if the embedded base can be obtained on the favorable terms; i.e., at January 1, 1986, which it requested. On the one hand, Carolina agrees that there is a strong demand for rental of telephones but, on the other hand, expresses concern that the demand for rental of telephones will drop off so rapidly that, by the end of 1987, a deregulated rental program will not be worthwhile. Other companies including Central and Continental have indicated their eagerness to get out of rental as soon as possible and have not indicated that they have any plans for deregulated rental.

The Commission recognizes that it will have no authority to require a rental program after deregulation and no guarantee that any deregulated rental program will be long-lived. In addition, it will have no authority to control price increases which would be expected by the deregulated company in the face of strong demand.

In order to address these concerns over the early loss of return and contribution to basic rates and to avoid an early demise of popular rental programs, the Commission has concluded that it will require continuation of regulated lease until December 31, 1987. The Commission concludes that requiring continuation of regulated rental of terminal equipment until the deregulation deadline will not adversely affect the balance of ratepayers and investor interests required in Democratic Central Committee.

VALUATION GUIDELINES

The Commission anticipates that there will be a significant amount of plant which is in-service and revenue-producing at the deregulation date. Because of the concerns previously discussed about the lack of recovery of the full contribution to basic rates at the time of deregulation, the Commission concludes that net book value may not be the best measure for economic value. For example, as pointed out by the Public Staff, Citizens Telephone Company has a zero net book value for station apparatus, yet it has approximately 10,000 telephones which are in service and revenue producing and at deregulation these rental revenues and the associated contribution will be lost. Other companies will have high depreciation reserves and will probably have a substantial amount of equipment in service at December 31, 1987. In cases such as these it would not be necessarily appropriate to use net book value as the valuation. The capital budgeting process as discussed by General in its comments and as listed by the FCC as one of four methods for measuring or developing a surrogate for economic value may provide a more accurate basis for valuation of the embedded base at the time of deregulation. The Commission concludes that the results of both of these approaches should be analyzed at deregulation and, in order to address the impact attendant to premature retirement, the larger of these methods should be adopted. The Commission concludes that this approach will best enable the Commission to satisfy the balance requirements in Democratic Central Committee.

With regard to the comments of Central Telephone Company's requesting the Commission to clarify the language in the revised deregulation plan under Valuation and Transer Requirements wherein the following statement appears: "All embedded terminal equipment, with the exception of CPE needed by the disabled, and associated reserves will be transferred to unregulated operations...", the Commission concludes that Central has correctly interpreted the plan to exclude the deregulation of company use telephones. For purposes of this proceeding "all embedded terminal equipment" means the types of CPE subject to deregulation as defined in the Third Report and Order in CC Docket No. 81-893. In the Third Report and Order in CC Docket No. 81-893 paragraph 47, the FCC allows the states to decide whether or not to detariff the specialized terminal equipment needed by persons whose hearing, speech, vision, or mobility is impaired, the Commission concludes that this specialized equipment should not be deregulated and should continue to be provided on a regulated basis under the existing rates and regulations.

ACCOUNTING AND TAX TREATMENTS

Treatment of deferred taxes and investment tax credits must be in accordance with the requirements of the FCC as specified in its Third Report and Order. Other requirements are as specified in the Final Deregulation Plan attached as Appendix C.

SALES OPTION

Most but not all companies have heretofore offered for sale their embedded terminal equipment. The Commission concludes that all terminal equipment may be offered for sale between now and the deregulation deadline. Sales to separate subsidiaries or transfers to unregulated operations prior to deregulation are prohibited except in special cases as reflected in approved

tariffs. Sale prices must be at or above net book value plus transaction costs. Sale prices below net book value plus transaction costs must be specifically approved by the Commission.

Based upon the evidence and conclusions herein, the Commission finds that the Final Deregulation Plan as set forth in Appendix C of this Order is the final form of the deregulation plan and will be certified to the FCC. The North Carolina state certification, due September 1, 1985, will be deemed approved if the FCC does not notify the North Carolina Utilities Commission otherwise within 90 days after receipt by the FCC.

IT IS, THEREFORE, ORDERED as follows:

1. That the Chief Clerk shall mail a copy of this Order to all the independent telephone companies in North Carolina.

2. That the Chief Clerk shall mail a copy of this Order to the FCC to certify to the FCC that the North Carolina Utilities Commission has adopted a plan to ensure the detariffing of embedded CPE by December 31, 1987.

3. That the Final Deregulation Plan shall be deemed approved if the FCC does not notify the North Carolina Utilities Commission otherwise within 90 days after receipt by the FCC.

ISSUED BY ORDER OF THE COMMISSION.
This the 26th day of August 1985.

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

APPENDIX A
ORIGINAL DEREGULATION PLAN*

Notice To Subscribers

Notices will be sent as bill inserts at least once during the last quarter of 1985, at least once during 1986, and at least once during 1987. The notice must inform the customers of the timetable established by the Commission for deregulation of embedded terminal equipment, reflect the Company's sales plan, and advise the subscriber of his option for provision of terminal equipment up to December 31, 1987, and after that date.

Time Table

All terminal equipment must be offered for sale beginning no later than January 1, 1986, and ending no earlier than December 31, 1987. Sales prices must be at or above net book value. Net book value is defined as recorded book value minus accrued depreciation. Effective December 31, 1987, all embedded terminal equipment will be transferred to unregulated operations or to an unregulated affiliate.

Valuation

Embedded terminal equipment assets and associated reserves will be removed from regulated books at recorded book value as of December 31, 1987, along with any associated deferred taxes and unamortized investment tax credit.

* Issued April 10, 1985

APPENDIX B
REVISED DEREGULATION PLAN*

Notice to Subscribers

Notices will be sent as bill inserts six months prior to deregulation and in the last billing before deregulation. The notice must inform the customers of the deregulation of embedded terminal equipment and advise the subscriber of his option for provision of terminal equipment up to the deregulation date and after that time.

Valuation and Transfer Requirements

All embedded terminal equipment, with the exception of CPE needed by the disabled, and associated reserves will be transferred to unregulated operations or to an unregulated affiliate at December 31, 1987, along with any associated deferred taxes and unamortized investment tax credits. The Commission intends to examine two methods of valuation, net book value and the capital budgeting process, as surrogates for the economic value of the embedded base. The equipment will be valued at the larger of the two overall results for each company, in order to best meet the balance requirements established in the Democratic Central Committee v. Washington Metro Area Transit Commission 485 F.2d 786(D.C. Cir. 1973), Cert. denied sub nom. D.C. Transit System v. Democratic Central Committee 415 U.S. 935 (1974).

Accounting and Tax Treatment

All ITCs who do not have a separate subsidiary are required to use separate books of accounts for their nonregulated activities. Specific below-the-line regulated accounts, dictated by the FCC in its Fifth Report and Order in CC Docket No. 81-893, must be used to identify costs associated with nonregulated activities. All other accounting procedures established by the FCC for the ITCs in CC Docket No. 81-893 must also be followed.

Sales Option

All terminal equipment may be offered for sale prior to the deregulation deadline. Sales prices must be at or above net book value plus reasonable transaction costs. The Commission will consider on an exception basis approval of sales prices below net book value plus transaction costs for specific items or types of terminal equipment. Sales to separate subsidiaries or to unregulated operations prior to deregulation are prohibited except in special cases as reflected in approved tariffs.

Other

The specialized terminal equipment needed by persons whose hearing, speech, vision, or mobility is impaired will not be deregulated and will continue to be provided on a regulated basis under the existing rates and regulations.

* Issued July 1, 1985

APPENDIX C
FINAL DEREGULATION PLAN

Notice to Subscribers

Notices will be sent as bill inserts six months prior to deregulation and in the last billing before deregulation. The notice must inform the customers of the deregulation of embedded terminal equipment and advise the subscriber of his option for provision of terminal equipment up to the deregulation date and after that time.

Valuation and Transfer Requirements

All embedded terminal equipment, with the exception of CPE needed by the disabled, and associated reserves will be transferred to unregulated operations or to an unregulated affiliate at December 31, 1987, along with any associated deferred taxes and unamortized investment tax credits. The Commission intends to examine two methods of valuation, net book value and the capital budgeting process, as surrogates for the economic value of the embedded base. The equipment will be valued at the larger of the two overall results for each company in order to best meet the balance requirements established in the Democratic Central Committee v. Washington Metro Area Transit Commission 485 F.2d 786(D.C. Cir. 1973), Cert. denied sub nom. D.C. Transit System v. Democratic Central Committee 415 U.S. 935 (1974).

Accounting and Tax Treatment

All ITCs who do not have a separate subsidiary are required to use separate books of accounts for their nonregulated activities. Specific below-the-line regulated accounts, dictated by the FCC in its Fifth Report and Order in CC Docket No. 81-893, must be used to identify costs associated with nonregulated activities. All other accounting procedures established by the FCC for the ITCs in CC Docket No. 81-893 must also be followed.

The proceeds realized from CPE sold under regulation will be treated as gross salvage and credited to the depreciation reserve. The transaction costs associated with the sale of embedded CPE will be treated as cost of removal and charged to depreciation reserve.

Items of station apparatus in inventory at the transfer date will be treated the same as items of station apparatus in service. Items of large PBX equipment in inventory at the deregulation date will be transferred at the net book value at which it is recorded on the books. In addition, any items in

stock that are included in expense accounts will be transferred at their recorded value at that time.

Land and buildings, if any, will be transferred at appraised value. Cost of appraisals will be charged to the regulated operations, Account 675, "Other Expenses," pending transfer of the assets and then transferred to Account 360, "Extraordinary Income Credits," in the case of land and to the depreciation reserve in the case of buildings to offset the gain.

Other supporting assets including motor vehicles, computers, furniture, fixtures, and machinery will be transferred at net book value. Common costs, that is, costs associated with both regulated and nonregulated operations, will be allocated on a fully distributed cost basis and the companies shall keep records to support their allocations.

Sales Option

All terminal equipment may be offered for sale prior to the deregulation deadline. Sales prices must be at or above net book value plus reasonable transaction costs. The Commission will consider on an exception basis approval of sales prices below net book value plus transaction costs for specific items or types of terminal equipment. Sales to separate subsidiaries or to unregulated operations prior to deregulation are prohibited except in special cases as reflected in approved tariffs.

Other

The specialized terminal equipment needed by persons whose hearing, speech, vision, or mobility is impaired will not be deregulated and will continue to be provided on a regulated basis under the existing rates and regulations.

DOCKET NO. P-100, SUB 81

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Deregulation of Embedded Customer Premises Equipment Owned by the Independent Telephone Companies and Tariffed by the State of North Carolina	))))	NOTICE TO ALL THE INDEPENDENT TELEPHONE COMPANIES IN NORTH CAROLINA

BY THE COMMISSION: On August 26, 1985, the Commission issued an Order in Docket No. P-100, Sub 81, entitled "Final Order Establishing Deregulation Plan Certified to the Federal Communications Commission" wherein the Commission stated in Ordering Paragraph No. 3 "That the final deregulation plan shall be deemed approved if the FCC does not notify the North Carolina Utilities Commission otherwise within 90 days after receipt by the FCC."

On November 15, 1985, the Commission received a letter from the FCC, a copy of which is appended hereto as Appendix A, stating that the FCC will not deny the North Carolina plan and that the plan will go into effect 90 days after the FCC filing date of August 28, 1985. Accordingly, it appears that the

Commission's plan to ensure the detariffing of embedded customer premises equipment by December 31, 1987, has been approved and is now in effect.

Additionally, for informational purposes appended hereto as Appendix B is a copy of the FCC letter of September 30, 1985; and appended hereto as Appendix C is a letter from a member of the Commission Staff to the FCC which is pertinent to this matter.

ISSUED BY ORDER OF THE COMMISSION.
This the 27th day of November 1985.

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

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

DOCKET NO. SP-4, SUB 1

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Application of Deep River Hydro for a Certificate of Public Convenience and Necessity, Pursuant to G. S. 62-110.1, Authorizing Saxapahaw Hydro Project on the Haw River	)))))	ORDER GRANTING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY PURSUANT TO G. S. 62-110.1

HEARD IN: County Office Building, Graham, North Carolina on May 9, 1984 and Commission Hearing Room, Second Floor, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina on April 2, 1985

BEFORE: A. Hartwell Campbell, Presiding; and Charles E. Branford and Hugh A. Crigler, Jr., Commissioners

APPEARANCES:

For the Applicant:

Edward S. Finley, Jr., Hunton & Williams, Post Office Box 109, Raleigh, North Carolina 27602
For: Deep River Hydro

For the Public Staff:

Michael L. Ball, Staff Attorney, Public Staff - North Carolina Utilities Commission, Post Office Box 29520, Raleigh, North Carolina 27626-0520
For: The Using and Consuming Public

BY THE COMMISSION: This proceeding was instituted on October 20, 1983, by the filing of an Application by Deep River Hydro (hereinafter Deep River Hydro or Applicant) for a Certificate of Public Convenience and Necessity pursuant to G. S. 62-110.1 to renovate a hydroelectric generating facility at Saxapahaw on the Haw River in Alamance County to be known as the Saxapahaw Hydro Project.

By order of the Commission dated October 26, 1983, Applicant was required to publish notice of the application in the manner required by G. S. 62-82(a). On December 13, 1983, Barbara R. Cristy filed a letter with the Commission in which she lodged a complaint with respect to the Saxapahaw Hydro Project. In response to this letter, the Commission issued an order on January 11, 1984, scheduling a hearing for the purpose of considering the application and the complaint. On January 23, 1984, Barbara R. Cristy filed a letter with the Commission requesting leave to withdraw her complaint. On January 25, 1984, Don Baker, an aquatic habitat specialist with the North Carolina Wildlife Resources Commission, filed a memorandum with the Commission raising essentially the same complaint as the letter of Barbara R. Cristy and requesting the Commission to withhold action on the application.

On January 31, 1984, the Commission issued an order (1) allowing withdrawal of the complaint filed by Barbara R. Cristy and (2) continuing, but

not cancelling, the hearing previously scheduled. The Commission also required the Wildlife Resources Commission to keep the Commission advised of all investigations and recommendations concerning the Saxapahaw Hydro Project. The Commission further provided that it would take further action after receiving the recommendation of the North Carolina Wildlife Resources Commission. On March 21, 1984, a letter signed by Gary Phillips, John M. Jordan and other individuals was filed with the Commission. The letter raised essentially the same complaint as that raised by the memorandum of Don Baker. On April 3, 1984, Don Baker of the North Carolina Wildlife Resources Commission filed a report with the Commission indicating that further study of the water flow situation was needed and that a more detailed report should be filed at a subsequent date.

By Order dated April 10, 1984, the Commission scheduled a hearing for May 9, 1984, for the purpose of considering the application and the report and recommendation of Mr. Baker. On April 27, 1984, Deep River Hydro filed a motion to postpone or limit the scope of the hearing. The Commission issued an Order on May 2, 1984, providing for the May 9, 1984, hearing to be limited to taking of testimony from public witnesses. Appearing at the hearing in Graham on May 9, 1984, were James Crutchfield, Gary Phillips, Kathleen Greno, Christina Lee and John M. Jordan.

On June 7, 1984, Jeffrey A. Andrews, attorney for John M. Jordan, filed a letter with the Commission asking for a temporary order requiring Deep River Hydro to flow a sufficient amount of water over the dam to allow both channels of the river immediately downstream from the dam to maintain a flow of water through its channel beds at all times. On June 25, 1984, the Applicant filed a response, asking that temporary relief be denied or alternatively, that a hearing be held on the request. On June 27, 1984, the Commission issued an Order denying the request for temporary relief.

On October 4, 1984, Don Baker, Aquatic Habitat Specialist, North Carolina Wildlife Resources Commission, filed a report indicating that the Wildlife Resources Commission, the N.C. Division of Water Resources and the United States Fish and Wildlife Services had conducted an investigation and concluded that 10 cfs instantaneous flow should be maintained at all time within the west channel of the Haw River below the Saxapahaw Hydro Project. By letter dated December 28, 1984, Deep River Hydro filed a response to Mr. Baker's report. Mr. Baker filed a further memorandum addressing this response on January 25, 1985. By order dated February 12, 1985, the Commission scheduled a hearing to be conducted on March 20, 1985. By Order dated February 29, 1985, the hearing was rescheduled for April 2, 1985. Appearing at the hearing on April 2, 1985, were Scott L. Van Horn, Fish Biologist with the North Carolina Wildlife Resources Commission, Gary Phillips and John Jordan.

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

FINDINGS OF FACT

1. The Applicant, Deep River Hydro, is a sole proprietorship owned by William H. Lee and Char. A. Lee.

2. The Applicant is a small power producer as defined in G. S. 62-3(27a) and is within the purview of G. S. 62-156.

3. The Applicant seeks a certificate of public convenience and necessity pursuant to G. S. 62-110.1 for a hydroelectric facility to be located at Saxapahaw on the Haw River in Alamance County. This project will be known as the Saxapahaw Hydro Project. All electric power generated at the site will be sold to Duke Power Company, pursuant to the contract containing fifteen year power purchase rates.

4. The Saxapahaw Hydro Project will consist of: (a) an existing dam composed of a concrete gravity overflow spillway, 550 feet long and 29 feet high; (b) an existing reservoir with a surface area of approximately 325 acres; (c) an existing power house containing two turbines and generator units with an installed capacity of 1500 kW; (d) transmission lines and interconnection facilities furnished by Duke Power Company. The average annual generation is expected to be 7×10^6 kWh. Applicant has obtained an exemption from licensing requirements under Part 1 of the Federal Power Act from the Federal Energy Regulatory Commission.

5. The total estimated cost of the Saxapahaw Hydro Project is $1,050,000.

6. The Applicant has completed renovation of the project and the project is presently generating power.

7. Public convenience and necessity require the operation by Applicant of the hydroelectric facility which is the subject of this application, in that such facility will provide Applicant with a generating capacity dependent upon the naturally renewing flow of the Haw River, with no fuel costs to the Applicant, while reducing the reliance of this state upon power generated through the burning of fossil fuels.

8. By agreement between the parties in this case, the certificate of public convenience and necessity granted to the Applicant will contain a condition that Applicant maintain an instantaneous minimum flow of 10 cfs or one-fourth of the inflow above the dam, whichever is less, in the west channel of the Haw River below the project until the west channel rejoins the main channel. The project will continue to operate on a run-of-river basis, such that instantaneous inflow upstream of the dam will approximately equal the total instantaneous flow in all channels downstream of the dam.

DISCUSSION OF EVIDENCE AND CONCLUSIONS

The public convenience and necessity require renovation of the Saxapahaw Hydro Project in that such facility will provide a generating capacity dependent upon the natural flow of the Haw River, with no fuel costs, while reducing reliance of this state upon power generated by the burning of fossil fuels.

The only evidence presented in this case against the unrestricted granting of a certificate of public convenience and necessity consisted of testimony from the North Carolina Wildlife Resources Commission and several owners of land along the west channel of the Haw River immediately downstream from the Saxapahaw Hydro Project. Testimony of the Wildlife Resources Commission

indicated that during certain operating conditions the west channel of the Haw River became dewatered because a natural obstruction separates the east and west channels of the Haw River and the west channel is higher in elevation than the east channel. When the Saxapahaw Hydro Project is in operation, discharges from the turbine are made into the east channel.

Affected landowners likewise expressed concern that the dewatering caused by the operation of the hydro project interfered with the enjoyment of the steam, or in various ways interfered with the ability of such property owners to enjoy the full use and benefits of such property.

After investigation, the North Carolina Wildlife Resources Commission recommended that 10 cfs instantaneous flow be maintained in the west channel of Haw River immediately below the Saxapahaw Hydro Project. The Wildlife Resources Commission also recommended that a "yardstick" gauge be placed in the west channel at a mutually agreeable spot that will allow a monitoring of the stream flow. Deep River Hydro has indicated a willingness to maintain the stream flow recommended by the Wildlife Resources Commission and will install a gauge in accordance with the Wildlife Resources Commission's specifications. The parties to this proceeding have agreed that the certificate of public convenience and necessity should be granted upon the conditions (1) that Applicant maintain an instantaneous minimum flow of 10 cfs or one-fourth of the inflow above the dam, whichever is less, in the west channel of the Haw River below the dam until the west channel rejoins the main channel and (2) that the Applicant install a yardstick gauge as hereinabove described. Although two witnesses expressed a desire to increase the flow to greater than 10 cfs, the parties have agreed that 10 cfs is acceptable, based on the recommendations of the Wildlife Resources Commission and the expert testimony of witness Van Horn.

Based upon the agreement of parties and the Commission's assessment and evaluation of the entire record in this case, the Commission approves the issuance of a certificate of public convenience and necessity conditioned in accordance with the agreement of the parties.

IT IS, THEREFORE, ORDERED as follows:

1. That a certificate of public convenience and necessity, attached hereto as Appendix A, should be, and hereby is, granted to Deep River Hydro for the renovation of the Saxapahaw Hydro Project on the Haw River in Alamance County, subject to the conditions set forth in the present Order and in the certificate; and

2. That the certificate of public convenience and necessity issued herein should be, and hereby is, conditioned upon Deep River Hydro maintaining an instantaneous minimum flow of 10 cfs or one-fourth of the inflow above the dam, whichever is less, in the west channel of the Haw River below the project until the west channel rejoins the main channel and Deep River Hydro's installation of a yardstick gauge to enable monitoring of the stream flow in the west channel.

ISSUED BY ORDER OF THE COMMISSION.
This the 10th day of May 1985.

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

APPENDIX A
STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH

DOCKET NO. SP-4, SUB 1

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION
Know All Men By These Present, That

DEEP RIVER HYDRO

is hereby granted this

Certificate of Public Convenience and Necessity
Pursuant to G. S. 62-110.1

To construct an electric generating facility

located on the Haw River in Alamance County and known
as the Saxapahaw Hydro Project

subject to the reporting requirements of G. S. 62-110.1(f) and also subject to all orders, rules, regulations and conditions as are now or may hereafter be lawfully made by the North Carolina Utilities Commission, specifically including, but not limited to, the conditions set forth in the Commission's Order Granting Certificate of Public Convenience and Necessity issued in this docket on May 10, 1985.

ISSUED BY ORDER OF THE COMMISSION.
This the 10th day of May 1985.

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

DOCKET NO. SP-11

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Application of Carolina Cogeneration Company, Inc., for a Certificate of Public Convenience and Necessity, Pursuant to G.S. 62-110.1) Authorizing Construction of an Electric Power Generating Facility at the Quarry of Martin Marietta Corporation near New Bern, North Carolina	)	ORDER GRANTING CONDITIONAL CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

HEARD IN: Craven County Courthouse, New Bern, North Carolina, December 6, 1984; New Bern Town Hall, New Bern, North Carolina, December 7, 1984; and the Commission Hearing Room, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, December 17, 1984

BEFORE: Commissioner A. Hartwell Campbell, Presiding; and Commissioners Edward B. Hipp and Charles Branford

APPEARANCES:

For the Applicant:

Henry A. Mitchell, Jr., and Julian D. Bobbitt, Jr., Smith, Anderson, Blount, Dorsett, Mitchell & Jernigan, P. O. Box 12807, Raleigh, North Carolina 27605
For: Carolina Cogeneration Company, Inc.

John B. O'Sullivan, Chadbourne, Parke, Whiteside and Wolff, 1101 Vermont Avenue, N.W., Washington, D.C. 20005
For: Carolina Cogeneration Company, Inc.

For the Public Staff:

Michael Ball, Staff Attorney, Public Staff - North Carolina Utilities Commission, P. O. Box 29520, Raleigh, North Carolina 27626-0521
For: The Using and Consuming Public

For the Intervenor:

John D. Runkle, Attorney at Law, P. O. Box 4135, Chapel Hill, North Carolina 27514
For: North Carolina Coastal Federation, Inc., et al.

BY THE COMMISSION: On October 20, 1983, Carolina Cogeneration Company, Inc. (hereinafter Carolina Cogeneration), filed an Application with the North Carolina Utilities Commission seeking a Certificate of Public Convenience and Necessity pursuant to G.S. 62-110.1 for the construction of an electric power cogeneration facility at the mine of Texas Gulf Chemical Company in Aurora, North Carolina.

On October 26, 1983, the Commission issued an Order requiring public notice. Notice was published in the local newspaper as required and no complaints were logged with respect to the application.

On December 8, 1983, the Commission issued a Certificate of Public Convenience and Necessity to Carolina Cogeneration for the cogeneration facility at the mine at Texas Gulf in Aurora.

Carolina Cogeneration entered into a contract with Carolina Power and Light Company for the sale and purchase of electricity from the facility on January 5, 1984. The Commission issued an Order approving the contract on January 24, 1984.

Subsequently, Carolina Cogeneration notified the Commission that it would be building its generating facility at a site other than the Texas Gulf site. By letters dated April 27 and July 19, 1984, Carolina Cogeneration advised the Commission that its facility would be constructed on an 11.2-acre site on the property of Martin Marietta Corporation near New Bern, North Carolina, and that

the facility would be a small power production facility rather than a cogeneration facility.

The Commission issued an Order requiring public notice on July 5, 1984. Public notice was published in the local newspaper as required by the Commission. Complaints or requests for hearing were filed with the Commission. Additionally, the Public Staff--North Carolina Utilities Commission filed a motion requesting a public hearing.

The Commission issued an Order on August 30, 1984, scheduling a hearing for December 6, 1984, at the Craven County Courthouse in New Bern and for December 7, 1984, at the New Bern Town Hall.

The hearing was convened as scheduled on December 6, 1984. After opening statements by the parties, the Public Staff presented testimony from the following public witnesses: Daniel Besse, Charles Ashwood, Jonathan Phillips, H. L. Balance, George Crockett, Raymond M. Staley, Willie Phillips, Anne Brady, Tom Thompson, Reggie Caroon, Clark Calloway, Dallas Ormond, and John Dodge. Carolina Cogeneration presented the testimony of its witnesses Sam J. Esposito, President of Carolina Cogeneration; Lee Hayes, an environmental consultant with Radian Corporation; and Edward Vidt, Technology Manager of the Process Engineering Department of Westinghouse Corporation. The Public Staff presented the testimony of William Flournoy, Jr., and Forrest Westall, both of the North Carolina Department of Natural Resources and Community Development. At the conclusion of the hearing on December 7, 1984, the hearing was continued until December 17, 1984, in Raleigh. At that time, Carolina Cogeneration presented Dr. Roy Ingram, Professor of Geology at the University of North Carolina; and the Intervenors presented the testimony of Charles Daniels of the U.S. Geological Survey, Water Resources Division; and Dr. Michael Corcoran, Executive Vice President of the North Carolina Wildlife Federation.

In addition to the foregoing, there were motions and Orders not specifically mentioned herein which the record will adequately reflect.

Based upon the testimony and the exhibits presented at the hearing and the entire record in this proceeding, the Commission makes the following

FINDINGS OF FACT

1. Carolina Cogeneration is a North Carolina corporation. Its principal owner and president is Sam J. Esposito of Chicago, Illinois. Carolina Cogeneration has qualified as a small power production facility pursuant to the provisions of the Public Utilities Regulatory Policy Act of 1978 (PURPA) and its implementing regulations. Carolina Cogeneration has a 15-year contract with Carolina Power & Light Company for the sale and purchase of electricity generated by Carolina Cogeneration.

2. Carolina Cogeneration proposes to construct an electric power generating facility in Craven County, near New Bern, and it has applied to this Commission for a certificate of public convenience and necessity for such construction. Carolina Cogeneration is subject to the jurisdiction of this Commission pursuant to the provisions of G. S. 62-110.1.

3. The facility which Carolina Cogeneration proposes to construct makes use of an innovative technology by which fuel, primarily peat, is gasified and the gas is combusted to generate electricity. Other fuels, such as peanut hulls or wood chips, could be used.

4. Carolina Cogeneration has an arrangement with White Tail Farms for the supply of peat. White Tail Farms has a lease for a peat mine site in Hyde County. Carolina Cogeneration proposes to barge the peat along the Neuse River from the mine site to the facility site.

5. There is significant concern among local residents and environmental groups as to the potential environmental impacts of the project. There is particular concern as to the potential environmental impacts of the proposed peat mining, especially as to the effect of increased fresh water runoff into adjacent salt water areas on the salt water fish population. These concerns as to environmental impacts should be addressed by the appropriate state and federal agencies, but they are not within the jurisdiction of this Commission.

6. If Carolina Cogeneration can obtain all other necessary state and federal permits, the public convenience and necessity will require construction of the proposed facility. A conditional certificate should be granted.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 1 AND 2

The evidence in support of these findings of fact is in the testimony of witness Esposito and it is uncontested. The Federal Energy Regulatory Commission granted qualifying status to Carolina Cogeneration in Docket QF 84-91-002 on July 19, 1984. Carolina Cogeneration signed a 15-year contract with CP&L on January 5, 1984. The contract was filed with the Commission and approved by Order of January 24, 1984. Carolina Cogeneration proposes to construct its electric power generating facility at a site near New Bern that is owned by the Martin Marietta Corporation, and it has a long-term lease for the site. G.S. 62-110.1 provides that no person shall begin the construction of any facility for the generation of electricity to be directly or indirectly used for the furnishing of public utility service without first obtaining from the Commission a certificate that public convenience and necessity requires, or will require, such construction.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 3

The evidence in support of this finding of fact is in the testimony of witnesses Esposito and Vidt.

The Process Engineering Department of Westinghouse has been working with Carolina Cogeneration in the design of the proposed facility. It has quoted a fixed price for engineering and construction of the facility. The design calls for three feeders to feed fuel into a fluidized bed gasifier, a cylindrical vessel approximately 35 feet tall. Fuel, primarily peat, will be fluidized and gasified at a temperature of 1450 degrees Fahrenheit. The peat gas will be combusted in a gas turbine and the combustion product, exiting through an expander, will drive the compressor to generate electricity. Other fuels, such as waste wood or peanut hulls, could be used; however, since they have lower BTU levels, more fuel would have to be used.

The fluidized bed gasifier will be provided and warranted by Omni Fuel, a subcontractor. Tests have been made on the peat at the White Tail Farms site to enable Omni Fuel to adapt and warrant its wood gasifer for operation on peat. The turbine will be a new 251 Westinghouse gas turbine with a capacity of approximately 44 megawatts. Carolina Cogeneration could bring the total capacity to about 70 megawatts by adding a waste heat boiler and steam turbine for a combined cycle plant, but it does not propose to do that now.

Both fluidized bed gasification and gas turbine technologies have existed for some time, but combining the two technologies with the use of peat is an innovative design. Westinghouse has confidence in its design. It will warrant the facility for 15 years or longer provided operation and maintenance are performed in accordance with its specifications. Westinghouse sees great potential for this innovative technology and is very interested in seeing the technology developed. The Commission is also interested in seeing the value of this new technology explored.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 4

The evidence in support of this finding of fact is in the testimony of witness Esposito.

White Tail Farms is a partnership in which Sam J. Esposito is a general partner and the principal partner. White Tail Farms has an agreement with Carolina Cogeneration to mine peat and to supply peat for Carolina Cogeneration's facility over the life time of the facility. White Tail Farms will contract out the actual mining to Peat Energies Company. White Tail Farms has a lease on a peat mine site owned by John Hancock Life Insurance Company. The lease covers a 40-year period of time, though there are several trigger points during that 40-year term at which certain conditions must be met in order for the lease to continue.

The first step of the mining will involve mixing and grinding up the peat to a depth of about a foot. The peat will then be turned to facilitate drying by the sun, and then folded up into rolls. The rolls will be picked up by cart and collected for transport to the facility site. The mined peat will be barged to the facility site. It is estimated that the facility will burn approximately one barge load of peat, between 800 and 1000 tons per day. A month's supply of peat will be stored at the facility site for emergency purposes. Other than that, the mined peat will be stored at the mine site. Approximately a year's supply of mined peat will be kept in storage.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 5 AND 6

The evidence in support of these findings of fact is in the testimony of the public witnesses and the testimony of witnesses Esposito, Hayes, Ingram, Flournoy, Westall, Daniels, and Cochran.

Numerous public witnesses testified as to their concerns over the potential environmental impacts of Carolina Cogeneration's proposed facility. Some testimony dealt with the increase in barge traffic, and some testimony dealt with the potential impacts of the generating facility itself. The majority of the witnesses expressed concerns over the environmental impacts of the proposed mining of peat for the facility, especially the potential adverse

effects on the salt water fish population. Many of the public witnesses are involved in the fishing industry. The questions and the concerns of all the public witnesses have been carefully weighed by the Commission in its deliberations.

Witness Esposito testified that the runoff from the mine site would be diverted into the Intercoastal Waterway. As to the transportation of peat, he testified that it would be by conventional barge loader with cover, conveyors, and a dust suppression system and that it would be unloaded by a vacuum system assuring an almost dust-free environment. Esposito estimated that the facility will required only one barge load of peat per day. He testified that the generating facility itself would be compact and quiet, with virtually no smoke or smell, and that it would be visually unobtrusive and screened by trees.

Witness Hayes testified that air pollution controls were an integral part of the generating facility design and that, except for one regulated pollutant; all of the air quality impacts of the facility were expected to be insignificant. He testified that the facility would compare favorably with a coal-fired generating facility of comparable size and that there would be no black smoke from the facility. Hayes testified that water discharge from the facility would be very small.

Carolina Cogeneration's witness Ingram testified that the environmental concerns regarding peat mining were either nonexistent, insignificant, or controllable. He recognized fresh water runoff into salt water nursery areas as a problem, but he testified that it could be controlled by a water management plan at the mine site. Witness Westall testified that fresh water runoff was controlled under the National Pollution Discharge Elimination System (NPDES) permit process, which is a federal permit administered by the Department of Natural Resources and Community Development (NRCD) under a delegation agreement with the federal government. Westall testified that White Tail Farms' NPDES permit had been amended on September 25, 1984, to require approval and implementation of a water management plan before mining operations begin. Carolina Cogeneration has not yet submitted such a plan for approval. Westall testified that the amended NPDES permit was a stringent one and that the mining site might actually be improved by the implementation of a water management plan since the site has already been cleared and drained during previous agricultural use and fresh water runoff is now occurring on a uncontrolled basis.

Witness Flourney identified numerous permits administered through NRCD that are or may be required of Carolina Cogeneration. In addition to the NPDES permit for the mine site, an application for an NPDES permit for the facility site has been submitted and such a permit may be required for Carolina Cogeneration's barge facilities. A 401 certification, dealing with water quality under the National Clean Water Act, is triggered by a disturbance of wetlands or a discharge into public waters, and such a certification will probably be required for this project. Discussions are underway between Carolina Cogeneration and the Division of Coastal Management to determine whether a permit will be necessary under the Coastal Area Management Act. A PSD (Prevention of Significant Deterioration) permit is an air quality permit required by federal law but administered by the State. Carolina Cogeneration will need such a permit for the mining site and for the facility site, and perhaps for its barge facility. Carolina Cogeneration has applied for and has

received a water use permit for the mine site and a mining permit as well as the NPDES permit for the mine site.

We recognize the concerns expressed by the public witnesses and believe that they are entitled to have their voice heard by the appropriate state agency. However, the authority of the Utilities Commission to deal with environmental concerns is quite limited. The North Carolina Court of Appeals, in addressing a certificate proceeding such as the present one, has written that "the purpose of requiring a certificate of public convenience and necessity before a generating facility can be built is to prevent costly over-building. Environmental concerns are generally left to other regulatory agencies, except as they affect the cost and efficiency of the proposed generating facility." 37 N.C. App. 138, 141 (1978). Thus, only environmental concerns that affect the cost and efficiency of a proposed generating facility are within the jurisdiction of this Commission. By the term "cost," the Court meant the cost to the applicant of the generating facility, not indirect costs to society such as those resulting from deterioration of the environment. Such indirect costs must be weighed by other regulatory agencies. We do not question the importance of the environmental concerns expressed at our hearing. These concerns should be considered by the appropriate bodies. We merely recognize that, in light of the Court of Appeals decision, these concerns are not within our jurisdiction. Although environmental concerns are not properly before us, we have assembled a substantial record of these concerns by our hearing. We will make this record available to any of our sister agencies for use by them in considering other applications of Carolina Cogeneration.

The Coastal Federation attempted to bring the environmental concerns voiced at this hearing within the scope of the Commission's jurisdiction by arguing that Carolina Cogeneration's proposed generating facility will not be reliable since it will not be able to comply with the regulatory requirements that will be imposed upon it in a cost effective manner. The evidence tends to show the following: The price that Carolina Cogeneration will be paid for its electricity has been fixed by a 15-year contract. It averages 6.7¢ per kWh A fixed price has been quoted for engineering and construction costs. The cost of fuel over the life of the contract is estimated at 3.5¢ per kWh Operating and maintenance costs, including regulatory costs, are estimated to be reasonable and not to threaten the economic viability of the project. Witness Esposito estimated that the project will produce a return on investment in excess of 12% and will return the the initial investment in approximately eight years. Further, the facility will have additional potential capacity at no more fuel costs. Thus, the evidence does not support the Coastal Federation's argument. Still, the Commission cannot predict what regulatory requirements (and resulting costs) may be imposed by other agencies. Some agencies may deny permits necessary for construction or operation of the proposed facility. The Commission believes the resolution is for us to issue a conditional certificate.

The certificate of public convenience and necessity that the Commission issues to Carolina Cogeneration will be conditioned on Carolina Cogeneration securing all other regulatory authorizations and permits necessary for its proposed mining operations and the construction and operation of its proposed generating facility. Carolina Cogeneration must file with this Commission a copy of each such authorization or permit or amendment thereto upon its securing same. Carolina Cogeneration is directed to file a copy of its water

management plan with the Commission as well as a copy of the NRCD action on the plan. The certificate issued herein is subject to being revoked if any other necessary state or federal permit is not secured and that fact is brought to the attention of the Commission and the Commission finds that as a result thereof the public convenience and necessity no longer requires, or will require, construction of this facility. The present certificate is also subject to the conditions set forth in Commission Rule R1-37(d), including the condition that Carolina Cogeneration begin construction within five years after issuance, submit annual reports as required by G.S. 62-110.1(f), and advise the Commission of any plans to transfer or assign the certificate or of any changes in the factors set forth in Rule R-137(b)(1).

IT IS, THEREFORE, ORDERED as follows:

1. That a conditional Certificate of Public Convenience and Necessity, attached as Appendix A hereto, should be, and the same hereby, is granted to Carolina Cogeneration for the construction of an electric power generating facility at the quarry of Martin Marietta Corporation near New Bern, subject to the conditions set forth in the present Order and in the Certificate;

2. That Carolina Cogeneration shall, promptly upon securing same, file with the Commission and serve upon the parties of record to this proceeding a copy of all regulatory authorizations or permits or amendments thereto from any regulatory authority dealing with its proposed peat mining operations or with the construction or operation of its proposed generating facility or barge facilities; and

3. That Carolina Cogeneration file with the Commission and serve upon all parties of record herein a copy of the water management plan required by NRCD pursuant to its NPDES permit of August 30, 1982, and a copy of the NRCD action thereon.

ISSUED BY ORDER OF THE COMMISSION.
This the 6th day of March 1985.

(SEAL)

NORTH CAROLINA UTILITIES COMMISSION
Sandra J. Webster, Chief Clerk

APPENDIX A
STATE OF NORTH CAROLINA UTILITIES COMMISSION
RALEIGH
DOCKET NO. SP-11

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION
Know All Men By These Presents, That
CAROLINA COGENERATION COMPANY
is hereby granted this
CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY
PURSUANT TO G.S. 62-110.1
to construct an electric generating facility located
At the Quarry of Martin Marietta Corporation
near New Bern, North Carolina

subject to the reporting requirements of G.S. 62-110.1(f) and also subject to all orders, rules, regulations and conditions as are now or may hereafter be lawfully made by the North Carolina Utilities Commission, specifically including, but not limited to, the conditions set forth in the Commission's Order Granting Conditional Certificate of Public Convenience and Necessity issued in this Docket on March 6, 1985.

ISSUED BY ORDER OF THE COMMISSION.
This the 6th day of March 1985.

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

DOCKET NO. SP-11

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Application of Carolina Cogeneration, Inc., for a Certificate of Public Convenience and Necessity, Pursuant to G. S. 62-110.1 Authorizing Construction of an Electric Power Generating Facility at the Quarry of Martin Marietta Corporation near New Bern, North Carolina	)	ORDER OVERRULING EXCEPTION

BY THE COMMISSION: On March 6, 1985, the North Carolina Utilities Commission issued an Order Granting Conditional Certificate of Public Convenience and Necessity in this docket. On April 4, 1985, Intervenors North Carolina Coastal Federation, Inc. et al., (hereinafter Coastal Federation) filed exception and notice of appeal pursuant to G. S. 62-90. By the same document, the Coastal Federation moved for reconsideration by the Commission pursuant to G. S. 62-80 and G. S. 62-90(c).

Based upon a careful consideration of the exception, the Commission concludes that Coastal Federation's exception should be overruled and denied.

IT IS, THEREFORE, ORDERED that the exception filed herein on April 4, 1985, by Coastal Federation should be, and the same hereby is, overruled and denied.

ISSUED BY ORDER OF THE COMMISSION.
This the 30th day of April 1985.

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

DOCKET NO. EC-32, SUB 39

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Andrew Benjamin Lloyd, Jr., d/b/a Lloyd's Dairy, Complainant	)	
vs.	)	ORDER OVERRULING EXCEPTIONS AND AFFIRMING RECOMMENDED ORDER
Piedmont Electric Membership Corporation and Duke Power Company, Respondents	)	

HEARD IN: Commission Hearing Room 217, Dobbs Building, 430 N. Salisbury Street, Raleigh, North Carolina on Monday, January 14, 1985, at 2:15 p.m.

BEFORE: Chairman Robert K. Koger; Presiding, and Commissioners A. Hartwell Campbell, Ruth E. Cook and Hugh A. Crigler, Jr.

APPEARANCES:

For the Complainant:

Edward S. Finley, Jr., Hunton & Williams, Post Office Box 109, Raleigh, North Carolina 27602
Appearing for: Andrew Benjamin Lloyd, Jr.

For the Respondent:

William T Crisp, Crisp, Davis, Schwentker & Page, P.O. Box 751, Raleigh, North Carolina 27602
Appearing for: Piedmont Electric Membership Corporation

BY THE COMMISSION: On October 29, 1984, Hearing Examiner Sammy R. Kirby entered a Recommended Order in this docket dismissing the complaint of Andrew Benjamin Lloyd, Jr. On November 7, 1984, Hearing Examiner Kirby entered a Corrected Recommended Order making certain clerical corrections and clarifications but leaving the reasoning and the decision of the Recommended Order unaffected.

On November 27, 1984, Complainant Lloyd timely filed exceptions and requested oral argument before the Commission on the exceptions.

Oral argument on the exceptions was scheduled for January 14, 1985, at 2:15 p.m. and was held at that time. Counsel for the Complainant Lloyd and the Respondent Piedmont filed briefs and presented oral argument.

Based upon a careful consideration of the entire record in this proceeding, including the exceptions and the briefs and oral argument relating to the exceptions, the Commission is of the opinion, finds and concludes that

all of the findings, conclusions and decretal paragraphs contained in the Recommended Order of November 7, 1984, are fully supported by the record and should be affirmed. Accordingly, the Commission furthers finds and concludes that the exceptions filed by the Complainant Lloyd on November 27, 1984, should be overruled and denied.

IT IS, THEREFORE, ORDERED as follows:

1. That each of the exceptions filed herein on November 27, 1984, by the Complainant Lloyd should be, and each is hereby, overruled and denied; and

2. That the Recommended Order entered in this docket on November 7, 1984, should be, and the same hereby is, affirmed.

ISSUED BY ORDER OF THE COMMISSION.
This the 22nd day of January 1985.

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

DOCKET NO. E-2, SUB 400

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Application of Carolina Power & Light Company for Authority to Enter into Expanded Pooled Inventory Management System	))))	ORDER GRANTING PARTICIPATION IN POOLED INVENTORY MANAGEMENT SYSTEM

BY THE COMMISSION: This cause comes before the Commission upon an application by Carolina Power & Light Company (CP&L, Company or Applicant) filed on November 27, 1984, wherein authority of the Commission is sought as follows:

> To participate in an expanded version of PIMS with other utilities having equipment which is interchangeable with equipment at Applicant's Nuclear Steam Electric Plants in a Pooled Inventory Management Service (PIM) for the purpose of having immediate access to critical spare parts and equipment meeting Nuclear Regulatory Commission (NRC) quality assurance requirements at minimum inventory cost.

Upon consideration of the application and the entire record in this docket, the Commission makes the following

FINDINGS OF FACT

1. The Applicant is a corporation organized and existing under the laws of the State of North Carolina, with its principal office at 411 Fayetteville Street, Raleigh, North Carolina, and is a public utility operating, transmitting, delivering, and furnishing electricity to the public for compensation.

2. The electric generating capacity of the Applicant includes two 790,000-kW nuclear fueled generating units at its Brunswick steam electric plant near Southport, North Carolina, and a 665,000-kW unit at its Robinson nuclear plant near Hartsville, South Carolina. The Applicant also intends to place a 900,000-kW unit into service at its Shearon Harris Plant near New Hill, North Carolina.

3. By Order of the Commission in Docket No. E-2, Sub 400, dated November 27, 1980, the Applicant was allowed to participate in Pooled Inventory Management Service (PIMS). Initial PIMS participation was limited to the Applicant's two Brunswick steam electric plants, which are boiling water reactors (BWR). By this application CP&L is proposing to include its Robinson and Harris pressurized water reactors (PWR) in a similar program now to be renamed PIM.

4. The Applicant plans to participate with other utilities having equipment which is interchangeable with equipment at the Applicant's above listed nuclear generating facilities in a PIM for the purpose of having immediate access to critical spare parts and equipment meeting Nuclear

Regulatory Commission (NRC) quality assurance requirements at minimum inventory cost by the Applicant.

5. The utility participants have established through PIMS an inventory of interchangeable, highly valued parts and equipment critical to unit availability which have long procurement lead times. Sufficient quantities of each item of interchangeable equipment are proposed to be purchased to provide reasonable assurance that an item of equipment will be in inventory in the event that the item of equipment is required by a participant. By sharing the financial cost of the carrying charges on the equipment inventory and of the management's services associated with the administration of PIM, the participants hope to achieve maximum protection against the serious impact of a forced outage due to failure of certain equipment at a substantial cost savings to the individual participants.

6. PIM consists of the participants, Pooled Equipment Inventory Company (PEICO), General Electric Company, and Morgan Guaranty Trust Company of New York (Morgan). PEICO, a nonprofit membership corporation, purchases and owns the equipment in PIM inventory. PEICO borrowed the funds required for the purchase of the inventory equipment from Morgan. The carrying charges on the PEICO indebtedness to Morgan will be shared by the participants in accordance with a formula based upon the cost of the particular items of equipment and each individual participant's right to draw upon the various items of equipment in inventory. General Electric Company will provide the PIM management services that PEICO is obligated to furnish to the participants. These services consist of program administration, interchangeability, engineering, equipment procurement with associated quality assurance and maintenance, storage, and insurance. In the event PIM terminates, the participants will be required to satisfy the PEICO indebtedness to Morgan for the equipment in inventory at the time of termination. The participants will in turn own the equipment.

7. Since the Applicant and other participants have joined PIMS, numerous items of equipment have been utilized. The Applicant recently withdrew from storage one item of equipment costing $80,000 for use at the Brunswick steam electric plant. The Applicant estimates the Brunswick Unit No. 2 outage could have been prolonged approximately 66 days without PIMS equipment availability.

8. PIMS was originally developed for reactors manufactured by General Electric Company. The Applicant and other participants have determined PIMS is beneficial for reactors supplied by other manufacturers also. Accordingly, participants have made several program alterations to allow all nuclear utilities to share in access to interchangeable equipment. These include additional engineering and procurement services contracts with General Electric and the other reactor manufacturers and a new program management contract with Southern Electric International, Inc., which will allow reactor manufacturers to supply equipment and services in a competitive manner. The membership company, BEICO, has been renamed Pooled Equipment Inventory Company (PEICO) and the program (PIMS) has been renamed Pooled Inventory Management (PIM).

9. The Applicant desires to place its Robinson and Harris nuclear plants in PIM along with other utilities owning similar reactors. Many utilities with nuclear programs have joined PIM or signed letters of intent to join. The Applicant will participate to the extent it deems necessary for those items of

equipment which are essential for continued operation of the Robinson and Harris nuclear units.

10. The Applicant has compared participation in the PIM program with direct purchase of the equipment covered by the program and determined that the cost of participation in PIM would be less than one-half of the cost of direct purchase, based on a 25-year present value of revenue requirement for each option. This economic evaluation was based on the assumption that the Applicant would participate in those items of equipment which are interchangeable with equipment at its nuclear plants. The economic evaluation did not assign any value to the increase in plant availability gained from participating in PIM as compared to the cost of an extended outage due to failed equipment that could not be readily replaced. A PIM feasibility study conducted by General Electric Company concluded that the annual cost per unit for participation in PIM would be less than one percent (1%) of the potential cost of an extended outage if PIM were not an established alternative.

CONCLUSIONS

From a review and study of the application, the supporting data and other information in the Commission's files, the Commission is of the opinion and concludes that the transactions herein proposed are:

1. For a lawful object within the corporate purposes of the petitioner Company;

2. Compatible with the public interest;

3. Necessary and appropriate for and consistent with the proper performance by the petitioner Company of its service to the public as a utility and will not impair its ability to perform that service; and

4. Reasonably necessary and appropriate for such purposes.

IT IS, THEREFORE, ORDERED that Carolina Power & Light Company be, and is hereby, authorized, empowered, and permitted under the terms and conditions set forth in the application to participate with other utilities having equipment which is interchangeable with equipment at the Applicant's Brunswick, Harris, and Robinson steam electric plants in a Pooled Inventory Management Service (PIM) for the purpose of having immediate access to critical spare parts and equipment meeting Nuclear Regulatory Commission (NRC) quality assurance requirements at minimum inventory cost. The rate-making treatment to be accorded the costs associated with participation in PIM shall be subject to determination in CP&L's next general rate case.

IT IS FURTHER ORDERED that Carolina Power & Light Company shall continue to furnish the Commission on an annual calendar year basis a report of its participation experience in PIM. The report is to include all actual costs associated with membership for the reporting period, any items purchased and the cost of each, the estimated cost savings, if any, and the reduction in downtime or outages because of membership in PIM. At the end of five years, the Company may request a review by the Commission of the future status of the reporting requirement as to whether it should be continued, modified, or

terminated. Ten copies of the report are to be filed with the Chief Clerk in Docket No. E-2, Sub 400.

ISSUED BY ORDER OF THE COMMISSION.
This the 11th day of March 1985.

NORTH CAROLINA UTILITIES COMMISSION
Sandra J. Webster, Chief Clerk

(SEAL)

DOCKET NO. E-2, SUB 391
DOCKET NO. E-2, SUB 402
DOCKET NO. E-2, SUB 411
DOCKET NO. E-2, SUB 416
DOCKET NO. E-2, SUB 446
(REMANDED)

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

Docket Nos. E-2, Sub 391, and E-2, Sub 416
(REMANDED)

In the Matter of
Applications by Carolina Power & Light Company)
for Authority to Adjust and Increase Its Rates)
and Charges)
)

Docket Nos. E-2, Sub 402; E-2, Sub 411; and)
E-2, SUB 446) RECOMMENDED ORDER
(REMANDED)) ON REMAND
)
In the Matter of)
Applications by Carolina Power & Light Company)
for Authority to Adjust Its Electric Rates and)
Charges Based Solely Upon Changes in Cost of)
Fuel)

HEARD IN: Commission Hearing Room 217, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on February 19-22, February 26-March 1, 1985, and May 28-31, 1985

BEFORE: Commissioner Sarah Lindsay Tate, Presiding; and Commissioners Charles E. Branford and Hugh A. Crigler, Jr. (Commissioner Crigler resigned from the Commission effective May 10, 1985.)

APPEARANCES:

For Carolina Power & Light Company:

Richard E. Jones, Vice President and Senior Counsel, and Robert W. Kaylor, Associate General Counsel, Carolina Power & Light Company, Post Office Box 1551, Raleigh, North Carolina 27602

For the Public Staff:

G. Clark Crampton and Gisele L. Rankin, Staff Attorneys, Public Staff - North Carolina Utilities Commission, Post Office Box 29520, Raleigh, North Carolina 27626-0520
For: The Using and Consuming Public

For the Attorney General:

Karen E. Long, Assistant Attorney General, North Carolina Department of Justice, Post Office Box 629, Raleigh, North Carolina 27602
For: The Using and Consuming Public

For the Intervenors:

Thomas R. Eller, Jr., Attorney at Law, Suite 205, Crabtree Center, 4600 Marriott Drive, Raleigh, North Carolina 27612
and
Sam J. Ervin, IV, Byrd, Byrd, Ervin, Blanton, Whisnant & McMahon, Attorneys at Law, Post Office Drawer 1269, Morganton, North Carolina 28655
For: Carolina Utility Customers Association, Inc.

M. Travis Payne, Edelstein, Payne & Jordan, Attorneys at Law, Post Office Box 12607, Raleigh, North Carolina 27605
For: Kudzu Alliance

BRANFORD, HEARING COMMISSIONER[1]: By opinions filed September 7, 1983, September 20, 1983, and October 18, 1983, the North Carolina Supreme Court and the North Carolina Court of Appeals remanded a number of cases involving the manner in which fuel expenses had been established by the North Carolina Utilities Commission in the cases which were the subject of the appeals giving rise to those court decisions.

The court decisions in question involve a number of Commission decisions in different dockets and involve, in varying degrees, all three of the major electric utilities operating in this State. Based on a perceived commonality of the issues on remand and other reasons, the North Carolina Textile Manufacturers Association (NCTMA), the Attorney General of North Carolina, Great Lakes Carbon Corporation (Great Lakes), the Kudzu Alliance, and the Conservation Council of North Carolina sought consolidation of all the remanded cases by motion filed December 5, 1983. On December 13, 1983, December 20, 1983, and January 9, 1984, respectively, Carolina Power & Light Company (CP&L or Company), Duke Power Company (Duke), and Virginia Electric and Power Company (Vepco) filed responses in opposition to the above-described joint motion.

On January 9, 1984, the Public Staff filed its response requesting the Commission to initially order a prehearing conference to be attended by all of the parties originally involved in each of the remanded dockets for the purpose of establishing the dockets and test periods to be reopened, settling the issue of standing, identifying the legal issues, and receiving proposals with regard to the appropriate procedures to be followed in further proceedings.

---

1 Commissioner Tate abstains from the recommended order entered in these dockets on remand by Commissioner Branford.

The Commission, by Order dated February 1, 1984, scheduled a pretrial conference for the above-listed purposes and required interested parties to file responses by February 27, 1984. Responses were timely filed by all interested parties and the conference came on as scheduled. All parties were represented by counsel with the exception of the Conservation Council.

On March 22, 1984, the Commission issued an Order denying the joint motion for consolidated proceeding and ruling that separate proceedings would be held for each company; finding that the Attorney General, the Public Staff, and any party, who was a party to any of the original proceedings as now consolidated for each company, had standing to participate in the separate proceedings; requesting proposed procedural orders; and allowing further briefs, memoranda, and reply briefs to be filed in accordance with the guidelines contained therein.

Proposed orders, briefs, memoranda, and reply briefs and memoranda were filed by the various parties during April and May 1984, and on May 30, 1984, the Commission issued its Order Scheduling Hearing and Establishing Procedure. Under that Order, CP&L, the utility with which the Commission is specifically concerned in this Order, was required to file its testimony and exhibits by September 11, 1984. Intervenor testimony and exhibits were due November 13, 1984, and the hearing was set for December 4, 1984.

CP&L filed its testimony and exhibits on September 11, 1984, as directed by the Commission. On October 16, 1984, the Attorney General and Carolina Utility Customers Association, Inc. (C.U.C.A.), the successor organization to NCTMA, filed a motion to require CP&L to produce certain documents and data. On October 23, 1984, CP&L filed an objection to the data request, which the Commission ruled on by Order dated October 26, 1984.

On November 6, 1984, and November 7, 1984, respectively, C.U.C.A. and the Attorney General moved to extend the time for filing intervenor testimony and also to reschedule the hearing date. CP&L objected by pleading filed November 9, 1984. The Commission, by Order dated November 15, 1984, rescheduled the hearing for February 5, 1985.

The testimony of Wells Eddleman on behalf of Kudzu Alliance was filed on December 14, 1984.

On December 17, 1984, the testimony and exhibits of Dr. John W. Wilson were filed on behalf of C.U.C.A.

On December 28, 1984, pursuant to an extension of time granted December 17, 1984, the Public Staff filed the testimony of Thomas S. Lam.

On January 11, 1985, the Commission issued an Order scheduling a prehearing conference for January 25, 1985.

On January 18, 1985, the Public Staff filed Revised and Supplemental Testimony of Thomas S. Lam.

On January 23, 1985, C.U.C.A. filed a motion to strike certain portions of the testimony of CP&L witness David R. Nevil and Public Staff witness Thomas S. Lam.

On January 24, 1985, CP&L filed Supplemental Testimony of David R. Nevil.

On January 25, 1985, the Attorney General filed a motion to strike certain portions of the testimony of David R. Nevil and Thomas S. Lam.

On January 29, 1985, Supplemental Testimony and Exhibits of Dr. John W. Wilson were filed on behalf of C.U.C.A.

On January 30, 1985, the Commission issued its Pre-Trial Order, resolving questions of judicial notice, order of witnesses, and other preliminary issues raised at the prehearing conference held January 25, 1985.

On February 1, 1985, the Public Staff moved to withdraw its testimony and to be allowed to refile on February 8, 1985, and for its witness or witnesses to be called to testify last.

Prior to and during the course of the hearings, various other procedural and discovery motions were made and ruled upon, all of which are a matter of record.

At the hearing, which came on as scheduled on February 4, 1985, various procedural issues were argued and the Attorney General moved for a continuance, in which the Public Staff and C.U.C.A. joined, on the ground that both the Public Staff and the Company were in the process of revising their positions. The Commission ruled from the bench that the hearing would be continued to February 19, 1985, with revised testimony due no later than February 8, 1985, with supplemental testimony in response being due on February 15, 1985.

The additional supplemental testimony and exhibits of David R. Nevil on behalf of CP&L were filed February 5, 1985.

On February 8, 1985, the Public Staff filed the testimony and exhibits of Thomas S. Lam and Candace A. Paton.

On February 15, 1985, Supplemental Testimony of Wells Eddleman was filed on behalf of Kudzu Alliance, and Updated Testimony and Exhibits of Dr. John W. Wilson were filed on behalf of C.U.C.A.

On February 18, 1985, C.U.C.A. filed a renewal of its motion to strike certain testimony.

The case came on for hearing as rescheduled on February 19, 1985, for the purposes of taking testimony and hearing oral argument on the motions to strike. By ruling from the bench, the Commission deferred ruling on the motions to strike.

CP&L presented the testimony and exhibits of the following witnesses: Jerry W. Kirk, General Manager for CP&L's Systems Operations Department; L. L. Yarger, Manager of Fossil Fuel, Fuel Department of CP&L; Ronnie M. Coats, Assistant to the Group Executive, Fossil Generation and Power Transmission Group; and David R. Nevil, Manager - Rates Development and Administration in the Rates and Services Practices Department of CP&L.

The Public Staff presented the testimony and exhibits of Thomas S. Lam, Engineer with the Public Staff Electric Division, and Candace A. Paton, Staff Accountant with the Public Staff Accounting Division.

The Intervenor Kudzu Alliance presented the testimony and exhibits of Wells Eddleman.

The Intervenor Carolina Utility Customers Association, Inc., presented the testimony and exhibits of Dr. John W. Wilson, President of J. W. Wilson & Associates, Inc.

The parties filed briefs and proposed orders on April 25, 1985. Thereafter, on May 2, 1985, the Commission issued Order Requiring Additional Data in this proceeding. The Order required Carolina Power & Light Company to provide the following information and data:

> "1. That Carolina Power & Light Company shall calculate and file with the Chief Clerk of the Commission the net cumulative level of under or over collection of fuel costs, before and after inclusion of interest charges during the time period(s) in question, that would have occurred based upon the final methodology advocated by Carolina Power & Light Company witness Nevil at the time of hearings on remand with respect to the matters captioned hereinabove; provided, however, that such methodology shall be modified to reflect utilization of nuclear capacity factors based upon average actual historical lifetime operating experience. An individual average shall be calculated for each general rate case reopened. The time period over which each average is to be calculated shall end so as to coincide with the end of the test year utilized by the Commission in each of the general rate case dockets reopened, respectively."

The Order also required Carolina Power & Light Company to provide 31 copies of summaries of the data requested and seven (7) copies of all workpapers reflecting the technical data and methodology developed and used in complying with this Order.

By Order of May 6, 1985, the Commission granted CP&L to and including May 7, 1985, to file the information and data requested by its May 2, 1985, Order.

On May 7, 1985, Carolina Power & Light Company filed the required copies of the information required by the Commission Order of May 2, 1985. CP&L stated in its cover letter as follows:

> "The recalculation produces a net cumulative undercollection of $4,100,877 before interest and an overcollection of $1,512,523 after inclusion of interest of 10% compounded monthly."

On May 8, 1985, Carolina Utility Customers Association, Inc., filed Objection and Motion to Strike or Reopen Hearings and Record; the Attorney General filed Motion to Strike or in the Alternative Motion for Additional Hearing; the Public Staff filed Motion to Strike or, Alternatively, to Reopen Hearing; and the Kudzu Alliance filed Objection to Order Requiring Additional Data, and Request that Record Be Reopened and a Hearing Set. In these

objections and motions, the four intervenors objected to the Commission Order of May 2, 1985, requiring the data from CP&L. The intervenors moved to strike the information and data that were filed by CP&L on May 7, 1985. In the alternative, the intervenors requested that the Commission, prior to the entry of any order in this proceeding, reopen the hearing and record therein to afford the parties an opportunity to cross-examine on the information and data filed by CP&L or to produce evidence with respect thereto.

On May 10, 1985, the Commission issued an Order reopening the hearing and record in this proceeding for the sole and limited purpose of allowing the parties to cross-examine the response filed by CP&L on May 7, 1985, including the workpapers, in compliance with the Commission Order of May 2, 1985, and to present evidence with respect to such response. The date of hearing was Tuesday, May 28, 1985.

Commissioner Crigler resigned from the Commission effective May 10, 1985.

The reopened hearing was held as scheduled beginning on Tuesday, May 28, 1985, at which time CP&L presented the testimony and exhibits of David R. Nevil. The Public Staff presented the testimony and exhibits of Candace A. Paton, and the Carolina Utility Customers Association, Inc., presented the testimony of Dr. Charles E. Johnson. The parties presented oral argument at the conclusion of the reopened hearing.

Based upon the appellate court decisions as interpreted by the Commission, the testimony and exhibits received into evidence or judicially noticed at the hearings, and the record as a whole, including the records in the remanded proceedings and in the reopened proceedings when originally heard, the Commission now makes the following

FINDINGS OF FACT

1. Carolina Power & Light Company 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.

3. The following table sets forth certain relevant information with respect to each of the two CP&L general rate cases and each of the three fuel adjustment clause proceedings held pursuant to G. S. 62-134(e) which the appellate courts have recently remanded to the Commission:

a. In Column 1, the docket number of the original proceeding before the Commission and brief citation of the appellate court decision pursuant to which the case was remanded;

b. In Column 2, the period during which the rates established in the proceeding were actually in effect;

c. In Column 3, the type of proceeding; i.e., whether it was a general rate case or a fuel adjustment clause proceeding held pursuant to G.S. 62-134(e); and

d. In Column 4, the test period which was used in the proceeding.

Col. 1	Col. 2	Col. 3	Col. 4
Dkt. E-2, Sub 402 (309 N.C. 195)	12/01/80 - 3/31/81	Fuel Clause	5/80 - 8/80
Dkt. E-2, Sub 391 (309 N.C. 238)	12/11/80 - 12/14/81	General Rate Case	10/78 - 9/79
Dkt. E-2, Sub 411 (309 N.C. 195)	4/01/81 - 7/31/81	Fuel Clause	9/80 - 12/80
Dkt. E-2, Sub 416 (64 N.C. App. 609)	12/15/81 - 9/23/82	General Rate Case	6/80 - 5/81
Dkt. E-2, Sub 446 (64 N.C. App. 183)	4/01/82 - 7/31/82	Fuel Clause	9/81 - 12/81

4. It is necessary and appropriate to reopen Docket No. E-2, Sub 366, CP&L's general rate case which immediately preceded its remand general rate case Docket No. E-2, Sub 391, for the limited purpose of ascertaining the base fuel rate to which an increment or decrement should have been added in remand Docket No. E-2, Sub 402, and in order to determine the fuel revenues which should have resulted from such properly established fuel adjustment clause rate for the period December 1, 1980, through December 10, 1980.

5. It is necessary and appropriate to reopen three CP&L fuel adjustment clause proceedings which were held pursuant to G.S. 62-134(e), but which were not appealed, in order to determine the rates which should have properly been established therein and the fuel revenues which should properly have been collected pursuant to such properly established rates. Those three fuel adjustment clause proceedings are Docket Nos. E-2, Sub 420; E-2, Sub 434; and E-2, Sub 452. The rates which were established in those three proceedings were in effect and collected for various periods between December 1, 1980, and September 23, 1982, the earliest and latest dates on which the rates established in any of the five cases which were remanded by the appellate courts were in effect. Thus, in order to determine the fuel rates which should properly have been established in the five cases which were remanded by the appellate courts and the fuel revenues which should have resulted therefrom, it is also necessary and appropriate to reopen the three fuel adjustment clause proceedings listed above.

6. The following table sets forth certain pertinent information with respect to each of the five proceedings which were remanded by the appellate courts and the additional four proceedings which must be reopened for the reasons set forth in findings of fact 4 and 5 above:

a. In Column 1, the docket number of the original proceeding before the Commission;

b. In Column 2, the type proceeding; i.e., whether a general rate case or a G.S. 62-134(e) fuel clause proceeding;

c. In Column 3, the period during which the rates established in the proceeding were actually in effect; and

d. In Column 4, the period during which the fuel rates which should have been established in the proceeding should have been in effect, as such period relates to this remand proceeding.

Col. 1	Col. 2	Col. 3	Col. 4
E-2, Sub 366	General Rate Case	4/01/80 - 12/10/80	12/01/80 - 12/10/80
E-2, Sub 402	Fuel Clause	12/01/80 - 3/31/81	12/01/80 - 12/10/80
E-2, Sub 391	General Rate Case	12/11/80 - 12/14/81	12/11/80 - 12/14/81
E-2, Sub 411	Fuel Clause	4/01/81 - 7/31/81	4/01/81 - 7/31/81
E-2, Sub 420	Fuel Clause	8/01/81 - 11/20/81	8/01/81 - 11/30/81
E-2, Sub 434	Fuel Clause	12/01/81 - 3/31/82	12/01/81 - 12/14/81
E-2, Sub 416	General Rate Case	12/15/81 - 9/23/82	12/15/81 - 9/23/82
E-2, Sub 446	Fuel Clause	4/01/82 - 7/31/82	4/01/82 - 7/31/82
E-2, Sub 452	Fuel Clause	8/01/82 - 9/23/82	8/01/82 - 9/23/82

7. During the period from December 1, 1980, through September 23, 1982, CP&L charged various amounts for fuel on a cents per kilowatt-hour (kWh) basis for North Carolina retail kWh sales. Those amounts which were in fact charged by CP&L during that period for fuel were those which were established in various fuel adjustment clause proceedings pursuant to G.S. 62-134(e) or those which, having been established in such a G.S. 62-134(e) proceeding, were adopted by the Commission in a general rate case proceeding. Specifically, CP&L charged the amounts, in cents per kWh, for each North Carolina retail kWh sold during the subperiods set forth in the table which follows. The docket numbers of the G.S. 62-134(e) proceedings or general rate cases in which each of those cents per kWh charges for fuel was established by the Commission are also set forth in the following table:

Subperiod	Charge per kWh in cents per kWh for fuel	Docket Number
12/01/80 - 12/10/80	1.498	E-2, Sub 402
12/11/80 - 3/31/81	1.498	E-2, Sub 402 rate (as adopted in general rate case Order in E-2, Sub 391)
4/01/81 - 7/31/81	1.682	E-2, Sub 411
8/01/81 - 11/30/81	1.205	E-2, Sub 420
12/01/81 - 12/14/81	1.462	E-2, Sub 434
12/15/81 - 3/31/82	1.462	E-2, Sub 434 rate (as adopted in general rate case Order in E-2, Sub 416)
4/01/82 - 7/31/82	1.680	E-2, Sub 446
8/01/82 - 9/23/82	1.627	E-2, Sub 452

8. During the period from December 1, 1980, through September 23, 1982, CP&L sold a total of 35,053,617,556 kWh to its North Carolina retail ratepayers. Those total kWh sales by CP&L occurred in the amounts and during the eight subperiods which are relevant to this proceeding as follows:

Subperiod	N.C. Retail kWh Sales
12/01/80 - 12/10/80	889,427,432
12/11/80 - 3/31/81	5,756,406,926
4/01/81 - 7/31/81	6,213,859,307
8/01/81 - 11/30/81	6,206,549,577
12/01/81 - 12/14/81	1,184,655,815
12/15/81 - 3/31/82	5,449,537,780
4/01/82 - 7/31/82	5,974,059,889
8/01/82 - 9/23/82	3,379,120,830
TOTAL	35,053,617,556

9. During the period from December 1, 1980, through September 23, 1982, CP&L collected a total of $531,194,993 excluding gross receipts tax and $565,101,056 including gross receipts tax from the North Carolina retail ratepayers through the various cents per kWh fuel adjustment clause charges for the kWh sales made during that period. The following table shows for each subperiod relevant to these remanded proceedings the cents per kWh charge which was in effect, the North Carolina retail kWh sales which occurred, and the resulting amount of fuel collections with respect to each of those subperiods.

Col. 1 Subperiod	Col. 2 Cents per kWh Fuel Charge	Col. 3 N.C. Retail kWh Sales	Col. 4 Fuel Revenues (Col. 2 x Col 3)
12/01/80 - 12/10/80	1.498	889,427,432	$ 13,323,614
12/11/80 - 3/31/81	1.498	5,756,406,926	86,231,012
4/01/81 - 7/31/81	1.682	6,213,859,307	104,517,127
8/01/81 - 11/30/81	1.205	6,206,549,577	74,788,832
12/01/81 - 12/14/81	1.462	1,184,655,815	17,319,667
12/15/81 - 3/31/82	1.462	5,449,537,780	79,672,243
4/01/82 - 7/31/82	1.680	5,974,059,889	100,364,202
8/01/82 - 9/23/82	1.627	3,379,120,830	54,978,296
TOTAL (excluding gross receipts tax)			$531,194,993
TOTAL (including gross receipts tax)			$565,101,056

10. In addition to the $565,101,056 of fuel collections by CP&L from North Carolina retail ratepayers which were made during the period December 1, 1980, through September 23, 1982, as detailed in finding of fact number 9 above, CP&L also collected $5,738,428 of additional fuel revenues including gross receipts tax which are properly attributable to that period and which are properly considered in determining any fuel overcollection or undercollection in these remanded proceedings. That $5,738,428 was collected by CP&L under Rider AFC-28 which was in effect from September 24, 1982, through November 30, 1982. These subject additional fuel revenues reflect a spreading out of part of the fuel adjustment clause rate increase which was approved in Docket No. E-2, Sub 434, but which was so large that the Commission directed that it be charged over a longer than normal period; i.e., over 12 months instead of four months. Therefore, the Company collected total fuel revenues of $570,839,484 including gross receipts tax during the relevant period.

11. The Company's actual generation mix is reasonable and appropriate for use in each of the reopened general rate cases.

12. The increment or decrement to be applied to a general rate case base fossil fuel factor, as a result of a G.S. 62-134(e) fuel adjustment clause proceeding, is properly computed by dividing the total fossil fuel expense for the relevant test period by the system mWh sales for the relevant test period and adding or subtracting the fossil factor so derived to or from the base fossil fuel factor set in the immediately preceding general rate case.

13. The proper methodology for determining the over- or undercollection of fuel-related revenues for the remand period requires the reversal of any general rate case adjustments originally made to facilitate incorporating fuel rates set in G.S. 62-134(e) proceedings into rates approved in general rate cases. Additionally, any adjustments which should have been made originally in those general rate cases to reflect the appropriate and reasonable level of production capacity and for annualization of fuel to reflect reasonable and representative price levels and variable operation and maintenance (O&M) expenses must now be made. The resulting change in the total allowable rate increase in each general rate case must be considered in calculating the over- or undercollection of fuel-related expenses during the remand period.

14. Total revenues related to fuel costs that should have been collected by the Company during the period at issue in these remand proceedings was $579,694,988 including gross receipts tax and exceeded revenues related to fuel costs in the amount of $570,839,484 including gross receipts tax actually collected by CP&L by $8,855,504.

15. When interest charges are taken into account, due to timing differences which exist when the period at issue is appropriately considered on a segmented basis with regard to over- and undercollections of fuel-related revenues, the effect is such that there exists an undercollection by CP&L of revenues related to fuel costs plus interest in the amount of $7,366,019 through March 1985.

16. The Company should be allowed to recover from its North Carolina retail ratepayers, by means of a surcharge, the undercollection of the prudently incurred fuel and fuel-related costs, as found in this Order.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 1 AND 2

The evidence supporting these findings of fact is contained in the verified applications originally filed by the Company, in prior Commission Orders in these dockets of which the Commission takes notice, and in G.S. 62-3(23)a.1, G.S. 62-133, and former G.S. 62-134(e). 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 - 6

The evidence supporting these findings of fact is contained in the appellate court opinions which remanded the various cases back to the Commission and in the Commission's May 30, 1984, Order Scheduling Hearing and Establishing Procedure which interpreted these appellate court opinions and established the dockets to be reopened, the methodology to be used, and the nature of the hearing in satisfying the various instructions of the appellate courts. While the appropriate methodology to be used was sharply disputed and has been extensively discussed elsewhere in this Order, these findings of fact are essentially procedural and jurisdictional in nature and the matters which they involve are essentially uncontested.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 7 - 9

The evidence for these findings of fact can be found in the testimony and exhibits of Company witness Nevil, Public Staff witness Paton, C.U.C.A. witness Wilson, and the February 1984 Compendium of General Rate Cases Including Fuel Clauses, 1970 - February 1984, which was compiled by members of the Commission Staff and introduced in evidence in this proceeding as Public Staff Nevil Cross-Examination Exhibit 1. The charge per kWh in cents per kWh for fuel shown in Column 2 and the docket numbers shown in Column 3 of finding of fact number 7 appear on the last line of page 2 of Table E-2 of the Compendium and on page 3 of said table. These amounts and the associated docket numbers were accepted by Company witness Nevil as an accurate listing. (Tr. Vol. 6, p. 137). The subperiods that the rates were in effect, as shown in Column 1, are not contested and have previously been discussed.

With respect to finding of fact number 8 concerning the North Carolina retail kWh sales during the eight subperiods relevant to this proceeding, the numbers from which these sales levels were computed were supplied by Company witness Nevil, more specifically on his final set of exhibits, Exhibits 3B, p. 5; 5B, p. 6; and 7B, p. 14, and none of the parties took issue with them.

The table that appears in finding of fact number 9 and the resulting finding that CP&L actually collected a total of $531,194,993 from North Carolina ratepayers during the period December 1, 1980, through September 23, 1982, result from combining the tables found to be accurate and appropriate in findings of fact 7 and 8 and multiplying the cents per kWh times actual North Carolina retail sales for each period in question. Finding that the multiplication is mathematically correct except for some immaterial rounding differences, the Commission concludes that CP&L actually collected $531,194,993 from its North Carolina retail ratepayers during the relevant period through its approved base fuel and fuel adjustment clause charges.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 10

Company witness Nevil, Public Staff witness Lam, C.U.C.A. witness Wilson, and Kudzu witness Eddleman presented testimony regarding CP&L's collection of $5,738,428 in additional fuel revenues from September 24, 1982, to November 30, 1982, due to the Commission's approving incorporation of an ongoing fuel cost adjustment factor of 0.273¢/kWh from Docket No. E-2, Sub 434, into general rate case Docket No. E-2, Sub 444, as Rider No. AFC-28, on September 24, 1982.

Witnesses Nevil, Lam, and Wilson all supported the addition of the $5,738,428 to actual revenue of $531,194,993 excluding gross receipts tax collected from December 1, 1980, to September 23, 1982. Witness Eddleman testified that the amount should be somewhat higher.

Docket No. E-2, Sub 434, was heard on October 20, 1981, and used a four-month test period ended August 31, 1981. The Commission in its Order of October 22, 1981, found the following in finding of fact number 7:

> "The increases in the cost of fuel to CP&L were incurred primarily during the air conditioning season, and a more appropriate matching of said seasonal use to a reasonable rate period, together with the unusually high fuel cost adjustment, requires that the normal four-month fuel cost adjustment factor be applied to a twelve-month period on an even split between the three included four-month periods. The increase should be a 0.273 cents per kilowatt-hour for the billing period from April 1982, through November 1982, an increase of 0.273 cents per kilowatt-hour should be added to the increase or decrease which will be derived from normal application of the fuel cost adjustment procedure."

CP&L's general rate case Docket No. E-2, Sub 444, was heard prior to the expiration of the 12-month period over which the Commission had authorized CP&L to collect the fuel costs approved in Docket No. E-2, Sub 434. The Company requested and the Commission approved in that general rate case a special rider to CP&L's rates, Rider No. AFC-28, on the ground that CP&L would otherwise not be allowed to collect revenues previously approved by the Commission which would have been collected but for the deferral. This rider was charged from

the effective date of the Sub 444 Order, September 24, 1982, until November 30, 1982.

Based on the foregoing, the Commission concludes that the $5,738,428 of additional fuel revenues collected pursuant to Rider No. AFC-28 were attributable to the period relevant to this proceeding and are therefore properly added to the previously determined fuel collections of $565,101,056 by CP&L from its North Carolina retail ratepayers for a total of $570,839,484 in fuel collections including gross receipts tax for that period.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 11

The evidence for this finding of fact, concerning the reasonableness and representativeness of fuel costs, is found primarily in the testimony and exhibits of Company witnesses Nevil, Yarger, Coats, and Kirk; Public Staff witness Lam; C.U.C.A. witness Wilson; and Kudzu witness Eddleman in the remand hearings and Public Staff witnesses Nightingale and Carrere and Company witnesses Yarger and Watson at the original hearings in these cases.

Witness Yarger testified concerning the burned cost of coal, oil, natural gas, and nuclear fuel used by the Company during the test periods for the reopened cases. He outlined the coal and nuclear fuel procurement practices followed by the Company during these periods. He testified that the Company regularly compares its performance in numerous fields with a group of seven other southeastern utilities and that throughout the periods in question the Company's total burned fuel costs were the lowest, or close to the lowest, of the group. Witness Yarger therefore concluded that the Company's fuel procurement practices must be considered reasonable.

The only intervenor witness at the remand hearings who addressed the Company's fuel procurement practices was Public Staff witness Lam. He stated that the Public Staff in the normal course of a rate case investigation checks into the reasonableness and representativeness of fuel prices and also investigates the company's fuel procurement practices and policies and that it was not necessary to investigate these matters again.

At the original hearings in each of the reopened fuel adjustment proceedings, either witness Yarger or witness Watson appeared on behalf of the Company and offered testimony which established the reasonableness of the Company's fossil fuel procurement practices. Their testimony at said hearings was never contradicted by any intervenor witness.

At the original hearings in two of the reopened general rate cases, the Public Staff presented testimony as to its investigation of the Company's fuel procurement practices. Witness Nightingale testified in Docket No. E-2, Sub 366, and witness Carrere, in Docket No. E-2, Sub 416. Both witnesses stated that the Company's fuel procurement practices were reasonable and its coal contracts were being administered in accordance with the Commission's guidelines.

Based on all of the evidence presented, and the fact that no party offered any evidence to the contrary, the Commission finds that the Company's fuel procurement practices were reasonable and prudent during the test periods for the reopened cases.

Witness Kirk testified that the Company engages in two types of power purchase transactions: (1) economy purchases, which are made when power can be obtained from another utility more cheaply than it can be generated on the Company's own system, and (2) reliability purchases, which are made when the Company's load requirements are greater than its available generating capacity. He stated that both types of purchases benefit ratepayers by enabling the Company to meet customer demand at the lowest possible cost.

Witness Kirk stated that the Company makes power purchase decisions on an annual, seasonal, monthly, weekly, daily, and hourly basis. The Company is in constant communication by telephone and teletype with neighboring utilities, in order to ensure that power purchases are made whenever power can be obtained from other companies at rates lower than the costs of generating power at the Company's own plants.

No objection was raised to the Company's power purchasing practices. Accordingly, the Commission finds and concludes that the Company's power purchasing practices were reasonable and prudent during the test periods for the reopened cases.

Witness Coats described the Company's program for planning and scheduling major outages for its plants. He stated that the Company schedules outages to minimize fuel costs and uses the critical path method of scheduling maintenance activities during an outage in order to accomplish the greatest possible amount of work while minimizing the length of the outage. He testified that, despite the Company's efforts to schedule outages efficiently, unexpected outages may occur because of many factors, including equipment breakdowns, the identification of environmental problems, or concerns of the Nuclear Regulatory Commission (NRC) that may require prompt attention, changes in weather, or disruption of fuel supplies.

Witness Coats testified that the Company's nuclear capacity factors for the test periods for the Sub 366, Sub 391, and Sub 416 cases were 70.7%, 56.7%, and 45.75%, respectively, and that the equivalent availability factors for the Roxboro Plant during these periods were very high. He stated that the lower nuclear capacity factor in the test year for Docket No. E-2, Sub 416, was primarily the result of outages for plant modifications required by the NRC. In his opinion, the outages during the test periods for these cases were not avoidable and were not caused by the Company's failure to follow prudent and reasonable management practices.

Witness Coats was extensively cross-examined about the outage at Brunswick Unit No. 2 which occurred during the summer of 1980. Torus modification work required by the NRC and performed during this outage was primarily responsible for the lower system nuclear capacity factor in 1980. Questions were raised as to whether the Company had incurred costs needlessly and had unjustifiably extended the length of the outage by prefabricating structures to be installed in the torus which did not fit and had to be modified. In response, witness Coats explained that the torus is a doughnut-shaped chamber which lies below and around the reactor vessel; that the torus is normally half filled with water which must be drained before maintenance work is performed; that even though many of the prefabricated structures had to be reworked to varying degrees, the Company still benefitted from having prefabricated the structures before the outage; that it would have been extremely difficult to prefabricate

structures that would fit perfectly the first time without any rework; and that it would also have been impractical to have an outage in order to precisely measure the location of existing structures inside the torus before prefabricating the new structures. Witness Coats further testified that the outage time required for torus modifications at the Brunswick Plant was no greater than that required for similar modifications at other companies' plants.

In discussing the Brunswick 2 outages which occurred during the summer of 1980, at page 48 of the original Order in Docket No. E-2, Sub 416, the Commission found that although the Company's nuclear performance for the period was below average, "evidence was not presented specifically indicating the below average performance . . . was the result of mismanagement by the Company. There is therefore not sufficient evidence presented in this docket upon which to base the specific adjustments proposed by the Public Staff" disallowing replacement power costs. None of the intervenors excepted to this finding or assigned it as error on appeal. After a thorough reconsideration of the issue, the Commission sees no reason to depart from its original finding. The outage at issue was for the purpose of carrying out plant modifications required by the NRC in order to protect the public health and safety.

Nevertheless, a major issue in this proceeding involves whether and to what extent a normalized generation mix should be used in determining the reasonable cost of fuel to be reflected in each of the general rate cases reopened in this proceeding. Company witness Nevil, Public Staff witness Lam, C.U.C.A. witness Wilson, and Kudzu witness Eddleman provided evidence bearing upon this issue.

Company witness Nevil testified that actual test period fuel costs should be used rather than normalized costs because when the cases were originally heard, normalization was not proposed and, further, that the concept of fuel cost normalization is unsound. Public Staff witness Lam, C.U.C.A. witness Wilson, and Kudzu witness Eddleman all testified that normalization of fuel costs was appropriate.

In order to determine the reasonable cost of fuel for the Company in each of the three general rate cases involved herein, it is necessary to determine what generation mix the Commission should reasonably assume will provide the level of generation produced during the time periods in question. Components of the generation mix are as follows: coal-fired generation, fossil-fired internal combustion generation (IC), nuclear generation, hydroelectric generation, and purchases and sales.

The driving force in establishing a reasonable normalized generation mix is the level of nuclear generation to be used. That is true because nuclear generation fuel costs, being relatively cheaper than those of other components (except hydroelectric), will be incurred first by a utility, with the other more costly components being used as necessary to meet demand. (Nuclear generation may constitute 35% to 40% of total generation, while hydroelectric rarely if ever constitutes more than 3% of the total.) The level of nuclear generation which can reasonably be expected is, in turn, essentially a function of the system nuclear capacity factor selected.

Public Staff witness Lam recommended that a 60% nuclear capacity factor should be used. He testified that the selection of a 60% nuclear capacity factor for CP&L's nuclear units was not done arbitrarily and that the North Carolina Utilities Commission and the Public Staff have consistently used a 60% nuclear capacity factor as a standard for acceptable performance since 1978. In support of this standard, he cited the Commission's Order Incorporating Plant Performance Review Procedure Into Fuel Cost Rate Adjustment Proceedings [G.S. 62-134(e)] And Order Establishing A Rulemaking For Fuel Cost Rate Adjustments Pursuant To G. S. 62-134(e) entered in Docket Nos. E-2, Sub 316, E-7, Sub 231, and E-22, Sub 216, on May 18, 1978. Finding of fact number 8 in that Order reads as follows:

> "A capacity factor of 60% on a systemwide basis for base loaded nuclear plants is an objective which the Company should seek to achieve and failure to achieve this objective on both a six- and twelve-month period requires a hearing to determine the reasons and causes therefor."

Witness Lam also testified that the use of a 60% nuclear capacity factor is consistent with the performance of nuclear units on a national level. For example, the North American Electric Reliability Council Equipment Availability Report for the 10-year periods ended in 1979, 1980, 1981, and 1982 shows the nuclear capacity factors actually achieved by all nuclear units in the United States to average 60%, 59.8%, 61.5%, and 60.3%, respectively. Witness Lam contended that since that is the average level of performance achieved by all utilities, it would be appropriate to use these figures as a standard against which to measure CP&L.

C.U.C.A. witness Wilson testified that the Company's test year generation mix should be adjusted to reflect at least a 60% nuclear capacity factor because the actual nuclear capacity factors achieved by CP&L were based on excessive outages and did not reflect the normal performance from those plants that should be expected in the future. He further testified that exceptional nuclear outages, whether CP&L was at fault or not, should not be permanently incorporated as a basis for setting future rates, just as the expenses incurred for one-time massive storm damage or for abnormally cold or hot weather should not be included.

The basis for Dr. Wilson's recommendation for normalizing CP&L's nuclear capacity factors to 60% consists of three reasons. First, CP&L has been able to actually achieve that level and more. Second, the industry average for the same type units for a five-year period generally exceeded 60%. Third, based on his simulation of the CP&L system with a probabilistic dispatch model, nuclear capacity factors should be 60% or greater in each of the test years, even including the actual outages of greater duration for refueling and other maintenance than had been planned during this period. For these reasons, Dr. Wilson concluded that using a 60% nuclear capacity factor provided a conservative estimate of the amount of energy that should have been expected from CP&L's nuclear plants in this period.

Kudzu witness Eddleman testified that the Commission should have, and probably would have, normalized nuclear performance to 70% in Docket No. E-2, Sub 366, if the Commission had not erroneously adopted the practice of incorporating the fuel clause factors into the general rate cases. He

recommended that 70% be used because the design rating capacity factor of CP&L's nuclear units in 1978 was nearly 70%; the Robinson 2 Unit has been performing in this range for years as of 1978; the Brunswick Units were relatively new and had been designed to operate with a 70% or more capacity factor; and finally, CP&L evidently attributed the lower capacity factors of Brunswick prior to 1978 to problems basic to the early operation of nuclear plants and not as normal operation.

Company witness Nevil testified that he used the Company's actual fuel costs and made no adjustment to "normalize" nuclear generation. The Company contended that under the intervenors' proposals the Company would be allowed rates sufficient to recover only the costs that would have been incurred if the Company's nuclear plants had been operated at a "representative" capacity factor based on the experience of other utilities and that in arriving at their "representative" capacity factor the intervenors did not give significantly greater weight to CP&L experience than to the experience of any other utility.

CP&L's average actually achieved nuclear capacity factor for the test year used in general rate case Docket No. E-2, Sub 366, was 70.7%; for the test year used in general rate case Docket No. E-2, Sub 391, it was 56.8%; for the test year used in general rate case Docket No. E-2, Sub 416, it was 45.7%.

The Company contends that, although the Commission adjusts total generation and sales to reflect "representative" weather and adjusts hydro generation to reflect "representative" rainfall, it should not adjust nuclear generation to reflect a "representative" capacity factor for the reason that nuclear normalization is different from weather and hydro normalization because, although temperature and rainfall change continually, long-term normal temperature and rainfall generally follow patterns that can be determined objectively. CP&L's basic position is that, absent a finding of management imprudence, the Company's rates should reflect actual test year fuel costs with no normalization.

Based on all of the evidence in the record of this proceeding, the Commission concludes that normalization of the level of nuclear generation in each reopened general rate case is not appropriate for the following reasons. First, the fuel procurement practices and procedures followed by CP&L during the pertinent test periods were reasonable and prudent. Second, the practices and procedures followed by the Company regarding purchased power were also reasonable and prudent during the relevant test periods. Third, normalization of the level of nuclear generation in these cases on remand would be contrary to the rate-making practices and procedures followed by the Commission at the time these cases were originally heard and decided. At that time, the Commission had never adopted a normalization adjustment to nuclear capacity factors as a part of the general rate-making process. In attempting to properly decide these cases on remand, the Commission has attempted to place itself in the position of the panels that originally heard these cases in order to determine the level of rates that the original panels would have approved pursuant to a legally correct interpretation of G.S. 62-133 and G.S. 62-134(e).

Thus, the Commission concludes, based on the evidence in the record on remand and for the reasons set forth hereinabove, that the actual test year generation mix is reasonable and appropriate, that the normalizing adjustment for hydroelectric generation recommended by the Company for use in each of the

reopened general rate cases (and about which there was relatively minor disagreement by the parties) is reasonable and appropriate, and that the adjusted test year level of generation and sales (about which there was little or no dispute in this proceeding) utilized by the Company is reasonable and appropriate.

Upon review of CP&L's actual test year nuclear capacity factors on remand, the Commission concludes that it is reasonable and appropriate to use a generation mix which reflects the actual test year level of CP&L's nuclear generation in determining the base fuel component which should have been established in each of the reopened general rate cases in Docket Nos. E-2, Sub 366, E-2, Sub 391, and E-2, Sub 416.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 12

The evidence for this finding of fact is contained in the testimony and exhibits of Company witness Nevil, Public Staff witness Lam, Kudzu witness Eddleman, and C.U.C.A. witnesses Wilson and Johnson.

Witness Nevil and witness Lam are in basic agreement with respect to the methodology which should be used in G.S. 62-134(e) proceedings to calculate the proper increments or decrements to be applied to the fossil base components set in the general rate case immediately preceding the fuel adjustment clause proceedings. Witness Lam derived the fossil factor for each of the reopened fuel adjustment clause proceedings by adding up the total fossil fuel expense for each month of the relevant four-month test period and dividing that total by system mWh sales for that four-month test period, thus deriving a fossil factor for that test period in dollars per mWh. The difference between the fuel clause fossil fuel factor and the rate case fossil base component is then added to or subtracted from the base fuel factor to arrive at a total fuel factor.

C.U.C.A. witness Wilson and Kudzu witness Eddleman objected to the use of the above-described methodology on the ground that rather than adjusting the fossil fuel factor only for changes in costs brought about by changes in the price of fossil fuel, witness Nevil and witness Lam adjusted for changes in the total expense for fossil fuel, including the effects of generation mix, as well as changes in the price of fuels.

Dr. Wilson's approach reprices the normalized generation mix produced in the most recent general rate case using burned fuel costs incurred during the four-month fuel adjustment clause test period and his adjustment to rates is based upon the difference between the repriced costs and the original costs. Kudzu witness Eddleman's approach is similar.

The two approaches advocated in this proceeding on remand arise out of differing interpretations of three appellate court opinions: the two opinions giving rise to this remand proceeding which involve fuel adjustment clauses, State ex rel. Utilities Commission v. Public Staff - North Carolina Utilities Commission, 309 N.C.. 195, 306 S.E. 2d 345 (1983) (hereinafter referred to as "the Public Staff opinion") and State ex rel. Utilities Commission v. Kudzu Alliance, 64 N.C. App. 183, 306 S.E. 2d 546 (1983) (hereinafter referred to as "the Kudzu opinion"), and an earlier Court of Appeals decision, State ex rel. Utilities Commission v. Virginia Electric and Power Company, 48 N.C. App. 453,

269 S.E. 2d 657 (1980) disc. rev. denied, 301 N.C. 531, 273 S.E. 2d 462 (1980) (commonly referred to as "the Vepco decision").

The parties generally agree on the holding of the court in the Vepco decision, though they disagree as to how the opinion should be interpreted as it relates to the fuel clause opinions involved in this remand proceeding. The following language from the Vepco opinion is important in determining how that decision affects the issues involved herein. The pertinent language regarding G.S. 62-134(e) is as follows:

> "By the clear and express language of this statute, the legislature has provided a procedure by which a public utility may apply to the Utilities Commission for authority to increase its rates and charges based solely upon the increased cost of fuel used in the generation of electric power.... Insofar as the Commission in the present cases considered and passed upon the cost of fuel used by Vepco in the generation of electric power during the periods in question by considering the reasonableness of the prices paid by Vepco for such fuel, it acted within the scope of the statutorily prescribed procedure. Insofar as the Commission considered and based its determination upon such factors as Vepco's heat rate and plant availability in these proceedings, it went beyond the scope of the procedure authorized by G.S. 62-134(e).
>
> * * * *
>
> "We hold only that plant efficiency as it bears upon fuel cost is not a factor to be considered in the limited and expedited proceeding provided for by G.S. 62-134(e). After all, the legislature enacted that section, not as a substitute for a general rate case, but to provide an expedited procedure by which the extremely volatile and uncontrollable prices of fossil fuels could be quickly taken into account in a utility's rates and charges. There is no such volatility in plant efficiency which depends upon long range maintenance decisions and practices carried out over a long period of time. We hold that the Commission erred in ordering rate reductions and ordering Vepco to make refunds based on changes made by the Commission in Vepco's fuel costs by taking into account the factors of heat rate and plant availability." 48 N.C. App. at 460-462.

The Public Staff and the Company argue that it is important to interpret the above-quoted language within the context within which it was written. In the fuel adjustment clause proceedings that gave rise to the appeal by Vepco, the Commission did not use its fuel clause formula for determining the proper adjustment to rates for increased costs of fuel, but rather reduced fuel costs and required refunds on the ground that Vepco's fuel expenses were excessive because of poor system fossil fuel heat rates and plant availability. 48 N.C. App. at 455-456. It is on this basis that the Public Staff and CP&L assert that the actual generation mix experienced by the Company during the four-month test period for a G.S. 62-134(e) proceeding must be used. Their reasoning is that if the reasonableness of the prices paid can be considered, but not heat rate and plant availability, then the generation mix cannot be adjusted. If nuclear capacity is normalized for the fuel clause in a G.S. 62-134(e)

proceeding, then a judgment regarding the reasonableness of plant efficiency and the resulting fuel costs has in fact been made.

The Attorney General, C.U.C.A., and Kudzu all argue, on the other hand, that the Vepco opinion requires that in order to consider only the reasonableness of prices paid by the utility, one must hold the generation mix and sales constant from the immediately preceding general rate case and adjust only for changes in the prices paid for fossil fuel, if those prices are reasonable.

With respect to the appellate court opinions directly involved in these remand proceedings, there is even less agreement.

The Public Staff argues that the only issue addressed and resolved by the Supreme Court in the Public Staff opinion was whether or not G.S. 62-134(e) permitted a utility in a fuel clause proceeding to obtain an adjustment to its rates to recover any of its costs or expenses for purchased power. The Court set out the formula used by the Commission during the time period in question, discussed it and the language and purpose of G.S. 62-134(e), and concluded that the cost of purchased power should have been considered only in a general rate case proceeding for much the same reasons the Vepco court held that plant availability and heat rates could not be considered in other than a general rate case proceeding. The use of the words "price of fossil fuels" by the Supreme Court in discussing the language, purpose, and history of G.S. 62-134(e) to arrive at its conclusion that the myriad of issues relating to purchased power costs should not be considered in expedited fuel clause proceedings cannot be taken to mean that less than the actual cost of fossil fuels burned during a fuel clause test period must be considered in a fuel clause proceeding.

With respect to the Kudzu opinion, which involved a CP&L fuel clause proceeding in which the Commission considered nuclear fuel cost and purchased power, as well as fossil fuel costs, the Public Staff argues that the Court of Appeals merely held that the Utilities Commission in fuel clause proceedings could consider only fluctuations in the cost of fossil fuels - oil, coal, and natural gas - used by the utility in the production of electric power in its generating units. There is nothing in the opinion that requires the Commission to use the generation mix from the immediately preceding general rate case. To the contrary, the holding that it was an error for the Commission to consider factors other than the cost of fossil fuels requires the Commission to use actual generation from the G.S. 62-134(e) test periods.

CP&L asserts that, except for the inclusion of nuclear fuel and purchased power costs, it used the formula approved by the Supreme Court in State ex rel. Utilities Commission v. Edmisten, 291 N.C. 327, 230 S.E. 2d 651 (1976) (known as "the Edmisten I case"), which the court left intact by its Public Staff opinion. CP&L argues that if the court had intended to overrule that aspect of the Edmisten I case, it would have done so by clear language, not by implication based upon fine distinctions between the terms "price" and "cost."

The Attorney General, C.U.C.A., and Kudzu argue that the Public Staff and Kudzu opinions, when read in conjunction with the Vepco opinion, require that only increases or decreases resulting solely from changes in the prices paid

for the amount of fossil fuels contained in the generation mix found to be reasonable in the immediately preceding general rate case should be passed along to CP&L's customers as a result of a G.S. 62-134(e) proceeding. Under this interpretation, the Commission cannot take into account any changes in cost of fossil fuels as a result of a change in the level of fossil generation in the generation mix, but must use the generation mix previously found to be reasonable. C.U.C.A. witness Wilson also used the level of sales from the immediately preceding general rate case.

After carefully reading the relevant cases and reviewing the arguments and positions of the parties to this proceeding, the Commission concludes that the methodology employed by Public Staff witness Lam and Company witness Nevil is in accordance with the appellate court decisions and appropriate for use in this proceeding. The crucial issue, as the Commission sees it, is not so much whether "price" is something different than "cost," as the courts used those words, but rather (1) whether the Commission must use actual test-period generation mix, sales, and the actual amounts spent for fossil fuels during that test period, whether resulting from more fossil fuels being burned, price increases, or both, or (2) whether the Commission must use the generation mix and sales determined to be appropriate in the most recent general rate case and allow increases in rates only when greater amounts are spent on the same amounts of fossil fuels because of price increases.

The Commission, having carefully read and studied the relevant appellate court opinions, finds little guidance to be had from these opinions on this question. The use by the courts of the word "cost" in one opinion and the word "price" in another confuses the issue, since all dictionaries consulted define the two words in such a way as to make them generally interchangeable. The Commission agrees with the Public Staff and CP&L that the terms "price" and "cost" can be used synonymously and concludes that the Supreme Court in the Public Staff case intended to use such words synonymously. In addition to the dictionary definitions which show that "price" and "cost" are similar in meaning, the Commission notes that in the Kudzu opinion, the Court of Appeals summarized the holding of the Supreme Court in the Public Staff opinion as follows (emphasis added):

> "[O]ur Supreme Court held that the Utilities Commission in fuel adjustment proceedings can consider only the fluctuations in the cost of fossil fuels--oil, coal and natural gas--used by the utility in the production of electric power in its generating units." 64 N.C. App. at 185.

As can be seen, the Court of Appeals was using almost the exact language of the Supreme Court in the portion of the Public Staff opinion upon which C.U.C.A. witness Wilson relies, with one significant exception: instead of the word "price" used by the Supreme Court, the Court of Appeals substituted the word "cost." Clearly, the Court of Appeals did not consider that the distinction between "price" and "cost" was critical to a proper understanding of the Public Staff opinion.

The Commission also notes that the fuel clause formula used in the original hearings was quoted in its entirety in the Public Staff opinion. 309 N.C. at 202-203, 306 S.E. 2d at 439-440. After quoting the formula, the opinion provides a detailed discussion of its components and the manner in

which it operates. Id. at 203-204, 306 S.E. 2d at 440. It seems unlikely that the court would have devoted three pages of its opinion to the details of the formula if it had intended to hold that the entire formula was fatally flawed and had to be scrapped, rather than merely revised to delete nuclear fuel and purchased power costs.

The clear holding in the Vepco decision that plant availability and heat rate as they reflect on fuel costs cannot be considered in fuel clause proceedings and the fact that the Supreme Court cited Vepco with approval for that proposition and neither overruled it nor altered it in any respect in the Public Staff case militate in favor of the adoption and interpretation of the Vepco, Public Staff, and Kudzu opinions advocated by the Public Staff and CP&L.

If a normalized generation mix from the most recent general rate case is used, the Commission is, in effect, adjusting for the effects of plant performance in a fuel clause proceeding in direct contravention of the Vepco decision. Neither the Public Staff nor the Kudzu opinions overrule the Vepco decision and require this result. They merely remove purchased power costs and nuclear fuel costs from consideration in a fuel clause proceeding.

It is also important to note that, since C.U.C.A. witness Wilson used "as burned" fuel costs based on total test-period costs to determine unit costs, these unit costs do in fact themselves reflect changes in generation mix, rather than just price changes.

With respect to the proper level of sales to be used in calculating increases in rates in fuel clause proceedings, none of the court decisions, including Vepco, addressed this issue. The Commission concludes that using the level of sales from the most recent general rate case test year, as Dr. Wilson proposes, penalizes the Company by not allowing it to recover the increased fossil fuel costs resulting from meeting increased demand over which it has little or no control. Thus, it is appropriate to use the actual generation and sales from the four-month fuel clause test period and the resulting actual fossil fuel costs.

Based on the foregoing, the Commission concludes that the increment or decrement to be applied to a general rate case base fossil fuel factor, as a result of a G.S. 62-134(e) fuel adjustment clause proceeding, is properly computed by dividing the total fossil fuel expense for the relevant test period by the system mWh sales for the relevant test period and adding or subtracting the fossil factor so derived to or from the fossil base fuel factor set in the immediately preceding general rate case.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 13

The evidence for this finding of fact, concerning the methodology for determining the difference between fuel-related revenues actually collected and fuel-related revenues that should have been collected during the remand period, is found in the testimony and exhibits of Company witness Nevil, Public Staff witnesses Paton and Lam, C.U.C.A. witnesses Wilson and Johnson, and Kudzu witness Eddleman.

The position of the Company, as presented in the testimony and exhibits of witness Nevil, is that the relevant court opinions require the Commission on

remand to correct errors made in both general rate cases and in G.S. 62-134(e) fuel adjustment proceedings. Those errors include the failure to determine fuel-related revenues in general rate cases, since fuel revenues from G.S. 62-134(e) proceedings were simply adopted in general rate cases, and the inclusion of nuclear fuel and purchased power in fuel adjustment proceedings. CP&L witness Nevil stated that in Docket No. E-2, Sub 366, the Company began making certain pro forma adjustments in order to eliminate consideration of fuel costs in determining rate increases in general rate cases. The Company began making such adjustments to implement the Commission's 1978 and 1979 rules which required that all fuel-related revenues be determined in G.S. 62-134(e) proceedings. In order to determine fuel-related revenues in general rate cases, those adjustments made to eliminate fuel costs from consideration in general rate cases must now be reversed. Additionally, since the courts have held that the costs of nuclear fuel and purchased power should not be considered in the remand fuel adjustment proceedings, they must be considered only in the appropriate general rate cases, together with all other fuel-related costs, in order to determine the total revenues required to earn the allowed rate of return. The relevant general rate case Orders for the remand period must be corrected to: (1) eliminate adjustments made to exclude fuel costs from the revenue determination; (2) add adjustments necessary to include all fuel expenses, including nuclear fuel and purchased power, in the revenue calculation; and (3) establish a fossil fuel factor for use in determining subsequent increments or decrements in G.S. 62-134(e) proceedings. To correct the Commission Orders in the relevant fuel clause proceedings, the fuel adjustment formula must be modified to exclude nuclear fuel and purchased power, and an appropriate increment or decrement to the fossil fuel factor established in the preceding general rate case must be determined.

Witness Nevil testified that he reconstructed the relevant general rate cases to properly include fuel in the revenue requirement calculation. To determine revenues for the remand period of December 1, 1980, through September 23, 1982, witness Nevil reconstructed general rate case Docket Nos. E-2, Subs 366, 391, and 416. In each case, he first reversed the original adjustments which had eliminated fuel from the revenue increase calculation. These original adjustments included: (a) revenue adjustments to annualize fuel revenues at the level that would have been realized if the particular G.S. 62-134(e) fuel factor in effect at the time of preparation of the filing had been in effect for the entire test year and (b) a fuel expense adjustment to annualize fuel expenses at the level of the same G.S. 62-134(e) fuel factor. These original adjustments were referred to as "matching adjustments" because their effect was to match fuel revenues and fuel expenses. Witness Nevil testified that this matching was artificial, however, in that it matched revenues and expenses at a level that had not actually been experienced by the Company during the test year. Moreover, the actual value of the adjustment to revenues differed from the value of the adjustment to fuel expenses. The result was that a matching was artificially forced where there had in fact been no match between fuel revenues and fuel expenses. In this way, the matching adjustments eliminated from the rate increase calculation the actually experienced difference between fuel revenues and fuel expenses for the adjusted test period. As a consequence, the excess, or deficiency, of fuel revenues over fuel expenses was not remedied by the Commission Orders in the general rate cases, even though that is one of the primary purposes of a general rate case. In fact, due to these artificially matching adjustments, the Company was allowed an increase of approximately $16 million too much in Docket No. E-2,

Sub 366; $12.5 million too little in Docket No. E-2, Sub 391; and $82 million too little in Docket No. E-2, Sub 416. Witness Nevil reversed the original matching adjustments to reintroduce the revenue excess or deficiency into the general rate case so that a proper level of revenues required to earn the allowed rate of return could be determined.

In addition to reversing the original matching adjustments, CP&L witness Nevil testified that it is also necessary to make the pro forma adjustments which are traditionally made when fuel is considered in a general rate case. These adjustments include a fuel annualization adjustment to reflect appropriate fuel price levels and a variable O&M adjustment.

When the above steps of reversing the original matching adjustments and adding necessary pro forma adjustments to include fuel costs in the revenue calculation had been completed, witness Nevil calculated the change in the revenue increase compared to the original rate case Order resulting from these steps. This change can be viewed as an increment which remedies the errors in the original determination of the allowable rate increase. It is the result of including fuel costs in the general rate case. If this increment is not allowed, the result is a lower operating income than is necessary to earn the allowed rate of return.

Using the additional revenue increment (or decrement) which should have been allowed in each general rate case if fuel had been correctly handled in those cases, witness Nevil next developed positive or negative revenue deficiency factors on a per kWh basis for each general rate case. These revenue deficiency factors could then be applied on a prospective basis to kWh consumption during the relevant collection periods. Witness Nevil also calculated a per books fuel factor in each general rate case. In addition, he calculated a fossil fuel cost factor for use in remand fuel adjustment proceedings for determination of the proper fossil fuel increment or decrement. These steps were all made in general rate case Docket No. E-2, Sub 366. For Docket Nos. E-2, Subs 391 and 416, witness Nevil made additional adjustments to test year revenues to reflect revenue changes resulting from correcting earlier rate case Orders as well as revenue changes resulting from correcting fuel adjustment Orders as described below. This was necessary since changes made to earlier cases affected subsequent test periods.

To correct the Commission Orders in the reopened G.S. 62-134(e) adjustment fuel proceedings, witness Nevil modified the fuel adjustment formula adopted by the Commission in 1976 to exclude nuclear fuel and purchased power, based upon his understanding of what the courts directed. Witness Nevil used the modified formula to calculate a fossil fuel factor which he then compared to the fossil fuel factor set in the preceding general rate case. From this comparison he determined the appropriate increment or decrement to the general rate case fossil fuel factor.

The formula, as modified by witness Nevil to exclude nuclear fuel and purchased power, is based on the cost of fossil fuel during the fuel adjustment test period divided by the total system kWh. This fossil fuel factor is the basis for determining the increment or decrement from the fossil fuel factor in the general rate case.

To determine the total over- or underrecovery of revenues resulting from correction of general rate cases and G.S. 62-134(e) fuel proceeding Orders, witness Nevil applied the general rate case deficiency factor he calculated for each general rate case to the kWh sold during the portion of the remand period when the rates in that particular docket were in effect. This step remedied the revenue deficiency which existed in the original general rate cases as a result of the differential between fuel-related revenues and fuel-related expenses. It also included recovery of those adjustments which annualize fuel-related expenses to year-end price level and kWhs. In addition, he computed the revenues needed to recoup the per books fuel costs for the test period, which were added to the deficiency calculation to determine total fuel-related revenues the general rate case should have produced on a per-kWh basis during the period the rates were in effect. He then computed, for each month of the remand period, fuel revenues based on the increment or decrement determined in the applicable G.S. 62-134(e) proceeding. The total revenues from these steps produced the total revenues which should have been collected and were compared with the fuel revenues actually collected to determine the total underrecovery.

The Public Staff initially filed testimony and exhibits of witness Lam on December 28, 1984. In this testimony, witness Lam used essentially the same methodology as witness Nevil, as described above, except that witness Lam normalized nuclear generation to a 60% capacity factor. On February 8, 1985, the Commission allowed the Public Staff's motion to withdraw the prefiled testimony of witness Lam. On the same day, the Public Staff filed the testimony and exhibits of witnesses Lam and Paton.

In the second version of his testimony, witness Lam developed base fuel factors for general rate case Docket Nos. E-2, Subs 366, 391, and 416, and fossil fuel increments or decrements in fuel adjustment proceeding Docket Nos. E-2, Subs 402, 411, 420, 434, 446, and 452. Witness Lam supplied his calculations to witness Paton, who then determined the over- or underrecovery.

In developing his base fuel factor for each general rate case, witness Lam normalized the test year generation mix, using the method previously outlined hereinabove. He derived a base fuel factor for each general rate case by dividing the total fuel cost calculated in accordance with his normalization method by total adjusted test year kWh sales. He also determined the fossil fuel component of this factor for use in calculating the increment or decrement for subsequent G.S. 62-134(e) proceedings.

In deriving the fossil fuel increment or decrement for each G.S. 62-134(e) proceeding, witness Lam first determined the total fossil fuel costs incurred during the applicable G.S. 62-134(e) four-month test periods. He divided this cost by the total kWh sales during that same test period. The result of this calculation was a new fossil fuel factor which could then be compared to the fossil fuel factor calculated in the general rate case to determine the increment or decrement.

Public Staff witness Paton used the general rate case base fuel factors and the G.S. 62-134(e) fossil fuel increments or decrements provided by witness Lam to determine a total fuel factor applicable to each month in the remand period. She also added a nonfuel energy-related purchase factor applicable to each month of the period to derive total factors for fuel and nonfuel. Using

these total factors, she calculated the amount of fuel-related revenues which she believes the Company should have been allowed to collect during the remand period by simply summing the fuel costs. She then compared this amount to the amount actually collected during the period to determine an overrecovery. It should be noted here that the fuel factors provided by witness Lam for witness Paton included the effects of fuel expenses related to the customer growth and weather normalization adjustments. Witness Paton is therefore including these effects even though they are not set forth separately.

Witness Paton did not attempt to follow the general rate-making convention set out in G.S. 62-133 and followed in the original hearings in these cases. She testified that the adjustments which were made in the original cases to eliminate fuel from the revenue calculation do not need to be reversed. She also testified that the reversal of these adjustments by witness Nevil is the major problem she has with his method. In response to questions by counsel for the Company, however, witness Paton did testify that in a general rate case it is appropriate to solve for the revenue deficiency created by the difference between revenues and expenses.

Witness Paton further disputed the efficacy of a change witness Nevil made in his additional supplemental testimony to eliminate objections to his method of recalculating fuel-related revenues. Witness Nevil testified in his additional supplemental testimony that he had incorrectly included the year-end fuel annualization adjustment in both the revenue deficiency factor and his base fuel factor, which should have included only per books fuel costs. In his later prefiled testimony, he therefore eliminated this adjustment amount from the base fuel factor so that the base fuel factor was set equal to per books test year fuel costs. Witness Paton initially disputed this, indicating that "subtracting the one one four five from the nine eight seven eight does not leave you with per books fuel." Following questions from the Commission, however, it was determined that witness Paton had made an error in her calculation, which she conceded and that witness Nevil's base fuel factor was the same as per books fuel costs.

C.U.C.A. witness Wilson presented testimony and exhibits which outlined another method of determining the over- or underrecovery of fuel-related revenues. Witness Wilson developed a base fuel factor for each general rate case in a manner similar to that of the Public Staff. He normalized the test year generation mix based on a nuclear capacity factor of 60% as explained previously.

To determine a fossil fuel increment or decrement for each G.S. 62-134(e) proceeding, witness Wilson used the generation levels and mix as determined through the normalization process in the preceding general rate case. This method is a departure from that followed by the Company and the Public Staff. Witness Wilson used the fuel proceeding four-month test period to determine fuel prices based on that test period's burned fossil fuel. He then applied this price to the fossil fuel generation level as determined in the general rate case. This procedure has the effect of normalizing the generation mix for the test period in the G.S. 62-134(e) proceeding. Witness Wilson established a base fuel factor for each G.S. 62-134(e) proceeding in this manner. This factor may represent an increment or decrement to the base fuel factor of the applicable general rate case.

To determine the total over- or underrecovery of fuel revenues, witness Wilson developed a total fuel cost factor for each month, adjusted to reflect the fossil fuel factor as calculated for each G.S. 62-134(e) proceeding. He multiplied this total cost factor by the appropriate kWh to determine the fuel revenues that should have been collected in each month. He also calculated certain nonfuel costs which he says should have been collected. He then summed the fuel costs and the modest nonfuel costs to get total revenues which he compared to those that were actually collected to arrive at an overcollection.

Witness Wilson's fundamental methodology differs from that of the Public Staff only with respect to the way he purports to limit G.S. 62-134(e) adjustments to changes in unit prices.

In addition to his differences with witness Nevil over normalization and the method for computing G.S. 62-134(e) increments or decrements, witness Wilson also contended that it was unnecessary to reverse the original general rate case adjustments which had artificially equated fuel costs with fuel-related revenues. Witness Wilson suggested that reversing these adjustments would result in a "double counting."

According to witness Wilson, "Mr. Nevil's alleged deficiency is really nothing more than the $16.1 million difference between booked fuel revenue and booked fuel expenses."

Kudzu witness Eddleman also presented testimony regarding the proper method for calculating an over- or underrecovery of fuel-related revenues. Witness Eddleman followed a procedure which is generally like that of witness Wilson, except that witness Eddleman used a 70% capacity factor for normalizing nuclear generation in each general rate case.

Although it might seem that there are countless differences between witness Nevil's methodology and that of witnesses Paton, Wilson, and Eddleman, in reality there is only one genuinely material difference among the parties. That is whether it is necessary on remand to follow normal rate case methodology to calculate fuel-related revenues, as witness Nevil did, or whether it is appropriate to simply sum the fuel costs and equate the sum of the costs to the revenue requirements. In a normal general rate case the amount of the rate increase equals the difference between adjusted test year expenses (including a reasonable return on rate base) and adjusted test year revenues. Company witness Nevil, in each rate case, allows the Company to recover this difference (except in Sub 366, where the difference is negative; in that case it is used to reduce the Company's rate increase). He does so by reversing the adjustments made in the original proceedings which forced an artificial matching between adjusted test year fuel expenses and test year fuel revenues and thereby prevented the Company from recovering the difference. These adjustments which witness Nevil reversed had facilitated the ability of the Commission to deal with fuel costs outside the context of the general rate case and within the context of the separate G.S. 62-134(e) proceeding. The intervenor witnesses, in contrast to witness Nevil, do not reverse the "matching" adjustments, and hence do not permit the Company to recover the difference between adjusted test year fuel expenses and test year fuel revenues. Instead, the intervenor witnesses continue to deal with fuel-related revenues outside of the general rate case and leave intact the revenue impact the original adjustments had on the total revenues allowed when the cases were

decided initially. Witness Wilson acknowledged on cross-examination that this was the main distinction between his methodology and that of witness Nevil.

The Commission believes that witness Nevil's methodology is preferable to that of the intervenors for several reasons. First of all, it conforms more closely to the instructions this Commission has received from the appellate courts. The Supreme Court has directed us in its Public Staff opinion to determine the rates that "should have been collected" in these cases under a proper interpretation of former G.S. 62-134(e). 309 N.C. at 214, 306 S.E. 2d at 446. The court specifically stated that the remand proceeding should be "in the nature of a general rate case." Id. at 213, 306 S.E. 2d at 445. As Mr. Eller, representing NCTMA (now C.U.C.A.), expressed it at page 38 of his Brief of April 30, 1984:

> The Court has effectively said: "Go back and find these costs the right way. When you have done this, determine what revenues were actually collected under the unlawful rates, deduct (or add) the revenues that would have been required to satisfy the reasonable costs of CP&L as properly determined under our law, and take the appropriate remedial action."

It is logical to conclude that if the Commission is to hold a proceeding "in the nature of a general rate case" and determine the rates which should have been collected during the period in dispute, it is necessary to adhere as closely as possible to customary general rate case methodology. Thus, the Commission should recalculate rates for each case that affected rates during the period at issue, including both general rate cases and fuel adjustment proceedings, in the same way they would have been calculated at that time. This is what witness Nevil has done.

By refusing to reverse the "matching" adjustments, the intervenors have not only failed to follow the appellate courts' instructions, but have also taken a position at odds with G.S. 62-133 and this Commission's traditional rate-making procedure. Traditionally, in a general rate case, the Commission follows a method described by witness Wilson as the "revenue deficiency approach." The Commission determines a utility's adjusted test-period expenses plus a reasonable return on rate base and its test-period revenues. The difference between the two figures is the rate increase to which the utility is entitled. At the original hearings in these cases the Commission departed from this procedure and used "matching" adjustments to artificially equalize test-period fuel expenses and test-period fuel revenues so that fuel-related revenues would not be established in the general rate case but would be considered only in fuel adjustment proceedings. The appellate courts held this two-track rate-making system unlawful and directed the Commission to treat fuel just like any other O&M expense in a general rate case. Consequently, there is no longer any justification for the "matching" adjustments. In refusing to reverse these adjustments, the intervenors are in effect saying that, even had the Commission had the benefit of the courts' thinking at the time these cases were first heard, we would still have made the matching adjustments which are now at issue. This is simply not factually correct. All witness Nevil has done is to calculate fuel-related revenues exactly as they would have been calculated if fuel costs had been considered in the general rate cases originally.

The Commission does not agree with the intervenors that witness Nevil's methodology, and in particular his reversal of the "matching" adjustments, violates the rule against retroactive ratemaking. To the contrary, this contention reflects a serious misunderstanding. When a utility is allowed a rate increase in a general rate case equal to the difference between adjusted test period expenses (including a reasonable return on capital) and test period revenues, the utility is not made whole for losses incurred (or inadequate earnings) in the test period; but rather, rates are being increased sufficient to compensate the utility for its service and provide it a reasonable opportunity to earn the allowed return in the future. The Supreme Court stated in State ex rel. Utilities Commission v. Edmisten, 291 N.C. 451, 232 S.E. 2d 184 (1977) (Edmisten II) that the "use of the company's experience in the past (the test period, extended) as a guide to, or measure of, what its expenses would be in the future" is nothing more than "the orthodox use of a test period." 291 N.C. at 471, 232 S.E.2d at 196. The difference between adjusted test-period expenses and test-period revenues is simply the amount the utility must have in order to cover its costs in the future, when the rates are in effect. The calculation of this difference is exactly what is done in every general rate case under G.S. 62-133.

The intervenors also argue that witness Nevil's methodology results in double counting. They contend that their own methodology--which involves setting revenues equal to total fuel costs without regard to the test-period mismatch between revenues and expenses--adequately accounts for the difference between adjusted test-period expenses and test-period revenues. Therefore, they assert, witness Nevil is engaging in double counting when he specifically recovers this difference for the Company (or, in Docket No. E-2, Sub 366, specifically passes excess revenues through to ratepayers). The Commission agrees with the intervenors that a methodology which involves double counting cannot be accepted. The difficulty with their assertion, in the Commission's judgment, is that it is no more than that--an assertion. They have not supported it. On the face of it, their methodology does not appear to account for the amounts associated with the erroneous "matching" adjustments. If they had shown that it does in fact account for these amounts, the Commission might understand why they would allege double counting. However, the issue really seems to be not double counting but rather whether the revenue deficiency in the original cases should be counted at all, or totally ignored. The Commission finds that it must be counted and that witness Nevil has only counted it one time.

It is also significant that the intervenors have failed to take into account the effect that rates fixed in one general rate case have upon rates fixed in subsequent cases. In order to properly recalculate rates for Docket No. E-2, Sub 391, it is necessary to adjust test-period revenues, replacing revenues actually collected during the test period with revenues that would have been collected if the rates which should have been approved in Docket No. E-2, Sub 366, had in fact been approved and had been in effect throughout the test period. Similarly, to recalculate rates correctly in Docket No. E-2, Sub 416, the Commission must adjust test-period revenues to reflect the rate levels that should have been approved in Docket No. E-2, Sub 391. Witness Nevil has made these necessary adjustments, whereas the intervenor witnesses have not.

There is one other factor of concern to the Commission with regard to the procedure advocated by witness Wilson, and also to some extent by witness Paton. A test of any methodology is the reasonableness of that methodology's end result. The end result of applying witness Wilson's methodology is not reasonable and does not meet the basic common sense test which is normally applied to any regulatory methodology. During the billing periods for rates previously established in these remand cases, the Company's booked fuel costs actually exceeded its related booked fuel revenues by $32 million. Witness Wilson claims that under his methodology the Company should have collected $85.5 million less than it actually did collect during this period. That means the Company's booked fuel costs would have exceeded its revenues by $117.5 million--the sum of the $32 million shortfall and witness Wilson's alleged $85.5 million overcollection. The Company's booked fuel expenses were $569 million for this period. The effect of witness Wilson's proposed methodology is that the Company would have absorbed 21% of its fuel costs during this period. No fuel clause without a true-up will lead to a precise matching of fuel clause revenues and booked fuel expenses; however, a reasonable methodology would not be expected to result in a utility collecting only 79% of its actual prudently incurred fuel costs. Witness Paton's methodology would require the Company to absorb $81.4 million, or 14% of its fuel costs, and thus it suffers from the same defect as that of witness Wilson, although to a slightly lesser extent.

A related concern is that, if this Commission had followed witness Wilson's methodology (or witness Paton's) when these cases were originally heard, the adverse effect on the Company's financial condition would have been serious. Investors would have been aware that the Commission was requiring the Company to absorb 21% of its fuel costs. The Company's fixed charge coverage, its actually achieved return on equity, and its earnings per share would all have decreased. Its bond rating might well have been lowered, and in any event its cost of capital would have risen. In all probability the Company would have filed for rate increases more frequently and quite possibly could have been required to request one or more emergency increases.

Absent a showing of imprudence, inefficiency, or malfeasance, it is the objective of this Commission to adopt rules and employ procedures whereby an electric utility will lawfully be permitted to recover all reasonably incurred fuel costs.

No party to the proceedings on remand contends that the Company was imprudent or negligent with respect to the level of fuel costs incurred. There is, however, much disagreement relating to the methodology the Commission should employ in resolving this controversy. It is the Commission's view that the appropriate inquiry as to the proper methodology to be utilized in determining the fuel costs that should have been included in rates will take into account all relevant past, present, and reasonably anticipated future events and circumstances that bear upon the question to be resolved. Such inquiry is appropriate without regard to the point in time or points in time from which such judgments are made. Public utility rates are set prospectively. Therefore, ratemaking inherently involves the forecasting of future events including the appropriate level of fuel costs. The most appropriate fuel cost forecasting methodology is the one that consistently more nearly predicts the actual level of fuel costs prudently incurred given the time period in question. In this regard, the methodology proposed by the

Company is superior to the methodologies proposed by the intervenors for purposes of this proceeding.

It is an uncontroverted fact that the rates in effect during the time period in question resulted in the Company actually underrecovering its prudently incurred fuel costs by $32.0 million ($37.7 million undercollection during the 22-month time period less $5.7 million Rider AFC 28 revenues collected subsequently). If the Public Staff's methodology was adopted, the resultant effect would be that the Company would have underrecovered its prudently incurred fuel costs by $81.4 million ($32.0 million actual undercollection + $49.4 million refund). If C.U.C.A.'s methodology was adopted, the resultant effect would be that the Company would have underrecovered its fuel costs by $117.5 million ($32.0 million actual undercollection + $85.5 million refund). Common sense and equity demand that the proposals of the intervenors be rejected.

From a broad common sense perspective, it is clear to the Commission that even though the rates collected by the Company in 1980-82 were determined by an improper procedure and may need to be modified somewhat, they were not grossly unreasonable. In advocating a refund of $120.5 million (with interest) as witness Wilson proposes, or a $72.5 million (with interest) refund as witness Paton proposes, the intervenors are seeking a one-time windfall. Based upon the foregoing and the entire evidence of record, the Commission does not believe that it should grant this windfall. Thus, the Commission finds and concludes that the appropriate methodology for use in this proceeding is that proposed by Carolina Power & Light Company witness Nevil.

As previously indicated, the Commission reopened its hearings in these remand proceedings for the expressed purpose of allowing parties to cross-examine and present evidence relating to the information and data filed by CP&L in response to the Commission Order Requiring Additional Data issued May 2, 1985. Upon reopening of the hearing, CP&L presented its witness Nevil for the purpose of allowing cross-examination in this specific regard. During this phase of the hearings, the intervenors continued to attack the methodology utilized by CP&L in developing its proposals and recommendations to the Commission. The Public Staff presented additional direct testimony through its witness Paton, and C.U.C.A. presented additional testimony through its witness Johnson. The Attorney General through cross-examination of witness Nevil sought to show that witness Nevil had somehow modified CP&L's proposed methodology, other than as directed by the Commission in its Order of May 2, 1985, such that an impropriety existed with respect thereto. The Commission in its findings and conclusions, as reflected hereinabove and hereafter, has not utilized the information filed in response to its May 2, 1985, Order in reaching its decision herein. However, out of an abundance of caution and in the interest of clarity, the Commission will address the so-called impropriety as alleged by the Attorney General.

The contentions of the Attorney General in this regard can best be placed in perspective through use of Attorney General Nevil Cross-Examination Exhibit Number 7 (AGN #7). Such exhibit is presented below.

ATTORNEY GENERAL NEVIL
CROSS-EXAMINATION EXHIBIT NUMBER 7

1.	Nevil Sub 366 Fuel Factor	.008733	$/kWh
2.	N.C. Retail Adjusted Sales	17,613,926,482	kWh
3.	Nevil Revenue Before Gross Receipts Tax	$153,822,420	
4.	Gross Receipts Tax Factor	1.06383	
5.	Nevil Fuel Revenue	$163,640,905	
6.	Nonfuel Revenue in Order	$477,965,433	
7.	Nevil Deficiency	$ 19,146,974	
8.	Total Nevil-Produced Revenues	$660,753,312	

In lines 1 through 5 above, the Attorney General purports to have calculated the end-of-period level of fuel-related revenue of $163.6 million shown on line 5, that witness Nevil contends, according to the Attorney General, should have been included by the Commission in developing the approved level of rates arising from the Commission's decision in Docket No. E-7, Sub 366. Line 6 of AGN #7 "Nonfuel Revenue in Order" of $478.0 million is stated to represent all components of cost entering into the cost of service or revenue requirements equation other than fuel-related costs or revenue as determined by the Commission in Docket No. E-7, Sub 366. Parenthetically, the Commission's final Order in Docket No. E-7, Sub 366, authorized CP&L a level of rates which were designed to produce annual revenues of $651.3 million based upon the test year level of operations. The Attorney General calculates the nonfuel revenue of $478.0 million by deducting, from the $651.3 million, fuel related revenues of $173.3 million which the Attorney General contends was included in the $651.3 million total revenue requirement. The Attorney General, as shown in AGN #7 above, then sums what is characterized as "Nevil Fuel Revenue" of $163.6 million, the "Nonfuel Revenue in Order" of $478.0 million, and the "Nevil Deficiency" of $19.1 million so as to arrive at "Total Nevil-Produced Revenues" of $660.7 million ($163.6 million + $478.0 million + $19.1 million = $660.7 million). The $660.7 million is then compared to the $670.4 million total revenue requirement which witness Nevil contends should have been established by the Commission in Docket No. E-7, Sub 366; whereupon, the Attorney General concludes that witness Nevil's methodology results in a $9.7 million ($670.4 - $660.7 = $9.7 million) unexplained discrepancy. The $670.4 million results from adding the revenue deficiency of $19.1 million to the $651.3 million revenue requirement previously established in Docket No. E-7, Sub 366 ($651.3 million + $19.1 million = $670.4 million).

In essence, AGN #7 and the record shows that the difference between $173.3 million in fuel-related revenues, purported to be included in the total revenue requirement of $651.3 million as established in Docket No. E-7, Sub 366, and the $163.6 million the Attorney General asserts that witness Nevil contends should have been included in rates derived in Docket No. E-7, Sub 366, is $9.7 million ($173.3 million - $163.6 million). Witness Nevil repeatedly disagreed with the procedure whereby the Attorney General attempted to indirectly reconstruct the methodology he employed in his calculations.

The level of fuel costs that witness Nevil asserts should have been included by the Commission in rates derived in Docket No. E-7, Sub 366, is encompassed in part in his calculation of the deficiency factor and in part in

his calculation of annualized end-of-period fuel cost. Witness Nevil's methodology clearly reflects the foregoing and is structured such that no double counting of any fuel cost can occur. AGN #7 and the attendant data in fact shows that use of any level of fuel-related revenue by witness Nevil other than X (here the Attorney General sets "X" equal to $173.3 million) will always result in a discrepancy or an inequality under the Attorney General's approach. Such is the nature of the Attorney General's mathematical tautology. Algebraically, AGN #7 and the attendant data may be expressed as follows:

$$R + Z = R - X + Y + Z$$

Where

R = Total revenue requirement approved in Docket No. E-7, Sub 366
Z = Nevil deficiency
X = Fuel-related revenue assumed to have been included in revenue requirement established in Docket No. E-7, Sub 366
Y = Annualized end-of-period level of fuel related revenue Attorney General asserts witness Nevil contends should have been included in rates approved in Docket No. E-7, Sub 366

The foregoing equation can be simplified by rearranging the terms so as to combine like terms or factor out like terms with opposite signs.

$$R + Z = R - X + Y + Z$$
$$\text{or } R + Z - R - Z + X = Y$$
$$\text{or } X = Y$$

From the above it is clear that any value assigned X other than the value of Y will result in an inequality. Such inequality serves to validate rather than discredit the Nevil methodology.

The additional testimony of witness Paton and witness Johnson serves only to reaffirm the earlier views of the interventors pertaining to the methodology advocated by CP&L for use in this proceeding. Such views have been previously discussed herein. The Commission, hereby, reaffirms its finding and conclusion that the most appropriate methodology for use in this proceeding is that proposed by Carolina Power & Light Company witness Nevil.

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

Based upon the findings of fact and conclusions set forth hereinabove, the following revenue deficiency, annualized base fuel, net base fuel, and base fossil fuel factors for each of the three reopened general rate cases and fossil fuel clause increments for each of the six reopened fuel adjustment clause proceedings are hereby found and concluded to be reasonable and appropriate for adoption in these proceedings on remand:

Docket Number	General Rate Case Revenue Deficiency Factor ($/mWh)	General Rate Case Annualized Base Fuel Factor ($/mWh)	General Rate Case Net Base Fuel Factor ($/mWh)
Sub 366	0.237	9.878	8.733
Sub 391	2.615	11.621	9.466
Sub 416	4.820	16.699	15.349

Docket Number	Test Period	General Rate Case Fossil Base Component ($/mWh)	Fuel Clause Fossil Factor ($/mWh)	Fossil Increment To Base Fuel Factor ($/mWh)
Sub 402	5/80 - 8/80	8.65 (Sub 366)	14.72	6.07
Sub 411	9/80 - 12/80	10.74 (Sub 391)	12.17	1.43
Sub 420	1/81 - 4/81	10.74 (Sub 391)	11.90	1.16
Sub 434	5/81 - 8/81	10.74 (Sub 391)	15.88	5.14
Sub 446	9/81 - 12/81	14.79 (Sub 416)	13.31	(1.48)
Sub 452	1/82 - 4/82	14.79 (Sub 416)	12.74	(2.05)

The Commission has heretofore determined all factors pertinent and necessary to the determination of the appropriate level of fuel and fuel-related revenues that CP&L should have been authorized to recover through rates charged for its sales of electricity during the periods at issue in these remand proceedings. There is no disagreement between the parties as to the level of fuel and fuel-related revenues that CP&L actually collected during these same remand periods in the total amount of $536,589,114 excluding gross receipts tax and $570,839,484 including gross receipts tax.

Therefore, based upon the foregoing findings of fact and conclusions and the entire evidence of record, the Commission further finds and concludes that CP&L experienced a net underrecovery of fuel and fuel-related revenues during the billing periods affected by these remand proceedings in the amount of $8,855,504. The table that follows presents a periodic summary of the over- and undercollections of such revenues which when considered on a cumulative basis, as previously stated, results in a net underrecovery in the amount of $8,855,504.

SUMMARY OF OVER-/(UNDER-) RECOVERY OF FUEL AND FUEL-RELATED REVENUES
THAT SHOULD HAVE BEEN INCLUDED IN RATE STRUCTURE

Period	Fuel and Fuel-Related Revenues That Should Have Been Collected: Deficiency Factor	Other Fuel	Total	Fuel Revenues Actually Collected	Net Over-(Under-) Recovery
(a)	(b)	(c)	(d)	(e)	(f)
1980					
Dec. 1-10	$ 198,146	$ 13,166,195	$ 13,364,341	$ 13,323,614	$ (43,327)
Dec. 11-31	1,639,917	6,315,227	7,955,144	9,993,877	2,168,864
1981					
Jan.	4,409,844	16,982,050	21,391,894	26,874,231	5,832,274
Feb.	4,332,406	16,683,844	21,016,250	26,402,284	5,729,823
Mar.	3,767,657	14,509,027	18,276,684	22,960,620	4,982,910
Apr.	3,582,355	15,879,477	19,461,832	24,512,922	5,373,500
May	3,376,732	14,968,011	18,344,743	23,105,903	5,065,064
Jun.	3,883,550	17,214,580	21,098,130	26,573,902	5,825,290
Jul.	4,431,650	19,644,143	24,075,793	30,324,400	6,647,454
Aug.	4,352,586	18,815,580	23,168,166	21,337,075	(1,947,970)
Sept.	3,931,921	16,997,108	20,929,029	19,274,816	(1,759,801)
Oct.	3,565,096	15,411,377	18,976,473	17,476,671	(1,595,534)
Nov.	3,406,717	14,726,729	18,133,446	16,700,270	(1,524,655)
Dec. 1-14	2,912,002	17,303,083	20,215,085	17,319,667	(3,080,232)
Dec. 15-31	1,708,015	5,786,243	7,494,258	5,511,426	(2,109,396)
1982					
Jan.	8,052,779	27,280,416	35,333,195	25,984,734	(9,945,171)
Feb.	7,869,266	26,658,730	34,527,996	25,392,575	(9,718,533)
Mar.	7,060,706	23,919,567	30,980,273	22,783,508	(8,719,962)
Apr.	6,662,910	20,395,493	27,058,403	24,705,762	(2,502,809)
May	6,269,854	19,192,330	25,462,184	23,248,333	(2,355,160)
June	6,927,278	21,204,737	28,132,015	25,686,032	(2,602,110)
July	7,207,228	22,061,678	29,268,906	26,724,075	(2,707,267)
Aug.	7,812,207	22,930,725	30,742,932	28,053,455	(2,861,145)
Sept. 1-23	7,497,915	22,008,202	29,506,117	26,924,841	(2,746,038)
Totals	$114,858,737	$430,054,552	$544,913,289	$531,194,993	(14,593,931)
Revenues Collected Under Rider AFC-28					5,738,427
Total Over-/(Under-) Recovery of Costs					$(8,855,504)

NOTE: (1) Columns (b), (c), (d) and (e) do not include gross receipts tax
(2) Column (f) includes gross receipts tax and may be calculated as follows: [Column (e) - Column (d)] /.94

Due to differing periodic levels of under- and overrecovery of costs in conjunction with periodic timing differences, when interest charges are taken into account the effect is such that there exists a net undercollection by CP&L of revenues (fuel and fuel-related cost plus interest) during the period December 1, 1980, through September 23, 1982, in the amount of $7,366,019. Such amount reflects consideration of costs recovered through Rider AFC-28 and interest at the rate of 10% per annum compounded monthly through March 31,1985.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 16

This finding of fact is to the effect that CP&L should be allowed to recover from its North Carolina retail ratepayers, by means of a surcharge, the undercollection of the prudently incurred fuel and fuel-related costs, as elsewhere found in this Order. Since all of the intervenors contended that rates actually collected exceeded the rates that should have been collected, none of them offered any proposals concerning the proper method of implementing a surcharge to rates. However, in their briefs and memoranda filed over a 15-month period prior to these remand hearings, several intervenors argued that the Company should not be permitted to collect a surcharge, even if rates that should have been collected are greater than rates actually collected. The Commission is unable to agree with these arguments.

In the Public Staff opinion the Supreme Court directed the Commission "to true-up any discrepancy" between rates actually collected and rates that should have been collected. 309 N.C. at 214, 306 S.E. 2d at 446. The language of the Public Staff opinion makes it clear that this Commission must implement a two-way true-up. The Supreme Court directed the Commission "to determine whether, during the period covered by proceedings which are the subject of this appeal, the utility companies are entitled to recoup any of their costs for purchased and interchange power sought by such companies which have not previously been recovered." 309 N.C. at 213, 306 S.E. 2d at 445. As this language indicates, the court recognized that rates that should have been collected might exceed rates actually collected, and in that event the court considered that the utilities would be "entitled to recoup" the difference. In the very last words of its opinion the court stated that after comparing rates actually collected with rates that should have been collected, the Commission should "true-up any discrepancy." Id. at 214, 306 S.E. 2d at 446 (emphasis added). "Any" is a simple, unambiguous word. The court did not instruct the Commission to true-up some discrepancies, or to true-up only those discrepancies that could be corrected by a refund, or to exercise its discretion in trueing-up discrepancies. Instead, the Commission was directed to true-up any discrepancy.

The Commission has carefully considered the arguments of the intervenors with respect to the invalidity of a two-way true-up and finds them without merit. In summary, the intervenors contend that a true-up which would allow CP&L to recover if there were an undercollection is objectionable on three grounds: (1) it constitutes retroactive ratemaking; (2) it is discriminatory; and (3) the Company is estopped from advocating it.

A true-up that operates in both directions will not violate the rule against retroactive ratemaking. This Commission has never issued a valid final Order in the remand cases and therefore there can be no retroactive ratemaking. As Intervenor NCTMA (now CUCA) pointed out at page 22 of its memorandum of

April 30, 1984: "Retroactive rate-making does not arise as a question until and unless there is a lawfully established rate....Clearly, the Commission is in no danger of retroactive rate-making where the courts have reversed the rates and practices and sent the subject matter back to the Commission with directives to remedy the unlawful rates." Support for this argument is found in State ex rel. Utilities Commission v. Conservation Council, 312 N.C. 59, 320 S.E. 2d 679 (1984), and in State ex rel. Utilities Commission v. CF Industries, Inc., 299 N.C. 504, 263 S.E. 2d 559 (1980). In Conservation Council the court held:

> "[R]etroactive rate making occurs when, ...the utility is required to refund revenues collected, pursuant to the then lawfully established rates, for such past use." State ex rel. Utilities Commission v. Edmisten, 291 N.C. 451, 468, S.E. 2d 184, 194 (1977). The key phrase here is "lawfully established rates." A rate has not been lawfully established simply because the Commission has ordered it. If the Commission makes an error of law in its order from which there is a timely appeal the rates put into effect by that order have not been "lawfully established" until the appellate courts have made a final ruling on the matter." 312 N.C. at 67, 320 S.E. 2d at 685.

In these remanded cases, as in Conservation Council, the Company's rates have never been "lawfully established." The rates fixed in the Commission's original Orders have been held unlawful and of no effect. The Commission is now free to fix rates either higher or lower than in its previous Orders, without violating the retroactive rate-making rule.

Nor is there merit that the true-up is unlawfully discriminatory. As discussed above, the mandate of the Supreme Court in the Public Staff case required the Commission "to determine whether, during the period covered by proceedings which are the subject of this appeal, the utility companies are entitled to recoup any of their costs for purchased and interchange power sought by such companies which have not previously been recovered." 309 N.C. at 213, 306 S.E. 2d at 445. (emphasis added.) The court continued: "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 214, 306 S.E. 2d at 446. The Commission concludes that the court clearly contemplated that there might be an undercollection by CP&L of its prudently incurred fuel and fuel-related costs and that the mandate of the court authorized the recovery of such undercollection. The Commission further concludes that the surcharge approved herein to recover said undercollection is not impermissibly discriminatory under the facts of this proceeding, since the rates under consideration were never lawfully established rates.

Finally, there is no merit to the contention that the Company is estopped from advocating a true-up that operates in both directions. The rate-making practices held unlawful by the courts were promulgated by the Commission at the recommendation of its staff or the Public Staff. It has been the position of the Company that the Commission's procedures for handling fuel costs were a permissible exercise of the Commission's discretion, not that they were the only ones permitted by law. (See the Company's Brief as Appellant before the

Supreme Court in Docket Nos. E-2, Sub 402, and E-2, Sub 411, at pages 9-10 and 22.) The Company further argued that even if this Commission's fuel cost procedures were in violation of G.S. 62-134(e), any costs that were improperly considered in fuel adjustment proceedings were also improperly excluded from general rate cases. The Supreme Court rejected the Company's contention that the Commission's procedures were within the bounds of its discretion, but upheld the Company's argument that it was entitled to have all its reasonable costs considered in one type of proceeding or the other. Consequently, the contention that CP&L is estopped from asserting a true-up to recover the undercollection is groundless.

Fairness and the plain language of the Supreme Court require that the true-up operates in both directions. The Commission therefore concludes that the difference between the rates actually collected by CP&L and the rates that should have been collected should be recovered by the Company through a surcharge and that the surcharge should be collected over a period of approximately one year.

The Commission found in finding of fact number 15 that the appropriate amount to be collected through the surcharge is $7,366,019. A surcharge of $0.000356 per kWh will enable the Company to collect this amount in approximately one year. (This figure is obtained by dividing the total surcharge amount of $7,366,019 by 20,688,464,092 kWh, the Company's North Carolina retail kWh sales for the 12-month period ended March 31, 1985, as reflected in the Company's pending Application for Adjustment in Rates in Docket No. E-2, Sub 503). The Company should implement this surcharge through a rider to its rate schedules. The rider should terminate upon the collection of the amount authorized herein.

Following the termination of the rider, the Comany should report to the Commission the amount collected through operation of this rider.

IT IS, THEREFORE, ORDERED as follows:

1. That Carolina Power & Light Company shall implement a rider to its present rates for the purpose of recovering its unrecovered fuel and related costs of $7,366,019. Said rider shall add a $0.000356 per kWh surcharge for bills rendered on and after the first day of the next calendar month following the effective date of this Order. Said rider shall be reduced during the final billing period(s) as required so as to facilitate recovery and shall terminate upon the recovery authorized herein. Upon termination of the rider, the Company shall report to the Commission the total amount collected through the rider.

2. That all motions not heretofore granted or ruled upon by the Commission are hereby denied.

ISSUED BY ORDER OF THE COMMISSION.
This the 18th day of June 1985.

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

Commissioner Tate, abstaining.
Commissioner Crigler resigned from the Commission effective May 10, 1985.

DOCKET NO. E-2, SUB 391
DOCKET NO. E-2, SUB 402
DOCKET NO. E-2, SUB 411
DOCKET NO. E-2, SUB 416
DOCKET NO. E-2, SUB 446
(REMANDED)

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

Docket Nos. E-2, Sub 391, and E-2, Sub 416
(REMANDED)

In the Matter of
Applications by Carolina Power & Light Company)
for Authority to Adjust and Increase Its Rates)
and Charges)
)
)
Docket Nos. E-2, Sub 402; E-2, Sub 411; and)
E-2, SUB 446) FINAL ORDER ON
(REMANDED)) REMAND REQUIRING
) CUSTOMER REFUNDS
In the Matter of)
Applications by Carolina Power & Light Company)
for Authority to Adjust Its Electric Rates and)
Charges Based Solely Upon Changes in Cost of Fuel)

ORAL ARGUMENT
ON EXCEPTIONS
HEARD IN: Commission Hearing Room 217, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on Monday, August 5, 1985

BEFORE: Chairman Robert K. Koger, Presiding; and Commissioners Sarah Lindsay Tate, Edward B. Hipp, A. Hartwell Campbell, Ruth E. Cook, Julius A. Wright, and Robert O. Wells

APPEARANCES:

For Carolina Power & Light Company:

Richard E. Jones, Vice President and Senior Counsel, and Robert W. Kaylor, Associate General Counsel, Carolina Power & Light Company, Post Office Box 1551, Raleigh, North Carolina 27602

For the Public Staff:

Antoinette R. Wike, Chief Counsel, Public Staff - North Carolina Utilities Commission, Post Office Box 29520, Raleigh, North Carolina 27626-0520
For: The Using and Consuming Public

For the Attorney General:

Karen E. Long, Assistant Attorney General, North Carolina Department of Justice, Post Office Box 629, Raleigh, North Carolina 27602
For: The Using and Consuming Public

For the Intervenors:

Thomas R. Eller, Jr., Attorney at Law, Suite 205, Crabtree Center, 4600 Marriott Drive, Raleigh, North Carolina 27612
and
Sam J. Ervin, IV, Byrd, Byrd, Ervin, Blanton, Whisnant & McMahon, Attorneys at Law, Post Office Drawer 1269, Morganton, North Carolina 28655
For: Carolina Utility Customers Association, Inc.

M. Travis Payne, Edelstein, Payne & Jordan, Attorneys at Law, Post Office Box 12607, Raleigh, North Carolina 27605
For: Kudzu Alliance

BY THE COMMISSION: By opinions filed September 7, 1983, September 20, 1983, and October 18, 1983, the North Carolina Supreme Court and the North Carolina Court of Appeals remanded a number of cases involving the manner in which fuel expenses had been established by the North Carolina Utilities Commission in the cases which were the subject of the appeals giving rise to those court decisions.

The court decisions in question involve a number of Commission decisions in different dockets and involve, in varying degrees, all three of the major electric utilities operating in this State. Based on a perceived commonality of the issues on remand and other reasons, the North Carolina Textile Manufacturers Association (NCTMA), the Attorney General of North Carolina, Great Lakes Carbon Corporation (Great Lakes), the Kudzu Alliance, and the Conservation Council of North Carolina sought consolidation of all the remanded cases by motion filed December 5, 1983. On December 13, 1983, December 20, 1983, and January 9, 1984, respectively, Carolina Power & Light Company (CP&L or Company), Duke Power Company (Duke), and Virginia Electric and Power Company (Vepco) filed responses in opposition to the above-described joint motion.

On January 9, 1984, the Public Staff filed its response requesting the Commission to initially order a prehearing conference to be attended by all of the parties originally involved in each of the remanded dockets for the purpose of establishing the dockets and test periods to be reopened, settling the issue of standing, identifying the legal issues, and receiving proposals with regard to the appropriate procedures to be followed in further proceedings.

The Commission, by Order dated February 1, 1984, scheduled a pretrial conference for the above-listed purposes and required interested parties to file responses by February 27, 1984. Responses were timely filed by all interested parties and the conference came on as scheduled. All parties were represented by counsel with the exception of the Conservation Council.

On March 22, 1984, the Commission issued an Order denying the joint motion for consolidated proceeding and ruling that separate proceedings would be held for each company; finding that the Attorney General, the Public Staff, and any party who was a party to any of the original proceedings as now consolidated for each company had standing to participate in the separate proceedings; requesting proposed procedural orders; and allowing further briefs, memoranda, and reply briefs to be filed in accordance with the guidelines contained therein.

Proposed orders, briefs, memoranda, and reply briefs and memoranda were filed by the various parties during April and May 1984, and on May 30, 1984, the Commission issued its Order Scheduling Hearing and Establishing Procedure. Under that Order, CP&L, the utility with which the Commission is specifically concerned in this Order, was required to file its testimony and exhibits by September 11, 1984. Intervenor testimony and exhibits were due November 13, 1984, and the hearing was set for December 4, 1984.

CP&L filed its testimony and exhibits on September 11, 1984, as directed by the Commission. On October 16, 1984, the Attorney General and Carolina Utility Customers Association, Inc. (C.U.C.A.), the successor organization to NCTMA, filed a motion to require CP&L to produce certain documents and data. On October 23, 1984, CP&L filed an objection to the data request, which the Commission ruled on by Order dated October 26, 1984.

On November 6, 1984, and November 7, 1984, respectively, C.U.C.A. and the Attorney General moved to extend the time for filing intervenor testimony and also to reschedule the hearing date. CP&L objected by pleading filed November 9, 1984. The Commission, by Order dated November 15, 1984, rescheduled the hearing for February 5, 1985.

The testimony of Wells Eddleman on behalf of Kudzu Alliance was filed on December 14, 1984.

On December 17, 1984, the testimony and exhibits of Dr. John W. Wilson were filed on behalf of C.U.C.A.

On December 28, 1984, pursuant to an extension of time granted December 17, 1984, the Public Staff filed the testimony of Thomas S. Lam.

On January 11, 1985, the Commission issued an Order scheduling a prehearing conference for January 25, 1985.

On January 18, 1985, the Public Staff filed Revised and Supplemental Testimony of Thomas S. Lam.

On January 23, 1985, C.U.C.A. filed a motion to strike certain portions of the testimony of CP&L witness David R. Nevil and Public Staff witness Thomas S. Lam.

On January 24, 1985, CP&L filed Supplemental Testimony of David R. Nevil.

On January 25, 1985, the Attorney General filed a motion to strike certain portions of the testimony of David R. Nevil and Thomas S. Lam.

On January 29, 1985, Supplemental Testimony and Exhibits of Dr. John W. Wilson were filed on behalf of C.U.C.A.

On January 30, 1985, the Commission issued its Pre-Trial Order, resolving questions of judicial notice, order of witnesses, and other preliminary issues raised at the prehearing conference held January 25, 1985.

On February 1, 1985, the Public Staff moved to withdraw its testimony and to be allowed to refile on February 8, 1985, and for its witness or witnesses to be called to testify last.

Prior to and during the course of the hearings, various other procedural and discovery motions were made and ruled upon, all of which are a matter of record.

At the hearing, which came on as scheduled on February 4, 1985, various procedural issues were argued and the Attorney General moved for a continuance, in which the Public Staff and C.U.C.A. joined, on the ground that both the Public Staff and the Company were in the process of revising their positions. The Commission ruled from the bench that the hearing would be continued to February 19, 1985, with revised testimony due no later than February 8, 1985, and with supplemental testimony in response being due on February 15, 1985.

The additional supplemental testimony and exhibits of David R. Nevil on behalf of CP&L were filed February 5, 1985.

On February 8, 1985, the Public Staff filed the testimony and exhibits of Thomas S. Lam and Candace A. Paton.

On February 15, 1985, Supplemental Testimony of Wells Eddleman was filed on behalf of Kudzu Alliance, and Updated Testimony and Exhibits of Dr. John W. Wilson were filed on behalf of C.U.C.A.

On February 18, 1985, C.U.C.A. filed a renewal of its motion to strike certain testimony.

The case thereafter came on for hearing as rescheduled on February 19, 1985, for the purposes of taking testimony and hearing oral argument on the motions to strike. By ruling from the bench, the Commission deferred ruling on the motions to strike. The Commission Hearing Panel consisted of Commissioner Sarah Lindsay Tate, presiding, and Commissioners Charles E. Branford and Hugh E. Crigler, Jr. These hearings contined through March 1, 1985.

CP&L presented the testimony and exhibits of the following witnesses: Jerry W. Kirk, General Manager for CP&L's Systems Operations Department; L. L. Yarger, Manager of Fossil Fuel, Fuel Department of CP&L; Ronnie M. Coats, Assistant to the Group Executive, Fossil Generation and Power Transmission Group; and David R. Nevil, Manager - Rates Development and Administration in the Rates and Services Practices Department of CP&L.

The Public Staff presented the testimony and exhibits of Thomas S. Lam, Engineer with the Public Staff Electric Division, and Candace A. Paton, Staff Accountant with the Public Staff Accounting Division.

The Intervenor Kudzu Alliance presented the testimony and exhibits of Wells Eddleman.

The Intervenor Carolina Utility Customers Association, Inc., presented the testimony and exhibits of Dr. John W. Wilson, President of J. W. Wilson & Associates, Inc.

The parties filed briefs and proposed orders on April 25, 1985. Thereafter, on May 2, 1985, the Commission issued Order Requiring Additional Data in this proceeding. The Order required Carolina Power & Light Company to provide the following information and data:

> "1. That Carolina Power & Light Company shall calculate and file with the Chief Clerk of the Commission the net cumulative level of under or over collection of fuel costs, before and after inclusion of interest charges during the time period(s) in question, that would have occurred based upon the final methodology advocated by Carolina Power & Light Company witness Nevil at the time of hearings on remand with respect to the matters captioned hereinabove; provided, however, that such methodology shall be modified to reflect utilization of nuclear capacity factors based upon average actual historical lifetime operating experience. An individual average shall be calculated for each general rate case reopened. The time period over which each average is to be calculated shall end so as to coincide with the end of the test year utilized by the Commission in each of the general rate case dockets reopened, respectively."

The Order also required Carolina Power & Light Company to provide 31 copies of summaries of the data requested and seven (7) copies of all workpapers reflecting the technical data and methodology developed and used in complying with this Order.

By Order of May 6, 1985, the Commission granted CP&L to and including May 7, 1985, to file the information and data requested by its May 2, 1985, Order.

On May 7, 1985, Carolina Power & Light Company filed the required copies of the information required by the Commission Order of May 2, 1985. CP&L stated in its cover letter as follows:

> "The recalculation produces a net cumulative undercollection of $4,100,877 before interest and an overcollection of $1,512,523 after inclusion of interest of 10% compounded monthly."

On May 8, 1985, Carolina Utility Customers Association, Inc., filed Objection and Motion to Strike or Reopen Hearings and Record; the Attorney General filed Motion to Strike or in the Alternative Motion for Additional Hearing; the Public Staff filed Motion to Strike or, Alternatively, to Reopen Hearing; and the Kudzu Alliance filed Objection to Order Requiring Additional Data, and Request that Record Be Reopened and a Hearing Set. In these objections and motions, the four intervenors objected to the Commission Order of May 2, 1985, requiring the data from CP&L. The intervenors moved to strike the information and data that were filed by CP&L on May 7, 1985. In the alternative, the intervenors requested that the Commission, prior to the entry

of any order in this proceeding, reopen the hearing and record therein to afford the parties an opportunity to cross-examine on the information and data filed by CP&L or to produce evidence with respect thereto.

On May 10, 1985, the Commission issued an Order reopening the hearing and record in this proceeding for the sole and limited purpose of allowing the parties to cross-examine the response filed by CP&L on May 7, 1985, including the workpapers, in compliance with the Commission Order of May 2, 1985, and to present evidence with respect to such response. The hearing was scheduled to begin on Tuesday, May 28, 1985.

Commissioner Crigler resigned from the Commission effective May 10, 1985.

The reopened hearing was held as scheduled beginning on Tuesday, May 28, 1985, before Commissioners Tate and Branford, at which time CP&L presented the testimony and exhibits of David R. Nevil. The Public Staff presented the testimony and exhibits of Candace A. Paton, and the Carolina Utility Customers Association, Inc., presented the testimony of Dr. Charles E. Johnson. The reopened hearing concluded on May 31, 1985. The parties presented oral argument at the conclusion of such hearing.

On June 18, 1985, Commissioner Charles E. Branford entered a "Recommended Order on Remand" in these dockets whereby CP&L was authorized to implement a rider to its present rates for the purpose of recovering a net undercollection of revenues (fuel and fuel-related costs plus interest) related to the period December 1, 1980, through September 23, 1982, in the amount of $7,366,019. Commissioner Tate abstained from the Recommended Order entered in these dockets on remand by Commissioner Branford.

Commissioner Branford's term on the Commission expired on June 30, 1985.

On July 3, 1985, the Commission entered an Order in these dockets in response to a motion from the Public Staff whereby all parties were granted an extension of time of 15 additional days, to and including July 18, 1985, in which to file exceptions to the Recommended Order entered herein on June 18, 1985.

On July 3, 1985, C.U.C.A., the Kudzu Alliance, and the Attorney General filed certain exceptions to the Recommended Order and requested oral argument thereon before the full Commission.

On July 18, 1985, the Public Staff filed certain exceptions to the Recommended Order and requested oral argument.

On July 24, 1985, the Commission entered an Order in these dockets scheduling oral argument on exceptions for Monday, August 5, 1985.

The matter came on for oral argument on exceptions as scheduled before the full Commission on August 5, 1985, with all parties being represented by counsel. The Commission heard oral argument from all parties.

On August 16, 1985, the Commission entered an Order in these dockets entitled "Notice to the Parties" whereby the Commission stated, in pertinent part, that although it was unable to comply with the literal provisions of

G.S. 62-60.1 and render a decision in this proceeding within 60 days from the date of the "Recommended Order on Remand," the Commission would make a good faith effort to comply with the spirit of that statute and render its decision at the earliest possible time.

Therefore, based upon the appellate court decisions as interpreted by the Commission, the testimony and exhibits received into evidence or judicially noticed at the hearings, the oral argument on exceptions offered by the parties, and the record as a whole, including the records in the remanded proceedings and in the reopened proceedings when originally heard, the Commission now makes the following

FINDINGS OF FACT

1. Carolina Power & Light Company 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.

3. The following table sets forth certain relevant information with respect to each of the two CP&L general rate cases and each of the three fuel adjustment clause proceedings held pursuant to G. S. 62-134(e) which the appellate courts have recently remanded to the Commission:

a. In Column 1, the docket number of the original proceeding before the Commission and brief citation of the appellate court decision pursuant to which the case was remanded;

b. In Column 2, the period during which the rates established in the proceeding were actually in effect;

c. In Column 3, the type of proceeding; i.e., whether it was a general rate case or a fuel adjustment clause proceeding held pursuant to G.S. 62-134(e); and

d. In Column 4, the test period which was used in the proceeding.

Col. 1	Col. 2	Col. 3	Col. 4
Dkt. E-2, Sub 402 (309 N.C. 195)	12/01/80 - 3/31/81	Fuel Clause	5/80 - 8/80
Dkt. E-2, Sub 391 (309 N.C. 238)	12/11/80 - 12/14/81	General Rate Case	10/78 - 9/79
Dkt. E-2, Sub 411 (309 N.C. 195)	4/01/81 - 7/31/81	Fuel Clause	9/80 - 12/80
Dkt. E-2, Sub 416 (64 N.C. App. 609)	12/15/81 - 9/23/82	General Rate Case	1/80 - 12/80
Dkt. E-2, Sub 446 (64 N.C. App. 183)	4/01/82 - 7/31/82	Fuel Clause	9/81 - 12/81

4. It is necessary and appropriate to reopen Docket No. E-2, Sub 366, CP&L's general rate case which immediately preceded its remand general rate case Docket No. E-2, Sub 391, for the limited purpose of ascertaining the base fuel rate to which an increment or decrement should have been added in remand Docket No. E-2, Sub 402, and in order to determine the fuel revenues which should have resulted from such properly established fuel adjustment clause rate for the period December 1, 1980, through December 10, 1980.

5. It is necessary and appropriate to reopen three CP&L fuel adjustment clause proceedings which were held pursuant to G.S. 62-134(e), but which were not appealed, in order to determine the rates which should have properly been established therein and the fuel revenues which should properly have been collected pursuant to such properly established rates. Those three fuel adjustment clause proceedings are Docket Nos. E-2, Sub 420; E-2, Sub 434; and E-2, Sub 452. The rates which were established in those three proceedings were in effect and collected for various periods between December 1, 1980, and September 23, 1982, the earliest and latest dates on which the rates established in any of the five cases which were remanded by the appellate courts were in effect. Thus, in order to determine the fuel rates which should properly have been established in the five cases which were remanded by the appellate courts and the fuel revenues which should have resulted therefrom, it is also necessary and appropriate to reopen the three fuel adjustment clause proceedings listed above.

6. The following table sets forth certain pertinent information with respect to each of the five proceedings which were remanded by the appellate courts and the additional four proceedings which must be reopened for the reasons set forth in findings of fact 4 and 5 above:

a. In Column 1, the docket number of the original proceeding before the Commission;

b. In Column 2, the type proceeding; i.e., whether a general rate case or a G.S. 62-134(e) fuel clause proceeding;

c. In Column 3, the period during which the rates established in the proceeding were actually in effect; and

d. In Column 4, the period during which the fuel rates which should have been established in the proceeding should have been in effect, as such period relates to this remand proceeding.

Col. 1	Col. 2	Col. 3	Col. 4
E-2, Sub 366	General Rate Case	4/01/80 - 12/10/80	12/01/80 - 12/10/80
E-2, Sub 402	Fuel Clause	12/01/80 - 3/31/81	12/01/80 - 12/10/80
E-2, Sub 391	General Rate Case	12/11/80 - 12/14/81	12/11/80 - 12/14/81
E-2, Sub 411	Fuel Clause	4/01/81 - 7/31/81	4/01/81 - 7/31/81
E-2, Sub 420	Fuel Clause	8/01/81 - 11/20/81	8/01/81 - 11/30/81
E-2, Sub 434	Fuel Clause	12/01/81 - 3/31/82	12/01/81 - 12/14/81
E-2, Sub 416	General Rate Case	12/15/81 - 9/23/82	12/15/81 - 9/23/82
E-2, Sub 446	Fuel Clause	4/01/82 - 7/31/82	4/01/82 - 7/31/82
E-2, Sub 452	Fuel Clause	8/01/82 - 9/23/82	8/01/82 - 9/23/82

7. During the period from December 1, 1980, through September 23, 1982, CP&L charged various amounts for fuel on a cents per kilowatt-hour (kWh) basis for North Carolina retail kWh sales. Those amounts which were in fact charged by CP&L during that period for fuel were those which were established in various fuel adjustment clause proceedings pursuant to G.S. 62-134(e) or those which, having been established in such a G.S. 62-134(e) proceeding, were adopted by the Commission in a general rate case proceeding. Specifically, CP&L charged the amounts, in cents per kWh, for each North Carolina retail kWh sold during the subperiods set forth in the table which follows. The docket numbers of the G.S. 62-134(e) proceedings or general rate cases in which each of those cents per kWh charges for fuel was established by the Commission are also set forth in the following table:

Subperiod	Charge per kWh in cents per kWh for fuel	Docket Number
12/01/80 - 12/10/80	1.498	E-2, Sub 402
12/11/80 - 3/31/81	1.498	E-2, Sub 402 rate (as adopted in general rate case order in E-2, Sub 391)
4/01/81 - 7/31/81	1.682	E-2, Sub 411
8/01/81 - 11/30/81	1.205	E-2, Sub 420
12/01/81 - 12/14/81	1.462	E-2, Sub 434
12/15/81 - 3/31/82	1.462	E-2, Sub 434 rate (as adopted in general rate case order in in E-2, Sub 416)
4/01/82 - 7/31/82	1.680	E-2, Sub 446
8/01/82 - 9/23/82	1.627	E-2, Sub 452

8. During the period from December 1, 1980, through September 23, 1982, CP&L sold a total of 35,053,617,556 kWh to its North Carolina retail ratepayers. Those total kWh sales by CP&L occurred in the amounts and during the eight subperiods which are relevant to this proceeding as follows:

Subperiod	N.C. Retail kWh Sales
12/01/80 - 12/10/80	889,427,432
12/11/80 - 3/31/81	5,756,406,926
4/01/81 - 7/31/81	6,213,859,307
8/01/81 - 11/30/81	6,206,549,577
12/01/81 - 12/14/81	1,184,655,815
12/15/81 - 3/31/82	5,449,537,780
4/01/82 - 7/31/82	5,974,059,889
8/01/82 - 9/32/82	3,379,120,830
Total	35,053,617,556

9. During the period from December 1, 1980, through September 23, 1982, CP&L collected a total of $531,194,993 excluding gross receipts tax and $565,101,056 including gross receipts tax from the North Carolina retail ratepayers through the various cents per kWh fuel adjustment clause charges for

the kWh sales made during that period. The following table shows for each subperiod relevant to these remanded proceedings the cents per kWh charge which was in effect, the North Carolina retail kWh sales which occurred, and the resulting amount of fuel collections with respect to each of those subperiods.

Col. 1 Subperiod	Col. 2 Cents per kWh Fuel Charge	Col. 3 N.C. Retail kWh Sales	Col. 4 Fuel Revenues (Col. 2 x Col. 3)
12/01/80 - 12/10/80	1.498	889,427,432	$ 13,323,614
12/11/80 - 3/31/81	1.498	5,756,406,926	86,231,012
4/01/81 - 7/31/81	1.682	6,213,859,307	104,517,127
8/01/81 - 11/30/81	1.205	6,206,549,577	74,788,832
12/01/81 - 12/14/81	1.462	1,184,655,815	17,319,667
12/15/81 - 3/31/82	1.462	5,449,537,780	79,672,243
4/01/82 - 7/31/82	1.680	5,974,059,889	100,364,202
8/01/82 - 9/23/82	1.627	3,379,120,830	54,978,296
TOTAL (excluding gross receipts tax)			$531,194,993
TOTAL (including gross receipts tax)			$565,101,056

10. In addition to the $565,101,056 of fuel collections by CP&L from North Carolina retail ratepayers which were made during the period December 1, 1980, through September 23, 1982, as detailed in finding of fact number 9 above, CP&L also collected $5,738,428 of additional fuel revenues including gross receipts tax which are properly attributable to that period and which are properly considered in determining any fuel overcollection or undercollection in these remanded proceedings. That $5,738,428 was collected by CP&L under Rider AFC-28 which was in effect from September 24, 1982, through November 30, 1982. These subject additional fuel revenues reflect a spreading out of part of the fuel adjustment clause rate increase which was approved in Docket No. E-2, Sub 434, but which was so large that the Commission directed that it be charged over a longer than normal period; i.e., over 12 months instead of four months. Therefore, the Company collected total fuel revenues of $570,839,484 including gross receipts tax during the relevant period.

11. In determining the base fuel component which should have been established in each of CP&L's general rate cases in Docket Nos. E-2, Sub 366, E-2, Sub 391, and E-2, Sub 416, it is reasonable and appropriate to use a normalized generation mix which reflects the lifetime historical average level of CP&L's nuclear generation. The lifetime historical average level of nuclear generation should be calculated as of the end of the test period utilized by the Commission in each reopened general rate case docket to which said average level of nuclear generation is applied. The resulting lifetime historical average levels of nuclear generation in these proceedings are 60.79% for Docket No. E-2, Sub 366, 58.96% for Docket No. E-2, Sub 391, and 57.05% for E-2, Sub 416. The normalized level of other sources of supply should be calculated in a manner consistent with previous practice. These normalization adjustments are tailored specifically to CP&L's own nuclear generating units and the Company's historical operating experience in order to adopt reasonable and representative fuel costs in these proceedings on remand which are fair and equitable to both CP&L and its rate-paying customers.

12. The increment or decrement to be applied to a general rate case base fossil fuel factor, as a result of a G.S. 62-134(e) fuel adjustment clause proceeding, is properly computed by dividing the total fossil fuel expense for the relevant test period by the system mWh sales for the relevant test period and adding or subtracting the fossil factor so derived to or from the base fossil fuel factor set in the immediately preceding general rate case.

13. The proper methodology for determining the over- or undercollection of fuel-related revenues for the remand period requires the reversal of any general rate case adjustments originally made to facilitate incorporating fuel rates set in G.S. 62-134(e) proceedings into rates approved in general rate cases. Additionally, any adjustments which should have been made originally in those general rate cases to reflect the appropriate and reasonable level of production capacity and for annualization of fuel to reflect reasonable and representative price levels and variable operation and maintenance (O&M) expenses must now be made. The resulting change in the total allowable rate increase in each general rate case must be considered in calculating the over- or undercollection of fuel-related expenses during the remand period.

14. Total revenues related to fuel costs that should have been collected by the Company during the period at issue in these remand proceedings was $574,940,360 including gross receipts tax and exceeded revenues related to fuel costs in the amount of $570,839,483 including gross receipts tax actually collected by CP&L by $4,100,877.

15. When interest charges are taken into account, due to timing differences which exist when the period at issue is appropriately considered on a segmented basis with regard to over- and undercollections of fuel-related revenues, the effect is such that there exists an overcollection by CP&L of revenues related to fuel costs plus interest in the amount of $1,512,523 through March 1985.

16. The Company should be required to refund to its North Carolina retail ratepayers the overcollection of fuel and fuel-related costs as found in this Order.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 1 AND 2

The evidence supporting these findings of fact is contained in the verified applications originally filed by the Company, in prior Commission Orders in these dockets of which the Commission takes notice, and in G.S. 62-3(23)a.1, G.S. 62-133, and former G.S. 62-134(e). 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 - 6

The evidence supporting these findings of fact is contained in the appellate court opinions which remanded the various cases back to the Commission and in the Commission's May 30, 1984, Order Scheduling Hearing and Establishing Procedure which interpreted these appellate court opinions and established the dockets to be reopened, the methodology to be used, and the nature of the hearing in satisfying the various instructions of the appellate courts. While the appropriate methodology to be used was sharply disputed and

has been extensively discussed elsewhere in this Order, these findings of fact are essentially procedural and jurisdictional in nature and the matters which they involve are essentially uncontested.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 7 - 9

The evidence for these findings of fact can be found in the testimony and exhibits of Company witness Nevil, Public Staff witness Paton, C.U.C.A. witness Wilson, and the February 1984 Compendium of General Rate Cases Including Fuel Clauses, 1970 - February 1984, which was compiled by members of the Commission Staff and introduced in evidence in this proceeding as Public Staff Nevil Cross-Examination Exhibit 1. The charge per kWh in cents per kWh for fuel shown in Column 2 and the docket numbers shown in Column 3 of finding of fact number 7 appear on the last line of page 2 of Table E-2 of the Compendium and on page 3 of said table. These amounts and the associated docket numbers were accepted by Company witness Nevil as an accurate listing. (Tr. Vol. 6, p. 137). The subperiods that the rates were in effect, as shown in Column 1, are not contested and have previously been discussed.

With respect to finding of fact number 8 concerning the North Carolina retail kWh sales during the eight subperiods relevant to this proceeding, the numbers from which these sales levels were computed were supplied by Company witness Nevil, more specifically on his final set of exhibits, Exhibits 3B, p. 5; 5B, p. 6; and 7B, p. 14, and none of the parties took issue with them.

The table that appears in finding of fact number 9 and the resulting finding that CP&L actually collected a total of $531,194,993 from North Carolina ratepayers during the period December 1, 1980, through September 23, 1982, result from combining the tables found to be accurate and appropriate in findings of fact 7 and 8 and multiplying the cents per kWh times actual North Carolina retail sales for each period in question. Finding that the multiplication is mathematically correct except for some immaterial rounding differences, the Commission concludes that CP&L actually collected $531,194,993 from its North Carolina retail ratepayers during the relevant period through its approved base fuel and fuel adjustment clause charges.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 10

Company witness Nevil, Public Staff witness Lam, C.U.C.A. witness Wilson, and Kudzu witness Eddleman presented testimony regarding CP&L's collection of $5,738,428 in additional fuel revenues from September 24, 1982, to November 30, 1982, due to the Commission's approving incorporation of an ongoing fuel cost adjustment factor of 0.273¢/kWh from Docket No. E-2, Sub 434, into general rate case Docket No. E-2, Sub 444, as Rider No. AFC-28, on September 24, 1982.

Witnesses Nevil, Lam, and Wilson all supported the addition of the $5,738,428 to actual revenue of $531,194,993 excluding gross receipts tax collected from December 1, 1980, to September 23, 1982. Witness Eddleman testified that the amount should be somewhat higher.

Docket No. E-2, Sub 434, was heard on October 20, 1981, and used a four-month test period ended August 31, 1981. The Commission in its Order of October 22, 1981, found the following in finding of fact number 7:

"The increases in the cost of fuel to CP&L were incurred primarily during the air conditioning season, and a more appropriate matching of said seasonal use to a reasonable rate period, together with the unusually high fuel cost adjustment, requires that the normal four-month fuel cost adjustment factor be applied to a twelve-month period on an even split between the three included four-month periods. The increase should be a 0.273 cents per kilowatt-hour for the billing period from April 1982, through November 1982, an increase of 0.273 cents per kilowatt-hour should be added to the increase or decrease which will be derived from normal application of the fuel cost adjustment procedure."

CP&L's general rate case Docket No. E-2, Sub 444, was heard prior to the expiration of the 12-month period over which the Commission had authorized CP&L to collect the fuel costs approved in Docket No. E-2, Sub 434. The Company requested and the Commission approved in that general rate case a special rider to CP&L's rates, Rider No. AFC-28, on the ground that CP&L would otherwise not be allowed to collect revenues previously approved by the Commission which would have been collected but for the deferral. This rider was charged from the effective date of the Sub 444 Order, September 24, 1982, until November 30, 1982.

Based on the foregoing, the Commission concludes that the $5,738,428 of additional fuel revenues collected pursuant to Rider No. AFC-28 were attributable to the period relevant to this proceeding and are therefore properly added to the previously determined fuel collections of $565,101,056 by CP&L from its North Carolina retail ratepayers for a total of $570,839,484 in fuel collections including gross receipts tax for that period.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 11

The evidence for this finding of fact, concerning the reasonableness and representativeness of fuel costs, is found primarily in the testimony and exhibits of Company witnesses Nevil, Yarger, Coats and Kirk, Public Staff witness Lam, C.U.C.A. witness Wilson and Kudzu witness Eddleman in the remand hearings and Public Staff witnesses Nightingale and Carrere and Company witnesses Yarger and Watson at the original hearings in these cases.

Witness Yarger testified concerning the burned cost of coal, oil, natural gas and nuclear fuel used by the Company during the test periods for the reopened cases. He outlined the coal and nuclear fuel procurement practices followed by the Company during these periods. He testified that the Company regularly compares its performance in numerous fields with a group of seven other southeastern utilities, and that throughout the periods in question the Company's total burned fuel costs were the lowest, or close to the lowest, of the group. Witness Yarger therefore concluded that the Company's fuel procurement practices must be considered reasonable.

The only intervenor witness at the remand hearings who addressed the Company's fuel procurement practices was Public Staff witness Lam. He stated that the Public Staff in the normal course of a rate case investigation checks into the reasonableness and representativeness of fuel prices and also investigates the Company's fuel procurement practices and policies, and that it was not necessary to investigate these matters again.

At the original hearings in each of the reopened fuel adjustment proceedings, either witness Yarger or witness Watson appeared on behalf of the Company and offered testimony which established the reasonableness of the Company's fossil fuel procurement practices. Their testimony at said hearings was never contradicted by any intervenor witness.

At the original hearings in two of the reopened general rate cases, the Public Staff presented testimony as to its investigation of the Company's fuel procurement practices. Witness Nightingale testified in Docket No. E-2, Sub 366, and witness Carrere in Docket No. E-2, Sub 416. Both witnesses stated that the Company's fuel procurement practices were reasonable and its coal contracts were being administered in accordance with the Commission's guidelines.

Based on all of the evidence presented, and the fact that no party offered any evidence to the contrary, the Commission finds that the Company's fuel procurement practices were reasonable and prudent during the test periods for the reopened cases.

Witness Kirk testified that the Company engages in two types of power purchase transactions: (1) economy purchases, which are made when power can be obtained from another utility more cheaply than it can be generated on the Company's own system, and (2) reliability purchases, which are made when the Company's load requirements are greater than its available generating capacity. He stated that both types of purchases benefit ratepayers by enabling the Company to meet customer demand at the lowest possible cost.

Witness Kirk stated that the Company makes power purchase decisions on an annual, seasonal, monthly, weekly, daily, and hourly basis. The Company is in constant communication by telephone and teletype with neighboring utilities, in order to ensure that power purchases are made whenever power can be obtained from other companies at rates lower than the costs of generating power at the Company's own plants.

No objection was raised to the Company's power purchasing practices. Accordingly, the Commission finds and concludes that the Company's power purchasing practices were reasonable and prudent during the test periods for the reopened cases.

Witness Coats described the Company's program for planning and scheduling major outages for its plants. He stated that the Company schedules outages to minimize fuel costs, and uses the critical path method of scheduling maintenance activities during an outage in order to accomplish the greatest possible amount of work while minimizing the length of the outage. He testified that despite the Company's efforts to schedule outages efficiently, unexpected outages may occur because of many factors, including equipment breakdowns, the identification of environmental problems or concerns of the Nuclear Regulatory Commission (NRC) that may require prompt attention, changes in weather, or disruption of fuel supplies.

Witness Coats testified that the Company's nuclear capacity factors for the test periods for the Sub 366, Sub 391 and Sub 416 cases were 70.7%, 56.7% and 45.75%, respectively, and that the equivalent availability factors for the Roxboro Plant during these periods were very high. He stated that the lower

nuclear capacity factor in the test year for Docket No. E-2, Sub 416, was primarily the result of outages for plant modifications required by the NRC. In his opinion, the outages during the test periods for these cases were not avoidable and were not caused by the Company's failure to follow prudent and reasonable management practices.

Witness Coats was extensively cross-examined about the outage at Brunswick Unit No. 2 which occurred during the summer of 1980. Torus modification work required by the NRC and performed during this outage was primarily responsible for the lower system nuclear capacity factor in 1980. Questions were raised as to whether the Company had incurred costs needlessly and had unjustifiably extended the length of the outage by prefabricating structures to be installed in the torus which did not fit and had to be modified. In response, witness Coats explained that the torus is a doughnut-shaped chamber which lies below and around the reactor vessel; that the torus is normally half filled with water which must be drained before maintenance work is performed; that even though many of the prefabricated structures had to be reworked to varying degrees, the Company still benefitted from having prefabricated the structures before the outage; that it would have been extremely difficult to prefabricate structures that would fit perfectly the first time without any rework; and that it would also have been impractical to have an outage in order to precisely measure the location of existing structures inside the torus before prefabricating the new structures. Witness Coats further testified that the outage time required for torus modifications at the Brunswick Plant was no greater than that required for similar modifications at other companies' plants.

In discussing the Brunswick 2 outages which occurred during the summer of 1980, at page 48 of the original Order in Docket No. E-2, Sub 416, the Commission found that although the Company's nuclear performance for the period was below average, "evidence was not presented specifically indicating the below average performance . . . was the result of mismanagement by the Company. There is therefore not sufficient evidence presented in this docket upon which to base the specific adjustments proposed by the Public Staff" disallowing replacement power costs. None of the intervenors excepted to this finding or assigned it as error on appeal. After a thorough reconsideration of the issue, the Commission sees no reason to depart from its original finding. The outage at issue was for the purpose of carrying out plant modifications required by the NRC in order to protect the public health and safety.

Nevertheless, a major issue in this proceeding involves whether and to what extent a normalized generation mix should be used in determining the reasonable cost of fuel to be reflected in each of the general rate cases reopened in this proceeding. Company witness Nevil, Public Staff witness Lam, C.U.C.A. witness Wilson and Kudzu witness Eddleman provided evidence bearing upon this issue.

Company witness Nevil testified that actual test period fuel costs should be used rather than normalized costs because when the cases were originally heard, normalization was not proposed and, further, that the concept of fuel cost normalization is unsound. Public Staff witness Lam, C.U.C.A. witness Wilson, and Kudzu witness Eddleman all testified that normalization of fuel costs was appropriate.

In order to determine the reasonable cost of fuel for the Company in each of the three general rate cases involved herein, it is necessary to determine what generation mix the Commission should reasonably assume will provide the level of generation produced during the time periods in question. Components of the generation mix are as follows: coal fired generation, fossil fired internal combustion generation (IC), nuclear generation, hydroelectric generation, and purchases and sales.

The driving force in establishing a reasonable normalized generation mix is the level of nuclear generation to be used. That is true because nuclear generation fuel costs, being relatively cheaper than those of other components (except hydroelectric), will be incurred first by a utility, with the other more costly components being used as necessary to meet demand. (Nuclear generation may constitute 35% to 40% of total generation, while hydroelectric rarely if ever constitutes more than 3% of the total.) The level of nuclear generation which can reasonably be expected is, in turn, essentially a function of the system nuclear capacity factor selected.

Public Staff witness Lam recommended that a 60% nuclear capacity factor should be used. He testified that the selection of a 60% nuclear capacity factor for CP&L's nuclear units was not done arbitrarily; and that the North Carolina Utilities Commission and the Public Staff have consistently used a 60% nuclear capacity factor as a standard for acceptable performance since 1978. In support of this standard, he cited the Commission's "Order Incorporating Plant Performance Review Procedure Into Fuel Cost Rate Adjustment Proceedings [G.S. 62-134(e)] And Order Establishing A Rulemaking For Fuel Cost Rate Adjustments Pursuant To G. S. 62-134(e)" entered in Docket Nos. E-2, Sub 316, E-7, Sub 231, and E-22, Sub 216 on May 18, 1978. Finding of fact number 8 in that Order reads as follows:

> "A capacity factor of 60% on a systemwide basis for base loaded nuclear plants is an objective which the Company should seek to achieve and failure to achieve this objective on both a six- and twelve-month period requires a hearing to determine the reasons and causes therefor."

Witness Lam also testified that the use of a 60% nuclear capacity factor is consistent with the performance of nuclear units on a national level. For example, the North American Electric Reliability Council Equipment Availability Report for the ten-year periods ending in 1979, 1980, 1981, and 1982 shows the nuclear capacity factors actually achieved by all nuclear units in the United States to average 60%, 59.8%, 61.5%, and 60.3%, respectively. Witness Lam contended that since that is the average level of performance achieved by all utilities, it would be appropriate to use these figures as a standard against which to measure CP&L.

C.U.C.A. witness Wilson testified that the Company's test year generation mix should be adjusted to reflect at least a 60% nuclear capacity factor because the actual nuclear capacity factors achieved by CP&L were based on excessive outages and did not reflect the normal performance from those plants that should be expected in the future. He further testified that exceptional nuclear outages, whether CP&L was at fault or not, should not be permanently incorporated as a basis for setting future rates, just as the expenses incurred

for one-time massive storm damage or for abnormally cold or hot weather should not be included.

The basis for Dr. Wilson's recommendation for normalizing CP&L's nuclear capacity factors to 60% consists of three reasons. First, CP&L has been able to actually achieve that level and more. Second, the industry average for the same type units for a five-year period generally exceeded 60%. Third, based on his simulation of the CP&L system with a probabilistic dispatch model, nuclear capacity factors should be 60% or greater in each of the test years, even including the actual outages of greater duration for refueling and other maintenance than had been planned during this period. For these reasons, Dr. Wilson concluded that using a 60% nuclear capacity factor provided a conservative estimate of the amount of energy that should have been expected from CP&L's nuclear plants in this period.

Kudzu witness Eddleman testified that the Commission should have, and probably would have, normalized nuclear performance to 70% in Docket No. E-2, Sub 366, if the Commission had not erroneously adopted the practice of incorporating the fuel clause factors into the general rate cases. He recommended that 70% be used because the design rating capacity factor of CP&L's nuclear units in 1978 was nearly 70%; the Robinson 2 Unit has been performing in this range for years as of 1978; the Brunswick Units were relatively new and had been designed to operate with a 70% or more capacity factor; and finally, CP&L evidently attributed the lower capacity factors of Brunswick prior to 1978 to problems basic to the early operation of nuclear plants and not as normal operation.

Company witness Nevil testified that he used the Company's actual fuel costs and made no adjustment to "normalize" nuclear generation. The Company contended that under the intervenors' proposals, the Company would be allowed rates sufficient to recover only the costs that would have been incurred if the Company's nuclear plants had been operated at a "representative" capacity factor based on the experience of other utilities, and that in arriving at their "representative" capacity factor the intervenors did not give significantly greater weight to CP&L experience than to the experience of any other utility.

The Company contends that although the Commission adjusts total generation and sales to reflect "representative" weather and adjusts hydro generation to reflect "representative" rainfall, it should not adjust nuclear generation to reflect a "representative" capacity factor. The Company contends that nuclear normalization is different from weather and hydro normalization because although temperature and rainfall change continually, long-term normal temperature and rainfall generally follow patterns that can be determined objectively. CP&L's basic position is that, absent a finding of management imprudence, the Company's rates should reflect actual test year fuel costs with no normalization.

The Commission is of the opinion that 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 can be reasonably anticipated to occur in the future on an ongoing basis. To adopt a level of nuclear generation which was abnormal or unrepresentative during a given test period would require a reevaluation and

resetting of the fuel component in the rates each time such abnormal or unrepresentative level of nuclear generation changed or returned to normal in order to prevent a serious overcollection or undercollection of fuel costs, and the timing of such reevaluations would need to be closely coordinated with the timing of such changes in the level of nuclear generation. Since the level of nuclear generation can change drastically from year to year due to planned refueling and maintenance outages as well as unplanned outages, and since any drastic changes in the level of nuclear generation can have a very large impact on the overall fuel cost of the Company, the fuel component in the rates can fluctuate significantly from rate case to rate case in response to changes in the level of nuclear generation. Such fluctuations in the fuel component of the rates, and therefore in the overall rates themselves, cause undue customer dissatisfaction and great regulatory difficulty in determining the proper level of fuel costs on an ongoing basis. It would be impractical to convene a formal inquiry into the appropriate level of nuclear generation each time an outage occurs at one of the nuclear generating units, especially when such an issue can be handled on an ongoing basis much more readily by normalizing the level of nuclear generation to a representative level at each general rate case.

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 the test year experience reflects an abnormality, such as an abnormally high or 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). A specific finding of management imprudence is not required to justify and support appropriate and reasonable pro forma normalization adjustments related to issues such as CP&L's reasonable and representative generation mix.

Based on all of the evidence in the record of this proceeding, the Commission concludes that normalization of the level of nuclear generation in each reopened general rate case herein is reasonable and appropriate. The Commission also concludes based on the evidence in the record that the use of a generation mix which reflects a normalized level of hydroelectric generation consistent with a long-term historical average level of such generation is appropriate, and that the normalized hydroelectric generation recommended by the Company for use in each of the reopened general rate cases (and about which there was relatively minor disagreement by the parties) is appropriate. The Commission further concludes that the adjusted test year levels of generation and sales (about which there was little or no dispute in this proceeding) utilized by the Company are appropriate.

As to the appropriate normalized level of nuclear generation, the Commission notes that the lifetime capacity factors actually achieved by nuclear units nationwide as reported by the North American Electric Reliability

Council Equipment Availability Report for the ten year periods ending in the periods involved in the proceeding averaged 60% in 1979, 59.8% for 1980, 61.5% for 1981, and 60.3% for 1982.

CP&L's average lifetime nuclear capacity factors actually achieved for the three general rate case test periods involved in the case compare favorably to those actually achieved by all nuclear units in the United States. They are 60.79% for general rate case Docket No. E-2, Sub 366, 58.96% for general rate case Docket No. E-2, Sub 391, and 57.05% for Docket No. E-2, Sub 416. The average achieved lifetime capacity factor for CP&L's nuclear plants for the period involved in these proceedings is only one to two percentage points less than that achieved nationally by all nuclear plants and closely approximates the 60% target or objective specified in Rule R8-46.

CP&L's average actually achieved nuclear capacity factor for the test year used in general rate case Docket No. E-2, Sub 366 was 70.7%; for the test year used in general rate case Docket No. E-2, Sub 391, it was 56.8%; and for the test year used in general rate case Docket No. E-2, Sub 416, it was 45.75%. The average capacity factor actually achieved for the test years in the three general rate cases was only one to two percentage points below CP&L's average achieved lifetime system nuclear capacity factor for the period.

Upon review of CP&L's actual test year nuclear capacity factors on remand, the Commission concludes that it is appropriate to use a normalized generation mix which reflects the lifetime historical average level of CP&L's nuclear generation in determining the base fuel component which should have been established in each of the reopened general rate cases in Docket Nos. E-2, Sub 366, E-2, Sub 391, and E-2, Sub 416. The lifetime historical average level of nuclear generation should be calculated as of the end of the test period utilized by the Commission in each reopened general rate case docket to which said average level of nuclear generation is applied. The Commission concludes that such normalization will establish CP&L's generation mix for ratemaking purposes on remand at reasonable and representative levels which are fair to both the Company and its ratepayers. In particular, the Commission concludes that the 45.75% nuclear capacity factor which CP&L experienced during the test year for Docket No. E-2, Sub 416 was abnormally low and not reasonably representative of an acceptable system nuclear capacity factor for ratemaking purposes and should not reasonably be expected to reoccur in subsequent periods. Thus, normalization is clearly appropriate and justified, even in the absence of a finding of management imprudence related to nuclear plant performance. Normalization of CP&L's nuclear capacity factor at 60.79% in Docket No. E-2, Sub 366 also serves to establish a more reasonable and representative nuclear capacity factor for ratemaking purposes to the benefit of CP&L in that case since the test year nuclear generation of 70.7% was, in effect, abnormally high. Normalization in Docket No. E-2, Sub 391 is generally of little consequence in view of the Company's actual test year nuclear generation. For purposes of these proceedings on remand, the normalization adjustments adopted by the Commission are tailored specifically to CP&L's own nuclear generating units and the Company's historical operating experience in order to adopt reasonable and representative fuel costs which are fair and equitable to both CP&L and its rate-paying customers.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 12

The evidence for this finding of fact is contained in the testimony and exhibits of Company witness Nevil, Public Staff witness Lam, Kudzu witness Eddleman, and C.U.C.A. witnesses Wilson and Johnson.

. Witness Nevil and witness Lam are in basic agreement with respect to the methodology which should be used in G.S. 62-134(e) proceedings to calculate the proper increments or decrements to be applied to the fossil base components set in the general rate case immediately preceding the fuel adjustment clause proceedings. Witness Lam derived the fossil factor for each of the reopened fuel adjustment clause proceedings by adding up the total fossil fuel expense for each month of the relevant four-month test period and dividing that total by system mWh sales for that four-month test period, thus deriving a fossil factor for that test period in dollars per mWh. The difference between the fuel clause fossil fuel factor and the rate case fossil base component is then added to or subtracted from the base fuel factor to arrive at a total fuel factor.

C.U.C.A. witnesses Wilson and Johnson and Kudzu witness Eddleman objected to the use of the above-described methodology on the ground that rather than adjusting the fossil fuel factor only for changes in costs brought about by changes in the price of fossil fuel, witness Nevil and witness Lam adjusted for changes in the total expense for fossil fuel, including the effects of generation mix, as well as changes in the price of fuels.

Dr. Wilson's approach reprices the normalized generation mix produced in the most recent general rate case using burned fuel costs incurred during the four-month fuel adjustment clause test period and his adjustment to rates is based upon the difference between the repriced costs and the original costs. Kudzu witness Eddleman's approach is similar.

The two approaches advocated in this proceeding on remand arise out of differing interpretations of three appellate court opinions: the two opinions giving rise to this remand proceeding which involve fuel adjustment clauses, State ex rel. Utilities Commission v. Public Staff - North Carolina Utilities Commission, 309 N.C.. 195, 306 S.E. 2d 345 (1983) (hereinafter referred to as "the Public Staff opinion") and State ex rel. Utilities Commission v. Kudzu Alliance, 64 N.C. App. 183, 306 S.E. 2d 546 (1983) (hereinafter referred to as "the Kudzu opinion"), and an earlier Court of Appeals decision, State ex rel. Utilities Commission v. Virginia Electric and Power Company, 48 N.C. App. 453, 269 S.E. 2d 657 (1980) disc. rev. denied, 301 N.C. 531, 273 S.E. 2d 462 (1980) (commonly referred to as "the Vepco decision").

The parties generally agree on the holding of the court in the Vepco decision, though they disagree as to how the opinion should be interpreted as it relates to the fuel clause opinions involved in this remand proceeding. The following language from the Vepco opinion is important in determining how that decision affects the issues involved herein. The pertinent language regarding G.S. 62-134(e) is as follows:

> "By the clear and express language of this statute, the legislature has provided a procedure by which a public utility may apply to the Utilities Commission for authority to increase its rates and charges

based solely upon the increased cost of fuel used in the generation of electric power.... Insofar as the Commission in the present cases considered and passed upon the cost of fuel used by Vepco in the generation of electric power during the periods in question by considering the reasonableness of the prices paid by Vepco for such fuel, it acted within the scope of the statutorily prescribed procedure. Insofar as the Commission considered and based its determination upon such factors as Vepco's heat rate and plant availability in these proceedings, it went beyond the scope of the procedure authorized by G.S. 62-134(e).

* * * *

"We hold only that plant efficiency as it bears upon fuel cost is not a factor to be considered in the limited and expedited proceeding provided for by G.S. 62-134(e). After all, the legislature enacted that section, not as a substitute for a general rate case, but to provide an expedited procedure by which the extremely volatile and uncontrollable prices of fossil fuels could be quickly taken into account in a utility's rates and charges. There is no such volatility in plant efficiency which depends upon long range maintenance decisions and practices carried out over a long period of time. We hold that the Commission erred in ordering rate reductions and ordering Vepco to make refunds based on changes made by the Commission in Vepco's fuel costs by taking into account the factors of heat rate and plant availability." 48 N.C. App. at 460-462.

The Public Staff and the Company argue that it is important to interpret the above-quoted language within the context within which it was written. In the fuel adjustment clause proceedings that gave rise to the appeal by Vepco, the Commission did not use its fuel clause formula for determining the proper adjustment to rates for increased costs of fuel, but rather reduced fuel costs and required refunds on the ground that Vepco's fuel expenses were excessive because of poor system fossil fuel heat rates and plant availability. 48 N.C. App. at 455-456. It is on this basis that the Public Staff and CP&L assert that the actual generation mix experienced by the Company during the four-month test period for a G.S. 62-134(e) proceeding must be used. Their reasoning is that if the reasonableness of the prices paid can be considered, but not heat rate and plant availability, then the generation mix cannot be adjusted. If nuclear capacity is normalized for the fuel clause in a G.S. 62-134(e) proceeding, then a judgment regarding the reasonableness of plant efficiency and the resulting fuel costs has in fact been made.

The Attorney General, C.U.C.A., and Kudzu all argue, on the other hand, that the Vepco opinion requires that in order to consider only the reasonableness of prices paid by the utility, one must hold the generation mix and sales constant from the immediately preceding general rate case and adjust only for changes in the prices paid for fossil fuel, if those prices are reasonable.

With respect to the appellate court opinions directly involved in these remand proceedings, there is even less agreement.

The Public Staff argues that the only issue addressed and resolved by the Supreme Court in the Public Staff opinion was whether or not G.S. 62-134(e) permitted a utility in a fuel clause proceeding to obtain an adjustment to its rates to recover any of its costs or expenses for purchased power. The Court set out the formula used by the Commission during the time period in question, discussed it and the language and purpose of G.S. 62-134(e), and concluded that the cost of purchased power should have been considered only in a general rate case proceeding for much the same reasons the Vepco court held that plant availability and heat rates could not be considered in other than a general rate case proceeding. The use of the words "price of fossil fuels" by the Supreme Court in discussing the language, purpose, and history of G.S. 62-134(e) to arrive at its conclusion that the myriad of issues relating to purchased power costs should not be considered in expedited fuel clause proceedings cannot be taken to mean that less than the actual cost of fossil fuels burned during a fuel clause test period must be considered in a fuel clause proceeding.

With respect to the Kudzu opinion, which involved a CP&L fuel clause proceeding in which the Commission considered nuclear fuel cost and purchased power, as well as fossil fuel costs, the Public Staff argues that the Court of Appeals merely held that the Utilities Commission in fuel clause proceedings could consider only fluctuations in the cost of fossil fuels - oil, coal, and natural gas - used by the utility in the production of electric power in its generating units. There is nothing in the opinion that requires the Commission to use the generation mix from the immediately preceding general rate case. To the contrary, the holding that it was an error for the Commission to consider factors other than the cost of fossil fuels requires the Commission to use actual generation from the G.S. 62-134(e) test periods.

CP&L asserts that, except for the inclusion of nuclear fuel and purchased power costs, it used the formula approved by the Supreme Court in State ex rel. Utilities Commission v. Edmisten, 291 N.C. 327, 230 S.E. 2d 651 (1976) (known as "the Edmisten I case"), which the Court left intact by its Public Staff opinion. CP&L argues that if the Court had intended to overrule that aspect of the Edmisten I case, it would have done so by clear language, not by implication based upon fine distinctions between the terms "price" and "cost."

The Attorney General, C.U.C.A., and Kudzu argue that the Public Staff and Kudzu opinions, when read in conjunction with the Vepco opinion, require that only increases or decreases resulting solely from changes in the prices paid for the amount of fossil fuels contained in the generation mix found to be reasonable in the immediately preceding general rate case should be passed along to CP&L's customers as a result of a G.S. 62-134(e) proceeding. Under this interpretation, the Commission cannot take into account any changes in cost of fossil fuels as a result of a change in the level of fossil generation in the generation mix, but must use the generation mix previously found to be reasonable. C.U.C.A. witness Wilson also used the level of sales from the immediately preceding general rate case.

After carefully reading the relevant cases and reviewing the arguments and positions of the parties to this proceeding, the Commission concludes that the methodology employed by Public Staff witness Lam and Company witness Nevil is in accordance with the appellate court decisions and appropriate for use in

this proceeding. The crucial issue, as the Commission sees it, is not so much whether "price" is something different than "cost," as the courts used those words, but rather (1) whether the Commission must use actual test-period generation mix, sales, and the actual amounts spent for fossil fuels during that test period, whether resulting from more fossil fuels being burned, price increases, or both, or (2) whether the Commission must use the generation mix and sales determined to be appropriate in the most recent general rate case and allow increases in rates only when greater amounts are spent on the same amounts of fossil fuels because of price increases.

The Commission, having carefully read and studied the relevant appellate court opinions, finds little guidance to be had from these opinions on this question. The use by the courts of the word "cost" in one opinion and the word "price" in another confuses the issue, since all dictionaries consulted define the two words in such a way as to make them generally interchangeable. The Commission agrees with the Public Staff and CP&L that the terms "price" and "cost" can be used synonymously and concludes that the Supreme Court in the Public Staff case intended to use such words synonymously. In addition to the dictionary definitions which show that "price" and "cost" are similar in meaning, the Commission notes that in the Kudzu opinion, the Court of Appeals summarized the holding of the Supreme Court in the Public Staff opinion as follows (emphasis added):

> "[O]ur Supreme Court held that the Utilities Commission in fuel adjustment proceedings can consider only the fluctuations in the cost of fossil fuels--oil, coal and natural gas--used by the utility in the production of electric power in its generating units." 64 N.C. App. at 185.

As can be seen, the Court of Appeals was using almost the exact language of the Supreme Court in the portion of the Public Staff opinion upon which C.U.C.A. witness Wilson relies, with one significant exception: instead of the word "price" used by the Supreme Court, the Court of Appeals substituted the word "cost." Clearly, the Court of Appeals did not consider that the distinction between "price" and "cost" was critical to a proper understanding of the Public Staff opinion.

The Commission also notes that the fuel clause formula used in the original hearings was quoted in its entirety in the Public Staff opinion. 309 N.C. at 202-203, 306 S.E. 2d at 439-440. After quoting the formula, the opinion provides a detailed discussion of its components and the manner in which it operates. Id. at 203-204, 306 S.E. 2d at 440. It seems unlikely that the court would have devoted three pages of its opinion to the details of the formula if it had intended to hold that the entire formula was fatally flawed and had to be scrapped, rather than merely revised to delete nuclear fuel and purchased power costs.

The clear holding in the Vepco decision that plant availability and heat rate as they reflect on fuel costs cannot be considered in fuel clause proceedings and the fact that the Supreme Court cited Vepco with approval for that proposition and neither overruled it nor altered it in any respect in the Public Staff case militate in favor of the adoption and interpretation of the Vepco, Public Staff, and Kudzu opinions advocated by the Public Staff and CP&L.

If a normalized generation mix from the most recent general rate case is used, the Commission is, in effect, adjusting for the effects of plant performance in a fuel clause proceeding in direct contravention of the Vepco decision. Neither the Public Staff nor the Kudzu opinions overrule the Vepco decision and require this result. They merely remove purchased power costs and nuclear fuel costs from consideration in a fuel clause proceeding.

It is also important to note that, since C.U.C.A. witness Wilson used "as burned" fuel costs based on total test-period costs to determine unit costs, these unit costs do in fact themselves reflect changes in generation mix, rather than just price changes.

With respect to the proper level of sales to be used in calculating increases in rates in fuel clause proceedings, none of the court decisions, including Vepco, addressed this issue. The Commission concludes that using the level of sales from the most recent general rate case test year, as Dr. Wilson proposes, penalizes the Company by not allowing it to recover the increased fossil fuel costs resulting from meeting increased demand over which it has little or no control. Thus, it is appropriate to use the actual generation and sales from the four-month fuel clause test period and the resulting actual fossil fuel costs.

Based on the foregoing, the Commission concludes that the increment or decrement to be applied to a general rate case base fossil fuel factor, as a result of a G.S. 62-134(e) fuel adjustment clause proceeding, is properly computed by dividing the total fossil fuel expense for the relevant test period by the system mWh sales for the relevant test period and adding or subtracting the fossil factor so derived to or from the fossil base fuel factor set in the immediately preceding general rate case.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 13

The evidence for this finding of fact, concerning the methodology for determining the difference between fuel-related revenues actually collected and fuel-related revenues that should have been collected during the remand period, is found in the testimony and exhibits of Company witness Nevil, Public Staff witnesses Paton and Lam, C.U.C.A. witnesses Wilson and Johnson, and Kudzu witness Eddleman.

The position of the Company, as presented in the testimony and exhibits of witness Nevil, is that the relevant court opinions require the Commission on remand to correct errors made in both general rate cases and in G.S. 62-134(e) fuel adjustment proceedings. Those errors include the failure to determine fuel-related revenues in general rate cases, since fuel revenues from G.S. 62-134(e) proceedings were simply adopted in general rate cases, and the inclusion of nuclear fuel and purchased power in fuel adjustment proceedings. CP&L witness Nevil stated that in Docket No. E-2, Sub 366, the Company began making certain pro forma adjustments in order to eliminate consideration of fuel costs in determining rate increases in general rate cases. The Company began making such adjustments to implement the Commission's 1978 and 1979 rules which required that all fuel-related revenues be determined in G.S. 62-134(e) proceedings. In order to determine fuel-related revenues in general rate cases, those adjustments made to eliminate fuel costs from consideration in general rate cases must now be reversed. Additionally, since the courts have

held that the costs of nuclear fuel and purchased power should not be considered in the remand fuel adjustment proceedings, they must be considered only in the appropriate general rate cases, together with all other fuel-related costs, in order to determine the total revenues required to earn the allowed rate of return. The relevant general rate case Orders for the remand period must be corrected to: (1) eliminate adjustments made to exclude fuel costs from the revenue determination; (2) add adjustments necessary to include all fuel expenses, including nuclear fuel and purchased power, in the revenue calculation; and (3) establish a fossil fuel factor for use in determining subsequent increments or decrements in G.S. 62-134(e) proceedings. To correct the Commission Orders in the relevant fuel clause proceedings, the fuel adjustment formula must be modified to exclude nuclear fuel and purchased power, and an appropriate increment or decrement to the fossil fuel factor established in the preceding general rate case must be determined.

Witness Nevil testified that he reconstructed the relevant general rate cases to properly include fuel in the revenue requirement calculation. To determine revenues for the remand period of December 1, 1980, through September 23, 1982, witness Nevil reconstructed general rate case Docket Nos. E-2, Subs 366, 391, and 416. In each case, he first reversed the original adjustments which had eliminated fuel from the revenue increase calculation. These original adjustments included: (a) revenue adjustments to annualize fuel revenues at the level that would have been realized if the particular G.S. 62-134(e) fuel factor in effect at the time of preparation of the filing had been in effect for the entire test year and (b) a fuel expense adjustment to annualize fuel expenses at the level of the same G.S. 62-134(e) fuel factor. These original adjustments were referred to as "matching adjustments" because their effect was to match fuel revenues and fuel expenses. Witness Nevil testified that this matching was artificial, however, in that it matched revenues and expenses at a level that had not actually been experienced by the Company during the test year. Moreover, the actual value of the adjustment to revenues differed from the value of the adjustment to fuel expenses. The result was that a matching was artificially forced where there had in fact been no match between fuel revenues and fuel expenses. In this way, the matching adjustments eliminated from the rate increase calculation the actually experienced difference between fuel revenues and fuel expenses for the adjusted test period. As a consequence, the excess, or deficiency, of fuel revenues over fuel expenses was not remedied by the Commission Orders in the general rate cases, even though that is one of the primary purposes of a general rate case. In fact, due to these artificially matching adjustments, the Company was allowed an increase of approximately $16 million too much in Docket No. E-2, Sub 366; $12.5 million too little in Docket No. E-2, Sub 391; and $82 million too little in Docket No. E-2, Sub 416. Witness Nevil reversed the original matching adjustments to reintroduce the revenue excess or deficiency into the general rate case so that a proper level of revenues required to earn the allowed rate of return could be determined.

In addition to reversing the original matching adjustments, CP&L witness Nevil testified that it is also necessary to make the pro forma adjustments which are traditionally made when fuel is considered in a general rate case. These adjustments include a fuel annualization adjustment to reflect appropriate fuel price levels and a variable O&M adjustment.

When the above steps of reversing the original matching adjustments and adding necessary pro forma adjustments to include fuel costs in the revenue calculation had been completed, witness Nevil calculated the change in the revenue increase compared to the original rate case Order resulting from these steps. This change can be viewed as an increment which remedies the errors in the original determination of the allowable rate increase. It is the result of including fuel costs in the general rate case. If this increment is not allowed, the result is a lower operating income than is necessary to earn the allowed rate of return.

Using the additional revenue increment (or decrement) which should have been allowed in each general rate case if fuel had been correctly handled in those cases, witness Nevil next developed positive or negative revenue deficiency factors on a per kWh basis for each general rate case. These revenue deficiency factors could then be applied on a prospective basis to kWh consumption during the relevant collection periods. Witness Nevil also calculated a per books fuel factor in each general rate case. In addition, he calculated a fossil fuel cost factor for use in remand fuel adjustment proceedings for determination of the proper fossil fuel increment or decrement. These steps were all made in general rate case Docket No. E-2, Sub 366. For Docket Nos. E-2, Subs 391 and 416, witness Nevil made additional adjustments to test year revenues to reflect revenue changes resulting from correcting earlier rate case Orders as well as revenue changes resulting from correcting fuel adjustment Orders as described below. This was necessary since changes made to earlier cases affected subsequent test periods.

To correct the Commission Orders in the reopened G.S. 62-134(e) adjustment fuel proceedings, witness Nevil modified the fuel adjustment formula adopted by the Commission in 1976 to exclude nuclear fuel and purchased power, based upon his understanding of what the courts directed. Witness Nevil used the modified formula to calculate a fossil fuel factor which he then compared to the fossil fuel factor set in the preceding general rate case. From this comparison he determined the appropriate increment or decrement to the general rate case fossil fuel factor.

The formula, as modified by witness Nevil to exclude nuclear fuel and purchased power, is based on the cost of fossil fuel during the fuel adjustment test period divided by the total system kWh. This fossil fuel factor is the basis for determining the increment or decrement from the fossil fuel factor in the general rate case.

To determine the total over- or underrecovery of revenues resulting from correction of general rate cases and G.S. 62-134(e) fuel proceeding Orders, witness Nevil applied the general rate case deficiency factor he calculated for each general rate case to the kWh sold during the portion of the remand period when the rates in that particular docket were in effect. This step remedied the revenue deficiency which existed in the original general rate cases as a result of the differential between fuel-related revenues and fuel-related expenses. It also included recovery of those adjustments which annualize fuel-related expenses to year-end price level and kWhs. In addition, he computed the revenues needed to recoup the per books fuel costs for the test period, which were added to the deficiency calculation to determine total fuel-related revenues the general rate case should have produced on a per kWh basis during the period the rates were in effect. He then computed, for each

month of the remand period, fuel revenues based on the increment or decrement determined in the applicable G.S. 62-134(e) proceeding. The total revenues from these steps produced the total revenues which should have been collected and were compared with the fuel revenues actually collected to determine the total underrecovery.

The Public Staff initially filed testimony and exhibits of witness Lam on December 28, 1984. In this testimony, witness Lam used essentially the same methodology as witness Nevil, as described above, except that witness Lam normalized nuclear generation to a 60% capacity factor. On February 8, 1985, the Commission allowed the Public Staff's motion to withdraw the prefiled testimony of witness Lam. On the same day, the Public Staff filed the testimony and exhibits of witnesses Lam and Paton.

In the second version of his testimony, witness Lam developed base fuel factors for general rate case Docket Nos. E-2, Subs 366, 391, and 416, and fossil fuel increments or decrements in fuel adjustment proceeding Docket Nos. E-2, Subs 402, 411, 420, 434, 446, and 452. Witness Lam supplied his calculations to witness Paton, who then determined the over- or underrecovery.

In developing his base fuel factor for each general rate case, witness Lam normalized the test year generation mix, using the method previously outlined hereinabove. He derived a base fuel factor for each general rate case by dividing the total fuel cost calculated in accordance with his normalization method by total adjusted test year kWh sales. He also determined the fossil fuel component of this factor for use in calculating the increment or decrement for subsequent G.S. 62-134(e) proceedings.

In deriving the fossil fuel increment or decrement for each G.S. 62-134(e) proceeding, witness Lam first determined the total fossil fuel costs incurred during the applicable G.S. 62-134(e) four-month test periods. He divided this cost by the total kWh sales during that same test period. The result of this calculation was a new fossil fuel factor which could then be compared to the fossil fuel factor calculated in the general rate case to determine the increment or decrement.

Public Staff witness Paton used the general rate case base fuel factors and the G.S. 62-134(e) fossil fuel increments or decrements provided by witness Lam to determine a total fuel factor applicable to each month in the remand period. She also added a nonfuel energy-related purchase factor applicable to each month of the period to derive total factors for fuel and nonfuel. Using these total factors, she calculated the amount of fuel-related revenues which she believes the Company should have been allowed to collect during the remand period by simply summing the fuel costs. She then compared this amount to the amount actually collected during the period to determine an overrecovery. It should be noted here that the fuel factors provided by witness Lam for witness Paton included the effects of fuel expenses related to the customer growth and weather normalization adjustments. Witness Paton is therefore including these effects even though they are not set forth separately.

Witness Paton did not attempt to follow the general rate-making convention set out in G.S. 62-133 and followed in the original hearings in these cases. She testified that the adjustments which were made in the original cases to eliminate fuel from the revenue calculation do not need to be reversed. She

also testified that the reversal of these adjustments by witness Nevil is the major problem she has with his method. In response to questions by counsel for the Company, however, witness Paton did testify that in a general rate case it is appropriate to solve for the revenue deficiency created by the difference between revenues and expenses.

Witness Paton further disputed the efficacy of a change witness Nevil made in his additional supplemental testimony to eliminate objections to his method of recalculating fuel-related revenues. Witness Nevil testified in his additional supplemental testimony that he had incorrectly included the year-end fuel annualization adjustment in both the revenue deficiency factor and his base fuel factor, which should have included only per books fuel costs. In his later prefiled testimony, he therefore eliminated this adjustment amount from the base fuel factor so that the base fuel factor was set equal to per books test year fuel costs. Witness Paton initially disputed this, indicating that "subtracting the one one four five from the nine eight seven eight does not leave you with per books fuel." Following questions from the Commission, however, it was determined that witness Paton had made an error in her calculation, which she conceded and that witness Nevil's base fuel factor was the same as per books fuel costs.

C.U.C.A. witness Wilson presented testimony and exhibits which outlined another method of determining the over- or underrecovery of fuel-related revenues. Witness Wilson developed a base fuel factor for each general rate case in a manner similar to that of the Public Staff. He normalized the test year generation mix based on a nuclear capacity factor of 60% as explained previously.

To determine a fossil fuel increment or decrement for each G.S. 62-134(e) proceeding, witness Wilson used the generation levels and mix as determined through the normalization process in the preceding general rate case. This method is a departure from that followed by the Company and the Public Staff. Witness Wilson used the fuel proceeding four-month test period to determine fuel prices based on that test period's burned fossil fuel. He then applied this price to the fossil fuel generation level as determined in the general rate case. This procedure has the effect of normalizing the generation mix for the test period in the G.S. 62-134(e) proceeding. Witness Wilson established a base fuel factor for each G.S. 62-134(e) proceeding in this manner. This factor may represent an increment or decrement to the base fuel factor of the applicable general rate case.

To determine the total over- or underrecovery of fuel revenues, witness Wilson developed a total fuel cost factor for each month, adjusted to reflect the fossil fuel factor as calculated for each G.S. 62-134(e) proceeding. He multiplied this total cost factor by the appropriate kWh to determine the fuel revenues that should have been collected in each month. He also calculated certain nonfuel costs which he says should have been collected. He then summed the fuel costs and the modest nonfuel costs to get total revenues which he compared to those that were actually collected to arrive at an overcollection.

Witness Wilson's fundamental methodology differs from that of the Public Staff only with respect to the way he purports to limit G.S. 62-134(e) adjustments to changes in unit prices.

In addition to his differences with witness Nevil over normalization and the method for computing G.S. 62-134(e) increments or decrements, witness Wilson also contended that it was unnecessary to reverse the original general rate case adjustments which had artificially equated fuel costs with fuel-related revenues. Witness Wilson suggested that reversing these adjustments would result in a "double counting."

According to witness Wilson, "Mr. Nevil's alleged deficiency is really nothing more than the $16.1 million difference between booked fuel revenue and booked fuel expenses."

Kudzu witness Eddleman also presented testimony regarding the proper method for calculating an over- or underrecovery of fuel-related revenues. Witness Eddleman followed a procedure which is generally like that of witness Wilson, except that witness Eddleman used a 70% capacity factor for normalizing nuclear generation in each general rate case.

Although it might seem that there are countless differences between witness Nevil's methodology and that of witnesses Paton, Wilson, and Eddleman, in reality there is only one genuinely material difference among the parties. That is whether it is necessary on remand to follow normal rate case methodology to calculate fuel-related revenues, as witness Nevil did, or whether it is appropriate to simply sum the fuel costs and equate the sum of the costs to the revenue requirements. In a normal general rate case the amount of the rate increase equals the difference between adjusted test year expenses (including a reasonable return on rate base) and adjusted test year revenues. Company witness Nevil, in each rate case, allows the Company to recover this difference (except in Sub 366, where the difference is negative; in that case it is used to reduce the Company's rate increase). He does so by reversing the adjustments made in the original proceedings which forced an artificial matching between adjusted test year fuel expenses and test year fuel revenues and thereby prevented the Company from recovering the difference. These adjustments which witness Nevil reversed had facilitated the ability of the Commission to deal with fuel costs outside the context of the general rate case and within the context of the separate G.S. 62-134(e) proceeding. The intervenor witnesses, in contrast to witness Nevil, do not reverse the "matching" adjustments, and hence do not permit the Company to recover the difference between adjusted test year fuel expenses and test year fuel revenues. Instead, the intervenor witnesses continue to deal with fuel-related revenues outside of the general rate case and leave intact the revenue impact the original adjustments had on the total revenues allowed when the cases were decided initially. Witness Wilson acknowledged on cross-examination that this was the main distinction between his methodology and that of witness Nevil.

The Commission believes that witness Nevil's methodology is preferable to that of the intervenors for several reasons. First of all, it conforms more closely to the instructions this Commission has received from the appellate courts. The Supreme Court has directed us in its Public Staff opinion to determine the rates that "should have been collected" in these cases under a proper interpretation of former G.S. 62-134(e). 309 N.C. at 214, 306 S.E. 2d at 446. The court specifically stated that the remand proceeding should be "in the nature of a general rate case." Id. at 213, 306 S.E. 2d at 445. As expressed by NCTMA (now C.U.C.A.) at page 38 of its Brief of April 30, 1984:

> The Court has effectively said: "Go back and find these costs the right way. When you have done this, determine what revenues were actually collected under the unlawful rates, deduct (or add) the revenues that would have been required to satisfy the reasonable costs of CP&L as properly determined under our law, and take the appropriate remedial action."

It is logical to conclude that if the Commission is to hold a proceeding "in the nature of a general rate case" and determine the rates which should have been collected during the period in dispute, it is necessary to adhere as closely as possible to customary general rate case methodology. Thus, the Commission should recalculate rates for each case that affected rates during the period at issue, including both general rate cases and fuel adjustment proceedings, in the same way they would have been calculated at that time. This is what witness Nevil has done.

By refusing to reverse the "matching" adjustments, the intervenors have not only failed to follow the appellate courts' instructions, but have also taken a position at odds with G.S. 62-133 and this Commission's traditional rate-making procedure. Traditionally, in a general rate case, the Commission follows a method described by witness Wilson as the "revenue deficiency approach." The Commission determines a utility's adjusted test-period expenses plus a reasonable return on rate base and its test-period revenues. The difference between the two figures is the rate increase to which the utility is entitled. At the original hearings in these cases the Commission departed from this procedure and used "matching" adjustments to artificially equalize test-period fuel expenses and test-period fuel revenues so that fuel-related revenues would not be established in the general rate case but would be considered only in fuel adjustment proceedings. The appellate courts held this two-track rate-making system unlawful and directed the Commission to treat fuel just like any other O&M expense in a general rate case. Consequently, there is no longer any justification for the "matching" adjustments. In refusing to reverse these adjustments, the intervenors are in effect saying that, even had the Commission had the benefit of the courts' thinking at the time these cases were first heard, we would still have made the matching adjustments which are now at issue. This is simply not factually correct. All witness Nevil has done is to calculate fuel-related revenues exactly as they would have been calculated if fuel costs had been considered in the general rate cases originally.

The Commission does not agree with the intervenors that witness Nevil's methodology, and in particular his reversal of the "matching" adjustments, violates the rule against retroactive ratemaking. To the contrary, this contention reflects a serious misunderstanding. When a utility is allowed a rate increase in a general rate case equal to the difference between adjusted test period expenses (including a reasonable return on capital) and test period revenues, the utility is not made whole for losses incurred (or inadequate earnings) in the test period; but rather, rates are being increased sufficient to compensate the utility for its service and provide it a reasonable opportunity to earn the allowed return in the future. The Supreme Court stated in State ex rel. Utilities Commission v. Edmisten, 291 N.C. 451, 232 S.E. 2d 184 (1977) (Edmisten II) that the "use of the company's experience in the past (the test period, extended) as a guide to, or measure of, what its expenses would be in the future" is nothing more than "the orthodox use of a test

period." 291 N.C. at 471, 232 S.E.2d at 196. The difference between adjusted test-period expenses and test-period revenues is simply the amount the utility must have in order to cover its costs in the future, when the rates are in effect. The calculation of this difference is exactly what is done in every general rate case under G.S. 62-133. Reversal of Commission Orders fixing rates and remanding the proceeding to the Commission for further proceedings has the effect of removing from the rates collected under such Orders any classification of the rates as "lawful rates," and renders the rates subject to recalculation in accordance with the direction of the Supreme Court.

In stating that certain purchased power costs may not have been recovered in a general rate case or fuel adjustment proceeding, and in remanding the case to the Commission for such determination and to make adjustments in current rates as necessary to true-up any discrepancy, the Commission concludes that the Supreme Court has directed that the proper rates be fixed for the general rate cases remanded to recover any purchased power costs (or fuel costs) which CP&L was entitled to recover and to make adjustments in current rates as necessary to true-up any discrepancy.

The intervenors contend that it would be retroactive ratemaking and contrary to earlier decisions of the Supreme Court to adjust current rates to true-up any discrepancy found to be uncollected under the rates fixed in the dockets remanded to the Commission. The Commission concludes that the reversal and remand of the Commission Orders removed the approved or ordered rates status of such earlier rate Orders and reopened those cases to be fixed to include the correct fuel costs and that the adjustments in current rates to true-up any discrepancy are being made under specific direction of the Supreme Court and would not come within the prohibition against retroactive ratemaking to ordered or approved rates.

The reasonable fuel costs being determined by the Commission on remand are being assigned to and included in the corrected rates of the remand proceedings and the adjustments in current rates necessary to true-up any discrepancy are made pursuant to direction of the Supreme Court in Utilities Commission v. Public Staff, 309 N.C. 195.

The intervenors also argue that witness Nevil's methodology results in double counting. They contend that their own methodology--which involves setting revenues equal to total fuel costs without regard to the test-period mismatch between revenues and expenses--adequately accounts for the difference between adjusted test-period expenses and test-period revenues. Therefore, they assert, witness Nevil is engaging in double counting when he specifically recovers this difference for the Company (or, in Docket No. E-2, Sub 366, specifically passes excess revenues through to ratepayers). The Commission agrees with the intervenors that a methodology which involves double counting cannot be accepted. The difficulty with their assertion, in the Commission's judgment, is that it is no more than that--an assertion. They have not supported it. On the face of it, their methodology does not appear to account for the amounts associated with the erroneous "matching" adjustments. If they had shown that it does in fact account for these amounts, the Commission might understand why they would allege double counting. However, the issue really seems to be not double counting but rather whether the revenue deficiency in the original cases should be counted at all, or totally ignored. The

Commission finds that it must be counted and that witness Nevil has only counted it one time.

It is also significant that the intervenors have failed to take into account the effect that rates fixed in one general rate case have upon rates fixed in subsequent cases. In order to properly recalculate rates for Docket No. E-2, Sub 391, it is necessary to adjust test-period revenues, replacing revenues actually collected during the test period with revenues that would have been collected if the rates which should have been approved in Docket No. E-2, Sub 366, had in fact been approved and had been in effect throughout the test period. Similarly, to recalculate rates correctly in Docket No. E-2, Sub 416, the Commission must adjust test-period revenues to reflect the rate levels that should have been approved in Docket No. E-2, Sub 391. Witness Nevil has made these necessary adjustments, whereas the intervenor witnesses have not.

There is one other factor of concern to the Commission with regard to the procedure advocated by witness Wilson, and also to some extent by witness Paton. A test of any methodology is the reasonableness of that methodology's end result. The end result of applying witness Wilson's methodology is not reasonable and does not meet the basic common sense test which is normally applied to any regulatory methodology. During the billing periods for rates previously established in these remand cases, the Company's booked fuel costs actually exceeded its related booked fuel revenues by $32 million. Witness Wilson claims that under his methodology the Company should have collected $85.5 million less than it actually did collect during this period. That means the Company's booked fuel costs would have exceeded its revenues by $117.5 million--the sum of the $32 million shortfall and witness Wilson's alleged $85.5 million overcollection. The Company's booked fuel expenses were $569 million for this period. The effect of witness Wilson's proposed methodology is that the Company would have absorbed 21% of its fuel costs during this period. No fuel clause without a true-up will lead to a precise matching of fuel clause revenues and booked fuel expenses; however, a reasonable methodology would not be expected to result in a utility collecting only 79% of its actual prudently incurred fuel costs. Witness Paton's methodology would require the Company to absorb $81.4 million, or 14% of its fuel costs, and thus it suffers from the same defect as that of witness Wilson, although to a slightly lesser extent.

A related concern is that, if this Commission had followed witness Wilson's methodology (or witness Paton's) when these cases were originally heard, the adverse effect on the Company's financial condition would have been serious. Investors would have been aware that the Commission was requiring the Company to absorb 21% of its fuel costs. The Company's fixed charge coverage, its actually achieved return on equity, and its earnings per share would all have decreased. Its bond rating might well have been lowered, and in any event its cost of capital would have risen. In all probability the Company would have filed for rate increases more frequently and quite possibly could have been required to request one or more emergency increases.

Absent a showing of imprudence, inefficiency, or malfeasance, it is the objective of this Commission to adopt rules and employ procedures whereby an electric utility will lawfully be permitted an opportunity to recover all reasonably incurred fuel costs.

No party to the proceedings on remand contends that the Company was imprudent or negligent with respect to the level of fuel costs incurred. There is, however, much disagreement relating to the methodology the Commission should employ in resolving this controversy. It is the Commission's view that the appropriate inquiry as to the proper methodology to be utilized in determining the fuel costs that should have been included in rates will take into account all relevant past, present, and reasonably anticipated future events and circumstances that bear upon the question to be resolved. Such inquiry is appropriate without regard to the point in time or points in time from which such judgments are made. Public utility rates are set prospectively. Therefore, ratemaking inherently involves the forecasting of future events including the appropriate level of fuel costs. The most appropriate fuel cost forecasting methodology is the one that consistently more nearly predicts the actual level of fuel costs prudently incurred given the time period in question. In this regard, the methodology proposed by the Company is superior to the methodologies proposed by the intervenors for purposes of this proceeding.

It is an uncontroverted fact that the rates in effect during the time period in question resulted in the Company actually underrecovering its prudently incurred fuel costs by $32.0 million ($37.7 million undercollection during the 22-month time period less $5.7 million Rider AFC 28 revenues collected subsequently). If the Public Staff's methodology was adopted, the resultant effect would be that the Company would have underrecovered its prudently incurred fuel costs by $81.4 million ($32.0 million actual undercollection + $49.4 million refund). If C.U.C.A.'s methodology was adopted, the resultant effect would be that the Company would have underrecovered its fuel costs by $117.5 million ($32.0 million actual undercollection + $85.5 million refund). Common sense and equity demand that the proposals of the intervenors be rejected.

From a broad common sense perspective, it is clear to the Commission that even though the rates collected by the Company in 1980-82 were determined by an improper procedure and may need to be modified somewhat, they were not grossly unreasonable. In advocating a refund of $120.5 million (with interest) as witness Wilson proposes, or a $72.5 million (with interest) refund as witness Paton proposes, the intervenors are seeking a one-time windfall. Based upon the foregoing and the entire evidence of record, the Commission does not believe that it should grant this windfall. Thus, the Commission finds and concludes that the appropriate methodology for use in this proceeding is that proposed by Carolina Power & Light Company witness Nevil.

As previously indicated, the Commission reopened its hearings in these remand proceedings for the expressed purpose of allowing parties to cross-examine and present evidence relating to the information and data filed by CP&L in response to the Commission Order Requiring Additional Data issued May 2, 1985. Upon reopening of the hearing, CP&L presented its witness Nevil for the purpose of allowing cross-examination in this specific regard. During this phase of the hearings, the intervenors continued to attack the methodology utilized by CP&L in developing its proposals and recommendations to the Commission. The Public Staff presented additional direct testimony through its witness Paton, and C.U.C.A. presented additional testimony through its witness Johnson. The Attorney General through cross-examination of witness Nevil sought to show that witness Nevil had somehow modified CP&L's proposed

methodology, other than as directed by the Commission in its Order of May 2, 1985, such that an impropriety existed with respect thereto. The Commission in its findings and conclusions, as reflected hereinabove and hereafter, has utilized the information filed in response to its May 2, 1985, Order in reaching its decision herein. Therefore, out of an abundance of caution and in the interest of clarity, the Commission will now specifically address the so-called impropriety as alleged by the Attorney General.

The contentions of the Attorney General in this regard can best be placed in perspective through use of Attorney General Nevil Cross-Examination Exhibit Number 7 (AGN #7). Such exhibit is presented below.

ATTORNEY GENERAL NEVIL
CROSS-EXAMINATION EXHIBIT NUMBER 7

1.	Nevil Sub 366 Fuel Factor	.008733	$/kWh
2.	N.C. Retail Adjusted Sales	17,613,926,482	kWh
3.	Nevil Revenue Before Gross Receipts Tax	$153,822,420	
4.	Gross Receipts Tax Factor	1.06383	
5.	Nevil Fuel Revenue	$163,640,905	
6.	Nonfuel Revenue in Order	$477,965,433	
7.	Nevil Deficiency	$ 19,146,974	
8.	Total Nevil-Produced Revenues	$660,753,312	

In lines 1 through 5 above, the Attorney General purports to have calculated the end-of-period level of fuel-related revenue of $163.6 million shown on line 5, that witness Nevil contends, according to the Attorney General, should have been included by the Commission in developing the approved level of rates arising from the Commission's decision in Docket No. E-2, Sub 366. Line 6 of AGN #7 "Nonfuel Revenue in Order" of $478.0 million is stated to represent all components of cost entering into the cost of service or revenue requirements equation other than fuel-related costs or revenue as determined by the Commission in Docket No. E-2, Sub 366. Parenthetically, the Commission's final Order in Docket No. E-2, Sub 366, authorized CP&L a level of rates which was designed to produce annual revenues of $651.3 million based upon the test year level of operations. The Attorney General calculates the nonfuel revenue of $478.0 million by deducting, from the $651.3 million, fuel-related revenues of $173.3 million which the Attorney General contends was included in the $651.3 million total revenue requirement. The Attorney General, as shown in AGN #7 above, then sums what is characterized as "Nevil Fuel Revenue" of $163.6 million, the "Nonfuel Revenue in Order" of $478.0 million, and the "Nevil Deficiency" of $19.1 million so as to arrive at "Total Nevil-Produced Revenues" of $660.7 million ($163.6 million + $478.0 million + $19.1 million = $660.7 million). The $660.7 million is then compared to the $670.4 million total revenue requirement which witness Nevil contends should have been established by the Commission in Docket No. E-2, Sub 366; whereupon, the Attorney General concludes that witness Nevil's methodology results in a $9.7 million ($670.4 - $660.7 = $9.7 million) unexplained discrepancy. The $670.4 million results from adding the revenue deficiency of $19.1 million to the $651.3 million revenue requirement previously established in Docket No. E-2, Sub 366 ($651.3 million + $19.1 million = $670.4 million).

In essence, AGN #7 and the record show that the difference between $173.3 million in fuel-related revenues, purported to be included in the total revenue requirement of $651.3 million as established in Docket No. E-2, Sub 366, and the $163.6 million the Attorney General asserts that witness Nevil contends should have been included in rates derived in Docket No. E-2, Sub 366, is $9.7 million ($173.3 million - $163.6 million). Witness Nevil repeatedly disagreed with the procedure whereby the Attorney General attempted to indirectly reconstruct the methodology he employed in his calculations.

The level of fuel costs that witness Nevil asserts should have been included by the Commission in rates derived in Docket No. E-2, Sub 366, is encompassed in part in his calculation of the deficiency factor and in part in his calculation of annualized end-of-period fuel cost. Witness Nevil's methodology clearly reflects the foregoing and is structured such that no double counting of any fuel cost can occur. AGN #7 and the attendant data in fact show that use of any level of fuel-related revenue by witness Nevil other than X (here the Attorney General sets "X" equal to $173.3 million) will always result in a discrepancy or an inequality under the Attorney General's approach. Such is the nature of the Attorney General's mathematical tautology. Algebraically, AGN #7 and the attendant data may be expressed as follows:

$$R + Z = R - X + Y + Z$$

Where

R = Total revenue requirement approved in Docket No. E-2, Sub 366
Z = Nevil deficiency
X = Fuel-related revenue assumed to have been included in revenue requirement established in Docket No. E-2, Sub 366
Y = Annualized end-of-period level of fuel related revenue Attorney General asserts witness Nevil contends should have been included in rates approved in Docket No. E-2, Sub 366

The foregoing equation can be simplified by rearranging the terms so as to combine like terms or factor out like terms with opposite signs.

$$R + Z = R - X + Y + Z$$
$$\text{or } R + Z - R - Z + X = Y$$
$$\text{or } X = Y$$

From the above it is clear that any value assigned X other than the value of Y will result in an inequality. Such inequality serves to validate rather than discredit the Nevil methodology.

The additional testimony of witness Paton and witness Johnson serves only to reaffirm the earlier views of the interventors pertaining to the methodology advocated by CP&L for use in this proceeding. Such views have been previously discussed herein. The Commission, hereby, reaffirms its finding and conclusion that the most appropriate methodology for use in this proceeding is that proposed by Carolina Power & Light Company witness Nevil.

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

Based upon the findings of fact and conclusions set forth hereinabove, the following revenue deficiency, annualized base fuel, net base fuel, and base fossil fuel factors for each of the three reopened general rate cases and fossil fuel clause increments for each of the six reopened fuel adjustment clause proceedings are hereby found and concluded to be reasonable and appropriate for adoption in these proceedings on remand:

Docket Number	General Rate Case Revenue Deficiency Factor ($/mWh)	General Rate Case Annualized Base Fuel Factor ($/mWh)	General Rate Case Net Base Fuel Factor ($/mWh)
Sub 366	1.087	10.791	8.733
Sub 391	1.583	11.401	9.465
Sub 416	4.406	15.031	15.351

Docket Number	Test Period	General Rate Case Fossil Base Component ($/mWh)	Fuel Clause Fossil Factor ($/mWh)	Fossil Increment To Base Fuel Factor ($/mWh)
Sub 402	5/80 - 8/80	9.74 (Sub 366)	14.72	4.98
Sub 411	9/80 - 12/80	10.47 (Sub 391)	12.17	1.70
Sub 420	1/81 - 4/81	10.47 (Sub 391)	11.90	1.43
Sub 434	5/81 - 8/81	10.47 (Sub 391)	15.88	5.41
Sub 446	9/81 - 12/81	13.01 (Sub 416)	13.31	0.30
Sub 452	1/82 - 4/82	13.01 (Sub 416)	12.74	(0.27)

The Commission has heretofore determined all factors pertinent and necessary to the determination of the appropriate level of fuel and fuel-related revenues that CP&L should have been authorized to recover through rates charged for its sales of electricity during the periods at issue in these remand proceedings. There is no disagreement between the parties as to the level of fuel and fuel-related revenues that CP&L actually collected during these same remand periods in the total amount of $536,589,114 excluding gross receipts tax and $570,839,483 including gross receipts tax.

Therefore, based upon the foregoing findings of fact and conclusions and the entire evidence of record, the Commission further finds and concludes that CP&L experienced a net underrecovery of fuel and fuel-related revenues during the billing periods affected by these remand proceedings in the amount of

$4,100,877. The table that follows presents a periodic summary of the over- and undercollections of such revenues which, when considered on a cumulative basis, results in a net underrecovery in the amount of $4,100,877.

SUMMARY OF OVER-/(UNDER-) RECOVERY OF FUEL AND FUEL-RELATED REVENUES THAT SHOULD HAVE BEEN INCLUDED IN RATE STRUCTURE

Period (a)	Fuel and Fuel-Related Revenues That Should Have Been Collected: Deficiency Factor (b)	Other Fuel (c)	Total (d)	Fuel Revenues Actually Collected (e)	Net Over-(Under-) Recovery (f)
1980					
Dec. 1-10	$ 908,800	$ 12,196,719	$ 13,105,519	$ 13,323,614	$ 232,016
Dec. 11-31	992,730	6,314,560	7,307,290	9,993,877	2,858,071
1981					
Jan.	2,669,515	16,980,256	19,649,771	26,874,231	7,685,595
Feb.	2,622,639	16,682,082	19,304,721	26,402,284	7,550,599
Mar.	2,280,765	14,507,494	16,788,259	22,960,620	6,566,341
Apr.	2,168,592	16,271,509	18,440,101	24,512,922	6,460,448
May	2,044,117	15,337,540	17,381,657	23,105,903	6,089,623
Jun.	2,350,921	17,639,572	19,990,493	26,573,902	7,003,626
Jul.	2,682,717	20,129,117	22,811,834	30,324,400	7,992,092
Aug.	2,634,854	19,291,901	21,926,755	21,337,075	(627,319)
Sept.	2,380,203	17,427,395	19,807,598	19,274,816	(566,790)
Oct.	2,158,144	15,801,521	17,959,665	17,476,671	(513,824)
Nov.	2,062,269	15,099,541	17,161,810	16,700,270	(491,000)
Dec. 1-14	1,762,791	17,621,755	19,384,546	17,319,667	(2,196,680)
Dec. 15-31	1,561,309	5,786,997	7,348,306	5,511,426	(1,954,128)
1982					
Jan.	7,361,109	27,283,970	34,645,079	25,984,734	(9,213,133)
Feb.	7,193,358	26,662,204	33,855,562	25,392,575	(9,003,178)
Mar.	6,454,248	23,922,683	30,376,931	22,783,508	(8,078,108)
Apr.	6,090,618	23,016,068	29,106,686	24,705,762	(4,681,834)
May	5,731,323	21,658,313	27,389,636	23,248,333	(4,405,641)
June	6,332,280	23,929,290	30,261,570	25,686,032	(4,867,594)
July	6,588,185	24,896,340	31,484,525	26,724,075	(5,064,308)
Aug.	7,141,200	26,003,329	33,144,529	28,053,455	(5,416,036)
Sept. 1-23	6,853,903	24,957,192	31,811,095	26,924,841	(5,198,142)
Totals	$91,026,590	$449,417,348	$540,443,938	$531,194,993	(9,839,304)
Revenues Collected Under Rider AFC-28					5,738,427
Total Over-/(Under-) Recovery of Costs					($4,100,877)

NOTE: (1) Columns (b), (c), (d) and (e) do not include gross receipts tax
(2) Column (f) includes gross receipts tax and may be calculated as follows: [Column (e) - Column (d)] /.94

Due to differing periodic levels of under- and overrecovery of costs in conjunction with periodic timing differences, when interest charges are taken into account the effect is such that there exists a net overcollection by CP&L of revenues (fuel and fuel-related cost plus interest) during the period December 1, 1980, through September 23, 1982, in the amount of $1,512,513. Detailed data in support of the Commission's determinations in this regard may be found in the Company's response (filed on May 7, 1985) to the Commission Order requiring additional data issued May 2, 1985. Further and finally, the Commission concludes that CP&L should be required to refund to its North Carolina retail customers this overcollection of costs in the amount of $1,512,523.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 16

This finding of fact is to the effect that CP&L should be required to refund to its North Carolina retail ratepayers the overcollection of the fuel and fuel-related costs as elsewhere found in this Order. The net refund ordered herein is the result of aggregating differing periodic over- and undercollections of fuel costs. In their briefs and memoranda filed over a 15-month period prior to these remand hearings, several intervenors argued that the Company should not be permitted to recover any undercollection of costs even if rates that should have been collected are greater than rates actually collected. The Commission is unable to agree with these arguments and concludes that any true-up found appropriate in these proceedings on remand should operate in both directions in conformity with the directions of the Supreme Court.

The decision of the Supreme Court in State ex rel. Utilities Commission v. Public Staff, 309 N.C. 195 (Filed September 7, 1983) ("The Public Staff decision"), contains the principal direction from the Supreme Court in the remand of the five Commission decisions. The Court stated at page 197, as follows:

> "...We hold that the Commission erred in CP&L Docket No. E-2, Sub 402, in allowing the recovery of the entire cost of purchased power and erred in CP&L Docket No. E-2, Sub 411, and in VEPCO Docket No. E-22, Sub 258, in allowing the recovery of the fuel component of purchased power costs. Because some portion of purchased power costs which the utilities were entitled to recover may not have been recovered in either a general rate case or a fuel clause proceeding, we find it necessary to remand this cause to the Utilities Commission for such a determination." (Emphasis added).

At pages 213 and 214, this direction was further expanded upon as follows:

> "This cause is remanded to the Court of Appeals for further remand to the North Carolina Utilities Commission for a hearing (or hearings as may be deemed by the Commission to be appropriate) in the nature of a general rate case, to determine whether, during the period covered by proceedings which are the subject of this appeal, the utility companies are entitled to recoup any of their costs for purchased and interchange power sought by such companies which have not previously been recovered. Should the Commission deem it appropriate, it may include in such hearing or hearings other electric utilities

similarly affected though not parties to the actions reviewed herein. 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, 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 necessary to true-up any discrepancy." (Emphasis added).

This ruling of the Supreme Court in Commission Docket No. E-2, Sub 402, and Docket No. E-2, Sub 411, was adopted by the Supreme Court and the Court of Appeals in the other three cases remanded by the Courts to the Utilities Commission. In State ex rel. Utilities Commission v. N. C. Textile Mfrs. Assoc., 309 N.C. 238 (Filed September 27, 1983) (Docket No. E-2, Sub 391, general rate case), the Supreme Court per curiam, referred to the Public Staff decision at page 239 as follows:

"For rate-making purposes, the reasonable operating expenses of the utility must be determined by the Commission. N.C. Gen. Stat. 62-133(b)(3)(1982). These expenses include the costs of fuel and purchased power. The opinion of this Court by Meyer, J., in cases numbered 529PA82 and 530A82, State ex rel. Utilities Commission v. Public Staff, filed this date is controlling upon this issue. (Emphasis added).

"The case must be remanded to the North Carolina Utilities Commission for a determination of the proper level of fuel expenses to be included in the applicant's rates and charges in Docket No. E-2, Sub 391."

In State ex rel. Utilities Commission v. Kudzu Alliance, 64 N.C. App. 182 (Filed September 30, 1985) (NCUC Docket No. E-2, Sub 446, fuel case)("The Kudzu Case"), the Court of Appeals stated at page 186 as follows:

"Accordingly, we must reverse the orders of the Utilities Commission and remand these causes for such further proceedings as may be necessary in light of the recent opinions of our Supreme Court, cited above." (Emphasis added).

In State ex rel. Utilities Commission v. The Public Staff, 64 N.C. App. 609 (Filed October 18, 1983) (Docket E-2, Sub 416, general rate case) ("The Public Staff II case"), the Court of Appeals stated at page 611 as follows:

"The Supreme Court in State ex rel. Utilities Comm. v. N.C. Textile Mfr. Assoc., 309 N.C. 238, 306 S.E. 2d 113 (1983) held that it was

> improper to adopt fuel costs established in the next preceding fuel cost adjustment proceeding as the fuel cost component used in establishing the general rate. In a general rate case the reasonable operating expense of the utility must be determined by the Commission. These expenses include the cost of fuel and purchased power.
>
> "Therefore, we must reverse the order of the Utilities Commission and remand this cause for such further proceedings as may be necessary in light of recent Supreme Court decisions." (Emphasis added).

The above decisions of the Court of Appeals thus remanded the cases to the Commission for further proceedings as may be necessary "in light of recent Supreme Court decisions."

All decisions deal with the proper calculation of fuel clause or general rate cases, but only the opinion of the Supreme Court by Meyer, J., in the Public Staff I case directs the Commission, in detail, as to how the fuel charge shall be processed in the remand proceeding after calculation of the fuel charge as directed in the four decisions. In the Public Staff case, 196 N.C., at 197, Justice Meyer directs as follows:

> "...Because some portion of purchased power costs which the utilities were entitled to recover may not have been recovered in either a general rate case or a fuel clause proceeding, we find it necessary to remand this cause to the Utilities Commission for such a determination."...

and concludes at pages 213 and 214:

> "...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 adjustment. 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."

In the Public Staff decision the Supreme Court directed the Commission "to true-up any discrepancy" between rates actually collected and rates that should have been collected. 309 N.C. at 214. The language of the Public Staff opinion makes it clear that this Commission must implement a two-way true-up. The Supreme Court directed the Commission "to determine whether, during the period covered by proceedings which are the subject of this appeal, the utility companies are entitled to recoup any of their costs for purchased and interchange power sought by such companies which have not previously been recovered." 309 N.C. at 213. As this language indicates, the Court recognized that rates that should have been collected might exceed rates actually collected, and in that event the Court considered that the utilities would be

"entitled to recoup" the difference. In the very last words of its opinion the Court stated that after comparing rates actually collected with rates that should have been collected, the Commission should "true-up any discrepancy." Id. at 214. (Emphasis added). "Any" is a simple, unambiguous word. The Court did not instruct the Commission to true-up some discrepancies, or to true-up only those discrepancies that could be corrected by a refund, or to exercise its discretion in trueing-up discrepancies. Instead, the Commission was directed to true-up any discrepancy.

The Commission has carefully considered the arguments of the intervenors with respect to the invalidity of a two-way true-up and finds them without merit. In summary, the intervenors contend that a true-up which would allow CP&L to recover if there were an undercollection is objectionable on three grounds: (1) it constitutes retroactive ratemaking; (2) it is discriminatory; and (3) the Company is estopped from advocating it.

A true-up that operates in both directions will not violate the rule against retroactive ratemaking. This Commission has never issued a valid final Order in the remand cases and, therefore, there can be no retroactive ratemaking. As Intervenor NCTMA (now CUCA) pointed out at page 22 of its memorandum of April 30, 1984: "Retroactive rate-making does not arise as a question until and unless there is a lawfully established rate....Clearly, the Commission is in no danger of retroactive rate-making where the courts have reversed the rates and practices and sent the subject matter back to the Commission with directives to remedy the unlawful rates." Support for this argument is found in State ex rel. Utilities Commission v. Conservation Council, 312 N.C. 59, 320 S.E. 2d 679 (1984), and in State ex rel. Utilities Commission v. CF Industries, Inc., 299 N.C. 504, 263 S.E. 2d 559 (1980). In Conservation Council the Court held:

> "[R]etroactive rate making occurs when, ...the utility is required to refund revenues collected, pursuant to the then lawfully established rates, for such past use." State ex rel. Utilities Commission v. Edmisten, 291 N.C. 451, 468, S.E. 2d 184, 194 (1977). The key phrase here is "lawfully established rates." A rate has not been lawfully established simply because the Commission has ordered it. If the Commission makes an error of law in its order from which there is a timely appeal the rates put into effect by that order have not been "lawfully established" until the appellate courts have made a final ruling on the matter." 312 N.C. at 67, 320 S.E. 2d at 685.

In these remanded cases, as in Conservation Council, the Company's rates have never been "lawfully established." The rates fixed in the Commission's original Orders have been held unlawful and of no effect. The Commission is now free to fix rates either higher or lower than in its previous Orders, without violating the retroactive rate-making rule.

Nor is there merit that the true-up is unlawfully discriminatory. As discussed above, the mandate of the Supreme Court in the Public Staff case required the Commission "to determine whether, during the period covered by proceedings which are the subject of this appeal, the utility companies are entitled to recoup any of their costs for purchased and interchange power sought by such companies which have not previously been recovered." 309 N.C. at 213. (Emphasis added.) The Court continued: "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 214. The Commission concludes that the Court clearly contemplated that there might be an undercollection by CP&L of its prudently incurred fuel and fuel-related costs and that the mandate of the court authorized the recovery of such undercollections. The Commission further concludes that the net refund required herein, which results from aggregating differing periodic over- and undercollections, is not impermissibly discriminatory under the facts of this proceeding, since the rates under consideration were never lawfully established rates.

Finally, there is no merit to the contention that the Company is estopped from advocating a true-up that operates in both directions. The rate-making practices held unlawful by the courts were promulgated by the Commission at the recommendation of its staff or the Public Staff. It has been the position of the Company that the Commission's procedures for handling fuel costs were a permissible exercise of the Commission's discretion, not that they were the only ones permitted by law. (See the Company's Brief as Appellant before the Supreme Court in Docket Nos. E-2, Sub 402, and E-2, Sub 411, at pages 9-10 and 22.) The Company further argued that, even if this Commission's fuel cost procedures were in violation of G.S. 62-134(e), any costs that were improperly considered in fuel adjustment proceedings were also improperly excluded from general rate cases. The Supreme Court rejected the Company's contention that the Commission's procedures were within the bounds of its discretion, but upheld the Company's argument that it was entitled to have all its reasonable costs considered in one type of proceeding or the other. Consequently, the contention that CP&L is estopped from asserting a true-up to recover any undercollection is groundless.

Fairness and the plain language of the Supreme Court require that the true-up operate in both directions. The Commission therefore concludes that the difference between the rates actually collected by CP&L and the rates that should have been collected should be "trued-up" through imposition of a refund.

IT IS, THEREFORE, ORDERED as follows:

1. That Carolina Power & Light Company shall refund to its North Carolina retail ratepayers the amount of $1,512,523, which includes interest at the rate of 10% per annum compounded monthly and accrued through March 1985. Interest at the rate of 10% per annum compounded monthly shall continue to accrue until all refunds are completed.

2. That Carolina Power & Light Company shall file a proposed refund plan in conformity with the provisions of this Order and shall serve a copy of such plan on all parties to these proceedings not later than Monday, September 23, 1985.

3. That, except to the extent granted herein, the exceptions to the Recommended Order filed by the Public Staff, Attorney General, C.U.C.A., and the Kudzu Alliance be, and the same are hereby, denied.

4. That all motions not heretofore granted or ruled upon by the Commission are hereby denied.

ISSUED BY ORDER OF THE COMMISSION.
This the 10th day of September 1985.

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

Commissioner Tate, dissenting in part.
Commissioner Cook, dissenting in part.

DOCKET NO. E-2, SUB 391
DOCKET NO. E-2, SUB 402
DOCKET NO. E-2, SUB 411
DOCKET NO. E-2, SUB 416
DOCKET NO. E-2, SUB 446

COMMISSIONER TATE, DISSENTING: The three major issues causing me concern in the remanded cases are: (1) price vs. cost; (2) the methodology used to determine an over or under-collection, and (3) whether or not normalization should be used to set capacity factors in the three general rate cases under consideration. I have read and re-read the decisions remanding all of these cases to the Commission for determination of proper rates. In all the previous fuel clause cases remanded to this Commission by the Courts, the Court has made it quite clear that the fuel clause proceedings were to be expedited proceedings and, therefore, it was inappropriate to consider heat rate or plant availability. State of North Carolina ex rel. Utilities Commission vs. Virginia Electric and Power Company, 48 N.C. at 453. Likewise, the Court has instructed us that it is improper to consider the cost of purchased power or power exchanges within the context of a fuel clause proceeding. The Court has made it clear that the old G.S. 62-134(e) Fuel Clause Proceeding was to be kept to the barest essentials and, therefore, it is possible that the Court intended that we should also simply consider the change in price of fossil fuels. I am, however, persuaded that because the Statute itself uses the term cost and in the cases remanded the word cost is used far more than the term price, that the Court indeed found it acceptable for the Commission to ascertain the cost of fuel which would include determining the mix of nuclear and fossil fuels and the capacity factors of the nuclear plants operating during the four-month test period. Therefore, I concur with the Order to the extent that it uses the cost of fuel rather than the price of fuel in these remanded proceedings.

I dissent from the Commission's use of nuclear capacity factor normalization, because I believe it was the purpose of the Court for us to re-try these cases as though we had known the proper interpretation of the law; that is, that base fuel costs were to be set in general rate cases and not in 134(e) fuel clause proceedings, but in all other parts of the proceeding the Commission was to use the procedures and practices that were in use during the time these cases were originally tried. It is my firm conviction that during this period of time the Commission never normalized nuclear capacity factors. Because the Commission erred and did not establish the base fuel cost in the rate cases, of course, we will not find any evidence as to whether they did or did not normalize capacity factors. However, in the fuel clause cases, where the Commission was determining a base cost of fuel, there is nothing to show

that the Commission did normalize in those proceedings (except perhaps in the Vepco case, which was reversed). Even the Commission's past rule governing fuel clause procedures states that a sixty percent capacity factor is simply to be used as a trigger to alert the Commission to examine the cost more carefully; it in no way suggests that a sixty percent or any other specific capacity factor is to be considered normal, appropriate or representative. The Commission's Order on Reconsideration now uses the lifetime capacity factors of the nuclear plants in each case to normalize and to my knowledge, there was no case in the twenty-two month period (or at any other time) that used that procedure. It appears to me that the Commission found that normalization to a lifetime capacity factor more closely resulted in a wash of the under or over-collections and it is for this reason that the lifetime normalization was used in the Order on Reconsideration. Because I believe that there was no evidence concerning normalization during the original hearings nor in the Orders of the cases now remanded, it is improper to go back to those cases and use a procedure not then in use. Therefore, like the Company, I would have used the actual capacity factors for each period, unless it had been proven that imprudence caused the capacity factor to be low, which would require an adjustment. There was no such evidence in this case.

My major cause for dissenting to this Order, however, is due to the accounting methodology adopted by the original Recommended Order and by the Order of the Commission on Reconsideration. Since I am the only Commissioner who actually heard all of the evidence during the three weeks of testimony and cross-examination in this case, perhaps it is more apparent to me than to the Majority that the Company's methodology was fatally flawed. Mr. Nevil attempted to remove the improper fuel cost which had been included in the rate cases that was carried over from the fuel clause proceedings and then to go back and put in the correct fuel costs that should have been determined as reasonable in the rate cases. Unfortunately, his methodology included a deficiency factor. This "deficiency" factor was nothing more or less than the amount of the under-collection that had taken place during the test period. The Company was entitled to have a fuel cost set that would recover its reasonable fuel costs during the time that the rates would be in effect. The Company was not entitled to go back to the test period and to incorporate any deficiency not collected during the test period in the rates to be set for the future. This is clearly retroactive rate making! Additionally, Mr. Nevil was unable to explain a ten million dollar difference in the theoretical operation of his methodology on cross-examination. There was also a question raised as to a six million dollar over-collection, which Mr. Nevil somehow turned into an under-collection in calculating the net over or under-collection. While the Commission's two Orders have valiantly attempted to explain away both the six million and the ten million dollar "errors" or discrepancies, Mr. Nevil never did so from the stand. It is for this reason that I firmly believe that the Company did not carry its burden of proof and that its methodology is unacceptable for the purpose of setting fair and reasonable rates.

The Public Staff methodology was, while exceedingly complex, in my view appropriately done. I would, therefore, have used the Public Staff's methodology, except I would have used no normalization. Consequently, I would have found that using the appropriate methodology, the over-collection by CP&L would have been 37.3 million dollars without interest and 58.3 million dollars with interest.

I am quite aware that it is uncontrovertible that during the period under consideration, CP&L actually failed to collect 32 million dollars of its actual fuel expenses. Ratemaking is an ongoing procedure and to remove any 22 months and segregate out the results of that period would likely always result in a substantial actual over or under-collection. It is the intent of regulators that although these swings up and down occur, due to seasonal as well as performance differences, eventually the collection should even out and come as close as possible to a wash. Regulation is not a science and because it relies on estimates, there will always be over or under-collections unless there is a procedure for a true up. In this State, we do not have such a procedure. Nor, do I think the Court in its remand cases has granted to us the luxury of simply deciding this case based on what would be a fair and equitable result. This Commission has no equitable jurisdiction. It is my understanding that the Courts' directions to us were quite explicit. We were to correct the errors of commission we made in the fuel clause proceedings and we were to correct the errors of omission we made in the general rate cases. It is my belief that to follow the Courts' directions, it is necessary to use the Public Staff's methodology and in my view to allow no normalization of the capacity factors.

Sarah Lindsay Tate, Commissioner

Docket No. E-2, Sub 391
Docket No. E-2, Sub 402
Docket No. E-2, Sub 411
Docket No. E-2, Sub 416
Docket No. E-2, Sub 446

COMMISSIONER COOK, DISSENTING IN PART: I respectfully dissent from the Majority's decision on the proper methodology to be used in determining any net over- or undercollection of fuel costs experienced by CP&L during the twenty-two month period of time extending from December 1, 1980, through September 23, 1982, which is the subject of review and "true-up" as enunciated in the instant court decisions on remand. I would require CP&L to refund approximately $65 million including interest to its North Carolina retail ratepayers rather than the $1.5 million refund required by the Majority.

For purposes of this proceeding, the Majority has adopted the faulty methodology advocated by CP&L for use in determining any net over- or undercollection of fuel costs during the twenty-two month period in question. The assertion of the Majority that CP&L's methodology adheres as closely as possible to normal and customary general rate case methodology is patently incorrect. Such methodology clearly results in retroactive ratemaking, an illegal practice in North Carolina.

I support the methodology advocated by the intervenors. My acceptance and support of the intervenors' methodology is based on my belief that the clear weight of the evidence overwhelmingly demonstrates that the Company's methodology, in substance, illegally trues-up fuel costs for periods of time far in excess of the twenty-two month period under review. The intervenors' methodology calculates and trues-up only the fuel costs applicable to the twenty-two month period in question in conformity with the various court opinions which gave rise to this proceeding, and does so in a straightforward

and forthright manner. Use of CP&L's methodology is unnecessarily complicated and complex.

The intervenors, through direct testimony and cross-examination of Company witness Nevil, have shown that the Company's methodology not only trues-up the collection of reasonable fuel costs during the subject twenty-two month period but also illegally trues-up the over- or undercollection of fuel costs actually incurred during each of the test years utilized by the Commission in Docket Nos. E-2, Subs 366, 391 and 416. The test years utilized by the Commission in these general rate case proceedings were calendar year 1978, the twelve-month period ending September 30, 1979, and calendar year 1980, respectively. Allowing the Company, as the Majority has done by adopting the Company's methodology, to recover a net undercollection of past costs during these three test periods when rates in effect were lawfully established and presumably fair is patently unlawful and flies in the face of traditional ratemaking practices and procedures. The cases which gave rise to those rates were never reversed on appeal based upon an error of law. See State ex rel. Utilities Commission v. Conservation Council, 312 N.C. 59, at 67 (1984).

The fundamental difference in the methodology utilized by the parties to these remanded proceedings is CP&L's addition of a so-called "revenue deficiency factor" to what the Company considers to be a representative and reasonable end-of-period level of fuel costs that should have been utilized by the Commission in its initial decisions with respect to the general rate case proceedings on remand.

In substance, each deficiency factor, in all material respects, represents the difference between actual test year fuel-related cost and actual test year fuel-related revenue. This fact is clearly evidenced by the additional testimony and exhibits of Public Staff witness Paton filed on May 22, 1985. Such testimony and exhibits reconcile and equate the deficiency factor developed and utilized by the Company relative to Docket No. E-2, Sub 366, to the actual overrecovery of fuel costs during the E-2, Sub 366 test year. I would point out that while the Company's methodology has the effect of retroactively and illegally refunding a modest overcollection actually experienced during the test year utilized in Docket No. E-2, Sub 366, such methodology also has the effect of allowing CP&L to retroactively and illegally collect vast undercollections which the Company actually experienced during the test years utilized in Docket Nos. E-2, Subs 391 and 416. Such retroactivity is clearly unlawful and inequitable. Attorney General Exhibit 2 also serves to clearly identify and point out the fact that the CP&L methodology results in retroactive ratemaking. The North Carolina Supreme Court has condemned retroactive ratemaking in several decisions, most notably in Utilities Commission v. Edmisten, Attorney General, 291 N.C. 451 (1977). In that decision, the Court defined retroactive ratemaking as follows: "Technically, retroactive ratemaking occurs when an additional charge is made for past use of a utility service, or the utility is required to refund revenues collected, pursuant to then lawfully established rates, for such past use." 291 N.C. at 468.

CP&L's general rate case methodology allows the Company to illegally recover vast test-year undercollections (and to refund a modest test-year overcollection) of past fuel costs incurred during periods when the rates in effect were lawfully established. Such lawfully established rates were in

effect for periods outside of the subject twenty-two month "true-up" period. Consequently, since retroactive ratemaking to recover a past deficit is unlawful, it should be clear that use of such methodology in this remand proceeding is in violation of the prohibition on retroactive ratemaking enunciated by the North Carolina Supreme Court in the Edmisten case, 291 N.C. 451 (1977), and cannot be employed by the Commission in arriving at a decision on remand.

In addition, the adoption of CP&L's methodology by the Majority is contrary to G.S. 62-133(b) and G.S. 62-133(c) so as to be "[i]n excess of statutory authority and jurisdiction of the Commission" contrary to G.S. 62-94(b)(2) and "[a]ffected by other errors of law" contrary to G.S. 62-94(b)(4).

For these reasons, I respectfully dissent from that part of the Commission's Order which permits an unlawful retroactive collection of test-year fuel costs.

I concur in and fully support the Majority's decision as it pertains to all other aspects of these remanded proceedings.

Ruth E. Cook, Commissioner

September 9, 1985

DOCKET NO. E-2, SUB 503

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Application by Carolina Power & Light Company for Authority to Adjust and Increase Its Electric Rates and Charges Pursuant to N.C.G.S. § 62-133.2 and NCUC Rule R8-54	)	ORDER APPROVING FUEL CHARGE RATE INCREASE

HEARD IN: Commission Hearing Room 217, Dobbs Building, 430 N. Salisbury Street, Raleigh, North Carolina, beginning on August 12, 1985

BEFORE: Commissioner A. Hartwell Campbell, Presiding; and Chairman Robert K. Koger and Commissioner Robert O. Wells

APPEARANCES:

For the Applicant:

Richard E. Jones, Vice President and Senior Counsel, and Robert W. Kaylor, Associate General Counsel, Carolina Power & Light Company, P. O. Box 1551, Raleigh, North Carolina 27602
For: Carolina Power & Light Company

For the Public Staff:

Paul L. Lassiter, Staff Attorney, Public Staff - North Carolina Utilities Commission, P. O. Box 29520, Raleigh, North Carolina 27626-0520
For: The Using and Consuming Public

For the Attorney General:

Jo Anne Sanford, Special Deputy Attorney General, and Karen E. Long, Assistant Attorney General, North Carolina Department of Justice, P. O. Box 629, Raleigh, North Carolina 27602-0629
For: The Using and Consuming Public

For the 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.

Ralph McDonald, Attorney at Law, Bailey, Dixon, Wooten, McDonald, Fountain & Walker, P. O. Box 12865, Raleigh, North Carolina 27605
For: Carolina Industrial Group for Fair Utility Rates-II

Wilbur P. Gulley (Attorney of Record), Gulley, Eakes and Volland, P. O. Box 3573, Durham, North Carolina 27702
For: Kudzu Alliance

BY THE COMMISSION: On May 21, 1985, Carolina Power & Light Company (CP&L or the Company) filed an application with the North Carolina Utilities Commission requesting authority to adjust its electric rates and charges pursuant to G.S. § 62-133.2 and NCUC Rule R8-54. CP&L requested authority to charge a uniform increment of 0.42¢/kWh, including gross receipts tax, as a rider to each of the Company's North Carolina retail electric rate schedules effective no later than September 18, 1985, based on the difference between the cost of fuel and the fuel component of purchased power established by the Commission in the Company's last general rate case, Docket No. E-2, Sub 481, and a historical 12-month test period ended March 31, 1985, as adjusted. The Commission was of the opinion that the application affected the public interest and set the matter for hearing by Orders issued on May 23, 1985, and June 7, 1985.

On June 7, 1985, Carolina Industrial Group for Fair Utility Rates-II (CIGFUR-II) filed a Petition to Intervene; on June 29, 1985, Carolina Utility Customers Association, Inc. (C.U.C.A.), filed a Petition to Intervene; and on August 29, 1985, the Kudzu Alliance filed a Petition to Intervene. By various Orders of the Commission, these petitions were allowed. In addition, the Public Staff and the Attorney General were deemed intervenors pursuant to NCUC Rule R1-19.

On August 5, 1985, C.U.C.A. filed a Motion to Dismiss CP&L's application on the grounds that the Commission was without authority to grant CP&L's request. In this regard, C.U.C.A. argued that CP&L, by its own admission, was seeking to increase its fuel charge not only for increased fuel prices but also

to increase its rate of return. In addition, C.U.C.A. argued that CP&L's proposal to recover dollar for dollar for its past undercollections would be statutorily impermissible. Moreover, C.U.C.A. argued that CP&L was seeking to set rates retroactively. The Attorney General, the Public Staff, and the Kudzu Alliance joined in C.U.C.A's Motion to Dismiss.

The matter came on for hearing at the scheduled time and place. The first order of business was to hear from public witnesses. The following persons appeared and testified: James Ira Sinclair, Hazel Sorrell, Jane Rogers Montgomery, Joseph R. Overby, and Wells Eddleman. All these witnesses were opposed to CP&L's rate request. The Commission also received and attached to the record a Petition containing the signatures of some 400 residents of the Cumberland County area opposing the proposed increase.

After hearing from the public witnesses, the Commission heard oral argument on C.U.C.A.'s Motion to Dismiss CP&L's application. This motion was supported by the Attorney General, the Public Staff, and the Kudzu Alliance. After hearing oral arguments, the Commission deferred ruling on the motion. The Commission now denies that motion and affirms its decision to have gone on and taken evidence from all parties in this case for the reasons generally advanced in opposition to the motions to dismiss by CP&L.

CP&L presented the testimony and exhibits of the following witnesses: L. L. Yarger, Manager of Fossil Fuel in the Fuel Department of CP&L; Ronnie M. Coats, Assistant to the Group Executive in the Fossil Generation and Power Transmission Group of CP&L; and David R. Nevil, Manager-Rate Development and Administration in the Rates and Service Practices Department of CP&L.

The Public Staff presented the testimony of Thomas S. Lam, Engineer in the Electric Division of the Public Staff.

CIGFUR-II presented the testimony and exhibits of Nicholas Phillips, Jr., a consultant with Drazen-Brubaker & Associates, Inc.

C.U.C.A. presented the testimony and exhibits of Dr. John W. Wilson, President of J. W. Wilson & Associates, Inc., and the testimony of Si Moss, Production Superintendent of Chicopee, Inc., a subsidiary of Johnson & Johnson.

Based upon a careful consideration of the entire record in this proceeding, including the testimony and exhibits received into evidence at the hearing, the Commission now makes the following

FINDINGS OF FACT

1. Carolina Power & Light 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 the North Carolina Utilities Commission. CP&L is engaged in the generation and production of electric power by fossil and nuclear fuels. CP&L is lawfully before this Commission based upon the application filed pursuant to G.S. § 62-133.2(a). The test period for purposes of this proceeding is the 12-month period ended March 31, 1985. The intervenors' motions to dismiss should be denied.

2. Carolina Power & Light Company in its original application applied for an incremental increase of 0.420¢/kWh, including gross receipts tax, to its North Carolina retail electric rates based on the difference between the current cost of fuel and the base fuel component established by the Commission in the Company's last general rate case, Docket No. E-2, Sub 481. At the hearing, CP&L revised its requested increase downward to 0.395¢/kWh, including gross receipts tax.

3. The adjustments proposed by the Company to normalize customer growth and weather are reasonable and appropriate for purposes of this proceeding.

4. A normalized generation mix is reasonable and appropriate for purposes of this proceeding.

5. The kWh generation from each nuclear unit should be normalized to reflect the 52.4% lifetime nuclear capacity factor of the Company's system as of the end of July 1985 for purposes of this proceeding.

6. The Company's fuel purchasing practices and power purchasing practices were reasonable and prudent during the test period.

7. The unit fuel prices utilized by the Public Staff are reasonable and appropriate for purposes of this proceeding.

8. The base fuel cost component which is appropriate for use in this proceeding is 1.750¢/kWh excluding gross receipts tax which reflects a reasonable fuel cost of $363,426,000 for North Carolina retail service. This result is a fuel factor increment of 0.168¢/kWh over the present base fuel component of 1.582¢/kWh approved in Docket No. E-2, Sub 481.

9. The fuel factor increment of 0.168¢/kWh excluding gross receipts tax (0.174¢/kWh including gross receipts tax) should be applied uniformly to all rate schedules.

EVIDENCE AND CNCLUSIONS FOR FINDINGS OF FACT NOS. 1 AND 2

The evidence for these findings of fact is contained in the verified application, Chapter 62 of the North Carolina General Statutes, the Commission's files and records regarding this proceeding, the Commission Order setting hearing, and the testimonies of Company witness Nevil and Public Staff witness Lam.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 3, 4, AND 5

Company witnesses Nevil and Coats, Public Staff witness Lam, C.U.C.A. witness Wilson, and CIGFUR-II witness Phillips provided testimony and 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. Second, it must be determined what generation mix will be utilized to provide the annual level of kWh generation,

including a determination regarding how much of that annual level of kWh generation will be produced by each of the various types of generating resources of the Company (such as nuclear, coal, IC, and hydro) and of the reasonable level of kWh energy purchases and sales. Third, a determination must be made of the reasonable unit fuel costs to be attributed to each component of the generation mix. Such unit fuel costs are then multiplied by the number of kWh's produced by each component of the generation mix in order to derive a fuel cost.

Public Staff witness Lam testified that a total company generation level of 36,739,000 mWh, a total company sales level of 32,875,550 mWh, and a North Carolina retail sales level of 20,767,173 mWh are the correct test year figures to be used in the fuel computations after adjustments to normalize customer growth and weather. Witness Lam testified that the Public Staff had examined the customer growth and weather normalization adjustments proposed by the Company and found the methods to be identical with those used in the last general rate case in Docket No. E-2, Sub 481. He therefore offered no testimony on the matter and accepted the Company's adjustment. C.U.C.A. witness Wilson testified that the Company's customer growth and weather normalization adjustments were incorrect but offered no substantive evidence other than a comparison between the Company's monthly residential consumption levels in Docket No. E-2, Sub 481, and Docket No. E-2, Sub 503. Witness Phillips used the same kWh levels as were used in Docket No. E-2, Sub 481, which are based on a test year ended September 30, 1983, rather than the test year ended March 31, 1985, at issue in this proceeding.

The Commission concludes that the adjustments proposed by the Company to normalize customer growth and weather are reasonable and appropriate for purposes of this proceeding and that such adjustments will produce a total company generation level of 36,739,000 mWh, a total company sales level of 32,875,550 mWh, and a North Carolina retail sales level of 20,767,173 mWh.

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 components of the Company's generation mix (i.e., nuclear, coal, IC, hydro, purchases, and sales). For example, Company witness Nevil testified that the fuel cost involved in generating a kilowatt-hour with IC fuel 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 the fact that, to the extent more nuclear generation is substituted in the generation mix for coal generation, the impact upon the resulting overall cost of fuel can be significant. 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 the other more costly generating resources.

The generation mix which Company witness Nevil used in deriving the Company's proposed base fuel component reflected the Company's actual test year level of nuclear generation. The other parties to the proceeding proposed a normalized level of nuclear generation.

Public Staff witness Lam proposed a normalized level of nuclear generation associated with a system nuclear capacity factor of 53.5% based upon a national review of the operation of similar size and types of nuclear units for a 10-year period 1974 through 1983, as reported by the North American Electric Reliability Council. Witness Lam's approach was virtually the same as the approach utilized by the Commission in Docket No. E-2, Sub 481. Witness Wilson of C.U.C.A. originally proposed a normalized level of nuclear generation associated with a system nuclear capacity factor of 60%. However, in C.U.C.A.'s proposed order it was its final position that the Commission should use the 53.4% nuclear capacity factor utilized in Docket No. E-2, Sub 481. CIGFUR-II witness Phillips recommended no specific normalized level of nuclear generation at one point in his testimony but stated at another point that the Commission should adopt the 53.4% capacity factor utilized in Docket No. E-2, Sub 481.

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 can reasonably be assumed will occur in the near future and, particularly, during the period of time these rates will be in effect. To the extent that the actual test year level of nuclear generation was "abnormal," or not reasonably representative of what should be reasonably 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. Furthermore, witness Nevil proposed to normalize the test year generation mix, including a 45.5% nuclear capacity factor, in order to represent the generation mix anticipated by the Company for the period October 1985 to September 1986 in the "future changes" portion of the Company's proposed base fuel component.

The normalization concept is one of the most basic concepts of ratemaking. It is a concept which arises out of the statutory requirement that a test year should 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 the use of such information 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 (1973); 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. Edmisten, 291 N.C. 327, 230 S.E. 2d 651 (1976); and State ex rel. Utilities Commission v. Duke Power Company, 305 N.C. 1, 287 S.E. 2d 786 (1982).

The Commission turns 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 in this proceeding the Company had an overall system nuclear capacity factor of only 36.5%. 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 the generating capacity of each of those units. Those were a 68% capacity factor for Brunswick Unit No. 1, a 25% capacity factor for Brunswick Unit No. 2, and a 13% capacity factor for Robinson Unit No. 2. Robinson Unit No. 2 did not operate during the first nine and one-half months of the test period due to an extended outage to replace its steam generators. Brunswick Unit No. 2 did not run for the first seven months of the test period due to an extended outage for refueling and maintenance that started in March 1984.

Company witnesses Nevil and Coats both testified that they anticipated a nuclear capacity factor of 45.5% for the future period October 1985 to September 1986. Witness Coats further testified that Brunswick Unit No. 1 is currently in a scheduled outage for refueling, modifications to electrical equipment required by Nuclear Regulatory Commission (NRC) Inspection and Enforcement Generic Bulletin No. 79-01B, and completion of torus modifications required by the NRC. The outage began on March 29, 1985, and is scheduled to end on December 13, 1985. Brunswick Unit No. 2 is scheduled to be out of service from December 1, 1985, through August 31, 1986, for refueling, modification of the fire protection system in accordance with NRC requirements, changes or upgrades of other equipment as required by NRC Inspection and Enforcement Generic Bulletin No. 79-01B, and completion of a 10-year in-service inspection. Robinson Unit No. 2 is scheduled for a 15-week outage beginning February 1, 1986, for refueling and NRC-mandated plant modifications. After completion of the outage at Brunswick Unit No. 2 on August 31, 1986, there are no further outages of more than 15 weeks on the Company's schedule, except for a 28-week outage at Brunswick Unit No. 1 beginning in early May 1987.

The Commission recognizes that the Company's proposed 1.964¢/kWh base fuel component includes a 0.140¢/kWh underrecovery portion and a 0.027¢/kWh future changes portion as well as a 1.797¢/kWh historic adjusted test year portion. The 1.797¢/kWh historic adjusted test year portion is based on the actual test year nuclear capacity factor of 36.5% and March 1985 unit fuel prices, and the 0.027¢/kWh future changes portion is based on the difference between 1.824¢/kWh and the 1.797¢/kWh historic adjusted test year. The 1.824¢/kWh is based on a production cost simulation model utilizing a 45.5% nuclear capacity factor and estimated burned fuel prices during October 1985 to September 1986.

The Commission concludes that the 36.5% 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 and should 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 36.5% system nuclear capacity factor reflects abnormal extended outages on Brunswick Unit No. 2 for refueling and repairs and maintenance and on Robinson Unit No. 2 for steam generator replacement.

The testimony of Company witnesses Nevil and Coats indicates that the Company expects an actual system nuclear capacity factor of approximately 45.5% for the future period of October 1985 to September 1986. The Commission notes that the Company has applied to the NRC for an extension of time until March 30, 1986, to complete the environmental qualification of electrical equipment at Brunswick Unit No. 2, and that, should such extension be incorporated into

the calculation of the expected nuclear capacity factor for October 1985 to September 1986, it would result in an expected nuclear capacity factor of approximately 52.1%. Public Staff witness Lam testified that the Company's systemwide lifetime nuclear capacity factor was 52.4% as of the end of July 1985.

The Commission notes that the system lifetime nuclear capacity factor is in the same range as those capacity factors which are based on a combination of national averages plus planned outages for specific units and the factor which should result assuming CP&L's request for an extension to the NRC is granted. The lifetime nuclear capacity factor of the Company's system does not seem to suffer from the same defects cited by CP&L regarding the application of specific planned outages to national average capacity factors in an attempt to make the national average capacity factors more company specific.

Based upon all of the evidence, the Commission concludes that a normalized generation mix is reasonable and appropriate for purposes of this proceeding. The Commission further concludes that the appropriate normalized generation mix for use herein is calculated by the same method used by the Public Staff, except that the generation mix should reflect the Company's systemwide lifetime nuclear capacity factor of 52.4% as of the end of July 1985.

Although witnesses Lam, Phillips, and Wilson advocated normalization adjustments, they did not contend that the Company had operated its plants imprudently.

Wells Eddleman, testifying as a public witness, alleged that the Company was guilty of bad nuclear performance. He stated that one week after the completion of the steam generator replacement outage at Robinson Unit No. 2, the unit was shut down again because the Company's architect-engineer had not properly considered the factors of safety specified by the NRC for operating a plant on an interim basis pending modification of certain seismic pipe supports. Witness Eddleman testified that this showed that "CP&L and their architect-engineer screwed up."

The Commission does not agree that the outage in January and February 1985 at Robinson Unit No. 2 was attributable to bad performance or imprudence on the part of the Company. As witness Coats pointed out on cross-examination, an error was made by the architect-engineer of a well respected firm in the nuclear industry, in determining which pipe supports qualified for interim operation. There is nothing in the record to indicate that the Company was negligent in its selection of the architect-engineer; or that the Company was obligated to make its own initial determination as to which pipe supports could be operated on an interim basis, rather than relying on the information furnished by its architect-engineer; or that the Company failed to take prompt and appropriate action when it found that the architect-engineer had erred.

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

The evidence concerning fuel purchasing practices, power purchasing practices, and unit fuel prices is found in the testimony and exhibits of Company witnesses Yarger and Nevil, Public Staff witness Lam, and C.U.C.A. witness Wilson.

Witness Yarger testified concerning the cost of coal, oil, natural gas, propane, and nuclear fuel used by the Company during the test period. He outlined the coal and nuclear fuel procurement practices followed by the Company during this period. He testified that the Company regularly compares its performance in numerous areas with a group of seven other southeastern utilities and that during the test period the Company's coal costs were below the group average, while its nuclear fuel costs were the lowest of the entire group.

Witness Yarger further testified that the labor contract between the United Mine Workers (UMW) and the coal mine operators expired on October 1, 1984. In anticipation of a possible strike, the Company built up its coal inventory from late 1983 through May 1984 by increasing its purchases on the spot market. The Company completed its inventory buildup in May 1984 so as to avoid paying higher spot coal prices during the months immediately prior to the threatened strike, when other users were adding to their inventories. In late September 1984 the UMW and the mine operators were able to renew their contract without a strike, and the Company's coal inventory at that point was sufficiently large that it has not needed to make spot purchases since then. Because the Company has not purchased spot coal since May 1984, 96% of the coal it used during the test period was acquired through short, intermediate, and long-term contracts, and only 4% was procured in the spot market. In previous years the Company had obtained on average approximately 16% of its coal supply on the spot market. Witness Yarger testified that by building up its inventory well in advance of the anticipated coal strike, the Company reduced its coal costs by approximately $4 million. He stated that spot coal prices have declined since the UMW contract negotiations were completed and that CP&L looks forward to reentering the spot coal market; nevertheless, the Company's coal costs for the period from October 1985 through September 1986 are projected to be higher than in the test period, because of price escalation clauses in its coal contracts.

Witness Lam testified that the Public Staff regularly reviews the Company's fuel procurement practices, that it has no objections to the Company's current practices, and that it does not consider them to be imprudent.

Witness Wilson testified that in recent years spot coal prices have been 20% to 25% lower than CP&L's long-term contract prices. He further stated that the Company normally buys 20% of its coal on the spot market. Because the spot market accounted for only 4% of the Company's coal purchases during the test period, Dr. Wilson was of the opinion that the Company's end-of-period inventory prices were abnormally high and should be normalized.

In the judgment of this Commission, there was a very real possibility that the UMW would strike in October 1984. It was entirely proper for the Company to build up its inventory in preparation for the strike. The Company exercised sound judgment in completing its inventory buildup by the end of May so as to avoid inflated spot prices in the last few months before the strike deadline. With the exception of 1984, in the last 20 years, whenever the UMW contract has expired, there has been a strike. Quite often the strikes have been lengthy and have resulted in coal shortages. Inventory buildups in the year before an anticipated strike, followed by a return to standard inventory levels, have been the rule rather than the exception.

No evidence was offered in opposition to the Company's power purchasing practices. Nevertheless, the Commission and the Public Staff receive monthly reports as to CP&L's cost of purchased power, and no cause for concern has been raised as a result of the cost of purchased power reflected in those reports covering the time periods at issue in this proceeding.

The Commission concludes that the Company's fuel purchasing practices and power purchasing practices were reasonable and prudent during the test period.

To calculate unit fuel prices, the Public Staff used the most current nuclear fuel cost and the most current "as burned" fossil fuel cost available (June 1985), which is the same approach used by the Commission in the last general rate case in Docket No. E-2, Sub 481. The Company used the March 1985 inventory fuel costs for the historic adjusted test year portion of its proposed base fuel component, and it used estimated future as-burned fuel costs (October 1985 to September 1986) for the future changes portion of its proposed base fuel component.

The Commission concludes that the most current unit fuel prices used by the Public Staff are reasonable and appropriate for purposes of this proceeding. In adopting the unit coal prices, the Commission has considered the likelihood of greater purchases by the Company of coal on the spot market but has concluded that any savings will be offset by escalation in unit contract prices.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 8

Company witness Nevil, Public Staff witness Lam, C.U.C.A. witness Wilson, and CIGFUR-II witness Phillips provided testimony on the proper fuel cost component to be included in general rates. The Company recommended a fuel component of 1.964¢/kWh, compared to the Public Staff's 1.672¢/kWh, C.U.C.A.'s 1.586¢/kWh, CIGFUR-II's 1.673¢/kWh, and the Attorney General's 1.568¢/kWh.

Company witness Nevil recommended a fuel factor of 19.64 mills (or 1.964¢/kWh) which equated to a $425,441,992 North Carolina retail base fuel cost. This $425,441,992 level of fuel-related expense consists of two components as follows:

Description	Amount	Fuel Factor
Anticipated generation mix and unit fuel prices for the year rates will be in effect (10/85-9/86)	$395,120,631	18.24 mills
Actual and estimated underrecovery of fuel expenses for 9/22/84 through 9/30/85 at 15.82 mills	30,321,361	1.40
Total	$425,441,992	19.64 mills

Witness Nevil computed his $395,120,631 base fuel cost by utilizing a combination of (1) actual unadjusted test year generation mix derived using a nuclear capacity factor of 36.5% applied to system kWh sales adjusted for weather and customer growth and March 1985 fuel inventory costs and (2) a PROMOD estimation of the future changes expected during the October 1985 to September 1986 billing period. The input data witness Nevil used in his PROMOD

"future changes" included (a) estimated October 1985 to September 1986 system capacity factors for the Company's nuclear generating units of 45.53%, (b) estimated customer growth and weather normalization, and (c) anticipated fuel prices for the October 1985 to September 1986 period. Witness Nevil then made adjustments to the PROMOD estimated 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 fuel costs related to CP&L's buyback of Mayo power from Power Agency.

The $30,321,361 amount calculated by witness Nevil represents two parts: (1) $15,644,406 represents CP&L's actual underrecovery of fuel expenses from September 22, 1984, through June 30, 1985, based on the 15.82 mills fuel factor set by the Commission in the Company's last rate case, Docket No. E-2, Sub 481, and (2) $14,676,955 is the Company's estimated underrecovery of fuel expenses for the period July 1, 1985, through September 30, 1985. Witness Nevil had originally estimated that the total underrecovery of fuel expenses for the period of September 22, 1984, through June 30, 1985, would be $20,851,562 which included estimates for the months of April, May, and June 1985 rather than actual values. Thus his projection of the underrecovery for these three months was overstated by approximately $5.2 million.

Public Staff witness Lam testified that his recommended base fuel factor was derived using the same methodology for determining base fuel expenses which he used in the Company's last general rate case, Docket No. E-2, Sub 481. Witness Lam calculated his level of nuclear generation in this proceeding based on a nuclear capacity factor of approximately 53.5%. This capacity factor was calculated by using the 10-year average capacity factor for each type of nuclear plant as reported in the latest North American Electric Reliability Council, Equipment Availability Report 1974-1983, and adjusting it for current but not projected outages. Witness Lam set his 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 his levels for purchases, sales, coal generation, and combustion turbine generation were prorated according to the actual test-period generation ratio. Using June 1985 fuel burn values and using total generation of 36,739,000 mWh, witness Lam computed a total company fuel cost of $549,617,000 ($347,227,000 North Carolina retail) which, when divided by total system sales of 32,875,550 mWh (20,767,173 mWh North Carolina retail), results in a base fuel factor of 1.672¢/kWh, excluding gross receipts tax. The fuel price used for each type of generation in his calculation is as follows:

Coal	2.080¢/kWh
IC	12.233¢/kWh
Nuclear	.438¢/kWh
Purchases	1.680¢/kWh
Sales	1.646¢/kWh

C.U.C.A. witness Wilson provided a calculation of the base fuel component that included a minimum 60% capacity factor for all nuclear generating units. Witness Wilson's base fuel component of 1.568¢/kWh as originally proposed utilizes CP&L's estimated inventory prices for coal and oil and is based on CP&L's PROMOD computer program. According to the proposed order filed in this proceeding, C.U.C.A. revised its recommendation on its fuel factor to

1.586¢/kWh, which reflects the use of a 53.4% nuclear capacity factor and the generation mix and kilowatt-hour sales as established in the preceding general rate case and concluded that CP&L should not be allowed to increase its rates in this proceeding.

CIGFUR-II witness Phillips computed two base fuel components, based on March 1985 fuel prices and 53.4% and 60% nuclear capacity factors, of 1.686¢/kWh and 1.620¢/kWh, respectively. However, the proposed order of CIGFUR-II recommended a 1.673¢/kWh fuel factor based on a 53.4% nuclear capacity factor and the June 1985 fuel burn prices as recommended by witness Lam.

The Attorney General's proposed order agreed with the original position of C.U.C.A.'s witness Wilson and recommended a fuel factor of 1.568¢/kWh reflecting a 60% nuclear capacity factor. This recommendation results in a decrement to rates of 0.014¢/kWh.

In reviewing the evidence presented on the issues involved in the determination of a fuel cost factor, the Commission has concluded, as discussed in the Evidence and Conclusions for Findings of Fact Nos. 3, 4, 5, 6, and 7, that a normalized generation mix is appropriate for use in this proceeding, that the kWh generation from each nuclear unit should be normalized to reflect the 52.4% lifetime nuclear capacity factor of the Company's system as of the end of July 1985, and that the unit fuel prices appropriate for use in this proceeding are those recommended by Public Staff witness Lam.

The remaining issue between the parties to be resolved is the extent, if any, to which the Commission should consider the Company's undercollection of fuel costs during the test period.

Witness Nevil testified that the fuel cost allowance of 1.582¢/kWh set in Docket No. E-2, Sub 481, has proven inadequate. For the period from implementation of Docket No. E-2, Sub 481, rates through June 1985, the Company's fuel costs exceeded its fuel-related revenues by $15,644,406. For the period from July through September 1985, the Company expects fuel costs to be $14,676,955 in excess of fuel-related revenues, resulting in a total fuel cost underrecovery of $30,321,361 over a one-year period. Witness Nevil testified that with an adjustment of 0.140¢/kWh, the Company would be able to eliminate the underrecovery by September 1986.

Witness Phillips testified that the Company's true-up adjustment should not be adopted, because it would render the Commission's ruling on fuel costs in Docket No. E-2, Sub 481, meaningless. In Docket No. E-2, Sub 481, according to witness Phillips, the Commisson established 53.4% as the lowest reasonable capacity factor for CP&L and required the Company to absorb all costs attributable to any lower capacity factor. Witness Phillips contended that this decision would be nullified if the Company were allowed to true-up its fuel cost underrecoveries.

Witness Wilson testified that a true-up constitutes retroactive ratemaking and is not permitted under North Carolina law. He further stated that a true-up undermines efficiency incentives, because when a true-up system is in effect, even if a utility incurs fuel costs higher than those predicted by the Commision, it is assured of recovering them from ratepayers.

According to the Public Staff, the Company's proposal for collection of its underrecovery contains two fundamental flaws. The first has to do with the past undercollections per se and the Company's contention that it is entitled to recover them through rates in the future. The Public Staff believes that this would constitute retroactive ratemaking. The language of G.S. § 62-133.2 authorizing the Commission to consider actual recovery of fuel costs during the test period did not, in its view, take fuel charge adjustment proceedings out from under the prohibition, enunciated in State ex rel. Utilities Commission v. Edmisten, 291 N.C. 451, 469 (1977), against prospective ratemaking to recover unexpected past expense.

In the opinion of the Public Staff, the second flaw in CP&L's proposal is related to the first. It is that the part of the undercollection of fuel expense which the Company seeks to recover prospectively through its proposed fuel factor has not yet occurred, the amount July 1, 1985, through September 30, 1985, being only a projected or estimated figure.

In the opinion of the Attorney General, it is inappropriate to allow the Company to recover its underrecoveries in that the Company's proposed treatment is a disincentive to efficient operation.

Commission Conclusion

It is a well established fundamental principle of regulation that public utility rates should be set to be representative of total costs on an ongoing basis. In other words, rates cannot be totally based on historical test year costs and revenues. Test year data must be normalized to reflect expected or prospective revenues and costs. The Commission has stated this position in its discussion on the need to normalize capacity factors. The rate-making process, thus, inherently requires the forecasting of reasonable and proper levels of revenues and costs for some limited but indefinite time period into the future. The individual revenues and costs items may, in fact, not occur. However it is hopeful that in the aggregate they will approximate the total revenues and expenses of the Company, assuming good management.

However, the legislature of this State, and every other state that the Commission knows about, has singled out fuel related revenues and costs for different treatment from that accorded to other items of revenue and expense. The reason is that fuel costs account for 30% to 40% of total costs for most utilities (including CP&L) and, therefore, small variances in fuel costs can put the utility company into a position for substantial over- or under-collection of costs and can result in large swings in earnings. When a utility has a large percentage of nuclear power, the swings can be exacerbated even further because of the wide differences in nuclear generated power and fossil generated power costs. Such swings can have significant adverse effects on bond ratings and the resultant cost of money to the utility.

No doubt, for these reasons, the North Carolina General Assembly enacted its statute requiring the Commission to hold annual hearings to determine the degree of change, if any, to be made to the level of fuel costs reflected in the existing rates of each electric utility. Based on the above stated considerations and absent a showing of imprudence, inefficiency, or malfeasance, it is the objective of this Commission to adopt rules and employ procedures whereby an electric utility will lawfully be permitted a reasonable

opportunity to recover all prudently incurred fuel costs. To achieve this objective, the Commission must exercise its discretionary authority in a responsible and consistent manner so as to facilitate accomplishment of this purpose. As indicated earlier, fuel cost is by far the major component of the total operating costs of a typical electric utility. It is also the most variable. The circumstances and events underlying this variability are to a large extent beyond the control of company management and this Commission. Moreover, given the number and nature of the parameters influencing its widely ranging variability, the reasonable level of fuel costs that a company can be expected to incur prospectively is exceedingly difficult to predict, within reasonable bounds, over relatively short periods of time. Again, due to the magnitude of the costs in question, relatively small variances in fuel costs included in prospective rates from the level of fuel costs actually incurred during the period the rates are in effect will have a significant impact on a company's financial viability. This further magnifies the need for an effective and fair means of determining the level of fuel cost to be included in rates on a representative or prospective (these words are used interchangeably in this Order) basis. Therefore, the Commission believes, in determining the level of fuel costs to be reflected in future rates, that it is necessary to carefully consider the efficacy of past fuel cost determinations. The Commission's authority in this regard is clearly reflected by the unencumbered language of G.S. § 62-133.2(d). Specifically, this subsection of the statute states in pertinent part:

> 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... (Emphasis added)

There are, perhaps, several techniques that the Commission could employ in seeking to accomplish its objective of allowing the Company a reasonable opportunity to recover its prudently incurred fuel cost. All such techniques rely to a great extent on historical circumstances and events, and properly so, for past events and historical data are clearly the keys to the future. Since it is the Commission's objective to provide a reasonable opportunity and not a guarantee, the Commission is reluctant to employ a procedure which results in an absolute guarantee of a dollar for dollar true-up of fuel costs. Such true-up mechanisms quite often are viewed as impediments to the incentive for efficiency and as such are considered to be counterproductive techniques. However, the Commission firmly believes that any prudent procedure used to set the fuel cost component of prospective rates will take into account past under- and overcollection of prudently incurred fuel costs. The Commission further believes that the most appropriate fuel costing methodology is the one that will minimize the variability of recovery of prudently incurred fuel costs in the short-run while maximizing the Company's potential for recovery of such costs in the long-run. Therefore, in its determination of the reasonable and prudent level of fuel costs to be included in rates prospectively, the Commission will incorporate an actual experience modification factor based in part upon the variance of the forecasted level of prudently incurred fuel cost from that actually experienced. For purposes of this proceeding, the Commission concludes that it is appropriate to incorporate an actual experience modification factor of $.00068 per kWh in its determination of the fuel cost increment to be added to the Company's existing base rates. In arriving at this

experience modification factor, the Commission has considered the evidence and arguments of the Company and all the intervenors regarding true-ups and retroactive ratemaking. The Commission has been particularly diligent in studying this issue because this is essentially the first controverted fuel clause case held under G.S. § 62-133.2(d) since its enactment.

The intervenors appear to generally take the position that any consideration of under- or overcollections is likely to result in illegal retroactive ratemaking. On the other hand, the company takes the position that full recovery; i.e., true-ups of all fuel costs, is proper and legal under G.S. § 62-133.2(d). Several of the intervenors also pointed out that the institution of true-ups would remove any incentive for the Company to operate efficiently. The Commission shares in that concern. Also, the Commission concludes that it is improper to consider any over- or undercollections except those which have actually occurred.

In arriving at an experience factor by which the Commission would adjust its estimate of prospective fuel costs, the Commission has taken the above considerations into account. The $.00068/kWh was arrived at by taking 90% of the difference between actual prudently incurred fuel costs for the test year and the revenues that were actually collected under the Commission's estimate of fuel costs in Docket No. E-2, Sub 481.

This use of an experience or correction factor constitutes neither a dollar for dollar true-up as proposed by the Company nor a complete ignoring of the likelihood of error by the Commission in setting a representative fuel factor cost as proposed by the intervenors. Assuming a similarly calculated experience or correction factor is applied consistently in future fuel clause cases, then over time the Company's opportunity to collect its reasonably and prudently incurred fuel costs should be significantly enhanced. Likewise, it should minimize any overcollections of fuel costs from customers. Furthermore, arriving at the correction factor by taking 90% of actual revenues minus actual costs should provide sufficient incentive to the Company to hold fuel costs as low as possible. The 90% figure is based upon applying the Commission's own discretion and will be monitored on the basis of the results it produces over time and modified, if necessary.

In summary, the Commission concludes that the appropriate fuel factor in this proceeding is 1.750¢/kWh which, when multiplied by the North Carolina retail kWh sales of 20,767,173,000 found appropriate in the Evidence and Conclusions for Findings of Fact Nos. 3, 4, and 5, results in a North Carolina retail base fuel cost of $363,425,527. The calculation of this factor is shown as follows:

Item		Adjusted Generation Mix (mWh)	Fuel Price $/mWh	Fuel Dollars (000s)
Coal		24,579,000	20.80	$511,243
IC		32,000	122.33	3,915
Nuclear		10,305,000	4.38	45,136
Hydro		725,000	-	-
Purchases		1,411,000	16.80	23,705
Sales		(313,000)	16.46	(5,152)
TOTAL		36,739,000		$578,847
Less:				
P.A. Nuclear	$ 5,823,000			
P.A. Coal	25,566,000			
	$31,389,000			(31,389)
Plus:				
Mayo Buyback				5,348
Fuel Dollars for Fuel Factor				$552,806
mWh for Fuel Factor				32,875,550
Preliminary Fuel Factor ¢/kWh				1.682
Experience Modification Factor				.068
Approved Fuel Factor ¢/kWh				1.750

In arriving at a decision in this case, the Commission has given careful consideration to 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, including adjusted and reasonable fuel expenses prudently incurred by CP&L under efficient management and economic operations as well as the fuel costs incurred by CP&L and the Company's actual recovery under the base fuel factor set in Docket No. E-2, Sub 481. The fuel charge adjustment approved in this proceeding is just and reasonable and shall remain in effect until changed by the Commission in a subsequent general rate case for CP&L pursuant to G.S. § 62-133 or annual fuel proceeding for the Company pursuant to G.S. § 62-133.2.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 9

Company witness Nevil and CIGFUR-II witness Phillips presented testimony bearing on the issue of uniformity of application of the fuel clause increment. Witness Nevil proposed a uniform increment of 0.395¢/kWh (0.382 cents plus gross receipts tax) to the kWh charge for all rate classes. Witness Phillips advocated that the fuel clause increment should vary by rate class to reflect the different loss factors experienced by the Company in serving the different classes. He stated that it "would be more appropriate to utilize actual loss factors by rate class in establishing the class fuel increment." After careful consideration of this issue, the Commission finds two facts dispositive. First, the presently effective rate schedules indicate uniformly that a base cost of fuel of 1.582¢/kWh is included in the charges. Second, the language of G.S. § 62-133.2(a) explicitly addresses this issue as follows:

> The Commission may allow electric utilities to charge a uniform increment or decrement as a rider to their rates for changes in the 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. (Emphasis added.)

Therefore, the Commission concludes not only that it is reasonable and appropriate to implement the fuel factor increment uniformly for all rate classes, but that under G.S. § 62-133.2 it is necessary to adopt a uniform increment or decrement if the Commission concludes that a fuel adjustment change is appropriate and justified.

IT IS, THEREFORE, ORDERED as follows:

1. That the Motions to Dismiss Carolina Power & Light Company's application filed by C.U.C.A., the Public Staff, the Attorney General, and the Kudzu Alliance be, and hereby are, denied.

2. That Carolina Power & Light Company shall adjust the base fuel component in its North Carolina retail electric rates and charges by a uniform fuel clause increment of 0.168¢/kWH excluding gross receipts tax (0.174¢/kWh including gross receipts tax). This rate change will produce a revenue increase of approximately $34,889,000 excluding gross receipts tax ($36,135,000 including gross receipts tax) per year from the Company's North Carolina retail operations.

3. That within five working days after the date of this Order, Carolina Power & Light Company shall file with the Commission five copies of rate schedules and an applicable fuel cost rider designed to include the incremental cost of fuel set forth in Decretal Paragraph No. 2 above.

4. That Carolina Power & Light Company shall give 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. 3 above.

5. That the Customer Notice attached hereto as Appendix A is hereby approved and is the appropriate notice to include as an insert in the Company's next billing statement mailed to the customer.

6. That this increase is effective for service rendered on and after the date of this Order.

7. That any motions not heretofore ruled upon be, and the same are hereby, denied.

ISSUED BY ORDER OF THE COMMISSION.
This the 18th day of September 1985.

(SEAL)

NORTH CAROLINA UTILITIES COMMISSION
Sandra J. Webster, Chief Clerk

APPENDIX A

CUSTOMER NOTICE
DOCKET NO. E-2, SUB 503

The North Carolina Utilities Commission after investigation and following hearings held in Raleigh, denied CP&L's request for an increase of $82 million in current rates and approved an increase of $36 million. If CP&L's full rate request had been granted, rates for a typical residential customer using 1000 kWh per month would have increased approximately $3.95 per customer. The Commission Order allows rates for a typical residential customer using 1000 kWh per month to increase approximately $1.74 per customer or from $76.00 to $77.74*, an increase of approximately 2.3%.

CP&L's request for an increase in current rates was based solely upon the increased cost of fuel used in the production of electric energy. CP&L's request was made pursuant to the statutory requirement that the Commission 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 over or under base rates established in the Company's last general rate case. The Commission Order allows a base fuel charge increment of $.00174 per kWh as a uniform rider to all rates currently in effect. The rate increase became effective for service rendered on and after September 18, 1985. The Public Staff, the Attorney General, and other Intervenors attempted to show that the Company's base fuel charges should be set lower than the Company's proposed level. The evidence adduced at the hearings indicated that a factor of $.00174/kWh which was between that proposed by the Company and the Intervenors was the proper increment to be added to base rate fuel costs. *

* Corrected by Errata Order issued September 19, 1985.

DOCKET NO. E-7, SUB 314
DOCKET NO. E-7, SUB 335
(REMANDED)

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Application by Duke Power Company for Authority to Adjust and Increase Its Rates and Charges	)	ORDER GRANTING MOTION FOR CONTINUANCE
Application by Duke Power Company for Authority to Adjust Its Electric Rates and Charges Based Solely Upon Changes in Cost of Fuel	)	

BY THE COMMISSION: These proceedings involve two cases which have been remanded to the Commission by the North Carolina Court of Appeals and the North Carolina Supreme Court involving Duke Power Company. These cases are State of North Carolina ex. rel. Utilities Commission v. Kudzu Alliance, 64 N.C. App. 183 (1983) (Docket No. E-7, Sub 335) and State of North Carolina ex. rel. Utilities Commission v. Conservation Council, 312 N.C. 59 (1984) (Docket No. E-7, Sub 314).

On October 22, 1985, the Commission entered an Order in these dockets on remand entitled "Order Scheduling Hearing and Establishing Procedure."

On November 7, 1985, Carolina Utility Customers Association, Inc. (C.U.C.A.), and Great Lakes Carbon Corporation, Intervenors in these dockets, filed a motion for continuance whereby the Commission was requested "...to enter an order postponing all scheduled filings and hearings scheduled by the Order Scheduling Hearing and Establishing Procedure entered by the Commission in the above-captioned proceeding on October 22, 1985, until after the conclusion of all appellate proceedings resulting from the various appeals from the Final Order on Remand Requiring Customer Refunds entered by the Commission on September 10, 1985, in the similar remand proceeding involving Carolina Power & Light Company or, in the alternative, postponing the date for filing testimony and exhibits by the Public Staff and all other intervenors scheduled in the Order Scheduling Hearing and Establishing Procedure entered by the Commission in the above-captioned proceeding on October 22, 1985, for sixty (60) days."

The Commission has been advised orally by the other parties to these proceedings on remand, including Duke Power Company, the Public Staff, and Attorney General, that said parties support the motion for continuance made by C.U.C.A. and Great Lakes Carbon Corporation.

Based upon a careful consideration of the foregoing, the Commission concludes that good cause exists to grant the motion for continuance which is supported by all parties to these proceedings on remand for the reasons given by C.U.C.A. and Great Lakes Carbon. In particular, the Commission takes judicial notice of the appeals to the North Carolina Supreme Court which have recently been taken in the CP&L remand cases in Docket Nos. E-2, Subs 391, 402, 411, 416, and 446, concerning issues which are also clearly germane and central to final resolution of these dockets on remand. Thus, the Commission concludes that it is appropriate to grant the pending motion for continuance in view of the complexity of the issues in these cases on remand and in view of the fact that certain of these same issues are presently on appeal to the North Carolina Supreme Court in the CP&L remand cases. The Commission further notes that the "Final Order on Remand Requiring Customer Refunds" entered in the CP&L remand dockets was not a unanimous Order since two Commissioners dissented. In addition, the Commission is of the opinion that no party to this proceeding will be prejudiced by holding these matters in abeyance pending a ruling from the Supreme Court in the CP&L cases since the Commission has authority to accrue interest on any over- or undercollection which may ultimately be found. For these reasons, the Commission concludes that good cause exists to grant the motion for continuance supported by all parties to these proceedings, including the Company and representatives of the using and consuming public.

IT IS, THEREFORE, ORDERED that the "Order Scheduling Hearing and Establishing Procedure" entered in these dockets on October 22, 1985, be, and the same is hereby, held in abeyance pending further Order to be entered after the conclusion of all appellate proceedings resulting from the various appeals to the North Carolina Supreme Court from the "Final Order on Remand Requiring Customer Refunds" entered on September 10, 1985, in Docket Nos. E-2, Subs 391, 402, 411, 416, and 446.

ISSUED BY ORDER OF THE COMMISSION.
This the 5th day of December 1985.

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

Commissioner Tate dissents.

DOCKET NO. E-7, SUB 314
DOCKET NO. E-7, SUB 335

COMMISSIONER TATE, DISSENTING. I dissent from this Order because of the Commission's cavalier disregard of its obligation to promptly hear cases sent to us by appellate courts on remand.

The Supreme Court entered its opinion in the Conservation Council case, 312 N.C. 59, on October 2, 1984, more than fourteen months ago. The Court of Appeals entered its opinion in the Kudzu Alliance case, 64 N.C. 183 on September 20, 1983, more than twenty-six months ago. The Commission by its decision today has further delayed the hearing of these cases indefinitely. In my view it is the obligation of the North Carolina Utilities Commission to hear cases that have been remanded to us by courts as soon as possible. At the very least, the Commission should act in response to a court's remand within a reasonable time. "The lower tribunal's exercise of jurisdiction after remand by the reviewing court is necessarily conditioned by the terms of the judgment on appeal, and the administrative agency is bound to act on and respect and follow the court's determination of questions of law within a reasonable time." (Italics mine) 2 Am. Jur. 2d 670. Delays of fourteen months and twenty-six months, followed by an indefinite postponement do not meet my definition of "within a reasonable time". Interest reipublicae ut sit finis litium.

The Commission's Order, while quite brief, seems to accord some importance to the fact that all of the parties involved have agreed to the delay. We evade our judicial responsibility if we simply poll the parties as to when or how the cases on remand should be heard. "When it comes to our attention that a lower court has failed to comply with the opinion of this Court, whether through insubordination, misinterpretation or inattention, this Court will, in the exercise of its supervisory jurisdiction, ex mero motu if necessary, enforce its opinion and mandate in accordance with the requirements of justice. N. C. Constitution, Art. IV, § 8; Westcott v. Bank, 227 N.C 644, 43 S.E. 2d 844." Collins v. Simms 257 N.C. 1 at p.8; D & W, Inc. v. Charlotte 268 N.C. 720 at p.723.

By deciding to delay these two remands, the Commission Majority has in effect decided to make the remanded CP&L case (Dockets No. E-2, Subs 391, 402, 411, 416 and 446) now on appeal, a trial run for the courts to either approve or disapprove the Commission's treatment of CP&L. Having dissented in the CP&L Remand, I can well understand the Commission's reluctance to rely on its decision in that case; but if the Commission indeed has reservations, the proper course is to reconsider the CP&L case rather than merely await with trepidation the courts' affirmation or disapproval of it.

The Majority Order states that no one will be prejudiced by this delay. Not so! If there are refunds due consumers, these refunds are due now and to

today's ratepayers. On the other hand, if there are undercollections and the ratepayers are to be billed, this unconscionable delay will result in additional (and unnecessary) interest being paid by consumers to the company. Justitia non est neganda non differenda.

Sarah Lindsay Tate, Commissioner

DOCKET NO. E-7, SUB 390

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Proceeding to Consider Annual Fuel Charge Adjustment for Duke Power Company Pursuant To G.S. 62-133.2	)	ORDER ON FUEL CHARGE ADJUSTMENT PROCEEDING

HEARD IN: Commission Hearing Room 217, Dobbs Building, 430 N. Salisbury Street, Raleigh, North Carolina on June 4, 1985

BEFORE: Chairman Robert K. Koger, Presiding; and Commissioners A. Hartwell Campbell and Sarah Lindsay Tate

APPEARANCES:

For the Respondent:

W. Larry Porter, Associate 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

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 Attorney General:

Steven F. Bryant, Assistant Attorney General, North Carolina Department of Justice, P.O. Box 629, Raleigh, North Carolina 27602
For: The Using and Consuming Public

For the Intervenor:

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: 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 means of fossil or nuclear fuels within 12 months after the last general rate case order for such utility to determine whether an increment or decrement fuel charge adjustment is needed 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 said last general rate case. North Carolina Utilities Commission Rule R8-55 requires the Commission to issue an order scheduling such a hearing at least 150 days prior to the date set for the hearing. The last general rate case order for Duke Power Company (Duke) was issued by the Commission on June 13, 1984 in Docket No. E-7, Sub 373. There has been no review of Duke'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 January 8, 1985, in Docket No. E-7, Sub 390, the Commission scheduled an annual fuel charge adjustment proceeding hearing for Duke for Tuesday, June 4, 1985, in order to determine whether an increment or decrement fuel charge adjustment is needed to reflect actual changes in the base fuel rate established for Duke in its last general rate case.

On February 15, 1985, Duke filed an application for a general rate increase in Docket No. E-7, Sub 391.

By order issued March 4, 1985, in Docket No. E-7, Sub 390, the Commission established calendar year 1984 as the test period to be used for the fuel charge adjustment proceeding.

On April 3, 1985, Carolina Utility Customers Association, Inc., (CUCA) petitioned to intervene in the Docket No. E-7, Sub 390 proceeding, and such intervention was allowed by order issued April 4, 1985.

On April 4, 1985, Duke prefiled the testimony and exhibits of R. H. Hall, Jr., and W. R. Stimart in the Docket No. E-7, Sub 390 proceeding.

On May 20, 1985, the Public Staff prefiled the testimony and exhibits of Thomas S. Lam in the Docket No. E-7, Sub 390 proceeding.

On May 21, 1985, the Attorney General filed notice of intervention in the Docket No. E-7, Sub 390 proceeding.

The matter came on for hearing at the scheduled time and place. Duke presented the testimony and exhibits of the following witnesses: R. H. Hall, Jr., Vice President for Fuel Purchases, Mill Power Supply Company, a wholly owned subsidiary of Duke acting as purchasing agent for Duke; and William R. Stimart, Vice President for Regulatory Affairs, Duke Power Company.

The Public Staff presented the testimony and exhibits of Thomas S. Lam, engineer in the Electric Division of the Public Staff.

One public witness, Samuel Reed, appeared at the hearing and testified. Another public witness, Wells Eddleman, was granted permission to file a written statement for the record, which was filed on June 7, 1985.

CUCA and the Attorney General conducted cross examination but presented no witnesses.

Immediately following the hearing, oral argument was heard from all parties in lieu of briefs or proposed orders.

Based upon a careful consideration of the entire record in this proceeding, including the testimony and exhibits received into evidence at the hearing, the Commission now makes the following:

FINDINGS OF FACT

1. Duke 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 the North Carolina Utilities Commission. Duke is engaged in the generation and production of electric power by fossil and nuclear fuels.

2. There has been no review of Duke's fuel costs since Duke's last general rate case order was issued by the Commission on June 13, 1984, in Docket No. E-7, Sub 373. The test period for purposes of this proceeding is the 12 month period ending December 31, 1984.

3. The current base fuel component of 1.2652¢ per kWh excluding gross receipts tax established in the last general rate case in Docket No. E-7, Sub 373, should be continued in effect pending the decision in Duke's current general rate case and no increment or decrement should be ordered in this proceeding.

EVIDENCE AND CONCLUSIONS

Duke presented testimony and evidence showing that a new base fuel component established at this time would be higher than the current base fuel component. Duke witness Hall described Duke's fuel procurement practices and inventories for the test period, including a summary of the fuel purchases and the factors affecting fuel prices. He testified that Duke's fuel costs during the test period were reasonable and prudent. Duke witness Stimart testified that he calculated a new fuel factor based upon current generation and unit prices from the last general rate case would be 1.3034¢ per kWh, that a new factor based upon actual unit prices would be 1.3483¢ per kWh, that a new factor based upon current unit prices would be higher and no such factor had been submitted, and that all three methodologies would produce factors higher than the current factor, thus entitling Duke to an increment in this proceeding. He testified that Duke's actual experience with the current fuel factor for the period July 1984 through April 1985 had been 1.2671¢ per kWh. The Public Staff presented testimony and evidence also showing that a new base fuel component established at this time would be higher than the current component. Public Staff witness Lam testified that he calculated a new fuel factor based upon March 1985 inventory fuel costs would be 1.3371¢ per kWh. He testified that since the current fuel factor had been set in Duke's last general rate case, Duke had collected approximately 1.8% more than it had spent as of March 1985.

However, both Duke and the Public Staff recommended that no change be made in the current base fuel component pending a final determination of the base

fuel component in Duke's current general rate case proceeding in Docket No. E-7, Sub 391. A final decision in said rate case is anticipated in September 1985. Both parties contended that any change in the current base fuel component would only be in effect for approximately two months before being superseded by the base fuel component established in the general rate case, and that such frequent changes in the base fuel component would be confusing to customers and would be contrary to the stabilization of such base fuel component that the current statute was designed to achieve.

CUCA contended that it had demonstrated through cross examination that a new base fuel component would be lower than the current base fuel component. Among other points, CUCA contended that Duke should share with ratepayers some of the savings resulting from the high average capacity factor of Duke's nuclear plants and that Duke overcollected on fuel by over $9 million from June 1984 through February 1985 on the basis of the current fuel factor. The Commission is not persuaded by CUCA's cross examination or its oral argument, and the Commission specifically finds that a new base fuel component established on the basis of the evidence presented at this hearing would not be lower than the current component.

The Commission is of the opinion that a new base fuel component established on the basis of the evidence presented herein would be higher than the current base fuel component, even after giving consideration to the overcollection of 1.8% as of March 1985; that an increase in the base fuel component for a short period of time followed by yet another change in said base fuel component would be contrary to reasonable rate stability; and that it is not necessary to order an increment to the base fuel component in this proceeding since no party is seeking an increment. In making this determination, the Commission has given careful consideration to 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, including adjusted and reasonable fuel expenses prudently incurred by Duke Power Company under efficient management and economic operations.

IT IS, THEREFORE, ORDERED that the current base fuel component of 1.2652¢ per kWh excluding gross receipts tax established for Duke Power Company in the last general rate case in Docket No. E-7, Sub 373 is hereby continued in effect pending the decision in Duke's current general rate case and that no increment or decrement is ordered in the present proceeding.

ISSUED BY ORDER OF THE COMMISSION.
This the 17th day of June 1985.

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

ELECTRICITY - RATES

DOCKET NO. E-7, SUB 391

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Application by Duke Power Company for Authority to Adjust and Increase Its Electric Rates and Charges	)	ORDER GRANTING PARTIAL RATE INCREASE

HEARD IN:

Main Courtroom, McDowell County Courthouse, Marion, North Carolina, on July 8, 1985
Superior Courtroom 305, Mecklenburg County Courthouse, 800 East Fourth Street, Charlotte, North Carolina, on July 8, 1985

Council Chambers, City Hall, 101 City Hall Plaza, Durham, North Carolina, on July 10, 1985

Council Chambers, City Hall, 101 North Main Street, Winston-Salem, North Carolina, on July 10, 1985

Courtroom 2-A, Guilford County Courthouse, No. 2 Governmental Plaza, Greensboro, North Carolina, on July 15, 1985

The Commission Hearing Room, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, from July 9, 1985, through August 8, 1985

BEFORE: Chairman Robert K. Koger, Presiding; and Commissioners Sarah Lindsay Tate, Edward B. Hipp, Ruth E. Cook, Julius A. Wright, and Robert O. Wells

APPEARANCES:

For Duke Power Company:

Steve C. Griffith, Jr., Senior Vice President and General Counsel, Ronald L. Gibson, Assistant General Counsel, and W. Edward Poe, Jr., Assistant General Counsel, Duke Power Company, 422 South Church Street, Charlotte, North Carolina 28242

and

Clarence W. Walker and Myles E. Standish, Kennedy, Covington, Lobdell & Hickman, Attorneys at Law, 3300 NCNB Plaza, Charlotte, North Carolina 28280

For the Public Staff:

Antoinette R. Wike, Chief Counsel, and James D. Little, Michael L. Ball, and Vickie L. Moir, Staff Attorneys, Public Staff, North Carolina Utilities Commission, Post Office Box 29520, Dobbs Building, Raleigh, North Carolina 27626-0520
For: The Using and Consuming Public

For the Attorney General:

Jo Anne Sanford, Special Deputy Attorney General, Karen E. Long, Assistant Attorney General, and Angeline M. Maletto, Associate Attorney General, North Carolina Department of Justice, Post Office Box 629, Raleigh, North Carolina 27602
For: The Using and Consuming Public

For the Intervenors:

Thomas R. Eller, Jr., Attorney at Law, Suite 205, Crabtree Center, 4600 Marriott Drive, Raleigh, North Carolina 27612
and
Sam J. Ervin, IV, Byrd, Byrd, Ervin, Whisnant, McMahon & Ervin, Attorneys at Law, P. O. Box 1269, Morganton, North Carolina 28655
For: Carolina Utility Customers Association, Inc.

Ralph McDonald and Carson Carmichael III, Bailey, Dixon, Wooten, McDonald, Fountain & Walker, Attorneys at Law, Post Office Box 12865, Raleigh, North Carolina 27607
and
Henry R. MacNicholas and William A. Chestnutt, McNees, Wallace & Nurick, Attorneys at Law, Post Office Box 1166, Harrisburg, Pennsylvania 17108-1166
For: Carolina Industrial Group for Fair Utility Rates

William I. Thornton, Jr., City Attorney, City of Durham, 101 City Hall Plaza, Durham, North Carolina 27701
For: The City of Durham

John Runkle, General Counsel, Conservation Council of North Carolina, 307 Granville Road, Chapel Hill, North Carolina 27514
For: The Conservation Council of North Carolina

Wells Eddleman, 718-A Iredell Street, Durham, North Carolina
For: Pro se

BY THE COMMISSION: On February 15, 1985, 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 $339,980,000 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, 1984, an approximate 19.7% 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 17, 1985. The principal reasons set forth in the application necessitating the requested increase in rates were: (1) the expense related to the Company's obligation to purchase capacity and energy from the joint owners of Unit 1 of the Catawba Nuclear Station; (2) the inclusion in rate base of the Company's 12.5% ownership interest in Unit 1 of the Catawba Nuclear Station; (3) an increase in the Company's allowed return on common equity; and (4) increased operating expenses.

In addition, Duke's application included a motion requesting the Commission to enter an Order authorizing deferral accounting of costs and fuel savings related to Catawba Unit 1 during the period between commercial operation of the Unit and the date the Commission enters a final Order in this docket, net of fuel savings for the precommercial operation of the Unit. That motion was allowed by Order dated March 19, 1985.

The Public Staff and the Attorney General intervened in this docket pursuant to statute and their interventions are deemed recognized.

By petitions of varying dates, which were granted by various Commission Orders, all of which are a matter of record, the following parties intervened in this docket: Carolina Industrial Group for Fair Utility Rates (CIGFUR III); Wells Eddleman, pro se; City of Durham; Conservation Council of North Carolina; and Carolina Utility Customers Association, Inc. (C.U.C.A.).

On March 12, 1985, the Commission entered an Order in this docket suspending the proposed rates pursuant to G.S. 62-134 for a period of up to 270 days from the proposed effective date of such rates.

On March 20, 1985, the Commission entered an Order in this docket declaring Duke's application to be a general rate case pursuant to G.S. 62-137, 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 March 22, 1985, Duke filed Affidavits of Publication of the Notice regarding its application as required by Commission Rule R1-15(1).

On May 22, 1985, C.U.C.A. filed a motion to dismiss the application and to be heard thereon. By Order dated June 4, 1985, the Commission ruled that the motions would not be heard prior to the scheduled hearings and that the motion to dismiss would be considered in the context of the scheduled hearings.

On July 1, 1985, the Commission entered a Prehearing Order establishing the order of witnesses.

On July 5, 1985, the Public Staff filed a Motion in Limine. On July 11, 1985, the Commission entered an Order denying the motion without prejudice to the right of any party to present objections during the course of the proceedings.

Prior to and during the course of the hearings, various other 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.

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:

Marion - J. C. Draughn, John A. Gouigou, Joe Hammond, Bill Wiseman, Virginia Hawkins, Ray Walker, Lewis Erskine, Sammy Hartsoe, Dwight Gilbert, Ray Cantrell, Henry Hill, J. B. Hoey, Harold Brown, J. B. Brooks, Harold J. Lonon, and Libby Olewine.

Charlotte - Stuart Elliott, Harry F. Herd, Adele G. Ducker, Vickie Miller, Sybil G. Adams, Lynn Ogman, Wilson Setzer, B. K. Barringer, Barbara Moore, Ola McKinney, Sharon Duggan, Suzie Frodsham, Charles Hargro, Al Mandell, Charles A. Hunter, Michael Leighton, Bruce Thornton, Phil Rutledge, Wilson Maxwell, Manuel Kiser, Bill Pawlas, Denyse K. Evans, James Greene, Jr., Lark Hayes, Jesse Riley, and Carolina L. Myers.

Durham - Sam Reed, Lenore Guidoni, Wallace West, George Ryals, Peter Nemenyi, Walter Holt, Shara Partin, Coby King, Robert Pharr, Johnny Williams, Dr. H. W. Moore, Larry Stewart, Frank Ward, Stancil Roberts, Gladys Wright, Johnny Leak, Becky Clayton, Berkley Taylor, Pat Sumner, Ralph, Bass, Meredith Emmett, Rebekay Kirby, George D. Beischer, John Friedrich, Jr., Lorisa Seibel, Willie Lovett, Mark Nielson, Randolph Horner, Laura Drey, Jeanne Lucas, David Birman, Tom Harris, Geoff Wyckoff, and Anne Vogel.

Winston-Salem - Lonnie P. Bowman, David A. Bragg, Larry Brower, Henry Drexler, Donna Oldham, Broadus Dinkins, John C. Jenkins, Legaree H. Thackston, Calvin L. O'Briant, Margery Parker, Beverly Spencer, Richard McKinney, Ron Ellis, J. P. Carter, Richard Lamberth, Mike R. Neaves, Rebecca Hedgecock, Larry Womble, and John Jenkins.

Greensboro - A. E. Honeycutt, Hugh White, Harry Boody, Robert Doolittle, Susan Ireton, Nancy Jo Smith, Barry Baker, Edith Holt, J. H. White, Sally Newell, Tammy Ziglar, Barbara Walker, Dennis Hands, Kenneth Murrell, Dolly Gunnell, Fannie Cates Graves, Jesie Walker, Marilyn Cirulis, Charles Rowan, Patti Eckard, Mitch House, and C. E. Staley.

As previously ordered, the case in chief came on for hearing on July 9, 1985. Duke Power Company presented the testimony and exhibits of the following witnesses:

1. William S. Lee, Chairman of the Board and Chief Executive Office of Duke. (direct testimony);

2. Dr. Charles E. Olson, Economist and President of Olson and Company, Inc. (direct testimony);

3. William R. Stimart, Vice President, Regulatory Affairs of Duke (direct and rebuttal testimony);

4. Donald H. Denton, Jr., Senior Vice President, Marketing and Rates of Duke (direct testimony);

5. Dr. Edward W. Erickson, Professor of Economics and Business, North Carolina State University (rebuttal testimony);

6. James N. Horwood, Partner, Spiegel & McDiarmid, Attorney for North Carolina Municipal Power Agency (rebuttal testimony); and

7. William H. Grigg, Executive Vice President, Finance and Administration of Duke (rebuttal testimony).

The Public Staff presented the testimony and exhibits of the following witnesses:

1. Dr. Ben Johnson, Economist and President of Ben Johnson Associates, Inc.;

2. Benjamin R. Turner, Jr., Engineer with the Electric Division of the Public Staff;

3. Timothy J. Carrere, Engineer with the Electric Division of the Public Staff;

4. Thomas S. Lam, Engineer with the Electric Division of the Public Staff;

5. Michael W. Burnette, Engineer with the Electric Division of the Public Staff;

6. Michael C. Maness, Accountant with the Accounting Division of the Public Staff;

7. William E. Carter, Director, Accounting Division of the Public Staff;

8. Danny P. Evans, Financial Analyst, Economic Research Division of the Public Staff; and

9. James G. Hoard, Supervisor of the Electric Section of the Accounting Division of the Public Staff.

Wells Eddleman presented his own testimony and exhibits.

C.U.C.A. presented the testimony and exhibits of Nicholas Phillips, Jr., and James T. Selecky, consultants with the firm of Drazen-Brubaker & Associates, Inc.

CIGFUR III presented the testimony and exhibits of Dr. Jay B. Kennedy, Stephen J. Baron, and Randall J. Falkenberg, consultants with the firm of Kennedy and Associates, and Randy S. Michael, Manager of Regulatory Affairs for Air Products and Chemicals, Inc.

The Attorney General presented the testimony of Dr. John W. Wilson, consultant with the firm of J. W. Wilson & Associates, Inc., and Whitfield A. Russell, consultant with the firm of Whitfield Russell Associates.

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 Power Company 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, 1984, adjusted for certain known changes based upon events and circumstances occurring up to the close of the hearings.

4. The overall quality of electric service provided by Duke to its North Carolina retail customers is adequate.

5. By its application, Duke sought an increase in its rates and charges to its North Carolina retail customers of approximately $339,980,000, which would produce jurisdictional revenues of $2,070,361,000 based upon a test year ended June 30, 1984. Revenues under the present rates, according to Duke, were $1,730,381,000, thereby necessitating an increase of $339,980,000. During the hearing, the Company lowered its requested increase to $292,763,000 primarily because of a decrease in the cost of capital since filing the application and the two-month delay in commercial operation of Catawba Unit 1.

6. The decisions made by Duke Power Company to construct and complete Catawba Unit 1 were reasonable, prudent, and made in good faith.

7. The decision of Duke Power Company in 1975 to offer to sell a portion of the Catawba Station to its wholesale customers was made in good faith in an effort to alleviate the Company's difficult financial condition at that time. The decision was intended to allow Duke to complete its construction program in order to ensure its customers an adequate supply of electricity in the future at a cost to the Company's retail customers at or below the cost such customers would have paid if Duke had financed Catawba itself.

8. The contracts entered into by Duke Power Company to sell a major portion of the Catawba Nuclear Station to North Carolina Municipal Power Agency #1 (NCMPA), Piedmont Municipal Power Agency (PMPA), North Carolina Electric Membership Corporation (NCEMC), and Saluda River Electric Cooperative, Inc. (Saluda River) (hereinafter, the Catawba Purchasers), including the Purchase, Construction, and Ownership Agreements, the Interconnection Agreements, and the Operating and Fuel Agreements with each such entity and all amendments thereto and restatements thereof (hereinafter collectively referred to as the "Catawba Sale Agreements") are reasonable and prudent. These contracts collectively have resulted in the cost of electricity to the Company's North Carolina retail ratepayers being substantially lower than the cost of electricity would have been if Duke had itself financed the entire plant.

9. Catawba Unit 1 was declared commercial on June 29, 1985. Said generating unit was constructed at reasonable cost, is needed to enable Duke to meet the load on its system, and does not represent excess generating capacity. Duke's extended cold shutdown program is reasonable and prudent in view of the age and condition of the units and is designed to lower the Company's cost of service.

10. Sales by Duke Power Company of the Catawba Nuclear Station to the Catawba Purchasers have resulted in Duke owning 12.5% of the Catawba Station. While Duke has legal title to 25% of Catawba Unit 1, its real ownership interest in that unit is 12.5%. Duke's 12.5% interest in Catawba Unit 1 and the Company's ownership interest in the common facilities of the station are used and useful in providing electric utility service to Duke's North Carolina retail ratepayers and were used and useful within a reasonable time after the end of the test period and prior to the time the hearings in this proceeding were closed. Duke is entitled to collect rates based upon the inclusion of 12.5% of Catawba Unit 1 and its costs of purchased capacity and energy from Catawba Unit 1 and the associated common facilities in the Company's cost of service.

11. The entire McGuire Nuclear Station remains used and useful in rendering service to the North Carolina retail ratepayers of Duke Power Company, notwithstanding the capacity entitlement of the Catawba Purchasers under Article 11 of the Interconnection Agreements. The provisions of Article 11 of the Interconnection Agreements should be reflected in fuel expenses and the demand jurisdictional allocation factor in the same manner as the Company's last general rate case, Docket No. E-7, Sub 373.

12. The summer coincident peak method is the most appropriate method for making jurisdictional cost 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 coincident peak cost allocation method.

13. A base fuel component of 1.2401¢/kWh excluding gross receipts tax is appropriate for this proceeding reflecting a reasonable total fuel cost of $414,017,000 for North Carolina retail service. Reasonable nuclear capacity factors of 62% for Duke's Oconee and McGuire stations and 60% for Catawba Unit 1 have been utilized in each finding of fact which deals with revenues and expenses affected by nuclear capacity factors.

14. The appropriate working capital allowance for fuel inventory for North Carolina retail service is $67,687,000, consisting of $64,067,000 for coal inventory and $3,620,000 for fuel oil inventory.

15. The reasonable allowance for total working capital for Duke's North Carolina retail operations is $182,007,000.

16. Duke's reasonable original cost rate base used and useful in providing service to the public within the State of North Carolina is $3,080,815,000, consisting of electric plant in service of $4,778,744,000; allowance for working capital of $182,007,000; reduced by accumulated

depreciation of $1,461,892,000, accumulated deferred income taxes of $407,047,000, and operating reserves of $10,997,000.

17. The appropriate gross revenue level for Duke Power Company for the test year, under present rates and after accounting and pro forma adjustments, is $1,732,580,000.

18. Duke's reasonable nonfuel Catawba purchased power expenses pursuant to the Catawba Interconnection Agreements with NCMPA, NCEMC, SREC, and PMPA are $149,948,000. This amount of nonfuel Catawba purchased power expenses reflects a levelization of the Company's reasonable purchased capacity capital charges over the lives of the applicable contracts.

19. The reasonable level of test year operating revenue deductions under present rates for Duke Power Company after normalized and pro forma adjustments is $1,446,207,000, including $146,649,000 total purchased power costs.

20. The capital structure for Duke Power Company which is reasonable and proper for use in this proceeding is as follows:

Long-term debt	43.20%
Preferred stock	11.28%
Common equity	45.52%
Total	100.00%

21. The fair rate of return that Duke Power Company should have the opportunity to earn on its North Carolina net investment for retail operations is 11.93%, which requires additional annual revenues for North Carolina retail customers of $164,935,000, based upon the adjusted level of operations in the test year, 12 months ended June 30, 1984. This rate of return on Duke's total net investment yields a fair rate of return on the Company's original cost common equity of approximately 14.90%. 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 reasonable requirements of its customers, and to compete in the market for capital on terms which are reasonable and fair to customers and existing investors. The proper embedded cost rates for long-term debt and preferred stock are 9.62% and 8.75%, respectively.

22. Based upon the foregoing, Duke Power Company should be authorized to increase its annual level of gross revenues under present rates by $164,935,000. The annual revenue requirement approved herein is $1,897,515,000 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 the Company's property used and useful in providing service to its North Carolina retail customers and its reasonable test year operating revenues and expenses as previously set forth in these findings of fact.

23. The across the board increase as proposed by Duke should be adopted for this proceeding. The resulting rate of return differentials between rate classes are just and reasonable. The cost of service and rate of return differences between the various classes of service approved in this proceeding do not constitute unreasonable differences between classes of service; nor do

they result in rates which are unreasonably preferential or prejudicial among and within the various classes of service.

24. The Company's proposal to open voluntary TOU rate schedules GT and IT to all general service and industrial customers served by Duke's transmission facilities and otherwise qualifying should be approved.

25. A revenue adjustment is the amount of $15.3 million should be applied across the board in the manner proposed by the Company in order to offset the revenue shortfall anticipated by the Company due to transfer of general service and industrial customers to TOU rate schedules GT and IT.

26. The Company should present for consideration and discussion with its next general rate case filing a study which explores expanding the availiability of TOU rate schedules RT, GT, and IT to all customers in the respective rate classes. Such study should include all calculations by rate class regarding the number of customers who might transfer to the TOU rates, the revenue impact of such transfer, the time required for such transfer, and the additional cost of making such TOU rates available.

27. The Company should present for consideration and discussion with its next general rate case filing a large power TOU rate and a small power TOU rate applicable to nonresidential customers. Such rate schedules should be accompained by a study which includes all calculations by rate class regarding the number of customers who might transfer to the large power and small power TOU rates, the revenue impact of such transfer, the time required for such transfer, and the additional cost of making such TOU rates available.

28. The Company should present for consideration and discussion with its next general rate case filing a five-year plan and a 10-year plan for merging closed rate schedule GA into the other available rate schedules.

29. The Company should present for consideration and discussion with its next general rate case filing a study which explores merging closed rate schedule GB into the other available rate schedules. Such study should include all calculations by rate class regarding the number of customers affected, the revenue impact of such merger, and the time which should be required for such merger.

30. The Company should present for consideration and discussion with its next general rate case filing a study which explores merging closed rate schedule RA into the other available rate schedules. Such study should include all calculations regarding the number of customers affected, the revenue impact of such merger, and the time which should be required for such merger.

31. The percentage increase for the outdoor lighting schedules should be one-third of the overall percentage increase allowed herein.

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 files and records regarding this proceeding, the Commission Order setting hearing, and the testimony of Company witness Stimart.

These findings of fact are essentially informational, procedural, and jurisdictional in nature. The test year proposed by the Company was not challenged by any party.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 4

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 Durham, Greensboro, Winston-Salem, Marion, and Charlotte. Much of the testimony offered by the public witnesses was devoted primarily to concerns about the Company's level of expenses and about the basic rates being charged or proposed to be charged by the Company for its services. However, many public witnesses also offered testimony with respect to the adequacy, quality, and reliability of service being provided by Duke. Virtually all of those witnesses who addressed such matters were complimentary of Duke's service. The Commission notes that the record contained little, if any, evidence which would suggest any problems as to the adequacy of Duke's service. A careful consideration of all of the evidence bearing on these matters leads the Commission to conclude that the quality of electric service being provided to retail customers in North Carolina by Duke is adequate.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 5

The evidence pertaining to this finding of fact is set forth in the Company's application and the testimony of Company witnesses Olson and Stimart. Dr. Olson testified that his updated estimate for the cost of equity capital for Duke was 15.25%, instead of the 16.25% requested in the application filed on February 15, 1985. (The basis for Dr. Olson's updated estimate is discussed in greater detail below.) The Company's application was filed based on a return on common equity of 16.25%. Mr. Stimart testified that adjusting the cost of service figures set forth in the Company's application to reflect the 15.25% return on equity and adjusting the Company's capital structure to May 31, 1985, actual levels, as recommended by Dr. Olson, results in a revenue requirement reduction of $18,830,000.

The application was also based on commercial operation of Catawba Unit 1 in early May 1985, and included $52,258,000 of costs from commercial operation to the effective date of new rates allowed in this docket. The actual commercial operation date for Unit 1 was June 29, 1985, which reduced this figure by $25,618,000. Adjusting the Company's requested increase in revenue for both of these reductions and correcting certain computational errors results in a revised requested increase of $292,763,000.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 6

The evidence for this finding of fact is found in the testimony of Company witness Lee. Witness Lee testified that construction of the Catawba Unit 1 was begun in 1973 in order to meet the Company's future load. At that time, the Company's load forecast showed that Catawba Unit 1 would be needed by 1979. This was at a period in time when the Company and its neighboring utilities were forecasting load growth at approximately 10% per year. Witness Lee testified that the Company's load growth projections at that time were actually several percentage points lower than the load growth projections of all of its neighboring utilities and continued to be lower than the forecasts of those

utilities until the late 1970s, but even those forecasts showed Catawba Unit 1 would be needed by 1979.

The Company's actual load growth in later years was less than what the Company had predicted in 1972. Witness Lee testified that this was due to factors which could not have been foreseen in 1972, primarily the rapid increase in energy prices which occurred after the Arab oil embargo and which continued thereafter. Witness Lee testified that as this lower load growth took place the Company began immediately to lower its own forecasts.

Witness Lee also testified that, after a certain percentage of a generating plant is completed, it is more economical and thus in the best interest of ratepayers to complete the plant as soon as possible. This is because allowance for funds used during construction accrues and compounds during the period of construction which drives up the capital cost of the plant, the plant becomes subject to new regulatory requirements, and inflation inevitably drives up the capital costs of the plant. Therefore, even if later load forecasts had shown that Catawba Unit 1 was not needed in 1985, which was not in fact the case, it still would have been prudent and cost effective to complete the unit as quickly as possible.

The decrease in the Company's load growth was accompanied by an increase in the length of time required for the construction of nuclear generating facilities. This was caused by increased regulation in the late 1970s and 1980s, particularly after the accident at the Three Mile Island plant. This caused a delay in the completion of Catawba Unit 1 from its originally planned date of 1979 until 1985, when witness Lee testified that it is in fact needed to meet Duke's load.

Further evidence for this finding of fact is contained in the "Analysis of Long-Range Needs for Electric Generating Facilities in North Carolina" issued by the Commission in 1977, 1978, 1979/80, 1980/81, 1982/83, and 1985. In each such analysis, the Commission also approved the then scheduled commercial operation dates of Catawba Unit 1. In those reports, the Commission found that nuclear-fueled generation for Duke held a distinct cost advantage over coal-fired generation and that Duke utilized generally acceptable forecasting procedures and techniques during this time frame.

Certain witnesses in this proceeding questioned the prudence and good faith of Duke's decision to construct Catawba Unit 1 and its decision to build said plant as a nuclear generating unit. Attorney General witness Wilson testified that, "[a]s to why Duke built Catawba, it is the position of Duke's management that having sold the plant, Duke had to build it." As has been discussed, however, the position of Duke management is that Catawba Unit 1 was built because it was the lowest cost means of meeting the electric demand of Duke's customers. Dr. Wilson also testified that Duke knew, or should have known, as early as 1975 that Catawba was not needed. Dr. Wilson's basis for this statement is a portion of a preliminary draft of a report prepared by Booz, Allen and Hamilton, a consulting firm which was employed by Duke to review certain decisions relating to Catawba. These statements, however, only raise questions concerning Duke's forecasting techniques in 1975, when Duke was forecasting that Catawba was needed by 1979, not 1985. Dr. Wilson admitted that no such statements were contained in Booz, Allen and Hamilton's final report, which the Attorney General did not offer into evidence. Furthermore, Dr.

Wilson's testimony does not contain the factual basis for these statements in the Booz, Allen and Hamilton draft and no such information has been presented by any party. This is contrary to witness Lee's testimony that Duke's forecasts of load growth at this time were below those of its neighboring utilities and to each "Analysis of Long-Range Needs for Electric Generating Facilities in North Carolina" prepared by the Commission throughout this time period which found Duke's forecasting techniques to be acceptable. It is also inconsistent with the granting by the Commission of a certificate of public convenience and necessity for the Perkins Nuclear Station in 1977 and with our finding in that connection that an additional 3,840 mW of capacity after Catawba would be required between 1985 and 1990. Therefore, the Commission finds no merit in Dr. Wilson's position.

Dr. Wilson also contended that Duke's decision to build Catawba was motivated not by the needs of its customers but by the Company's desire to keep its construction force employed and a desire to avoid potential antitrust liability to its municipal and cooperative wholesale customers. Under both theories, Dr. Wilson contends that the sale of 87-1/2% of the Catawba Nuclear Station to Duke's wholesale customers was the solution to these concerns because the sale contracts obligated Duke to build Catawba regardless of whether said generating plant was needed.

There is absolutely no support for either of Dr. Wilson's contentions in the record. Neither Dr. Wilson nor any other witness has presented any credible evidence that Duke's decision to build or sell Catawba was in any way motivated by a desire to keep its construction force employed or by any perceived antitrust liability. The uncontradicted testimony of Duke witnesses Lee and Grigg shows that the sole reason for the sales of Catawba was financial. Mr. Lee testified that a sale to the wholesale customers was desirable because it would allow Duke to complete the plant which was needed to meet Duke's load and keep the generation within Duke's service area. Furthermore, the sales were in accordance with the dictates of the North Carolina Legislature and the people of this State who adopted a constitutional amendment and legislation allowing such sales. The Supreme Court in affirming our last Duke rate case Order said:

> These constitutional and statutory provisions reflect the legislature's conclusion that joint ownership arrangements and exchange agreements such as the Catawba Sale Agreements are in the public interest and should be encouraged. Since such agreements are generally in the public interest, it is logical to assume that the facilities used to effectuate them provide benefits to the public. (Slip Opinion, p. 12)

Dr. Wilson's contentions concerning Duke's potential antitrust liability were also refuted by Duke witnesses Grigg and Horwood. Witness Grigg, who was Senior Vice President of Legal and Finance of Duke Power Company from 1975 to 1982, the entire time frame the negotiations with the wholesale purchasers of Catawba were conducted, testified that Duke's antitrust controversies with its municipal and cooperative customers were completely settled by March 1975, three years before the first sale of Catawba. Grigg Exhibit 4, which was entered into evidence, is the settlement agreement among those parties. This agreement contains no obligation on the part of Duke to sell generation to the wholesale customers.

Witness Horwood, who represented Duke's North Carolina and South Carolina municipal customers in connection with the antitrust settlement and certain related matters in 1974 and 1975 and also in connection with Duke's North Carolina municipal customers' purchase of a portion of Catawba in 1978, testified that after the settlement agreement in March 1975 between Duke and its wholesale customers, there were no antitrust concerns between Duke and its wholesale customers that he was aware of. Furthermore, witness Horwood testified that he was aware of no antitrust considerations in connection with the sale of a portion of Catawba to the North Carolina municipalities in 1978. Witness Grigg gave similar testimony on this point when, on cross-examination, the Attorney General presented witness Grigg with a copy of a complaint brought by the cooperatives against Carolina Power & Light Company and South Carolina Electric and Gas Company which mentioned Duke in certain of the allegations. Witness Grigg explained that the activities alleged were covered by the March 1975 settlement and they did not represent any potential liability to Duke. The Attorney General also questioned witnesses Grigg and Horwood concerning the inclusion of antitrust releases in the Catawba Sale Agreements. Witnesses Horwood and Grigg and Mr. Booth all stated that these agreements were entered into as a matter of precaution only and did not relate to any known concerns. The Commission notes that similar releases were entered into by Duke releasing the wholesale customers from antitrust liability. Based upon this evidence, the Commission finds Dr. Wilson's contentions concerning Duke's motivation in selling Catawba implausible and without merit.

CIGFUR witness Falkenberg raised questions concerning the decision to build Catawba as a nuclear facility, Duke's load forecasting techniques, and Duke's projections of the cost of Catawba. The Commission notes that witness Falkenberg does not state that Duke was imprudent with respect to any of these matters, but only that the Commission should consider these questions. With respect to Duke's decision to build Catawba as a nuclear plant, witness Falkenberg admits that Duke's studies showed that nuclear as opposed to coal represented a $9,000,000 per year cost advantage over the life of the unit. Witness Falkenberg suggests, however, that this is an insignificant amount in relation to the potential escalation of costs of nuclear units. The Commission cannot agree with witness Falkenberg's assertion because the cost for all types of generating units, not just nuclear, was increasing during this time frame and the cost of fossil fuels was increasing dramatically, which would tend to increase the advantage of nuclear generation. Witness Falkenberg also admits that Booz, Allen and Hamilton found that the decision to build Catawba as a nuclear plant was prudent.

Witness Falkenberg's questions with respect to Duke's projection of the cost of Catawba relates to certain information in the Booz, Allen and Hamilton report, which CIGFUR did not introduce into evidence, concerning Duke's projection of the cost of Catawba compared to other utilities' projections concerning the cost of other nuclear plants to be constructed during the same time frame. Witness Falkenberg admits, however, that Duke's historical cost of building plants -- both coal and nuclear -- has been substantially lower than the industry average. This is shown in the present case in which the cost of Catawba Unit 1 is approximately 60% of the cost of the average nuclear unit being brought into service in this time frame. Therefore, the fact that Duke projected the cost of Catawba to be lower than what other utilities were projecting for the cost of nuclear plants cannot be regarded as evidence of imprudence.

Finally, witness Falkenberg criticizes Duke for not adopting until 1981 certain forecasting techniques which were adopted by other utilities earlier. As has been discussed above, the evidence shows that Duke's load forecasts during the middle and late 1970s were consistently below the load forecasts of other utilities. Furthermore, witness Falkenberg does not state in his testimony that Duke's decisions with respect to Catawba would have been any different even if Duke had used the forecasting techniques that he suggests Duke should have used. Therefore, the Commission rejects witness Falkenberg's assertions.

Witness Eddleman, appearing on his own behalf, also questioned Duke's forecasting techniques. Mr. Eddleman testified that Duke built Catawba in "defiance" of accurate forecasts of the Carolina Environmental Study Group which showed in 1974 that Catawba was not needed. Witness Eddleman presented no evidence that Duke's forecasts were imprudently made, however, but only that when viewed in hindsight they were inaccurate. Witness Eddleman's own source of the forecasts of Carolina Environmental Study Group is Mr. Jesse Riley. In the Perkins certification proceedings, Mr. Riley forecasted a peak load for 1982 for Duke of 6,200 mW. (Order at 9) Duke's actual peak load in 1982 was 11,145 mW. Clearly, if Duke had built to Mr. Riley's predicted peak load, the Piedmont Carolinas would be experiencing continued blackouts presently and for a long period of time to come.

Witness Eddleman also contended that Duke could have avoided building Catawba through greater encouragement of conservation and through use of cogeneration. Witness Eddleman's contention is contradicted by the testimony of witnesses Lee and Denton who testified that Duke has the most comprehensive load control program in the nation, which emphasizes conservation. Furthermore, witness Eddleman presented no evidence concerning the amount of cogeneration available to Duke or when these sources became available to Duke.

Considering the testimony of all of the parties, the Commission concludes that Duke's decisions to build Catawba Unit 1 and its construction of Catawba Unit 1 as scheduled were reasonable and prudent and made in good faith.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 7

The evidence for this finding of fact is found in the testimony of Company witnesses Lee and Grigg. Witness Lee testified that in late 1974, Duke faced a financial crisis in which the Company was unable to raise sufficient funds to continue its then existing construction program. Duke's common stock was selling at a deep discount from its book value, and for a period of almost a year there was no viable market for electric utility bonds rated below AA. At that time, the Company's bonds were rated a tentative A. For a period of time Duke actually was contractually prohibited from issuing first mortgage bonds because of a low earnings to interest coverage ratio. As a result, the Company offered many of its assets for sale. It sold and leased back numerous assets, including office buildings, warehouse facilities, and nuclear fuel. The Company also decided to offer the Catawba Station for sale to its wholesale customers to whom Duke owed an obligation of service. This sale of Catawba was calculated to relieve Duke of the financial strain of building Catawba while keeping the generation from Catawba in Duke's service area. Witness Lee also testified that, if Duke had not sold Catawba, the Company would not have been

able to have financed Catawba on its own. Witness Lee's testimony is confirmed by the testimony of witness Grigg to the same effect.

While Duke's financial condition changed between 1974 and 1982, the year in which Duke amended its contract with the Piedmont Municipal Power Agency, witnesses Lee and Grigg both testified that Duke's decisions to sell the Catawba Nuclear Station continued at all times to be motivated by its financial condition, which was never strong during this time period. Witness Lee testified that in 1982 Duke's financial condition, in fact, was worse than at any time since 1974. At that time, Duke was facing double digit inflation, double digit interest rates, and an all-time high construction budget. Witness Lee further testified that Duff and Phelps had down-rated Duke's bonds in the fall of 1982, that the Legislature had passed legislation which the investment community perceived as punitive and that at one point trading in Duke's stock on the New York Stock Exchange was suspended.

While Duke was motivated to sell a portion of the Catawba Nuclear Station solely by the need to improve its financial condition so that it could pay its bills and complete its construction program, witness Lee also testified that its goal was to do so in such a way that the price of electricity to its retail ratepayers would not be increased over what those customers would have paid if Duke had itself financed the entire Catawba Nuclear Station and, if possible, to save the retail ratepayers money.

Attorney General witness Wilson was the only witness who presented any contradictory testimony. Dr. Wilson's testimony is based solely on speculation and is supported by no credible evidence presented for this record. Thus, the Commission rejects Dr. Wilson's testimony in this regard for the same reasons set forth hereinabove in conjunction with the discussion of Finding of Fact No. 6.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 8

The record reflects the fact that Duke has entered into six different sets of agreements with the Catawba Purchasers which are at issue in this case as follows: (1) the original agreements with North Carolina Municipal Power Agency No. 1 (NCMPA) dated March 6, 1978; (2) the original agreements with the North Carolina Electric Membership Corporation (NCEMC) dated October 14, 1980; (3) the original agreements with the Saluda River Electric Cooperative, Inc. (Saluda River), dated October 14, 1980; (4) the original agreements with the Piedmont Municipal Power Agency (PMPA) dated August 1, 1980; (5) the first amendments to the agreements with PMPA dated October 22, 1982; and (6) certain amendments to the interconnection agreement with NCMPA dated November 12, 1982. These agreements have been entered into evidence as Duke Exhibit 4. Various other amendments are also included in Duke Exhibit 4 but those amendments are not at issue in this case.

The undisputed evidence shows that these agreements generally provide for Duke's sale of a portion of the Catawba Nuclear Station to each of the four groups of wholesale customers. There are three agreements in connection with each sale: (1) the Purchase Construction and Ownership Agreement (hereinafter, the Purchase Agreement); (2) the Operating and Fuel Agreement, and (3) the Interconnection Agreement. The agreements have resulted in Duke's making the following sales of the Catawba Nuclear Station: (1) 75% of Catawba Unit 2 to

NCMPA; (2) 25% of Catawba Unit 2 to PMPA; (3) 56.25% of Catawba Unit 1 to NCEMC; and (4) 18.75% of Catawba Unit 1 to Saluda River.

The Purchase Agreements with each purchaser provide that Duke will continue to design and build Catawba and the purchasers will pay their pro rata share of the costs. The Operating and Fuel Agreements provide that Duke will operate, maintain, and fuel the plant to meet the system load. The Interconnection Agreements cover Duke's obligation to provide the remaining power requirements the purchasers may have over and above their retained interests in Catawba. The Interconnection Agreements also provide for certain reliability exchanges between the two Catawba units and between the Catawba Station and the McGuire Station. Finally, the Interconnection Agreements provide that Duke will purchase a certain portion of the purchasers' capacity in Catawba for a period of time. In the case of the municipalities, the buy-back begins at 97% of the municipalities' Catawba capacity and declines to zero over a period of 15 years. In the case of the cooperatives, the buy-back begins at 100% of the cooperatives' Catawba capacity and declines to zero over a period of 10 years. Witness Lee testified that the buy-back provision was a nonnegotiable feature from the viewpoint of the Catawba Purchasers and without such a provision there would have been no sale.

The price Duke pays for the capacity under the buy-back is different in the case of the municipalities and cooperatives. In the case of the municipalities, the price Duke pays per kW for capacity is calculated at 94.5% of a capital cost per kW for Duke's ownership in Catawba Unit 1 levelized over the life of the plant. In the case of the cooperatives, the price for capacity paid by Duke is 84% of the cooperatives' cost of the plant times Duke's money costs, unlevelized.

Pursuant to the Catawba Sale Agreements, Duke will build, operate, maintain, and dispatch the Catawba Nuclear Station the same as it would any of its own plants. Witness Lee testified that the sale of Catawba to the Catawba Purchasers will not in any way affect the flow of electricity on the Duke system. In effect, the Catawba Sale Agreements finance the Catawba Nuclear Station and establish how electricity is priced to the Catawba Purchasers. As a result of the Catawba Sale Agreements, witness Lee testified that the increase requested in this case was lower by approximately $100,000,000.

Duke witness Stimart testified that the Catawba Purchasers pay for electricity over and above their retained capacity in Catawba according to system average cost. Witness Stimart stated that system average cost is the method by which the North and South Carolina retail ratepayers pay for electricity. The Catawba Purchasers pay for their retained capacity through their ownership interest in Catawba.

Various intervenors have raised numerous questions concerning provisions of the Catawba Sale Agreements and the effect of those provisions on the retail ratepayers and have proposed various cost-of-service adjustments as a result. For convenience of discussion, certain aspects of the Catawba Sale Agreements will be discussed separately below. The Commission notes, however, that the Catawba Sale Agreements and their effect on the North Carolina retail ratepayers should not be viewed individually but in their entirety. In Duke's last general rate case, Docket No. E-7, Sub 373, the Commission stated that:

> 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 either be 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. (emphasis added)

On appeal of this case, the North Carolina Supreme Court upheld the above-quoted conclusion and went on to express its own affirmative view that the Catawba Sale Agreements should be viewed in their entirety. The Court stated that:

> [a]s noted previously, the Commission was of the opinion that the exchange agreement should be viewed as an inseparable part of the Catawba Sale Agreements. We agree. Evidence was presented which tended to show that the Catawba Sale Agreements provided benefits to North Carolina ratepayers in addition to the advantages flowing from the reliability exchange. If found to exist, these benefits should also be considered in order to arrive at an equitable rate determination. State ex rel. Utilities Commission v. Carolina Utility Customers Association, slip opinion at 14 (August 13, 1985).

Effect of Catawba Sale Agreements on System Average Cost

Duke witness Lee testified that because of discounts in the buy-back provision of the Catawba Sale Agreements, the North Carolina retail ratepayers will save $306,000,000 compared with the price they would have paid for such capacity if Duke had financed and owned Catawba. Several parties challenged witness Lee's calculation, the basis for which is discussed herein. The Commission concludes, as discussed herein, that the buy-back will result in substantial savings to the North Carolina retail ratepayers which will lower Duke's system average cost.

Duke witnesses Lee and Stimart testified that the retail ratepayers are receiving benefits from the sales because the sales have resulted in Duke's having a lower embedded cost of debt and preferred stock than the Company would have had had Duke financed Catawba itself. This is a result of the fact that by selling Catawba Duke avoided issuing substantial amounts of long-term debt and preferred stock during the period from 1978 to 1984 when interest rates were at extraordinarily high levels. Had Duke issued this long-term debt and preferred stock between 1978 and 1984, the Company's embedded cost of debt and preferred stock would have risen substantially, resulting in an increased revenue requirement. Witness Lee testified that this has resulted in a savings to the North Carolina retail ratepayers of $28 million each year, or approximately $700,000,000 during the next 25 years.

The fact that this lower embedded cost of debt and preferred stock resulted in a savings to the retail ratepayers was not affirmatively contested by any of the parties. The Public Staff, through its cross-examination of witnesses Lee, Stimart, and Grigg, attempted to show that the savings estimated by witness Lee was overstated because witness Lee's calculations did not

accurately reflect Duke's capital structure at the end of the test period. Witnesses Lee, Grigg, and Stimart all testified, however, that the Public Staff's contention was incorrect because it failed to include the impact that additional retained earnings resulting from the issuance of additional common stock needed to finance Catawba would have had on the capital structure. The Public Staff presented no evidence to show what impact the additional retained earnings would have had on Duke's capital structure. Therefore, the Commission rejects the Public Staff's contention. Moreover, whether the saving is exactly $28 million a year or something more or less is not a determinative issue. It is clear from the evidence that, by avoiding the Catawba financing, Duke saved a substantial amount for its North Carolina retail ratepayers.

Attorney General witness Wilson stated that if the financings for Catawba (had Duke financed Catawba itself) resulted in Duke's having a lower percentage of common equity, then the benefit of lower embedded cost of debt and preferred stock would have been diminished. There is no evidence, however, to support a conclusion that Duke's percentage of common equity would have declined if Duke had financed Catawba itself. That would depend upon the percentage of debt, preferred stock, and common stock Duke would have issued and there is no indication in the record that Duke would have revised its goals with respect to its debt/equity ratio if the Company had financed Catawba. Furthermore, a decline in Duke's percentage of common equity might itself have resulted in the Company's having a higher cost of debt and equity because an investment in Duke would be perceived by the investment community as having a greater risk. Therefore, the Commission concludes that the Catawba Sale Agreements have kept down Duke's embedded cost of debt and preferred stock and that this has resulted in substantial benefits to the Company's North Carolina retail ratepayers.

Witness Stimart also testified that additional savings from the Catawba Sale Agreements result from the fact that the Catawba Purchasers will retain a greater portion of Catawba capacity than they would have paid for had they remained wholesale customers of Duke on FERC Schedules 10 and 11. This savings will increase as the percentage of the purchasers' retained capacity increases over the period of the capacity buy-back. Witness Stimart testified that, because Catawba is the highest cost capacity on Duke's system, this will result in increased savings to retail ratepayers because they will not be required to pay for this high cost capacity. This will remain true even when Duke adds additional base load capacity (which the Company currently has no plans to do) because Catawba's cost, even with the addition of new base load capacity, will still remain above system average cost. Witness Stimart testified that this will result in savings to the retail ratepayers of hundreds of millions of dollars through the year 2000. No intervenor presented any evidence to contradict witness Stimart's testimony. Therefore, the Commission finds that the North Carolina retail ratepayers will benefit from this shifting of the high cost Catawba capacity to the Catawba Purchasers.

Original NCMPA and PMPA Catawba Sale Agreements

The prudence of the original NCMPA and PMPA agreements does not appear to be subject to debate among the parties. Witness Lee testified that these agreements provide that the retail ratepayers will receive a discount of 5.5% from Duke's costs for the power Duke will purchase from the ownership interest of NCMPA and PMPA. In addition, these agreements provide that Duke's costs per

kW, on which the purchase price of the buy-back is calculated, will be the amount produced by levelizing over the entire life of the plant. Payments based upon Duke's levelized cost are substantially beneficial to the retail ratepayers when compared to normal ratemaking treatment of such cost. Witness Lee testified that these savings were possible because the municipalities were able to obtain financing through tax-exempt bonds and thus at lower rates than Duke was able to. Both Attorney General witness Wilson and CIGFUR witness Falkenberg agreed that the price Duke will pay for purchased capacity from NCMPA and PMPA is below what the Company's ratepayers would have paid for such capacity if Duke owned the entire plant. Furthermore, as previously discussed, these contracts lowered Duke's embedded cost of debt and preferred stock and shifted the high cost capacity to the Catawba Purchasers. Therefore, it is clear that these contracts were prudent and beneficial to the Company's North Carolina retail ratepayers.

Amended PMPA and NCMPA Catawba Sale Agreements

Witness Lee testified that PMPA did not close after the agreements were signed in 1980 because of an appeal to the South Carolina Supreme Court to test the constitutionality of the statute which allowed PMPA to purchase its interest in the Catawba Nuclear Station. In early 1982, the South Carolina Supreme Court upheld the constitutionality of that legislation. Subsequent to that time, Duke attempted to get PMPA to close the sale, but PMPA refused to because it was having a feasibility study done as to the net benefits or detriments of the transaction. In June 1982, the PMPA feasibility study was completed and showed that the purchase of a portion of the Catawba Nuclear Station under the terms of the original PMPA Catawba Sale Agreements was no longer feasible. This was a result of changes in interest rates and capital market conditions occurring between the signing of the agreements and June 1982.

The original PMPA agreements provided that said agreements had to be approved by the South Carolina Public Service Commission, and one of the factors that such Commission was required to study was how this sale would affect PMPA's costs of electricity. Witness Lee testified that PMPA was unable to close because of the potential difficulty in obtaining the approval of the South Carolina Public Service Commission and the improbability of a successful bond sale due to lack of feasibility. Because of these problems, Duke concluded that its only alternatives were to renegotiate the agreements or not close the transaction.

Witness Lee testified that at this time the Company was facing double digit inflation; the prime rate had recently been in excess of 20%; Duff and Phelps had reduced Duke's bond rating; and Duke's common stock was selling below book value. The Company had just sold preferred stock with a dividend rate of 15.4%, nine-year bonds with a yield of 15-1/8%, and seven-year notes at a rate of 15-1/2%. The Company sold $539,000,000 of securities in 1982, the most in its history. The Company's projected construction costs over the next three years were $1,900,000,000 with total capital requirements of $2,300,000,000. The Company's forecasts showed a need for $10,600,000,000 in financing during the next 15 years and that two-thirds of its earnings during that time period would come from AFUDC. Therefore, as witness Lee testified, the sale to PMPA was an absolute financial necessity. Witness Lee's testimony was confirmed by Duke Exhibit 7, a portion of the deposition of witness Grigg.

Witness Lee also testified that PMPA offered several alternatives to restore feasibility to the transaction. One of these alternatives was to increase the amount of the buy-back by 47% in the first year and 50% in each year up to 10 years of the buy-back. Witness Lee testified that among the alternatives this was the most satisfactory to the Company since this alternative would still result in a benefit to the retail ratepayers because of the discount and levelization in the PMPA buy-back discussed previously. Witness Lee testified that the Company was fully aware that this amended contract was not as favorable to the retail ratepayers as was the original contract because it resulted in Duke's buying back an additional amount of the high cost Catawba capacity, but witness Lee stated that this was necessary to close the transaction and still resulted in a benefit to the North Carolina retail ratepayers.

Witness Lee testified that as part of the PMPA renegotiation Duke was able to negotiate a delay in the "trigger dates" of the precommercial McGuire reliability exchange contained in Article 11 of the Interconnection Agreement with PMPA. Witness Lee testified that this resulted in a saving to the North Carolina retail ratepayers because it lowered Duke's cost of service to them. Witness Lee stated that the Company was aware that the benefits of this delay in the Article 11 trigger date did not equal the costs of the increased buy-back, but it was an attempt on the part of the Company to obtain all of the benefits that it could for the retail ratepayers.

None of the intervenors challenged the prudence of the 1982 PMPA renegotiation. The Commission concludes, therefore, that the PMPA renegotiation was a prudent action, considering the financial conditions that faced the Company at the time and the benefits that closing the PMPA sale, as amended, would have to the North Carolina retail ratepayers.

Witness Lee also testified that, at the time Duke was negotiating with PMPA, Duke was aware that it would be required to offer the same terms to NCMPA. This was a result of the "most favored nation" clause found in Section 29.15(B) of the original NCMPA Interconnection Agreement. The most favored nation clause of that agreement provides as follows:

> If Duke enters into an interconnection agreement with the South Carolina municipal systems and/or any other entity relating to the sale to such entity of an ownership interest in Catawba Nuclear Station on more favorable terms than those contained in this Agreement, Duke will make such more favorable terms available to NCMPA provided NCMPA agrees to all of the terms and conditions in such agreement relating to the net monetary benefits thereunder and the respective risks undertaken by the parties to that agreement.

It is obvious that the most favored nation clause was not included in the agreement for Duke's benefit and did not operate for Duke's benefit. However, witness Lee testified that NCMPA had insisted on the provision. This position was confirmed by the testimony of Duke witness Horwood, an attorney who represented NCMPA in the negotiations, who stated that the most favored nation clause was important to NCMPA not only because of its economic value but also because of the political pressures on NCMPA which would have resulted if another entity obtained a more favorable contract from Duke than NCMPA had been

able to negotiate. Witness Horwood also testified that he was familiar with other sales of nuclear plants which contained a most favored nation clause.

The Commission has previously found in this Order that the original NCMPA agreements as a whole were prudent and benefitted the Company's North Carolina retail ratepayers. The uncontradicted testimony of witnesses Lee and Horwood indicates that the most favored nation clause was an essential part of those agreements. As previously concluded, it would be inappropriate to isolate one provision in the contracts. They must either be accepted or rejected in their entirety. Isolation of one part of the contracts for separate evaluation would be inappropriate at this juncture because it is obvious that in the actual course of negotiations the deletion of one provision would have caused changes in other parts of the contracts. Witnesses Lee, Stimart, and Horwood all testified to this effect. Therefore, if the Commission were not to reflect one provision of the contract, it would have to speculate on what other changes would have been made in the contract. This the Commission refuses to do.

Pursuant to the most favored nation clause, Duke in November 1982 offered to NCMPA the increased buy-back which it had negotiated with PMPA. Duke's offer was contingent upon NCMPA also accepting the delays in the "trigger dates" of the precommercial Article 11 McGuire reliability exchange which had been accepted by PMPA. In the course of negotiations, disagreement arose as to what the most favored nation clause required with respect to the delays in the trigger dates of the McGuire reliability exchange. Witness Horwood testified that Duke took the position that the most favored nation clause required NCMPA to accept the same trigger dates that were in the renegotiated PMPA agreement, while NCMPA took the position that the clause required it to agree to the same slippage of trigger dates. Further, the renegotiated PMPA agreement allowed PMPA to trigger Unit 2 on a certain date by paying a trigger fee of $2,500,000. This fee was reduced each month that PMPA did not trigger so that after six months PMPA could trigger without paying any fee. Duke and NCMPA negotiated the triggering provisions of the McGuire reliability exchange and reached agreement "somewhere in the middle" between their respective positions. In light of the disagreement as to what the most favored nation clause required of NCMPA with respect to the delay of the trigger dates, the Commission concludes that Duke acted reasonably in its negotiations with NCMPA. Duke and NCMPA negotiated the increased buy-back, delayed Article 11 trigger dates in November 1982, and signed the amendments on November 22 of that year.

The Public Staff was the only party to challenge the renegotiation of the NCMPA buy-back. The thrust of the Public Staff's argument is that Duke should have retained the benefits of the unamended NCMPA contract by not renegotiating the contract with NCMPA. The opinion testimony is conflicting as to whether it was necessary for Duke to offer the increased buy-back to NCMPA at the time the Company did so or whether it could have waited to offer those terms until PMPA closed. Witness Lee testified that he had been advised that Duke could have waited until PMPA closed to offer the amendments, but that Duke chose to negotiate the amendment at the earlier date because NCMPA had triggered the precommercial McGuire reliability exchange effective January 1, 1983. This would have increased Duke's cost of service and, consistent with our decision in Docket No. E-7, Sub 373, these costs would have been passed on to the North Carolina retail ratepayers.

The Public Staff apparently claims that these costs would have been borne by Duke's stockholders since rates in effect in November 1982 did not include the cost of service of the exchange. This contention, however, overlooks the fact that, had Duke not succeeded in postponing the effective date of the exchange, the Company could have filed for rate relief to embrace such costs earlier than February 1983, when it commenced Docket No. E-7, Sub 358, and in any case would have included such costs in that docket when it was filed.

Witness Lee testified that it was prudent to negotiate the NCMPA changes prior to January 1, 1983, even though he did not believe that they had to be offered at that time, because of the potential saving from postponing the precommercial McGuire exchange. Witness Lee also stated that, in light of the fact that the South Carolina enabling legislation had already been approved by the Supreme Court of that state, Duke anticipated that PMPA would close within four to nine months of the date the agreements were signed, which had been the case in all of the other closings. Witness Lee testified that PMPA actually closed in December 1984, because of a court appeal of the South Carolina Commission's approval of the PMPA sale which could not have been foreseen at that time.

Witness Horwood testified that in his opinion Duke was required to offer the PMPA terms to NCMPA at the time it signed the agreement with PMPA. The basis of witness Horwood's conclusion is the plain language of the most favored nation clause which states that it takes effect when "Duke enters into an interconnection agreement" with another entity. Witness Horwood stated that, as he interprets the clause, Duke entered into an interconnection agreement with PMPA at the time it executed amendments to the original PMPA/Duke Interconnection Agreement on October 22, 1982. Witness Horwood also stated that, if Duke had not offered NCMPA the amended terms at that time, he would have recommended that NCMPA take legal action to enforce the most favored nation clause.

Public Staff witness Hoard recommended that the Commission disallow the costs of the November 22, 1982, amendments to the NCMPA Interconnection Agreement. The basis for witness Hoard's recommendation was the Public Staff's opinion that Duke was not required to offer the amendments to NCMPA in November 1982. Mr. Hoard testified that the most favored nation clause would not have required those terms to be offered until PMPA closed, which was on December 20, 1984, and that at that time, because NCMPA would have received benefits under Article 11 for approximately two years, "PMPA and NCMPA would have been in completely different positions relating to net monetary benefits in respect of risks pursuant to the Agreement." Witness Hoard stated that this was not his own conclusion, but was based upon legal advice he had received from Public Staff counsel.

Witness Hoard's testimony was contradicted by both witnesses Lee and Horwood. Witness Lee testified that Duke would have been required to offer the amended PMPA terms to NCMPA after PMPA closed in 1984. This delay could have resulted in Duke's and the North Carolina retail ratepayers' losing the benefits of a delay in the precommercial Article 11 McGuire exchange trigger dates. Witness Horwood testified that, if Duke had not been required to offer the PMPA terms in 1982, Duke would have been required to offer the PMPA buy-back schedule to NCMPA when PMPA closed. He also testified that if Duke had not offered such terms he would have recommended that NCMPA assert "as

fully and forcibly as I could that it was entitled to the benefits of the buy-back" and to take appropriate legal action in accordance with the terms of the contract. Witness Horwood stated that whether or not an adjustment would have been necessary to reflect the fact that NCMPA had received the benefits of the McGuire exchange for two years would have been subject to negotiations at that time.

The Commission finds that the Company's actions in renegotiating the NCMPA contract in November 1982 were prudent and in the best interests of the North Carolina retail ratepayers. While the language of the most favored nation clause is such that reasonable men may differ as to whether Duke was required to offer the amendments in 1982 or could have waited until after PMPA closed, it is clear that Duke would have been required to offer the amendments at some point in time. Duke, by offering the amendments when it did, acted in the best interests of the Company's North Carolina retail ratepayers by diminishing the period of time the precommercial McGuire reliability exchange was in effect. Moreover, as witness Lee testified, when Duke renegotiated the Interconnection Agreement with NCMPA, Duke expected PMPA to close within a short period of time. This testimony, and the reasonableness of this assumption, was uncontradicted. The renegotiation in November 1982, rather than in early 1983 when Duke expected PMPA to close, allowed Duke to avoid the triggering of the precommercial McGuire reliability exchange. Therefore, Duke's objective in renegotiating the amendments with NCMPA in November 1982 was in the retail ratepayers' best interests and was reasonable and prudent.

The Public Staff's position is based on hindsight and speculation. The Public Staff does not contend that Duke's expectation in November 1982 that PMPA would close in a short period of time was unreasonable; nor does it contend that Duke would not have been required to offer the terms of the PMPA amendments to NCMPA if PMPA had closed when it was expected to. In effect, the Public Staff's assertion that Duke's 1982 decision was imprudent is based on the unexpected delay in closing PMPA. The Commission does not accept that premise. The prudence of a utility's decisions should not be judged based on hindsight but should generally be judged based upon the circumstances which were known at the time the decisions were made. There is no testimony which indicates that Duke's actions, based on the facts which were known at the time, were imprudent.

Furthermore, the Public Staff's position that Duke would not have had to offer the amendments if it had waited until PMPA closed is refuted by the testimony of both witness Lee and witness Horwood, both of whom testified that even if Duke had waited until PMPA closed in late 1984 to renegotiate the NCMPA Interconnection Agreement, Duke would have then been required to offer the increased buy-back. This is in accordance with the plain language of the most favored nation clause. It is undisputed that the increased buy-back to PMPA was a more favorable term than that contained in the original NCMPA Interconnection Agreement. Under the most favored nation clause, Duke was required to offer to NCMPA any more favorable term which was contained in the PMPA contract.

The Public Staff's argument is that Duke would not have been required to offer the increased buy-back to NCMPA because under the most favored nation clause the net monetary benefits to PMPA and NCMPA would have been different because NCMPA would already have triggered the precommercial McGuire reliability exchange and would have been receiving power under the exchange for

approximately two years when PMPA closed in December 1984. The Public Staff does not contest that, even with the original precommercial McGuire reliability exchange trigger dates, NCMPA would not have received the same economic benefits as PMPA if NCMPA had not been offered the increased buy-back. Therefore, the Public Staff's interpretation of the most favored nation clause is contrary to the clear intent of that clause which is to equalize the net monetary benefits between NCMPA and PMPA. The Commission concludes that the triggering of the McGuire exchange on the original schedule would not have prevented the most favored nation clause from taking effect. Witness Horwood testified that an offset could readily have been implemented to reflect the benefits to NCMPA of the precommercial McGuire reliability exchange if such an adjustment were required. Such an offset would have been easy to calculate since, in essence, the precommercial McGuire reliability exchange is a method of calculating the price NCMPA pays for power, and the difference between that price and the price of power under FERC Schedule 10 (which NCMPA would have paid if it had not triggered Article 11) would have been a simple arithmetic determination.

Finally, the Public Staff argues that the most favored nation clause would not have required Duke to offer the terms of the increased buy-back to NCMPA in December 1984 because the respective risks of the parties as referred to in the most favored nation clause were substantially different. In 1984, however, the risks the parties faced were virtually identical. The parties faced the same risks with respect to the completion of the Catawba Nuclear Station. The parties also faced the same risks with respect to the operation of the McGuire Nuclear Station. Any event which would have occurred with respect to the McGuire or Catawba Nuclear Stations which would have affected one party would have affected the other because the contractual terms in their agreements with respect to the construction and operation of those nuclear stations were substantially identical. The only exception to this is in relation to the precommercial McGuire exchange and, as previously discussed, an adjustment could easily have been made to account for that, if necessary. The Public Staff, however, is apparently attempting to compare the risks undertaken by NCMPA when it closed in 1978 with the risks undertaken by PMPA when it closed in 1984. Because those risks were different, the Public Staff seems to suggest that the most favored nation clause was no longer effective. This interpretation would render the most favored nation clause meaningless by limiting its application to the narrow and unlikely event that Duke entered into an agreement with another party at the same time and on the same terms as with NCMPA. The Commission does not read such a limitation in the clause. In addition, it is clear that the risks undertaken by NCMPA in 1978 at the time of its closing were substantially greater than those undertaken by PMPA at the time of its closing in 1984 because the McGuire Nuclear Station was completed in 1984 and the Catawba Nuclear Station was nearing completion at that time. The fact that NCMPA faced greater risks in 1978 would suggest that NCMPA should be entitled to greater benefits under the contract because of the greater risks it faced. Certainly, the fact that NCMPA undertook greater risks in 1978 than did PMPA in 1984 provides no support for giving NCMPA less benefits than PMPA received.

The Commission rejects the adjustment proposed by the Public Staff in relation to the November 1982 NCMPA renegotiation and all of the related cost-of-service and accounting adjustments proposed by the Public Staff based upon the NCMPA disallowance.

NCEMC and Saluda River Catawba Sale Agreements

Witness Lee testified that the savings resulting from the buy-back provisions in the NCEMC and Saluda River agreements amounted to $43,000,000. This calculation is based upon the amount that the North Carolina retail ratepayers would have paid for such power if Duke had owned the plant compared to the amount they will pay for the power under the contracts with NCEMC and Saluda River. Witness Lee testified that the savings for the cooperative buy-back were less than in the case of the municipality buy-back because the cooperatives had a higher cost of capital than the municipalities. A savings is still present, however, because the cooperatives could raise capital with debt backed by the United States government and thus their cost of capital was lower than Duke's.

Witness Lee's testimony was challenged by the Public Staff, the Attorney General, and CIGFUR. The only intervenor which proposed an adjustment based on the cooperative contracts, however, was CIGFUR, which proposed that all costs of the cooperative buy-back above the costs of the municipal buy-back should be disallowed. The Public Staff presented Lee Public Staff cross-examination Exhibits 21, 22 and 23 which made certain changes in witness Lee's calculations and purported to show that the NCEMC and Saluda River buy-backs actually cost the retail ratepayers $80,000,000 above the cost of Duke owning Catawba. Witness Stimart, in his rebuttal testimony, testified that the Public Staff's changes were incorrect because (1) they were based on embedded cost of debt and preferred stock, which included debt issued more than 20 years ago with interest rates as low as 3-5/8%, not on the cost of debt and preferred stock which Duke would have incurred during the time Catawba was built; (2) they exclude the discounts that the North Carolina retail ratepayers will receive on purchases of nuclear fuel; and (3) they assume a regulatory treatment of Duke's cost that is inconsistent with this Commission's practices and procedures.

Attorney General witness Wilson and CIGFUR witness Falkenberg testified that the savings or costs to the retail ratepayers resulting from the NCEMC and Saluda River buy-backs should be compared to Duke's levelized cost if Duke had owned the plant, not with what Duke's customers would have actually paid during the period of the buy-back, because the retail ratepayers would receive in the later years of the plant's operations the benefits of depreciation paid in the earlier years. Witness Stimart, in his rebuttal testimony, testified that Duke's levelized costs were an inappropriate comparison. First, the levelized cost figure used by witnesses Wilson and Falkenberg was a figure derived from the Catawba Sale Agreements and was not Duke's actual levelized cost which is much higher. Furthermore, witness Stimart testified that attempting to justify levelization on the basis of diminishing depreciation costs in later years ignores the impact of continuing capital additions after Catawba Unit 1 comes into service. Witness Stimart also testified that in the approximate 10-year period that Duke's Oconee Nuclear Station has been in operation, Duke's additional capital costs have been approximately equal to the original capital cost of the Oconee plant. None of these on-going capital costs were factored into witnesses Wilson's and Falkenberg's calculations. Finally, witness Stimart noted that the ratepayers receive greater benefits during the earlier years of a plant than in the later years, because plants tend to be more efficient during their earlier years and thus generate a greater number of kilowatt-hours over which a plant's capital cost can be spread. In the later years, plants are less efficient and thus their capital costs are spread over a

fewer number of kilowatt-hours and the maintenance costs of a plant escalate in the plant's later years.

Based upon this evidence, the Commission concludes that the cooperative buy-backs result in savings to the Company's North Carolina retail ratepayers as opposed to the rates such ratepayers would have been charged had Duke owned the entire plant and financed it conventionally. The Public Staff's calculations in arriving at an $80,000,000 detriment in the cooperative buy-backs are based upon inappropriate assumptions for the reasons stated by witness Stimart.

As to the contentions of the Attorney General and CIGFUR, the Commission finds that the appropriate comparison is between the costs the retail ratepayers would have paid under normal regulatory treatment if Duke Power Company had owned the plant and the costs they will actually pay under the cooperative buy-back agreements. A comparison based upon levelized costs is inconsistent with ratemaking procedures required by statute in North Carolina, and it ignores later capital costs which must be recovered from the ratepayers and the decrease in efficiency of plants as they age. Therefore, the Commission rejects the adjustment proposed by CIGFUR.

In this connection, the Commission notes that even if the cooperative buy-back costs Duke's ratepayers more than if Duke owned the plant, the overall prudence of Duke's decision is unaffected, because of the other benefits the Company's ratepayers will receive from the sale of Catawba to the cooperatives and the municipals. The lower cost of the buy-back from the municipals is unchallenged, and assuming, arguendo, that the cooperative buy-back resulted in an $80,000,000 detriment, when netted against the municipal buy-back, a significant benefit still exists; to wit, $180,000,000. Also, the NCEMC and Saluda River Catawba Sale Agreements contribute substantially to the savings to the North Carolina retail ratepayers because they have resulted in Duke's having a lower embedded cost of debt and preferred stock. Furthermore, the sale to the cooperatives has shifted to them a greater portion of the high cost capacity of Catawba, as discussed above.

In summary, the Commission finds that each of the Catawba Sale Agreements was prudent when entered into and when restated and amended and will result in benefits to the North Carolina retail ratepayers. These agreements were necessary to enable Duke to complete Catawba Unit 1. As a result of these agreements, the benefits the North Carolina retail ratepayers are receiving are as follows:

1. Reduced cost of power from Catawba Unit 1 to the North Carolina retail ratepayers;

2. Reduced embedded costs of debt and preferred stock to Duke which are being reflected in lower North Carolina retail rates;

3. Avoidance of a portion of the high cost of capacity of Catawba; and

4. Completion of Catawba Unit 1 which will provide enhanced system reliability.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 9

The evidence for this finding of fact is found in the testimony of witness Lee.

Witness Lee testified that Catawba Unit 1 will cost approximately $1,700/kW, including AFUDC and the cost of common facilities, which is approximately $915/kW less than the cost of the average nuclear unit expected to come into service in 1985 and lower than the cost of any of those units. Witness Lee testified that had Catawba Unit 1 been built at the average cost of a nuclear unit, the North Carolina retail ratepayers would have paid over $901 million in additional rates during the next 10 years alone. Witness Lee's testimony was uncontradicted.

Witness Lee also testified that the sales of Catawba were only a financing arrangement which will not affect the flow of electricity whatsoever. Catawba will serve all of Duke's customers in the same manner as any of Duke's plants. The only effect of the Catawba Sale Agreements is who pays for Catawba and how electricity is priced. Witness Lee's testimony was uncontradicted.

Witness Lee testified that without Catawba Unit 1, based on Duke's forecasted peak load for the summer of 1985 of 12,150 mW, Duke would have a generating reserve margin of only 13.4%. With Catawba Unit 1, Duke's generating reserve margin would be 22.9% based on the forecasted summer 1985 peak. Duke's actual reserve margin for the Company's 1985 forcasted summer peak will be 13.6% because of an extended outage at Belews Creek Unit 1 this summer. This compares to a reasonable target reserve margin generally adopted by the Commission of approximately 20%. Witness Lee also testified that Catawba will substantially enhance system reliability. Witness Lee noted that Duke's newest coal-fired plant is 11 years old and that certain of Duke's coal-fired units are already more than 30 years old. By 1995, 57% of Duke's fossil system will be 25 or more years old. Therefore, the addition of Catawba Unit 1 will be vital for continued system reliability.

Witness Lee stated in his testimony that the Company's calculated reserve margin did not include 997 mW of capacity which had been placed in extended cold shutdown (ECS). This capacity consists of 12 small coal-fired units which are 27 years to 43 years old. These units were placed into extended cold shutdown because they can no longer provide reliable service and because their use as peaking units in the past few years has stressed the units, which originally were designed for base-load use. Witness Lee stated that the Company's intention was to thoroughly examine the units and determine whether and at what cost they could be rehabilitated. This process will take approximately three years. From initial examinations, witness Lee noted that the units would require repair or replacement of turbine rotors, precipitators and feed water heaters, reinsulation of generator rotors, rewinding of generator stators, retubing of condensers, and many other unit-specific refurbishments to make them reliable. Nine of the 12 units were not available at the time of the hearing in this case for any service whatsoever and the remaining three units were available only in extreme emergency conditions. Witness Lee stated that because of the length of time needed to examine these units and order the necessary equipment and make the necessary repairs, the units would not be able to be brought back into service until the late 1980s or early 1990s, if at all.

The Attorney General cross-examined witness Lee concerning the fact that these units were not shown on Duke's retirement schedule from 1982 on. Witness Lee testified that many of these units had originally been scheduled for retirement in the 1980s and shown on prior retirement schedules but, because of the increasing costs of new units, Duke had taken the units off of the retirement schedule in anticipation that they would be rehabilitated through the extended cold shutdown program. The Attorney General also cross-examined witness Lee concerning the availability of these units in 1983. Attorney General-Lee Cross Examination Exhibit 9 shows that these units were available in 1983 between 59% and 97% of the time. Witness Lee testified that this showed only the availability of the units for dispatch and reflected the fact that the units were called on infrequently. If the units had been called on more frequently, they may not have run and their availability would have been lower.

Witness Lee also testified concerning the summer 1985 peak load forecast of 12,150 mW. Mr. Lee stated that the forecast had been made in September 1984, for budgetary purposes. It is this short-term forecast made in September of each year upon which the Company plans its budget for the following fiscal year. Witness Lee stated that a similar forecast is made every year and that this forecast is the most accurate forecast the Company has for the next fiscal year. Witness Lee testified that this forecast was higher than the forecast shown in the Company's previous short-range load forecast because that forecast was made in 1983. The 1983 forecast was made shortly after the bottom of a recession and incorporated a lower growth rate in the economy than had actually occurred since that time or was expected to occur in the near future. The September 1984 forecast was based upon the more current economic conditions prevailing at that time. Therefore, witness Lee testified that the September 1984 forecast was the most reliable forecast for prediction of the 1985 summer peak.

This finding of fact is also supported by the testimony of Public Staff witness Lam. Witness Lam testified that Catawba Unit 1 did not represent excess capacity because even with Catawba Unit 1 and including the units which have been placed in extended cold shutdown, Duke had a reserve margin of only 25.5%, based upon the actual winter peak load of 12,687 mW experienced in January 1985. Witness Lam testified that use of Duke's actual peak load was appropriate because the Company has to meet whatever the largest peak is on its system and that naturally occurs during extreme weather conditions.

Witnesses for the Attorney General and CIGFUR and Wells Eddleman, representing himself, testified that Catawba Unit 1 was excess capacity and not needed at this time. Dr. Wilson gave the following reasons for his conclusion that Catawba Unit 1 represented excess capacity: (1) the 997 mW of capacity placed in extended cold shutdown should be included in the calculation of reserves; (2) Catawba was base load capacity coming on at a time when the addition of cycling capacity is more appropriate; and (3) Duke's load forecast made in September 1984 was high in comparison to the 1983 load forecast.

Dr. Wilson's conclusion that the units placed in extended cold shutdown should be included in the calculation of reserve margins was based upon the testimony of Attorney General witness Whitfield Russell. Witness Russell testified that these units should be included in the reserve margin because they were capable of providing service. Upon cross-examination, however,

witness Russell was unable to state when these units could be made available for reliable service. Witness Russell did not know whether they could be made available for service within a period of two years or longer. Witness Russell admitted that he had not examined the units placed in extended cold shutdown; rather, he stated that his conclusions were based upon an examination performed by Mr. Walter Gunderson. Mr. Gunderson was not offered as a witness by the Attorney General. Duke subpoenaed Mr. Gunderson to testify, but that subpoena was not mandatory since it was addressed to Mr. Gunderson outside North Carolina. Mr. Gunderson did not appear. Mr. Gunderson's report on the extended cold shutdown program was introduced into evidence, however. Mr. Gunderson's report concluded that "[t]he [extended cold shutdown] program, as presently conceived, is a prudent action that is carefully designed to reduce operating costs while retaining operating flexibility; based on the projected Load/Capacity situation in the Duke Control Area."

Witness Russell also testified that Duke could have rehabilitated the extended cold shutdown units prior to the commercial operation of Catawba Unit 1. On cross-examination, however, he could not state when Duke would have had sufficient capacity to remove these units for the period of time that it would take to rehabilitate them. Indeed, as discussed above, he had no knowledge concerning the length of time it would take to rehabilitate these units.

Dr. Wilson's conclusion that the addition of cycling capacity rather than base load capacity was more appropriate at this time was based in part on his finding that Catawba Unit 1 could operate only 4,000 hours per year without replacing generation from Duke's Belews Creek and Marshall units. Dr. Wilson testified that this would have a negative effect because Belews Creek and Marshall are the most efficient coal-fired units in the country. With respect to this matter, witness Lee testified that the conversion of coal-fired units from base load to cycling duty was an inevitable result of the aging process and this had been the pattern of every coal-fired unit Duke had ever built.

CIGFUR witness Falkenberg also testified that Catawba Unit 1 was excess capacity. His conclusion was based upon the assumption that the extended cold shutdown units could provide reliable service. Witness Falkenberg admitted on cross-examination that he had performed no independent analysis of the extended cold shutdown program. Rather, his conclusion that the units could provide service was based entirely upon his reading of witness Lee's testimony. He acknowledged that he would also accept any testimony witness Lee gave at the hearing, but he was unaware that witness Lee testified on redirect examination that the ECS units would be out of service for several years. Witness Falkenberg also stated that he had assumed in his conclusion that a reserve margin of 15% was adequate and that reserves beyond 15% would begin to be excess.

Witness Eddleman also based his conclusion that Duke had excess capacity on the assumption that the extended cold shutdown units should be included in Duke's reserve margins. Witness Eddleman also had made no examination of the extended cold shutdown units. Witness Eddleman contended that these units should have been rehabilitated, but he did not state when Duke should or could have rehabilitated these units.

Witness Eddleman also contended that Duke's September 1984 load forecast for the summer 1985 peak was too high. Witness Eddleman suggested that the

Commission use the forecast prepared by the Carolina Environmental Study Group as well as a forecast he prepared which show a 1985 summer peak for Duke in the range of 11,000-11,500 mW. Witness Eddleman did not state what assumptions contained in Duke's September 1984 forecast were incorrect, however.

Finally, witness Eddleman testified that Duke has excess base load capacity. He suggested that if Duke needs new capacity it should be cycling or peaking capacity rather than base load capacity.

The Commission concludes that it is inappropriate to include the extended cold shutdown units in the calculation of Duke's current reserve margin. First, witness Lee's testimony concerning the condition of these units is uncontradicted. It is clear to the Commission that these units cannot provide reliable service until major repairs can be performed which will take a number of years. It would be inappropriate to include generating plants in Duke's reserve margins which cannot run and will not be able to run for a number of years. Second, the Commission concludes that the only way that these units can be rehabilitated so as to extend their lives for a number of years is through a comprehensive program such as the extended cold shutdown program. Ordinarily, plants of this age and condition are retired and replaced by new capacity. If this program can successfully rehabilitate these units, the units will be able to replace expensive new capacity which otherwise would have to be built. Therefore, the Commission finds that the extended cold shutdown program is prudent and designed to minimize costs to the Company's North Carolina retail ratepayers. The Commission further concludes that to discourage such a program would not be in the best interests of Duke's retail ratepayers because over the long term it would increase costs by forcing the Company to run older units until they cannot be rehabilitated and thus force Duke to build new capacity rather than rehabilitating older, lower cost capacity.

The Commission also concludes that Duke's September 1984 forecast of its summer 1985 peak of 12,150 mW is the appropriate forecast to use in determining Duke's reserve margin for the summer of 1985. That forecast was based upon the most recent information available to Duke at the time at which it was made and was based upon the economic conditions thought likely to prevail during the period of time it covers. No party has shown any invalid or improbable assumptions which were included in the September 1984 forecast.

With respect to the contention that Catawba Unit 1 represents excess base load capacity, the Commission notes that even Dr. Wilson admits that Catawba Unit 1 may be able to run with a capacity factor of almost 50% without displacing generation from Duke's Marshall or Belews Creek Units. The average capacity factor in the United States of a unit of comparable size to Catawba Unit 1 is only 57% and thus the amount of generation displaced from Marshall and Belews Creek is likely to be minimal. Furthermore, the Commission notes that the conversion of base load coal units to cycling duty is a natural result of the aging of such units. The running costs of nuclear units such as Catawba Unit 1 are substantially below the running costs of any coal-fired unit, including Marshall and Belews Creek.

Therefore, the Commission concludes that no party to this proceeding has presented any convincing evidence to support a finding that Catawba Unit 1 represents excess generating capacity. The Commission finds that Catawba Unit 1 is needed.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 10

The evidence for this finding of fact is contained in witness Lee's testimony. Witness Lee testified that the costs of Catawba Unit 1 should be included in Duke's cost of service for the following reasons: (1) Catawba Unit 1 is needed to meet Duke's load; (2) Catawba Unit 1 is the lowest cost nuclear unit completed in its time frame, which will save the North Carolina retail ratepayers over $1 billion in comparison to what they would have paid if Catawba had been built at the average cost of units completed during the same time frame; and (3) the costs of Catawba to North Carolina ratepayers are lower as a result of the Catawba Sale Agreements. Witness Lee also testified that Catawba Unit 1 was declared commercial on June 29, 1985, and that by the beginning of the hearing in this docket it has produced over 1,000,000,000 kWh for use on Duke's system. The Commission has discussed this testimony in detail previously and will not repeat here its reasons for agreeing with it.

The Commission finds it necessary, however, to give its reasons for including only 12.5% of Catawba Unit 1 in Duke's rate base because of the contentions of C.U.C.A. Witness Lee testified that Duke had sold 100% of Catawba Unit 2 to NCMPA and PMPA and 75% of Catawba Unit 1 to NCEMC and Saluda River, leaving the Company with 25% of Catawba Unit 1. He stated, however, that Duke's true economic interest in Catawba Unit 1 was only 12.5% because of the exchange entitlements between the owners of Catawba Unit 1 and Catawba Unit 2. As a result of these exchanges, Duke is entitled to 12.5% of the output of Catawba Unit 1 and 12.5% of the output of Catawba Unit 2. Witness Lee explained that the reason Duke had title to 25% of Unit 1 rather than 12.5% of each unit was because of a legal problem that the South Carolina municipalities had in owning a unit jointly with an investor owned utility such as Duke. Therefore, these sales were structured so that the South Carolina municipalities would not have title to any property which was jointly owned by Duke but the economic substance of the transaction would be such that Duke and each of the Catawba Purchasers would own an equal interest in each unit. Witness Stimart testified that the payments made by the Catawba Purchasers and by Duke for the construction of the Catawba Station were made upon the basis of a percentage of the cost of the station rather than a percentage of the cost of the individual units each entity owned.

The testimony of witnesses Lee and Stimart in this regard was uncontradicted by any other witness. It is clear to the Commission that Duke's real ownership interest is in 12.5% of each unit rather than 25% of Catawba Unit 1. G.S. § 62-133(b)(1) requires the Commission to determine the "cost of the public utility's property used and useful or to be used and useful within a reasonable time after the test period . . . ." It does not state that this determination is to be made merely according to what property the utility has legal title to. The argument of C.U.C.A. equates the term "property" with ownership by legal title. However, the two concepts are not identical. The used and useful standard itself contradicts any such assumption. That standard requires the Commission to look to substance, not to legal formality. Therefore, the Commission concludes that it would be inappropriate to ignore the economic substance of the transaction and to rely merely upon which party has title in determining the amount properly includable in Duke's rate base. Thus, for purposes of this case, Duke is entitled to collect rates based upon 12.5% of the cost of Catawba Unit 1 in its cost of service.

With respect to the inclusion of Duke's ownership in the common facilities, see discussion with respect to Finding of Fact No. 16, infra.

Various intervenors have argued that it would be inappropriate to reflect any of the costs of Catawba Unit 1 in Duke's rates because the Company did not receive a certificate of public convenience and necessity pursuant to G.S. § 62-110.1 prior to construction of the Catawba Nuclear Station. Duke applied for and received a certificate of public convenience and necessity from the South Carolina Public Service Commission before constructing the Catawba Nuclear Station which is located in South Carolina. The Commission does not find it necessary to determine whether G.S. § 62-110.1 required Duke to obtain a certificate of public convenience and necessity for the Catawba Nuclear Station because (1) if a certificate had been sought, it is clear from the evidence in this record that the certificate would have been granted for Catawba Unit 1 and (2) the Commission has been aware of the construction of Catawba Unit 1 from the time construction began.

G.S. § 62-110.1 provides that no public utility or other person shall begin the construction of any facility for the generation of electricity to be directly or indirectly used for the furnishing of public utility service without first obtaining from the Utilities Commission a certificate that public convenience and necessity requires, or will require, such construction. The North Carolina Court of Appeals has written, "This regulatory statute was enacted in 1965 to help curb overexpansion of generating facilities beyond the needs of the service area. . . . From these statutes and the case law, it is clear that the purpose of requiring a certificate of public convenience and necessity before a generating facility can be built is to prevent costly overbuilding." State ex rel. Utilities Commission v. High Rock Lake Association, Inc., 37 N.C. App. 138, 245 S.E. 2d 787, cert. denied, 295 N.C. 646, 248 S.E. 2d 257 (1978). From the Commission's previous discussion, in particular the discussion of Finding of Fact No. 6, it is clear that there was, and still is, a need for Catawba Unit 1. Therefore, had Duke applied for a certificate of public convenience and necessity, it is clear that the certificate would have been granted.

Moreover, the Commission approved issuance of a certificate of public convenience and necessity for the Perkins Nuclear Station on March 4, 1977, after construction of the Catawba Nuclear Station had already commenced and that Order assumed that the Catawba Nuclear Station would be built. In addition, the Commission, pursuant to G.S. § 62-161, is required to approve the purposes for which a public utility under its jurisdiction proposes to issue securities. Pursuant to G.S. § 62-161(c), the Commission is required to "specify the purposes for which any such securities or the proceeds thereof may be used by the public utilities making such application." Duke has, at various times during the construction of Catawba Unit 1, petitioned the Commission for approval of the Company's issuance of securities, the proceeds of which were to be used for the construction of Catawba. The Commission has repeatedly approved the issuance of securities for such purposes. The Commission also approved the sales of portions of Catawba to the purchasers at various times beginning in 1978. The Commission also issued six "Analysis of Long-Range Needs for Electric Generating Facilities in North Carolina" during the construction of Catawba Unit 1. In each of the proceedings leading up to those reports, the Commission was fully advised as to Duke's plans for construction of Catawba Unit 1. Finally, under G.S. § 159B-24, NCMPA was required to seek a

certificate of public convenience and necessity to enter into a joint arrangement to purchase a generating plant. On September 18, 1978, in Docket No. E-43, the Commission issued an Order granting a certificate to NCMPA to purchase a 75% interest in Unit 2 of Catawba and granted Duke authority to sell that portion of Catawba to NCMPA.

Therefore, the Commission concludes that no adjustment should be adopted based upon Duke's failure to obtain a certificate of public convenience and necessity from this Commission for Catawba Unit 1.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 11

The evidence for this finding of fact is found in witness Lee's testimony. Witness Lee testified that the Article 11 McGuire reliability exchange was a necessary part of the sale to the Catawba Purchasers. The purchasers insisted upon both the exchange and upon a trigger date for the exchange which was a date certain. At the time the trigger date was first set, witness Lee testified that it was thought that the Catawba Units would be completed prior to the time of their respective trigger dates. Because of the accident at Three Mile Island and subsequent increased federal regulation of nuclear facilities, however, Duke was unable to complete the Catawba units by the time of their respective trigger dates. Therefore, under the Article 11 McGuire reliability exchange provisions of Duke's Interconnection Agreements with the Catawba Purchasers, the Catawba Purchasers will receive energy from the McGuire Nuclear Station at that station's production cost without paying additional capital costs of that unit for a short period of time prior to the completion of Catawba Unit 2. Witness Lee testified that the reliability exchange in the Interconnection Agreements is fair to all parties because it evens out the impact of outages and because the exchange does not call for firm capacity. Furthermore, witness Lee noted that the McGuire plant would likely be retired before Catawba and at that time the North Carolina retail ratepayers will receive energy from Catawba at Catawba's production cost. Witness Lee also testified that the exchange represents a fair sharing of costs because the Catawba Purchasers have already paid for their capacity costs through their purchase of the Catawba Station, which costs approximately two times the cost of McGuire capacity. Finally, witness Lee testified that it would be inappropriate to view the McGuire reliability exchange separate from the Catawba Sale Agreements which he testified lowered the present rate request by approximately $100,000,000 and will lower costs to the retail ratepayers over the next 30 years by over $1 billion.

Various intervenors proposed adjustments to Duke's rate base and operating expenses to remove from Duke's rate base and operating expenses a percentage of the undepreciated cost and operating expenses of the McGuire Nuclear Station equal to the percentage of generation the Catawba purchasers will receive pursuant to the precommercial McGuire reliability exchange during the time the rates set in this case are in effect. The basis for this adjustment is that the North Carolina retail ratepayers should not be required to pay the costs of a portion of the McGuire Station which is not serving them at this time.

An identical adjustment was proposed in Docket No. E-7, Sub 373, by Carolina Utility Customers Association, Inc., and Great Lakes Carbon Corporation. In that case, the Commission stated, in part, that the Catawba Sale Agreements

> 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.

The Commission also noted the benefits the North Carolina retail ratepayers are receiving from the Catawba Sale Agreements. The Commission's view of the precommercial McGuire reliability exchange was subsequently upheld by the North Carolina Supreme Court. In its opinion, the Court stated

> As noted previously, the Commission was of the opinion that the exchange agreement should be viewed as an inseparable part of the Catawba Sale Agreements. We agree. Evidence was presented which tended to show that the Catawba Sale Agreements provided benefits to North Carolina ratepayers in addition to the advantages flowing from the reliability exchange. If found to exist, these benefits should also be considered in order to arrive at an equitable rate-determination. State ex rel. Utilities Commission v. Carolina Utility Customers Association, Slip Opinion at 14 (August 13, 1985)

No party has presented any facts which would cause the Commission to change its opinion with respect to the precommercial McGuire reliability exchange. In fact, the evidence in this case is even more compelling. As discussed with respect to Finding of Fact No. 8 above, Duke presented overwhelming evidence in this case as to the benefits of the Catawba Sale Agreements with which the Commission has agreed. It clearly would be inequitable to pass on these benefits to the North Carolina retail ratepayers without also requiring the North Carolina retail ratepayers to pay the costs associated with the Catawba Sale Agreements. In addition, the Commission agrees with witness Lee that the McGuire reliability exchange is itself a fair sharing of costs which will be beneficial to the North Carolina retail ratepayers as well as to the Catawba Purchasers and their customers, who also include retail ratepayers in North Carolina. Finally, the Commission believes that consistency in regulation is important and should not be abandoned except for solid and legitimate reasons. No such reasons have been advanced by any party in this case.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 12

Company witness Denton, Public Staff witnesses Hoard and Turner, CIGFUR witness Kennedy, C.U.C.A. witness Phillips, and Intervenor witness Eddleman presented testimony and evidence regarding the proper cost allocation methodology.

The Company provides retail service in two states, service under the Catawba Agreements and conventional wholesale service. For this reason, it is necessary to allocate the cost of service among jurisdictions as well as among customer classes within each jurisdiction. In the Company's previous rate cases in North Carolina, the Commission has used the summer coincident peak (Summer CP) method for cost allocation. The Company proposes to utilize the same method for this proceeding.

Company witness Denton testified that demand-related production and transmission items were allocated using summer peak demand in order to reflect the demand for electricity that each jurisdiction or rate class places on the production and transmission system during the time of the system summer peak. While Duke has summer and winter peaks that are in balance, witness Denton contended that the summer peak is the natural and dominant one and that Duke's forecast shows that it will remain that way. Witness Denton contended that if Duke or the Commission were to diminish the price of electricity during the summer by changing the allocation of costs from a Summer CP method to some other method, the result would be to send improper pricing signals to customers, which would ultimately increase costs to all customers by accelerating the growth of the summer peak.

In Docket No. E-7, Sub 373, the Commission adopted the Summer CP cost allocation methodology, but ordered the Company to prepare and file additional cost allocation studies with its next general rate case (Docket No. E-7, Sub 391) which allocate production plant based on (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. These studies were filed and are a part of the record.

Public Staff witness Turner recommended allocation of jurisdictional costs based on the Summer CP method, but supported use of the summer/winter peak and average method to determine jurisdictional retail rate class cost responsibility. It was his belief that the summer/winter peak and average method better recognizes factors that compel a utility to produce electricity and hence to incur cost. Allocation of jurisdictional cost based on the Summer CP method is recommended by the Public Staff in this case primarily because of the Public Staff's adjustments concerning the Catawba Agreements.

Witness Turner testified that the Public Staff believes it is more important in this case to deal with the issues raised by the Catawba Interconnection Agreements than the issue of jurisdictional allocation methods.

Witness Turner testified that there are two basic problems with the Company's proposed summer CP method. First, the Summer CP method assigns all production capital based only on customer class contribution to the system's summer peak when there is clearly a winter peak which demands and uses the Company's generating facilities. He testified that the Company is at times winter peaking and at times summer peaking and that Carolina Power & Light Company and North Carolina Power (formerly Virginia Electric and Power Company) are now forecasting balanced summer and winter peaks.

The second basic problem that witness Turner found with the Company's method is that allocating all production units by contribution to the summer peak assumes that plant was built solely to provide the system with additional capacity, when in actuality the type of plant built depends on the total hours the unit is expected to run as well as the generating capacity required at the time the system peaks.

CIGFUR witness Kennedy and C.U.C.A. witness Phillips both supported Duke's summer peak responsibility cost-of-service study as more appropriate for use in this proceeding.

Witness Eddleman testified that the best method for allocating demand-related costs on the Duke Power system is the Summer-Winter Average Coincident Peak method.

After carefully reviewing all of the evidence, the Commission concludes that it should again adopt the Summer CP method for allocating costs in this proceeding. There seem to be valid points to be said for most of the methodologies at issue herein, but the Commission is not convinced that a change is warranted at this time.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 13

Company witness Stimart, Public Staff witness Lam, Attorney General witness Wilson, C.U.C.A. witness Selecky, CIGFUR witness Falkenberg, and Wells Eddleman, representing himself, presented testimony and exhibits regarding the fuel component to be included in base rates in this proceeding.

Company witness Stimart recommended that the Commission adopt a fuel factor of 1.2771¢ per kWh. The basic assumptions included in witness Stimart's calculation were as follows: (1) Oconee Units 1, 2 and 3 and McGuire Units 1 and 2 would operate at a 62% capacity factor, and Catawba 1 would operate at an annualized 60% capacity factor; (2) median conventional hydro generation; (3) three-year average pumped storage generation; (4) test-period oil and gas generation, purchased power, interchange in and interchange out, intersystem sales, and Company usage; (5) average coal expense per kWh of 1.970¢; (6) nuclear fuel expense per kWh of .493¢ per kWh; and (7) pro forma adjustments for Catawba interconnection fuel costs priced in accordance with the Catawba agreements.

With respect to the capacity factor for Duke's nuclear generating facilities, witness Stimart testified that 62% is the Company's historic nuclear capacity factor. With respect to nuclear units in their first year of operation, 58% is the Company's historic capacity factor. In addition, Duke Late-Filed Exhibit 12 shows that Duke's nuclear capacity factor for 1985 through June is 59.89%. Finally, witness Stimart testified that Duke's projected capacity factor for its nuclear units, which has been relied on by other parties, was intended as a goal set for Nuclear Production Department employees rather than as an actual estimate of what will occur in the future.

Witness Stimart also testified that it was appropriate to use the current prices Duke was paying for coal rather than burned prices because burned prices represent what the Company paid for coal four to nine months before the coal is actually burned.

Public Staff witness Lam recommended a fuel factor of 1.2469¢ per kilowatt-hour, which was updated in the Public Staff's Proposed Order to 1.2359¢/kWh. Mr. Lam's basic generation and fuel cost assumptions were as follows: (1) acceptance of Duke's prefiled nuclear capacity factor figures; (2) acceptance of Duke's historical median conventional hydro generation; (3) nine-year average pumped storage; (4) two-year average combustion turbine generation; (5) actual burned cost of May 1985 fuel; (6) Catawba interconnection pricing based upon the actual price in the Catawba agreements but with an adjustment in accordance with the adjustment proposed by witness

Hoard for the NCMPA renegotiation; and (7) remaining fossil and purchase transactions prorated according to actual test-period generation ratios.

Witness Lam also testified that the North American Reliability Council's Equipment Availability Report, 1974 - 1983 showed that the average capacity factor for pressurized water reactors in the United States was 60% and that the average capacity factor for nuclear units over 800 mW was 57%. Witness Lam testified that all of Duke's units were pressurized water reactors and over 800 megawatts. Witness Lam stated that Duke had scheduled refueling outages at each of its nuclear units during the 15 months the rates in this case are expected to be in effect.

Attorney General witness Wilson recommended a fuel factor of 1.263¢ per kWh. Dr. Wilson made the following changes in Duke's fuel calculation: (1) capacity factor for Duke's nuclear units of 65%; (2) cost of coal of 1.862¢ per kWh, the price which Dr. Wilson testified was the most recent 12-month average cost of coal; and (3) removal of Catawba from Duke's generation mix altogether in accordance with his contention that Catawba should be entirely disallowed. Dr. Wilson testified that his capacity factor for Duke's nuclear units was more consistent with the capacity factors that Duke had achieved in 1983 and 1984 and more in line with Duke's projections for 1985 and 1986. With respect to Duke's coal cost, Dr. Wilson testified that witness Stimart's 1.97¢ per kilowatt-hour was unrealistically high because it represented a period when coal costs were bid up in anticipation of a United Mine Workers strike and that coal costs had since come down. Both witnesses Stimart and Lam disagreed with this last assertion. Since Duke's coal supply is comprised almost entirely of long-term contracts, it is seldom subject to short-term bidding fluctuations.

CIGFUR witness Falkenberg recommended a fuel factor of 1.1375¢ per kWh based on a nuclear capacity factor of 70%. Witness Falkenberg stated that this capacity factor should be obtainable based upon Duke's nuclear capacity factor in 1984. Witness Falkenberg also recommended that Duke's coal costs be based on a cost of coal generation of 1.869¢ per kWh, based upon his calculation of Duke's actual cost in 1984. Finally, witness Falkenberg recommended that the Commission order Duke to refund a $31 million overcollection of fuel costs in 1984.

C.U.C.A. witness Selecky recommended a fuel factor of 1.2369¢ per kWh. This fuel factor was based upon a capacity factor for Duke's nuclear units of 68%. Witness Selecky's recommendation concerning Duke's capacity factor was based upon (1) Duke's capacity factors in 1983 and 1984 and the capacity factor of Duke's Oconee units in 1980, 1981, 1983, and 1984 (the capacity factor in 1982 of 45% was eliminated because witness Selecky felt that that year was unrepresentative); and (2) Duke's projections for 1985 and 1986. Witness Selecky also made an adjustment with respect to Catawba's generation based upon other adjustments proposed by C.U.C.A.

Wells Eddleman recommended a fuel factor of 1.1793¢ per kWh. Witness Eddleman's fuel factor was based upon a 70% nuclear capacity factor and Duke's cost of fuel in its February 1985 fuel report. Witness Eddleman's fuel factor also included an adjustment consistent with his other Catawba adjustments.

The Commission finds that the nuclear capacity factors proposed by Duke and agreed to by the Public Staff are reasonable and based upon the best

information available and should be adopted in this case. It is more appropriate to set Duke's current capacity factors based upon national average capacity factors and the Company's own total experienced data rather than to derive capacity factors from the performance of a particular Duke nuclear unit in any one year or at any one station.

The Commission further concludes that there is no factual or legal justification to order Duke to refund $31 million as recommended by witness Falkenberg, and, therefore, this proposal is denied. In this regard, the record indicates that Duke has in fact undercollected its reasonable fuel costs since the setting of the Company's base fuel factor in Docket No. E-7, Sub 373. Furthermore, Mr. Falkenberg's proposed refund would constitute retroactive ratemaking, which is illegal in North Carolina.

Both the Company and the Public Staff agreed on the level of generation associated with conventional hydro. Therefore, based on the evidence of record, the Commission concludes that the appropriate level of conventional hydro generation is 1,811,900 mWh.

As noted hereinabove, Public Staff witness Lam proposed to base the Company's combustion turbine generation on a two-year average and to base the Company's net pumped storage generation on a nine-year average. Based on the entire record and the operating experience concerning these components of the Company's generation mix, the Commission concludes that the Public Staff's recommendation concerning these matters is appropriate.

Similarly, the Commission concludes that Public Staff witness Lam's methodology to prorate remaining fossil and purchase transactions in accordance to test-period generation ratios for these items is appropriate to be used in establishing the Company's fair and reasonable generation mix in this proceeding.

As noted hereinabove, Public Staff witness Lam utilized the most current burned fuel values as of the close of the hearing in determining the Company's generation costs. The Commission concludes that the current burned fuel values, as proposed by the Public Staff, are appropriate for establishing the reasonable fuel expense to be included in the Company's cost of service.

The Company and the Public Staff differ as to the appropriate level of Catawba interconnect contract purchases and sales to be included in determining the Company's appropriate generation. Consistent with the Commission's decision under Finding of Fact No. 8 above, the Commission concludes that the amounts used by the Company for this item are appropriate.

The Company and the Public Staff disagree as to the appropriate cost related to Catawba interconnect contract purchases included in the fuel factor calculation. This difference is due to the parties' differing treatments of nuclear fuel disposal costs associated with said purchases and sales. Public Staff witness Hoard made an adjustment to purchased power expense associated with nuclear fuel disposal costs related to Catawba interconnect contract purchases and sales; whereas the Company made an adjustment to purchased power for nuclear fuel disposal costs related to Catawba sales and included nuclear fuel disposal costs related to Catawba purchases in the calculation of the fuel factor. Additionally, the Public Staff used the nuclear fuel disposal factor

currently being charged Duke; whereas the Company factor is based on a past estimate. The Commission concludes that nuclear fuel disposal costs related to Catawba interconnect contract purchases and sales should be reflected in purchased power expense, as proposed by Public Staff witness Hoard. Therefore, the Commission concludes that the cost rate applied to Catawba purchases by the Public Staff in the fuel factor calculation is appropriate.

There being no substantial evidence in the record to the contrary, the Commission further concludes that the appropriate line loss percentage to be used in the fuel factor calculation is 7.34%, as recommended by the Public Staff. Similarly, the Commission finds the proper level of light off expense to be included in the fuel factor calculation is $5,906,000 as proposed by the Public Staff.

Based upon the above considerations, the Commission concludes that the proper fuel factor is 1.2401¢/kWh (excluding gross receipts tax). The calculation of this factor is shown as follows:

	Total Company Adjusted Generation Mix (mWh)	Fuel Price $/mWh	Fuel Dollars (000s)
Coal	$26,702,456	18.69	$499,069
Oil and Gas	4,371	105.47	461
Light Off	-	-	5,906
Nuclear	27,582,393	5.23	144,256
Hydro	1,811,900	-	-
Net Pumped Storage	(202,391)	-	-
Purchased Power	45,981	4.31	198
Interchange In	139,739	24.30	3,396
Interchange Out	(722,360)	19.01	(13,732)
Catawba Contract Purchases	4,867,659	6.20	30,179
Sales	(1,949,075)	5.00	(9,745)
Total	58,280,673		659,988
Less:			
Line Loss	4,277,801		
Adjusted Company Sales	54,002,872		
Less:			
Intersystem Sales	305,063		5,925
System mWh Sales/Fuel Cost	$53,697,809		$665,913
Fuel Factor ¢/kWh			1.2401

As discussed elsewhere in this Order under the Evidence and Conclusions For Finding of Fact No. 18, the Commission has adopted the Company's weather adjustment and has modified the Public Staff's customer growth adjustment to test-period mWh sales. Based on the foregoing, the Commission concludes that the appropriate level of North Carolina retail mWh sales to be used in setting rates in this proceeding is 31,857,750 mWhs.

The Commission further concludes that consistent with the positions of both the Public Staff and the Company, and in conjunction with the Company's allocation factors found to be appropriate herein, the appropriate level of non-Catawba related nuclear fuel disposal costs is $17,078,000 and the appropriate level of North Carolina retail excess over Company average line loss is $1,871,000. Therefore the Commission concludes that the fair and reasonable level of fuel used in generation is $414,017,000.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 14

The evidence relating to the appropriate level of fuel inventory was presented by Company witness Stimart and Public Staff witness Burnette. Duke included $71,700,000 for coal inventory and $3,620,000 for fuel oil inventory in its working capital allowance. The Public Staff included in its working capital allowance $64,583,000 for coal inventory and $3,604,000 for fuel oil inventory.

The $16,000 difference between the Public Staff and the Company regarding fuel oil inventory is due to the Public Staff's adjustment to reflect the effects of Article 11. Based on the Commission's conclusions on this matter in conjunction with Finding of Fact No. 11, the Commission concludes that the amount of $3,620,000 represents a proper allowance for fuel oil inventory in this proceeding.

Witness Stimart proposed a $121,825,000 investment allowance for coal inventory on a systemwide basis, or $71,700,000 for the N.C. Retail jurisdiction. Witness Stimart based his proposal on a 2,500,000-ton inventory. The 2,500,000-ton inventory was calculated to provide a 42-day supply based on a daily burn rate of 60,000 tons. Witness Stimart acknowledged under cross-examination that the Company had changed methodologies since the last rate case proceeding. The Company is now using a daily burn rate derived from a full load burn method which is based on the fossil units' maximum dependable capacity (MDC) ratings and performance data for the calendar year 1983.

Witness Burnette recommended a $114,802,523 investment allowance for coal inventory on a systemwide basis, $67,566,000 for the N.C. retail jurisdiction. His recommended 2,348,640-ton coal inventory level would provide an 80-day supply based on a 29,358-ton daily burn rate. Witness Burnette calculated the 29,358-ton daily burn rate using the same methodology adopted by this Commission in the Company's last general rate case, which is 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 coal used by the Company. Witness Burnette testified that it would be appropriate to update his recommendation for current coal inventory values. The Public Staff therefore recommended in its proposed order an allowance for coal of $64,583,000, based on updated inventory price information and on the Public Staff's revised level of coal generation.

The Commission concludes that the procedure used by the Public Staff is a more reliable indicator of Duke's coal inventory needs since it is based on actual recent system operations. The Commission further concludes that the use of updated coal price information is appropriate, inasmuch as that information is a known change occurring before the close of the hearing in this matter. Therefore, consistent with the coal generation found to be fair and reasonable

under the Evidence and Conclusions for Finding of Fact No. 13, the Commission concludes that a working capital allowance of $64,067,000 for coal inventory and $3,620,000 for fuel oil inventory is appropriate for use in this proceeding.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 15

The evidence pertaining to the proper total working capital allowance was presented by Company witness Stimart, Public Staff witnesses Carter, Maness, and Hoard, and Attorney General witness Wilson. An analysis of the total working capital proposed by the parties is set forth in the following table:

Analysis of Working Capital
N.C. Retail
(000's)

Item	Company	Public Staff	Attorney General
Materials and supplies Inventory:			
Coal	$ 71,700	$ 64,583	$ 71,700
Oil	3,620	3,604	3,620
Other	61,294	56,834	60,021
Subtotal	$136,614	$125,021	$135,341
Required bank balances	1,606	1,625	1,606
Investor funds advanced for operations	88,446	55,770	40,581
Customer deposits	(6,255)	(6,255)	(6,255)
Miscellaneous deferred debits and credits	848	851	848
Total working capital allowances	$221,259	$177,012	$172,121
Differences vs. Company		(44,247)	(49,138)

The Company proposes a total working capital allowance of $221,259,000; the Public Staff proposes $177,012,000; and the Attorney General proposes $172,121,000. The appropriate level of working capital for coal and fuel oil inventory has been established in Finding of Fact No. 14.

The Company, the Public Staff, and the Attorney General are in agreement as to the appropriate amount of customer deposits to be deducted from rate base. Therefore, the Commission concludes that the amount of customer deposits to be deducted from rate base is $6,255,000.

The differences between the parties with respect to the determination of the appropriate level of required bank balances and miscellaneous deferred debits and credits for the working capital allowance relate to allocation differences brought about with regard to the Catawba contracts which the Commission has previously rejected. Therefore, the Commission finds reasonable

and adopts the amounts proposed by the Company for each item: required bank balances, $1,606,000; and miscellaneous deferred debits and credits, $848,000.

The remaining basic areas of disagreement between the Company, the Public Staff, and Attorney General relate to nonfuel material and supplies, investor funds advanced for operations, and differences based on the Public Staff's position on the Catawba Sale Agreements and the Attorney General's position excluding Catawba Unit 1 from rate base. The specific areas of disagreement and the amounts included are set forth below:

Item	Company	Public Staff	Attorney General
Other Materials and Supplies	$ 61,294	$ 56,834	$ 60,021
Investor Funds Advanced For Operations	88,446	55,770	40,581
Total	$149,740	$112,604	$100,602

Analysis of Differences

Item	Public Staff	Attorney General
Allocation factors	$ 1,065	$(1,273)
Portion of materials and supplies related to McGuire removed due to Article 11	(2,583)	
Remove materials and supplies related to accounts payable	(2,749)	
Adjustments to Investor Funds Advanced for operations		
1. Change cost of service in lead/lag study	357	
2. Assign revenue lag to ITC	(3,733)	(3,829)
3. Assign revenue lag to abandonment amortization	(2,392)	(2,904)
4. Change employee benefits	(2,148)	
5. Change interest and preferred dividend lag	(27,834)	(26,563)
6. Change lag on common dividends		(14,569)
7. Change state income tax lag	3,366	
8. Change payroll lag	(467)	
9. Change other O&M lag	(18)	
Total	$(37,136)	$(49,138)

The Public Staff's proposal to disallow the costs associated with the 1982 NCMPA amendments impacts the working capital allowance. The Commission has rejected the Public Staff's position on the 1982 NCMPA amendments and the McGuire exchange. Therefore, the Public Staff's related adjustments to working capital based on these positions must also be rejected.

The Public Staff proposes a reduction in the working capital allowance of $2,749,000 for materials and supplies inventory. Public Staff witness Maness testified that the Company included in rate base the costs of its inventory of nonfuel materials and supplies as of June 30, 1984, and that this inventory includes items which are used at the construction projects and in day-to-day operations. Witness Maness stated that inclusion of the entire inventory in rate base treats the total amount as if it were financed by capital supplied by investors, but that a portion of the cost is in the form of accounts payable, and therefore not financed by investors. Witness Maness testified further that the accounts payable related to materials and supplies used in day-to-day operations are removed through the lead-lag study, and that the removal of these payables related to construction requires a separate adjustment, or a $2,749,000 reduction in the amount of construction-related materials and supplies.

Witness Stimart testified that these adjustments were improper, since the underlying basis for the adjustment is the assumption that this inventory is financed on an on-going basis as accounts payable. The accounts payable associated with materials and supplies are paid within thirty (30) days, at which time these items become plant in service, financed by investor capital. Witness Stimart testified that tracing the accounts payable for a short time and updating rate base demonstrates that these items become plant in service and that a designation of plant in service financed by accounts payable is arbitrary and unreasonable.

The Commission recognizes that accounts payable are not the primary source of financing for the Company's materials and supplies inventory. However, the Commission also recognizes that accounts payable are a continuous secondary source of financing for these assets. While it may be true, as witness Stimart contends, that payables are paid within 30 days of their accrual, it is also true that during that 30-day period other assets are purchased which will themselves be in the accounts payable stage for a period of time. Therefore, it is reasonable to assume that there is a portion of materials and supplies continuously supported by accounts payable, created by the transition of purchased items through the payables stage. Such accounts payable related to construction materials and supplies should be deducted from the Company's rate base consistent with previous Commission Orders in Duke cases.

The remaining area of disagreement among the parties involve the proper level of cash working capital generated by the lead/lag study. The Public Staff and Attorney General assign a revenue lag to investment tax credits (ITC), which would reduce the allowance for working capital. Public Staff witness Carter proposes to assign the same number of lag days to ITC expense as assigned to revenue, 43.40 lag days.

Duke witness Stimart testified that these proposed adjustments violate IRS regulations which require that ITC be treated the same as common equity for rate base purposes. Assigning the revenue lag of 43.40 days of ITC differs from the zero lag days assigned to common equity and has the effect of zeroing the ITC out of rate base, whereas common equity with a zero lag is included in working capital and thus in rate base. Therefore, the Public Staff would treat ITC differently from common equity. Witness Stimart testified that his interpretation of the applicable IRS regulations was based on his review of the regulations and his discussions with tax counsel for Duke concerning the

regulations. Witness Stimart stated that the amount of additional revenue associated with this proposed adjustment was $702,000 and that an erroneous interpretation of the IRS regulations by the Public Staff or Attorney General would jeopardize $270 million in utilized investment tax credits.

Witness Carter presented tables and computations designed to show that giving the ITC a revenue lag in the lead-lag study neutralizes ITC for working capital purposes and therefore does not result in any decrease in rate base.

There is a preponderance of support in the Internal Revenue Code, as elucidated by the legislative history, for the Company's position that the overriding requirement of section 46(f) of the Code is that, in all rate case decisions affecting rate base, ITC must be treated in the same way that common equity is treated. There is some support in the Regulations for the position of the Public Staff and Attorney General that the relevant inquiry is whether ITC is treated in a manner that reduces rate base. The Commission concludes that the differences are largely semantic. The adjustments proposed by the Attorney General and Public Staff would result in a reduction in rate base below the level that would exist if the ITC were treated the same for rate base purposes as the Commission treats common equity. This, at best, poses a serious risk that such treatment would be in violation of IRS regulations and should not be adopted. The Commission has followed this interpretation in prior cases involving Carolina Power & Light Company and Southern Bell and has not been presented with evidence in this case which would justify a change in such position which, if erroneous, would result in a loss of investment tax credits, a consequence harmful to both the Company and ratepayers.

The Public Staff and Attorney General propose adjustments to working capital related to amortization of four abandoned projects, Cherokee and Perkins Nuclear Stations, Western Fuel, and Peter White coal mine. Public Staff witness Maness testified that he applied a revenue lag to the per books amortization amounts related to each of the four abandoned projects and applied a revenue lag to the per books deferred taxes related to each of the abandonments. Witness Maness testified that the Company's assignment of zero lag to the amortized amounts improperly allows the Company to earn a return on a portion of the abandonment losses, contrary to this Commission Order in Docket No. E-7, Sub 358, by including working capital related to these losses in rate base. The Public Staff's adjustment would reduce working capital by $2,392,000.

Dr. Wilson recommended an adjustment to these costs based on policy and economic arguments.

Company witness Stimart testified that since the Commission allowed the amortized cost of these projects to be included in the cost of service, the Company is entitled to the recovery of this cost as service is provided. To the extent that the amortized cost is not recovered at the date of service, witness Stimart testified that the Company should be entitled to earn a return on the unrecovered amount.

Public Staff witness Maness testified further that the Commission's intent in disallowing any return on unamortized abandonment losses is to limit the Company's revenue recovery to that which would be produced by simply amortizing the losses over a period of years. He testified that the assignment of lag

days less than the revenue lag to these items increases working capital and thus produces revenue in excess of that produced by simply amortizing the said losses to cost of service. Witness Maness also testified that the basis of his position is the Commission policy, expressed in its Order in Docket No. E-2, Sub 461, that no adjustment be made which would have the effect of allowing a company to earn a return on the unamortized balance of such investments. Witness Maness noted that his recommendation is consistent with the Commission's lead-lag treatment of this item in CP&L's most recent general rate case (Docket No. E-2, Sub 481).

The Commission does not dispute the fact that there may be a working capital requirement associated with the amortization of abandoned projects; however, the issue to be decided is not whether such a requirement exists, but whether or not the ratepayer is to be compelled to finance that requirement.

In Docket No. E-2, Sub 461, the Commission clearly stated its current policy related to returns on abandonment losses. The Order in that proceeding reads in part as follows:

> Pursuant to the Commission's reexamination of the proper ratemaking treatment of abandonment losses, the Commission has determined that it is neither fair nor reasonable to include any portion of the unamortized balance of such investments in rate base and, furthermore, that no adjustment should be allowed which would have the effect of allowing the Company to earn a return on the unamortized balance (Docket No. E-2, Sub 461, Order on Reconsideration, p.21).

The intent of the Commission in pursuing this policy is simply to allow the Company to recover its abandonment losses over a given period of years by including the annual amortization in rates, while disallowing any return on the unrecovered investment.

Therefore, the Commission concludes that the exclusion of these carrying charges from rates achieved by the Public Staff's assignment of the revenue lag to the abandonment amortizations is both reasonable and proper.

The next adjustment to working capital involves banked vacation, the incentive benefit program, and employee stock purchase plan.

Public Staff witness Maness testified that he recalculated the composite lag on employee benefits expense. Witness Maness stated that the 39.39 composite benefits lag is appropriate, due to the fact that the Company accrues Banked Vacation, Incentive Benefits, and Stock Purchase Savings Plan expenses and recovers them from ratepayers throughout the year, but expends the funds after they are collected.

Company witness Stimart testified that the employee benefits in question are components of cost of service and that the Company should be allowed to recover the expense as service is provided. Witness Maness testified that the benefits lag which he had assigned reflects an average of the period of time between the provision of service to the ratepayer and the disbursement of the funds recovered for that service and that the Company's assignment of a zero

lag allows it to immediately receive the benefit of the recovery of that revenue, prior to the actual disbursement.

Based upon the evidence presented, the Commission concludes that the Company has use of the Banked Vacation, Incentive Benefits, and Stock Purchase Savings Plan funds from the time that they are recovered from the ratepayer until the time they are actually disbursed. Since the Company is able to earn a return from investment of these ratepayer-supplied funds during that period, assignment of a zero lag, as the Company has proposed, would allow the common shareholders to keep that return for themselves. Such a procedure is contrary to the ratemaking principle that the benefits of funds advanced by the ratepayers for operations should flow to the ratepayers, not to the investors. The assignment of a zero lag is based upon the false premise that those funds are disbursed every day. Therefore, the Commission concludes that the assignment of a composite benefits lag of 39.39 is reasonable and proper.

The next adjustment proposed by the Public Staff and Attorney General is the assignment of a lag to interest on long-term debt and dividends on preferred stock. Public Staff witness Maness testified that he applied lags of 86.86 days and 45.63 days, respectively, which reduces the working capital allowance by $27,834,000. Dr. Wilson proposes a similar adjustment which would reduce the working capital allowance by $26,563,000.

Public Staff witness Maness testified that the made this adjustment in order to recognize the fact that there is a distinct and measurable period between the time that interest and preferred dividends are recovered from the ratepayers and the time that they are paid to the holders of debt and preferred stock.

Company witness Stimart testified that these items are assigned zero lag by the Company because the Company is entitled to recover these costs as service is rendered.

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 debtholders and preferred stockholders. Accordingly, the Commission concludes that the assignment of 86.86 and 45.63 lag days to interest and preferred dividends, respectively, is reasonable and appropriate.

Attorney General witness Wilson has included an adjustment to working capital accomplished by applying a 45-day lag to common stock dividends, which reduces working capital by $14,569,000. The Company's position on this adjustment is that the common stock dividend should receive a zero lag, the same as with respect to interest and preferred dividends.

The Commission concludes, consistent with prior rulings, that zero lag days should be applied to common stock dividends and that the Attorney General's adjustment is not appropriate.

The Public Staff proposes to assign a lag to state income taxes that reflects the change in the state requirements for the payment of income taxes. This adjustment increases working capital by $3,366,000. The Company and the

Attorney General did not oppose this adjustment. Therefore, the Commission adopts this adjustment for use in this proceeding.

The Public Staff adjusted the payroll lag as a result of separating payroll and benefits in the lead-lag study. This procedure has been adopted by the Commission in previous proceedings and is essentially uncontested in the record. Based on the foregoing, the Commission concludes that the Public Staff's payroll lag is appropriate.

Similarly, the Public Staff has adopted a different lag for other O&M, as the result of separating other O&M into various components. The Commission concludes that this adjustment is proper.

The Public Staff adjusted the Company's cost of service used in the lead-lag study to reflect the allocation factors change resulting from the adjustment for the restated NCMPA contract and Article 11. Consistent with our decision elsewhere herein, the Commission rejects the Public Staff's adjustment for the restated NCMPA contract and Article 11. Further, the Public Staff excluded the dollars associated with the Three Mile Island (TMI) expenditure from the Company's per books cost of service in the lead-lag study. Consistent with the Commission's adjustment to exclude TMI from the Company's cost of service elsewhere herein, the Commission concludes that this item should not be included in the Company's cost of service used in the lead-lag study.

Based on all the foregoing, the Commission concludes that the appropriate level of investor funds advanced for operations to be included in working capital is $59,576,000.

In summary, the Commission finds that the appropriate allowance for working capital for use in the proceeding is $182,007,000, as set forth in the chart below:

(000's)

Materials and supplies inventory:	
Coal	$ 64,067
Oil	3,620
Other	58,545
Subtotal Materials & Supplies	$126,232
Required bank balances	1,606
Investor funds advanced for operations	59,576
Customer deposits	(6,255)
Miscellaneous deferred debits and credits	848
Total working capital allowance	$182,007

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 16

The evidence pertaining to Duke's reasonable original cost rate base was presented by Company witness Stimart, Public Staff witness Hoard, and Attorney General witness Wilson. CIGFUR witness Falkenberg, Attorney General witness Wilson, and Wells Eddleman proposed adjustments to rate base consistent with

their position that Catawba Unit 1 is excess capacity. The Commission has rejected this position, and, therefore, rejects the related rate base adjustment. The following chart summarizes the amounts which the Company, the Public Staff, and the Attorney General contend are proper levels of original cost rate base to be used in this proceeding:

Original Cost Rate Base
(000's)

Item	Company	Public Staff	Attorney General
Electric plant in service	$4,778,744	$4,578,494	$4,287,400
Accumulated depreciation and amortization	(1,461,892)	(1,458,839)	(1,172,891)
Construction work in progress	0	0	0
Allowance for working capital	221,259	177,012	172,121
Accumulated deferred income taxes	(407,047)	(411,571)	(362,507)
Operating reserves	(10,997)	(11,133)	(52,628)
Total orig. cost rate base	$3,120,067	$2,873,963	$2,871,495
Total difference		$ (246,104)	$ (248,572)

The Company proposes a total original cost rate base of $3,120,067,000. The Public Staff proposes a reduction in original cost rate base of $246,104,000, and the Attorney General proposes a reduction of $248,572,000. The Commission will discuss each component of rate base and the adjustments proposed by the parties.

The Company proposes electric plant in service of $4,778,744,000. The Public Staff and Attorney General propose reductions to electric plant in service of $200,250,000 and $491,344,000, respectively. The chart below summarizes the differences between the Company, the Public Staff, and Attorney General:

Electric Plant In Service
(000's)

Company	$4,778,744	$4,778,744
Public Staff	4,578,494	
Attorney General		4,287,400
Difference	$ (200,250)	$ (491,344)

Adjustments	Public Staff	Attorney General
1. Elimination of NCMPA renegotiation		
a. Allocation difference	$ 51,070	
b. Additional McGuire Article 11	(38,474)	
2. Removal of McGuire (Article 11)	(198,782)	
3. Reduction of Catawba Unit 1 costs		
a. One-half of Catawba common plant	(14,064)	
4. Elimination of Catawba Unit 1		
a. Allocation difference		$(418,882)
b. Other		(153,089)
5. ECS Units		80,627
Total difference	$(200,250)	$(491,344)

Items 1 and 2 relate to the Public Staff's adjustment to restate the NCMPA contract and to the Public Staff's adjustment related to Article 11 of the Catawba Contracts. Having already found these adjustments to be improper elsewhere herein, the Commission concludes that items 1 and 2 should be rejected.

Item 3 in the above chart reflects the Public Staff's position that one-half of the cost of Catawba common plant should not be included in rate base. Witness Hoard testified that it would be improper to include common facilities related to Catawba Unit 2 in rate base because "to do so would presume that Catawba Unit 2 will not represent excess capacity when it goes into commercial operation." Witness Hoard acknowledged on cross-examination that he was unable to specify any specific common facilities or costs which were not necessary for the safe and reliable operation of Unit 1 and that he had simply proposed to exclude half of the cost of such common facilities.

Company witnesses Lee and Stimart testified that all of the costs incurred for common plant are necessary for the safe, reliable operation of Catawba Unit 1 and that the Uniform System of Accounts requires that all common facilities be included in rate base with Unit 1. Witness Stimart quoted the relevant portion of the Uniform System of Accounts, which provides:

> Further, if a project, such as a hydro project, a steam station, or a transmission line is designed to consist of two or more units or circuits which may be placed in service at different dates, any expenditures which are common to and which will be used in the operation of the project as a whole shall be included in electric plant in service upon the completion and readiness for service of the first unit.

The Public Staff's basis for eliminating half of the common plant is not persuasive. The Commission accepts witness Stimart's testimony, which is uncontradicted, that all of the common plant is needed for the reliable operation of Catawba Unit 1. Thus, to include all of the common plant in rate base now does not imply any prejudgment, one way or the other, of any issues that may arise in the future with reference to Catawba Unit 2. Furthermore, inclusion of all of the Catawba common plant is consistent with the Uniform System of Accounts previously adopted in North Carolina. The Commission does not accept the Public Staff's position and will include the reasonable cost of common plant in rate base with Catawba Unit 1.

Items 4 and 5 in the above chart reflect the Attorney General's proposed adjustments to electric plant in service to reflect a position that all costs related to Catawba Unit 1 should be excluded from rate base and that the ECS units can continue to provide reliable electric service. As discussed previously, the Commission has rejected the Attorney General's position and has determined that Catawba Unit 1 is used and useful to provide electric service to North Carolina retail customers. Therefore, the Commission will not accept these adjustments to electric plant in service. Similarly, CIGFUR witness Falkenberg also proposed adjustments for Catawba costs based on his position that Catawba is excess capacity. The Commission has rejected witness Falkenberg's excess capacity arguments and must necessarily reject his proposed accounting adjustments.

Based on all the foregoing, the Commission concludes that the appropriate level of electric plant in service for use in this proceeding is $4,778,744,000.

The Company proposes to reduce electric plant in service by $1,461,892,000 in accumulated depreciation and amortization. The Public Staff and Attorney General propose smaller reductions. The differences between the proposals of the Company, the Public Staff, and Attorney General are summarized in the chart below:

Accumulated Depreciation and Amortization (000's)		
Company	$(1,461,892)	$(1,461,892)
Public Staff	(1,458,839)	
Attorney General		(1,172,891)
Difference	$ 3,053	$ 289,001

Differences vs. Company	Public Staff	Attorney General
1. Elimination of NCMPA renegotiation		
a. Allocation difference	$ (12,873)	
b. Additional McGuire Article 11	2,491	
2. Removal of McGuire (Article 11)	12,872	
3. Reduction of Catawba Unit 1 costs		
a. One-half of common plant	563	
4. Elimination of Catawba Unit 1		
a. Allocation difference		$ 363,816
b. Other		5,812
5. ECS Units		(80,627)
Total difference	$ 3,053	$ 289,001

The Commission has rejected each of the proposed adjustments for the reasons set forth in the discussion of the Catawba issues presented elsewhere in this Order. Therefore, the Commission concludes that the appropriate level of accumulated depreciation and amortization for use in this proceeding is ($1,461,892,000).

The Company proposes accumulated deferred income taxes of $407,047,000. The Public Staff proposes adjustments which would increase deferred income taxes by $4,524,000, and the Attorney General proposes adjustments which would decrease deferred income taxes by $44,540,000. The differences between the proposals of the Company, the Public Staff, and Attorney General are set forth in the chart below:

	Accumulated Deferred Income Taxes (000's)	
Company	$(407,047)	$(407,047)
Public Staff	(411,571)	
Attorney General		(362,507)
Difference	$ (4,524)	$ (44,540)

Adjustments	Public Staff	Attorney General
1. Elimination of NCMPA renegotiation		
a. Allocation difference	$ (5,026)	
b. Disallowance of McGuire Article 11	1,689	
2. Removal of McGuire (Article 11)	8,727	
3. Deduction from rate base for deferred taxes beyond the test year	(9,914)	
4. Adjustment for NFDC excess		$ 44,540
Total difference	$ (4,524)	$ 44,540

Items 1 and 2 relate to adjustments to deferred taxes resulting from the Public Staff's positions regarding the 1982 NCMPA amendments and the McGuire exchange. Since these adjustments have been rejected elsewhere herein, items 1 and 2 above must also be disallowed for the reasons stated previously.

The Public Staff also proposes to annualize the post-in-service date deferred taxes related to McGuire Unit 2 and Catawba Unit 1 investment as shown in item 3 above. Although the calculation is somewhat different, this same issue was addressed in Duke's last general rate case, Docket No. E-7, Sub 373. In that case, the Commission agreed with the Company that this adjustment was inappropriate. The related IRS regulations have not changed since the last case. Public Staff witness Hoard relies on a private letter IRS ruling (LTR8506010) as being fully supportive of his adjustment. However, that private letter ruling, by its own terms, cannot be regarded as precedent in this case. Moreover, there is question whether the facts on which the private letter was based are comparable with the facts in this case.

The Internal Revenue Code provides that tax normalization must be made in compliance with requirements contained in the Code. The Company could otherwise be in jeopardy of losing benefits associated with accelerated depreciation. Therefore, if this adjustment is allowed, there is a risk of a loss of the benefit derived from hundreds of millions of dollars in deferred taxes. Witness Stimart testified that in order to avoid this risk, the Company has consistently deducted from rate base actual end-of-test-period deferred taxes. With this methodology, ratepayers are assured of receiving over time the benefits of all deferred taxes.

The Commission agrees with the views and concerns expressed by the Company. Consistent with our ruling in Docket No. E-7, Sub 373, the Commission rejects this Public Staff adjustment.

Attorney General witness Wilson proposes in item 4 an adjustment to deferred taxes of $44,540,000. The Company proposed an adjustment to rate base and operating expenses as a result of the final determination of the liability to the Department of Energy for the disposal of nuclear fuel burned prior to April 7, 1983. The Company had accrued an amount in excess of the actual liability. Therefore, the Company proposed to amortize this excess as a credit to operating expenses over a period of 15 months, the estimated time the rates from this rate case will be in effect. This amortization included a provision for a return on the average unamortized balance. The Company also adjusted rate base to remove both the amount accrued, as well as the associated accumulated deferred income taxes. This was proposed as the amount accrued was either paid prior to the close of the hearing or was proposed to be amortized to expense. Attorney General witness Wilson disagreed with the Company's proposed adjustment in two respects. First, he proposed a 12-month amortization instead of a 15-month amortization. Second, he proposed the inclusion of one-half of the excess to be amortized in rate base in lieu of the inclusion of a return in operating expenses. This approach was largely a difference of method and not results. However, the Attorney General's witness erred in his calculation in that he failed to remove from rate base the accumulated deferred income taxes. This error overstates rate base by $44,540,000, since the accumulated deferred income taxes were a debit balance. Therefore, Dr. Wilson's proposal should be rejected.

Based on the foregoing, the Commission concludes that the adjustments to deferred income taxes set out hereinabove should not be accepted for the reasons generally advanced by the Company and that the appropriate amount of accumulated deferred income taxes to be used in this proceeding is ($407,047,000).

The Company proposes operating reserves of $10,997,000. The Public Staff and Attorney General propose adjustments which would increase operating reserves by $136,000 and $41,631,000, respectively. The differences between the proposals of the Company, the Public Staff, and Attorney General are summarized in the chart below:

	Operating Reserves (000's)	
Company	$(10,997)	$(10,997)
Public Staff	(11,133)	
Attorney General		(52,628)
Difference	$(136)	$(41,631)

Adjustments	Public Staff	Attorney General
1. Elimination of NCMPA renegotiation		
a. Allocation difference	(136)	
2. Elimination of Catawba Unit 1		
a. Allocation difference		15
3. Equity/debt swap		(29,340)
4. Adjustment for unamortized Breeder Reactor Reserve		(1,149)
5. Adjustment for NFDC Reserve		(11,157)
Total difference	$ (136)	$(41,631)

Item 1 reflects the Public Staff's adjustment related to disallowance of the 1982 NCMPA amendments. For the reasons previously stated elsewhere in this Order, the Commission does not accept the Public Staff's position and therefore rejects the related adjustment to operating reserves. Similarly, item 2 reflects the Attorney General's adjustment related to disallowance of all Catawba costs. For the reasons previously stated, the Commission does not accept the Attorney General's position with respect to Catawba costs and therefore rejects the related adjustments to operating reserves.

The Attorney General proposes an adjustment based on the January 1982 exchange of debt for equity which resulted in a gain of $48,304,000 as an extraordinary net income item. Attorney General witness Wilson proposes that the gain on the exchange be deducted from rate base. The Commission has previously decided the issues relating to the debt/equity exchange. In no case since the transaction was completed has the Commission made any explicit adjustment such as that proposed by Dr. Wilson. Dr. Wilson's testimony offers no new evidence or argument which would justify a change in the Commission's position. Therefore, the Commission concludes that this adjustment is not appropriate and will not be accepted.

Dr. Wilson also proposes to reduce rate base by one-half of the unamortized amounts collected by the Company in the Clinch River Breeder Reactor reserve fund and excess nuclear fuel disposal costs (NFDC), as shown in items 4 and 5 above. The Company proposes amortization of those amounts to the cost of service, including a return at the Company's AFUDC rate, thus achieving the same result.

The Commission concludes that the Company's amortization is reasonable for the breeder reactor reserve and NFDC accrual and therefore does not accept Dr. Wilson's proposed adjustment.

The Commission concludes that the appropriate amount of operating reserves for use in this proceeding is $10,997,000.

No party has proposed to include any construction work in progress in the Company's rate base. Therefore, the Commission concludes that no construction work in progress should be included in the Company's rate base in this proceeding.

The parties disagree as to the appropriate level of working capital to be included in the Company's rate base. Under Finding of Fact No. 15 above, the Commission concluded that the proper working capital allowance is $182,007,000.

Based on the foregoing discussion and analysis of the evidence, the Commission concludes that the appropriate North Carolina retail original cost rate base for use in this proceeding is $3,080,815,000 calculated as follows:

Original Cost Rate Base (000's)	
Electric plant in service	$4,778,744
Accumulated depreciation and amortization	(1,461,892)
Construction work in progress	0
Allowance for working capital	182,007
Accumulated deferred income taxes	(407,047)
Operating reserves	(10,997)
Total original cost rate base	$3,080,815

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 17

The evidence pertaining to the appropriate level of test year gross revenue was presented by Company witness Stimart, Public Staff witnesses Hoard, Carrere, and Evans, and Attorney General witness Wilson. The Company proposes test year revenue of $1,730,381,000. The Public Staff proposes to increase this amount by $10,943,000, and the Attorney General proposes an increase of $517,000. The chart below summarizes the differences between the parties:

(000's)

	Company	Public Staff	Attorney General
Revenue as adjusted	$1,730,381	$1,741,324	$1,730,898
Difference vs. Company		(10,943)	517
Adjustments			
Disallow 1982 NCMPA amendments:			
- allocation differences		(17)	
- remove Catawba Buyer Fees		(2,217)	
Customer growth:			
- impact of differences in end of period number of customers		2,264	1,660
- include usage of 30 large industrial customers in growth calculation		1,017	
- impute additional kwh sales to existing customers			1,169
Weather adjustment - use new methodology		10,286	
Gross receipts tax rate change related to above items		(390)	(82)
Eliminate Catawba Unit 1:			
- allocation differences			(13)
- operating fees			(2,217)
Total adjustments		$ 10,943	$ 517

The Public Staff proposes two adjustments consistent with its position on the 1982 NCMPA amendments. The Commission has rejected the Public Staff's position and must therefore reject these two related accounting adjustments.

The Public Staff and Attorney General propose customer growth adjustments based on the difference in number of customers at the end of the test period. The Company included an adjustment to revenue of $10,971,000, based on 178,762,830 additional kwh sales due to customer growth. Public Staff witness Carrere recommended a revenue adjustment of $14,252,483, based on 233,546,624 additional kwh sales.

Both the Public Staff and the Company have used a regression analysis technique to predict the end-of-period number of customers. However, as the following table shows, there are significant differences in the revenues calculated in this adjustment for several customer classes or rate schedules.

	Company	Public Staff	Difference
Residential	$ 6,605,110	$ 8,322,107	$1,716,997
General	3,701,108	4,724,650	1,023,542
Industrial Nontextile - Special Billed	1,388,206	2,405,330	1,017,124
Other	(723,749)	(1,199,604)	(475,855)
Total Revenues	$10,970,675	$14,252,483	$3,281,808

The differences in the adjustments made by witness Stimart and witness Carrere relate to the differences in their use of regression analysis and differences in the treatment of certain industrial customers. Company witness Stimart utilized a regression analysis based on a period of 30 months of historical data, ended June 30, 1984; whereas Public Staff witness Carrere utilized a regression analysis based on historical data from a three-year period ended December 31, 1984, to determine the normalized end-of-period level of customers. Witness Carrere testified that using a regression analysis including the most recent data available more accurately reflects the direction in which the customer level is moving than does using 30 months of historical data ended June 30, 1984, as the Company did. Witness Carrere emphasized that even though he used data past the end of the test year, the predicted customer level he utilized from his regression analysis was the predicted value for June 30, 1984, the end of the test year.

Witness Carrere testified that the use of three years of historical data in the regression analysis tends to minimize the effect of anomalous data and produce a normalized result that appropriately reflects the end-of-period levels. He further testified that the use of data points from after the end of the test period in the regression analysis will give a more accurate picture of the direction in which the rate class is currently moving. Public Staff witness Carrere further testified that in his use of the regression analysis, each rate schedule offered by the Company was further broken down into individual subgroups of customers. These classes of customers were categorized by usage characteristics for purposes of determining an average usage in order to annualize revenues. Witness Carrere noted that in this proceeding, in contrast to the previous rate case, the industrial class was broken down into six separate usage classes for the regression analysis. He testified that grouping the customers into subgroups based on similar use characteristics for the regression analysis and then taking the average usage for the annualization of revenues should alleviate any disparity between the industrial customers as a whole.

Witness Stimart testified that the difference in industrial revenue results from the Company's removing the 30 largest industrial customers from the average industrial usage per customer before applying the average usage to the test year increase in industrial customers. Including these customers in the test year average industrial usage increased the Staff's adjustment to revenue by $1,017,124. Witness Stimart stated that during the test period no industrial customer was added with average kWh usage as high as the 30 largest industrial customers; therefore, inclusion of these customers would bias the adjustment.

Witness Stimart indicated that the Company has examined trends in customer usage and has determined that there was no identifiable increase in average customer usage within the test year, other than fluctuations resulting from kWh sales being weather sensitive.

Attorney General witness Wilson proposed an adjustment to the Company's calculations, stating that the Company's regression is biased because (1) it uses a regression period in which economic conditions suppressed growth and (2) it uses a 30-month period which did not properly reflect seasonal growth. Dr. Wilson's adjustment includes additional customers and imputes additional kwh sales from existing customers. Witness Stimart disagreed with these criticisms. He testified that the purpose of using an extended period for the regression is to obtain a trend line for growth in number of customers and that the no-growth periods have to be considered in determining this trend. Witness Stimart further stated that inclusion of the "suppressed growth" periods exerts no more bias than inclusion of high growth period.

Based on the evidence of record, the Commission concludes that the use of a regression analysis based on 36 data points, as presented by the Public Staff and for the reasons generally stated by said party, is appropriate for use in this proceeding. However, the Commission further concludes that the Company's adjustment to remove the effects of the 30 largest customers from the customer growth analysis of rate schedule Industrial Nontextile - Special Billed is also appropriate for the reasons generally advanced by Duke.

Based on the foregoing, the Commission concludes that the appropriate adjustment to end-of-period revenues for customer growth is $13,235,359. The Commission further concludes that the appropriate customer growth adjustment to kWh N.C. retail sales is 211,178,000 kWhs.

The Public Staff proposes a weather adjustment which increases test year revenue by $10,286,000. Witness Evans testified that his methodology involves constructing a 95% confidence band around the mean of the weather variable. Weather which falls outside the confidence band would be considered abnormal and would require an adjustment.

Witness Stimart testified that the Company's methodology adjusts actual kilowatt-hour sales to the kilowatt-hour sales that would have been achieved had the most probable temperature over the last 20 years been achieved during the test period. Witness Stimart indicated that this methodology has been used by Duke in the last seven general rate cases and that use of a consistent methodology over time is desirable because it will even out the effects of temperature variances. Witness Stimart noted that the same methodology is used by the Company for other proceedings affected by weather normalization. Witness Stimart further stated that the Public Staff's new methodology was improper because it will result in adjustment only for extreme weather and is no more reliable as a cut-off point for abnormal than any other point.

The Commission concludes that the long-standing methodology employed by the Company in general rate cases and other proceedings, and previously adopted by the Commission, is reasonable and should be used in this proceeding. Therefore, the Commission concludes that the Public Staff's weather adjustment is improper and that the proper weather adjustment to N.C. Retail kWh sales is 578,230,000 kWhs.

The next adjustment proposed by the Public Staff and Attorney General relates to the effect the revenue changes proposed herein have on the level of North Carolina gross receipts tax. Since the Commission has not accepted the revenue level proposed by any party, the Commission must make its own adjustment to end-of-period revenues to reflect the gross receipts tax rate. The Commission determines that the appropriate adjustment to the Company's filed revenue level is $65,000.

The Attorney General, CIGFUR, and Wells Eddleman also proposed adjustments to test year revenue based on the exclusion of Catawba from rate base. The Commission has rejected these positions and must reject the related revenue adjustments.

Based on the foregoing, the Commission concludes that the appropriate level of end-of-period operating revenues under present rates for use in this proceeding is $1,732,580,000.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 18 AND 19

The evidence pertaining to the level of test year operating revenue deductions was presented by Company witness Stimart, Public Staff witnesses Hoard, Lam, and Carrere, Attorney General witness Wilson, CIGFUR witness Falkenberg, and Wells Eddleman, representing himself. The Company proposed total operating revenue deductions of $1,496,774,000. The Public Staff's adjustments would lower revenue deductions to $1,446,911,000 and the Attorney General's adjustments would lower revenue deductions to $1,321,986,000. The differences between the Company, the Public Staff, and Attorney General are summarized below:

	(000's) Company	Public Staff	Attorney General
O&M Expenses			
Fuel used in electric generation	$ 425,390	$ 415,803	$ 418,915
Purchased power and net interchange	203,035	136,117	(2,283)
Other O&M expenses	384,517	364,518	348,311
Depreciation and amortization	206,561	195,070	143,916
Taxes other than income taxes	98,308	98,289	97,221
Interest on customer deposits	481	481	481
Income taxes	188,464	247,269	327,027
Amortization of ITC	(9,982)	(10,636)	(11,602)
Total operating revenue deductions	$1,496,774	$1,446,911	$1,321,986
Total difference		$ (49,863)	$ (174,788)

Many of the proposed adjustments to operating revenue deductions relate to positions which have been previously considered and rejected in this Order by the Commission. For example, the Commission has rejected the Public Staff's proposal to disallow the 1982 NCMPA amendments and the Attorney General's

proposal to disallow Catawba Unit 1. Having rejected these proposals, the Commission must necessarily reject the related accounting adjustments to operating revenue deductions. In the discussion below of the differences between the parties, the Commission will not repeat rulings with respect to these adjustments. The remaining differences not related to already rejected proposals will be discussed below.

The three categories of O&M expenses are fuel, purchased power and net interchange, and other expenses. The Commission will discuss each area separately.

Under the Evidence and Conclusions for Finding of Fact No. 14, the Commission determined the Company's appropriate end-of-period level of fuel expense to be $414,017,000. Therefore, the fuel levels presented by all parties are rejected.

The next area of difference between the parties is purchased power and net interchange. The differences between the Company, the Public Staff, and Attorney General with respect to purchased power and net interchange expense are summarized below:

PURCHASED POWER AND NET INTERCHANGE
(000's)

Company	$203,035	$203,035
Public Staff	136,117	
Attorney General		(2,283)
Difference	$(66,918)	$(205,318)

	Public Staff	Attorney General
Adjustments		
1. Reduction in required overall rate of return		
a. Intervenor reduction of ROE to 14.00%	$ (5,501)	
2. Elimination of NCMPA renegotiations		
a. Allocation difference	2,782	
b. Disallowance of McGuire Article 11	63	
c. Effect on Catawba Unit 1 annualization	(39,305)	
d. Effect on fuel factor	(407)	
3. Removal of portion of McGuire	327	
4. Reduction of Catawba Unit 1 costs		
a. Errors in calculations	(87)	
5. Levelization of purchased capacity	(26,143)	
6. Reduction of proposed fuel factor	1,353	$ 3,866
7. Elimination of Catawba Unit 1		
a. Allocation difference		17
b. Other		(209,201)
Total difference	$(66,918)	$(205,318)

The first area of disagreement between the Company and the Public Staff regarding the non-fuel Catawba purchased power expenses concerns the appropriate return on equity to be used in calculating the capital cost component of the Catawba purchased capacity charge. The Company included in its calculation of the capital cost component of the Catawba purchased capacity charges the return on equity granted by the Commission in the Company's last general rate case, Docket No. E-7, Sub 373. The Public Staff included a weighted return on equity based on four months of the Sub 373 return on equity and eight months of the Public Staff's proposed return on equity in this docket. This weighted return is the return that will be in effect for the contracts during the fiscal year ended August 31, 1986, which represents approximately the first 12 months that rates approved herein will be in effect.

The Public Staff contends that the return on equity granted in the last rate case is applicable only through the end of calendar year 1985 and that the appropriate return on equity to include in the capital cost should reflect both the Sub 373 return and the return granted in this case. Public Staff witness Hoard testified that the Interconnection Agreements established the allowed rate of return on common equity as the ceiling for the return on equity charged Duke by the Buyers. Witness Hoard stated that, "it is apparent from reading these sections of the Agreements (Section IC-II-16 of the NCMPA & PMPA Agreements and Section IC-II-12 of the NCEMC Agreements) that the most Duke would be required to pay these Buyers for any calendar year would be the return on investment which this Commission allows."

Company witness Stimart, during his rebuttal cross-examination, acknowledged that, if the Public Staff's recommended return on equity was allowed by the Commission, the weighted return calculated by witness Hoard would result.

Based on the foregoing and Finding of Fact No. 21 concerning the reasonable rate of return on common equity in this proceeding for Duke Power Company, the Commission finds it appropriate to adjust the capital cost portion of the Catawba purchased capacity charge to reflect a weighting of the Sub 373 allowed return and the allowed return in this case.

The second area of disagreement between the purchased power costs supported by the Company and the Public Staff, respectively, concerns the Public Staff's adjustments to restate the NCMPA contract and to restate Duke's cost of service as the result of Article 11. The Commission has rejected these adjustments elsewhere herein in this Order and therefore concludes that the effects of these adjustments should not be allowed here.

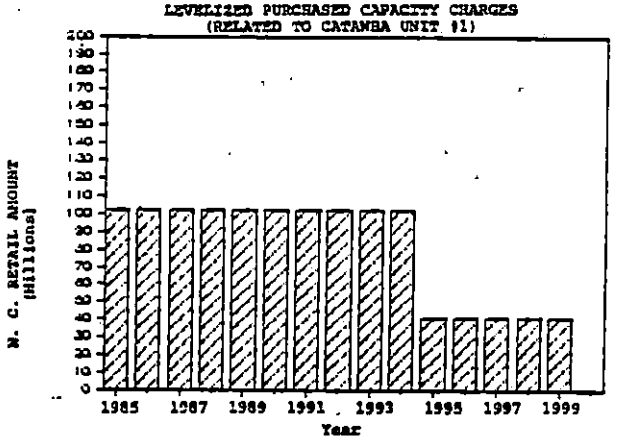
The third area of disagreement concerns the appropriate return on unamortized nuclear fuel which should be included in the calculation of the nonfuel energy O&M portion of the energy charge. The Company used the pre-tax overall return granted by the Commission in the Company's last rate case, Docket No. E-7, Sub 373; whereas the Public Staff, in its proposed order, used a weighted pre-tax overall return, comprised of four months of the Sub 373 return and eight months of its return recommended herein. The treatment accorded this return is consistent with the treatment the Public Staff accorded the return on equity in its calculation of the capital component of the purchased capacity charge.

The Interconnection Agreements outline the calculation of return and taxes associated with unamortized nuclear fuel investment in Exhibits IC-III-2 and IC-I-23. Exhibit IC-I-23 addresses the appropriate composite cost of capital to be applied to the investment. According to Note E of that Exhibit, the capital structure to be used in establishing the overall rate is to be determined in conformance with the methodology used by the Commission in its most recent rate Order. In addition, Exhibits IC-I-24 through 28 prescribe methods for determining the embedded cost of capital associated with long-term debt and preferred stock and the actual earned return on common equity. Although there are differences between the calculations outlined in the Interconnection Agreements and those made by the Commission, an appropriate proxy for the return on unamortized nuclear fuel is the pre-tax overall return calculated by the Commission.

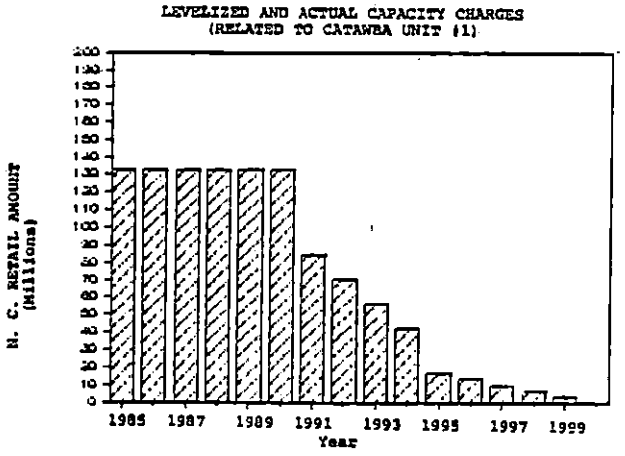
The Commission finds, based upon a careful review of the contracts and the evidence presented regarding the appropriate return on common equity to be included in purchased capacity charges, that the appropriate return on unamortized nuclear fuel should be based on a weighting of the pre-tax overall returns granted in Docket No. E-7, Subs 373 and 391. Therefore, this Commission concludes that the appropriate rate of return on unamortized nuclear fuel is 19.36%.

The only adjustments to nonfuel Catawba purchased power expense which have not been decided by the Commission are the proposals of the Public Staff and CIGFUR to levelize the payments made by the Company regarding purchased power from the Catawba Purchasers under the Catawba Sale Agreements. The Commission has previously determined that the Catawba Sale Agreements are reasonable and prudent and that the Compay's purchased power costs thereunder should be included in the cost of service. CIGFUR witness Falkenberg proposes a levelization based on Catawba's being excess capacity and reflecting misinterpretations of the Catawba Sale Agreements. The Commission cannot accept witness Falkenberg's calculations since they are based on positions previously rejected in this Order.

Public Staff witness Hoard discussed two possible levelization plans in his testimony. Both levelization plans witness Hoard discussed were based on his calculation of the reasonable capacity (capital and demand O&M) charges for Duke from the Catawba Buyers over the levelization period. One levelization plan discussed by witness Hoard was to levelize the reasonable purchased capacity charges over the term of the buy-back. Below is a graph which depicts the Public Staff's annual North Carolina retail purchased capacity charges under this plan, based on the Public Staff's recommended level of expenses:

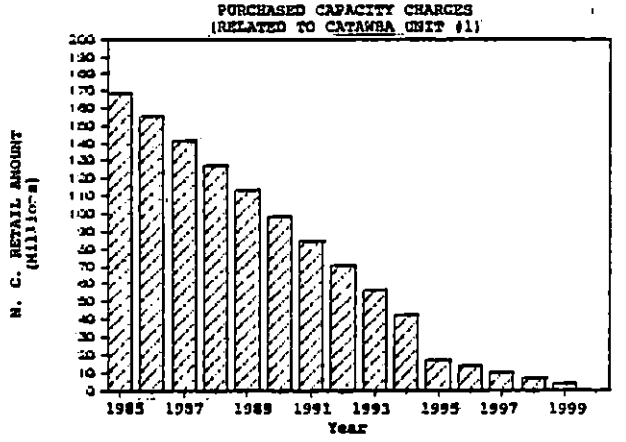


The other levelization plan discussed by Public Staff witness Hoard was to levelize the first five years of reasonable purchased capacity charges. A graph of this levelization plan based on the Public Staff's recommended level of expenses is presented below.



Witness Hoard pointed out two very significant advantages which result from his levelization plans. The first advantage pointed out by witness Hoard was that levelization would reduce the relative frequency of rate adjustments necessary to reflect the annual reductions in Duke's Catawba buy-back

requirements. The other advantage was that levelization would moderate present revenue requirements. Both of these advantages can be explained by comparing the graph shown below, which presents the Public Staff reasonable purchased capacity charges without levelization, as determined by the Public Staff, to the previously presented graphs depicting witness Hoard's proposed levelization plans.



The purchased capacity charges without levelization are much higher in the early years of the buyback than they would be with either of witness Hoard's proposed levelization plans.

Witness Hoard's ultimate recommendation to the Commission, regarding the appropriate levelization plan, was the plan which involved the levelization of the first five years of reasonable Catawba purchased capacity charges. However, this recommendation was premised on acceptance by the Commission of all the other Public Staff adjustments.

Duke witness Lee testified that the Company considered the advantages and disadvantages of a levelized approach to recovery of the purchased power costs. Witness Lee stated that the basic advantage of a levelization is that customers would pay less in the short term and rate shock would be avoided. The Company chose not to propose levelization for several reasons: (1) customers would pay more in the long run because of the carrying costs on a deferred account; (2) after an initial increase in rates, there would probably be a period of rate stability with smaller or fewer increases; (3) a phase-in gives customers the wrong price signal; i.e., that the cost of electricity is lower than it actually is; (4) since future Commissions are not bound by current Commission Orders, there is uncertainty with respect to future Commissions continuing the recovery of revenue which exceeds the then current cost of service; (5) there are uncertainties in the accounting profession over the validity of a deferred account as an asset; and (6) there is the legal uncertainty arising because the Commission would be ordering rates that are lower than the cost of service for today's customers and higher than the cost of service for future customers.

Public Staff witness Hoard acknowledged on cross-examination that under his levelization proposal, Duke's revenues would recover less than its actual cash payments in the early years and more than its cash payments in the later years of the levelization period. The amounts not recovered in the early years would be reflected in a deferred account.

Witness Lee also testified that the Catawba Sale Agreements were in reality an innovative financing tool which enabled Duke Power Company to complete construction of Catawba during times when the Company's financial condition would not enable it to secure capital on reasonable terms. An essential element of this arrangement is the buy-back provision. Under the terms of the Catawba Sale Agreements, Duke makes payments to the other owners on a declining basis over the next 15 years. This feature, which allows the buyers to gradually assume their interest in Catawba, created the economic feasibility which enabled the Catawba Nuclear Station to be financed and constructed. Duke will make payments to the Catawba Purchasers during the next 15 years. The Commission must determine whether all or any portion of these capacity payments should be levelized over a period of years, or whether such capacity payments should be reflected in the cost of service as they are paid.

The Commission has carefully weighed the competing considerations with respect to levelizing these capacity payments. The buy-back provisions are financial payments by the retail customers which made the Catawba Sale Agreements possible. The buyers of Catawba are taking the largest share of the most expensive electricity which will be generated on the Duke system for the foreseeable future. Their share is three-fourths and the buy-back which the retail customers in North and South Carolina will pay is only about one-fourth. This financing is in the nature of a capital payment rather than one for purchased power because, as Mr. Lee testified, the flow of electricity from Catawba is unaffected by the buy-back provisions. Further, as Witness Stimart testified, this is a financial benefit to retail customers. Catawba Unit 1 is needed to meet the load of the entire Duke system (the retail, Catawba buyers, and conventional wholesale customers). Catawba will meet that load during and after the buy-back is completed. The buy-back does not play the role of actually supplying electricity. Its role is to allow the municipals and cooperatives to purchase Catawba.

Since the Catawba sale is in reality a financing mechanism, it makes sense to levelize the Company's capacity capital costs and give rate stability for the period of the buy-back. The determination by the Commission that it is reasonable to allow a change in the timing of the recovery of certain of Duke's buy-back costs should not, in any way, be read as an implication that the Catawba Sale Agreements are not beneficial to the Company's North Carolina retail customers. Instead, such levelization will serve to better align present and future customer payment responsibilities with the benefits which flow from the buy-back arrangements over the lives of those contracts. Since the Public Staff has recommended that the Company receive a return on the deferred balance during the levelization period, there is no question that the Company will ultimately receive all revenues to which it is entitled. It is merely the timing of the recovery that is at issue. The Commission's authority and discretion over the timing of expense recovery is sanctioned by long-standing practice in such areas as depreciation and amortization of expenses and others.

In addition, the Commission is of the opinion that levelization of Duke's nonfuel Catawba purchased power capacity capital costs over the lives of the applicable contracts is in the nature of a pro forma normalization adjustment designed to reasonably include such expenses in the Company's cost of service for rate-making purposes in an equitable manner to both Duke and its North Carolina retail ratepayers and to also reasonably apportion such expenses for rate-making purposes between the Company's present and future retail ratepayers who will receive the benefits of the sale of Catawba Unit 1 over the lives of the contracts.

Thus, the Commission concludes the purchased power capacity capital costs from Catawba Unit 1 should be reflected in Duke's cost of service levelized over the lives of the applicable contracts and that the appropriate amount of Catawba payments to be included in purchased power expense in this case is $149,948,000. The Commission concludes that this rate-making adjustment does not result in any unreasonable preference or advantage to either present or future ratepayers of Duke Power Company for all of the reasons set forth hereinabove and that such adjustment is, therefore, entirely fair and reasonable. Annual demand O&M and fuel charges, which are by their very nature more variable than capacity capital charges, will not be levelized, but will be included in the cost of service as proposed by Duke. The difference between the amount included in purchased power expense and Duke's actual capacity capital payments should be placed in a deferred account and should accrue carrying costs at the Company's existing AFUDC rates. Said carrying costs are compounded as of the end of the first calendar year. This accounting treatment is fair to both Duke Power Company and its North Carolina retail ratepayers since the Company will be allowed to accrue a fair and reasonable return on the deferred balance and consumers will realize the benefits of a moderated present revenue requirement which will avoid rate shock and hopefully lead to a long period of relative rate stability.

In order to derive the total purchased power and net interchange for use in this proceeding, the Commission must reduce the Catawba payments of $149,948,000 by the per books net nonfuel credits of $6,166,000. To this amount, the Commission concludes that the nuclear fuel disposal costs related to the net Catawba purchases should be added. This amount, consistent with the methodology employed by Public Staff witness Hoard, is $2,867,000.

Based in all the foregoing, the Commission concludes that the appropriate level of purchased power and net interchange to be used in this proceeding is $146,649,000.

The differences between the Company, the Public Staff, and Attorney General with respect to other O&M expenses are summarized below:

	Other O&M Expenses (000's)	
Company	$384,517	$384,517
Public Staff	364,518	
Attorney General		348,311
Difference	$(19,999)	$(36,206)

Adjustments	Public Staff	Attorney General
Disallow 1982 NCMPA amendments:		
- allocation differences	3,815	
- additional portion of McGuire removed from cost of service	(1,041)	
Remove a portion of McGuire from cost of service	(5,376)	
Reduce adjustment for expanding work activities:		
- disallow Co.'s expense growth adjustment	(7,816)	(7,816)
- Staff's employee growth adjustment	(1,337)	
- Staff's expense growth adjustment	1,200	
- new weather adjustment methodology	(732)	
Disallow attrition	(3,337)	(14,475)
Amortize NFDC and breeder reactor reserve over 12 months instead of 15 months	(5,504)	(4,310)
Eliminate return on NFDC refund	1,220	
Eliminate payments made for TMI	(727)	(727)
Eliminate expenses of corporate affairs department	(68)	
Eliminate 40% of EEI dues	(140)	
Eliminate a portion of officers' salaries	(156)	
Eliminate Catawba Unit 1:		
- allocation differences		(1,313)
- Catawba O&M expenses		(3,890)
Eliminate annualization of test year inflation		(3,675)
Total adjustments	$(19,999)	$(36,206)

The Public Staff and Attorney General propose to reduce O&M expenses through a number of additional adjustments other than those related to the Article 11 and NCMPA adjustments rejected elsewhere herein.

The first three items of difference to be discussed here are interrelated. The Company proposed an adjustment of $7,816,000 to increase nonfuel O&M for test-period growth in expenses other than growth caused by inflation and wage increases. The adjustment was computed by multiplying test year nonfuel O&M expense by a growth factor of 2.16%. The 2.16% was calculated by averaging the end-of-period percentage increases for employees (2.8%), customers (1.41%), and kWh sales (2.27%). 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. Additionally, the Attorney General rejected the Company's expense growth adjustment.

The Company's O&M growth is based on a composite growth factor of 2.16% which in turn is based on the simple average test year growth in customers, employees, and kWh sales. This growth factor was applied to the Company's expenses without consideration of the specific cost items which would change due to increased kWh sales, customers, and employees. The Public Staff asserts that only energy-related expenses should vary in proportion to kWh used, only customer-related expenses should change due to additional customers, and only employee expenses should change due to additional employees.

The Public Staff has proposed adjustments to O&M expenses to reflect (1) changes in kWh sales due to customer growth and weather normalization, (2) changes in customer-related expenses due to customer growth and (3) changes in wages and benefits of $(1,337,000) to reflect the end-of-period level of employees.

The Public Staff adjustment to O&M expenses to reflect changes in kWh sales due to weather normalization and customer growth is computed by multiplying the Public Staff's net change in test year per book kWh sales by its nonfuel energy-related expense factor. The Public Staff's energy-related expense factor calculation by Public Staff witness Carrere as shown on Exhibit TJC-2, page 2 of 2, utilizes nonfuel energy-related production expenses and an allowance for administrative and general expenses applicable to those energy-related production expenses. Public Staff witness Carrere calculated total nonfuel energy-related expenses per kWh to be .18376¢/kWh.

The Public Staff applies the nonfuel energy-related expense factor of .18376¢/kWh to its net North Carolina retail sales adjustment of (164,745,000) kWh for customer growth and weather normalization resulting in an adjustment to nonfuel O&M expenses of $(303,000).

The Public Staff's customer-related expense factor calculation, by Public Staff witness Carerre shown in Exhibit TJC-2, page 1 of 2, 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. Witness Carerre calculated total customer-related expenses per bill to be $4.677. Based on the adjustment to billings of 164,895 proposed by the Public Staff and the factor of $4.677 results in an adjustment to customer-related expenses of $771,000.

The Public Staff's adjustment to reflect changes in wages and benefits due to growth in employees during the test year was computed by annualizing the monthly net change in wages which occurred each month during the test year due to changes in the number of employees and then deducting energy and customer-related wages in arriving at the net adjustment for employee growth of ($1,337,000).

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.

Dr. Wilson testified that the Company's proposed growth rates have no realistic application in this case because each growth factor contains inherent inconsistencies.

Based on the foregoing evidence, the Commission concludes that the Company's expense growth adjustment should be rejected for the reasons generally given by the Public Staff and the Attorney General. The Commission further concludes that O&M expenses (excluding fuel) should be adjusted for (1) changes in nonfuel energy-related expenses to reflect changes in kWh sales due to customer growth and weather normalization, (2) changes in customer-related expenses due to changes in the number of customers, and (3) changes in wages and benefits due to changes in the level of employees, based on the procedures proposed by the Public Staff, because such procedures more accurately recognize the appropriate elements included in costs associated with the changes in kWh sales, customer billings, and employee levels. However, since the Commission has adopted different kWh levels resulting from customer growth and weather adjustments, the methdology approved herein must be applied to the Commission's level of kWh change for customer growth and weather.

In summation, the Commission concludes that the following adjustments to the Company's other O&M expenses are appropriate to reflect growth in kWh sales, customers, and employees:

(000s Omitted)

Item	Amount
Reversal of Company's growth adjustment	$(7,816)
Employee growth	(1,315)
Customer-related expenses due to customer growth	771
Nonfuel energy related expenses due to weather normalization and customer growth kWh sales	(675)
Total	$(9,035)

The Public Staff and Attorney General propose to remove from O&M expenses the effect of the Company's adjustment for post-test year inflation. Witness Stimart testified that the Company adjusted O&M expenses to account for the realities of an expanding business.

In its original filing, the Company made an adjustment to increase its North Carolina retail other O&M expenses by $11,138,000 in order to provide for forecasted annual inflation occurring after the test year. In his testimony on cross-examination and his rebuttal testimony, Company witness Stimart testified that the Company had experienced wage increases occurring after the test year of $11,138,000 including fringe benefits and taxes.

The Public Staff included the $11,138,000 for the North Carolina retail wage increase occurring after the test year, after consideration of the proper cost of service allocation factors accepted by the Commission elsewhere herein. Public Staff witness Hoard then applied the $11,138,000 North Carolina retail

amount as a direct offset to the inflation adjustment originally proposed by witness Stimart. The Public Staff recommends that the residual amount of $3,337,000 be eliminated from operating revenue deductions since there are not specific items of cost supporting the amount.

The Commission has considered the evidence in this regard and does not believe that it is appropriate to make a specific adjustment to compensate for projected attrition beyond that reflected in the accounting and pro forma adjustments which the Commission has adopted for use herein. The Commission finds it proper, however, to include the wage increases occurring subsequent to the test year and before the close of hearing in other O&M expenses. Based on the foregoing, the Commission has reduced the Company's other O&M expenses by $3,337,000, which represents the residual of the Company's adjustment for inflation occurring after the test year.

The next area of difference relates to the Public Staff's using a 12-month amortiztion period to refund overcollected nuclear fuel disposal costs. The record is clear that the length of amortization period is one that must be weighed carefully by the Commission with due consideration to each issue and its unique circumstances. Therefore, the Commission concludes that the Company's proposed amortization period of 15 months is appropriate for use in this proceeding in amortizing refunds related to nuclear fuel disposal costs.

The Public Staff presented an adjustment in its proposed order to remove carrying costs associated with the unamortized balance of the nuclear fuel disposal costs refund. Consistent with our decision to include a return in the levelization adjustments approved elsewhere herein, the Commission concludes that carrying costs should also be calculated on the unamortized balance of the nuclear fuel disposal costs refund.

The next item of difference relates to the cleanup costs associated with Three Mile Island. Public Staff witness Hoard testified that Duke included, in its North Carolina retail O&M expenses, the costs associated with the Company's contribution to the TMI cleanup. Attorney General witness Wilson pointed out the Company's direct contradiction of the Commission's Orders in Docket Nos. E-7, Sub 358 and Sub 373, in that the Company has again, in this docket, included the TMI cleanup costs as an expense for rate-making purposes.

The Commission notes that the TMI cleanup cost accrual was disallowed in Docket Nos. E-7, Subs 358 and 373. The disallowance in Sub 358 was based on the uncertainty concerning the amount, the timing, and the actual incurrence of the expense. In Sub 373 the Commission again disallowed this expense, noting 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."

Public Staff witness Hoard in this case (and in Sub 373) presented the following reasons for disallownace of the TMI cleanup costs as an operating expense for rate-making purposes:

(1) The unfairness of requiring North Carolina retail ratepayers to pay for an accident which occurred in another jurisdiction,

(2) Duke's ratepayers are already required to pay over $15 million annually for nuclear property and replacement power insurance premiums begun since the TMI acccident, and

(3) Numerous TMI-related modifications which have been made to Duke's nuclear plants at the expense of the ratepayers.

The Commission has again reviewed the arguments of the various parties in this proceeding and continues to conclude that the amounts presented by the Company for the cleanup cost associated with the TMI accident are not properly includable in test-period operating expenses. In conclusion, the Commission finds that North Carolina retail ratepayers should not be required to bear the cost responsibility for the TMI cleanup expenses. Therefore, the Company's test year O&M expenses should be reduced by $727,000 to reflect the removal of TMI cleanup expenses.

The next area of difference between the Company and the Public Staff is a $140,000 adjustment reflecting disallowance of a portion of Edison Electric Institute dues. Public Staff witness Hoard stated in his testimony that after reviewing NARUC interrogatories, EEI's budget, test year advertising, and various newspaper and magazine articles, as well as Commission decisions in other jurisdictions, his recommendation to disallow 40% of EEI dues was not unreasonable. Company witness Stimart, in his rebuttal testimony, stated that EEI dues were reasonable and prudent and that the Public Staff has not presented any evidence to show that EEI dues were unreasonable. The Company has failed to carry the burden of proof necessary to show in this case that the portion of EEI dues which witness Hoard eliminated should be included in the cost of service for rate-making purposes. Therefore, the Commission finds that the $140,000 adjustment proposed by witness Hoard to eliminate a portion of EEI dues is appropriate. Consistent with its recent ruling in Docket No. E-2, Sub 481, the Commission concludes that it is proper to also require Duke to present in its next general rate proceeding information which will show all direct and indirect contributions to and through EEI from source and all expenditures by program and by system of accounts, thus allowing the Commission to specifically determine the appropriateness of all such expenditures for rate-making purposes.

The next item of difference concerns an adjustment of $69,000 to eliminate from operating revenue deductions salary 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 a registered lobbyist for the Company. Consistent with the previous decision of the Commission in Docket No. E-7, Sub 373, regarding lobbying activities, the Commission concludes that the appropriate rate-making amount for this item is $34,000. This adjustment will require Duke's shareholders to bear a reasonable portion of the Company's lobbying expenses, while still recognizing the fact that the employee in question is also a member of the Company's Executive Committee involved in the daily operations of the Company.

The next item of disagreement between the Company and the Public Staff is an adjustment that reduces other O&M expenses by $156,000. The Public Staff in making this adjustment excludes 27% of the test year officers' salaries charged by the Company to North Carolina retail ratepayers for the Company's Chief Executive Officer, Chief Operating Officer, and three Executive Vice

Presidents. Since deferred compensation for these officers is already charged "below-the-lines," the net effect is that of charging 50% of such officers' compensation to shareholders. By requiring shareholders to share in this expense, the Public Staff asserts that they become more responsive to seeing that the Company maintains a fair and reasonable level of salaries and ultimately all levels of expenses. The Commission has given this issue much consideration not only in this proceeding but in several other cases which have been decided recently. Therefore, the Commission concludes that the Company's shareholders should bear 50% of the overall compensation of those officers whose functions are most closely linked with meeting the demands of the common shareholders.

Based on the foregoing the Commission concludes that the appropriate level of other O&M expense for use in the proceeding is $371,088,000.

The Company proposes depreciation and amortization expense of $206,561,000. The Public Staff originally reduced this amount by $9,447,000, while the Attorney General reduced this amount by $62,645,000. The differences between the Company's, the Public Staff's original position, and the Attorney General's are summarized below:

	Depreciation and Amortization (000's)	
Company	$206,561	$206,561
Public Staff	197,114	
Attorney General		143,916
Difference	$(9,447)	$(62,645)

Adjustments	Public Staff	Attorney General
1. Elimination of NCMPA renegotiation		
a. Allocation difference	$ 3,337	
b. Disallowance of McGuire Article 11	(1,476)	
c. Effect on Catawba Unit 1 deferred cost	(5,108)	
2. Removal of portion of McGuire	(7,625)	
3. Reduction of Catawba Unit 1 costs		
a. Errors in calculations	(283)	
b. Elimination of return	(2,159)	
c. Change amortization period 12 vs. 15 months	6,660	
d. One-half of common plant	(1,108)	
e. Difference in updates	1,254	
4. Deduction from rate base for deferred taxes beyond the test year	(228)	
5. Annualization of amortization of ITC	(99)	
6. Other Adjustments		
a. Elimination of Eastover Mining Company Costs	(2,261)	(2,261)
b. Amortization of NFDC & Breeder Reactor	(460)	
c. Reduction of Proposed fuel factor	790	
d. Errors in abandonment losses	(681)	
7. Elimination of Catawba Unit 1		
a. Allocation difference		(6,702)
b. Catawba Unit 1 annualization		(5,831)
c. Catawba Unit 1 deferred costs		(26,640)
8. Elimination of abandonment losses and Western Fuel		(24,089)
9. Adjustment for ECS units		2,878
Total difference	$(9,447)	$(62,645)

The Public Staff made various changes related to Catawba deferred costs in the amount of (2,703,000) from the time of its original filing and the filing of its proposed order. Additionally, the Public Staff corrected a computational error related to the Cherokee loss amortization. The Commission shall incorporate discussion on these changes as the chart shown above is addressed.

The differences with respect to depreciation and amortization which have not been decided in this Order relate to Catawba Unit 1 costs, Eastover Mining costs, Cherokee, Perkins, and Western Fuels abandonment losses, and various calculation errors.

The Commission's March 19, 1985, Order authorized the Company to defer the costs and fuel savings related to Catawba Unit 1 during the period between commercial operation and the date the Commission issues a final Order in this docket, net of fuel savings from precommercial operation. The Commission Order indicated that the parties could present evidence at the hearing as to the appropriate level of deferred costs and fuel savings and the appropriate amortization and ratemaking treatment to be given these deferred items. The parties disagree over the appropriate treatment of these deferred costs.

Company witness Stimart testified that the Company estimated the fuel savings, operating costs, purchased power costs, and capital costs between commercial operation and the anticipated effective date of rates authorized by this Order. The Company proposes to amortize these costs, net of fuel savings, over 15 months, the anticipated time that rates authorized in this docket would be in effect. The Company's application and witness Stimart's exhibits were based on commercial operation of Catawba on May 1, 1985, and new rates effective September 1, 1985. Since commercial operation of Catawba did not occur until June 29, 1985, witness Stimart provided updated information based on actual costs, the later commercial operation date, and September 1, 1985, as the effective date for new rates. The Company proposes to base its amortization on this updated cost data.

Public Staff witness Hoard proposed that these deferred costs be amortized over a 12-month period. Witness Hoard also proposed several adjustments to the calculation of these costs. Witness Hoard adjusted the level of purchased power expense based on the Public Staff's position on the 1982 NCMPA amendments, and witness Hoard excludes a return on the unamortized balance of these deferred costs. Additionally, the Public Staff updated the precommercial fuel savings related to Catawba Unit I in its proposed order.

The Attorney General proposes that the Company not recover any of these costs based on the position that Catawba Unit 1 is excess capacity.

CIGFUR witness Falkenberg proposed that these deferred costs, net of fuel savings, be capitalized and collected as a component of CIGFUR's recommended levelized approach to recovery of the buy-back costs. Witness Falkenberg based his recommendation on CIGFUR's position that Catawba is excess capacity. Intervenors C.U.C.A. and Wells Eddleman did not present proposals for treatment of these deferred costs, but it appears, based on their cross-examination of witness Stimart, that both intervenors oppose recovery of these deferred costs.

The Commission has considered the evidence presented by the parties and concludes that Catawba's deferred costs, net of fuel savings, should be reflected in Duke's cost of service. The Commission has previously rejected the position of the Attorney General and CIGFUR that Catawba is excess capacity, and it accordingly rejects their proposed adjustments related to deferred cost. Similarly, the Commission has rejected the Public Staff's position on the 1982 NCMPA amendments and the McGuire exchange and accordingly rejects the Public Staff's proposed adjustments to the level of deferred costs based on these positions. The Commission has previously determined that the Catawba Sale Agreements are reasonable and prudent and that costs incurred by the Company under these agreements should be reflected in cost of service.

However, the Commission deems certain adjustments proposed by the Public Staff to be appropriate. First, the Commission concludes that the appropriate return to be applied to Duke's investment for the deferral period is the return found proper in Docket No. E-7, Sub 373, as proposed by the Public Staff. Second, consistent with the Commission's decision related to investment tax credit amortization found elsewhere in this Order, the Commission concludes that the Public Staff's consideration of annualized investment tax credits related to Catawba I in the cost deferral calculation is appropriate. Third, the Commission has considered the Public Staff's recommended cost of coal per mW, as adopted elsewhere herein, for determining the value of displaced fuel during the deferral period.

There is one other adjustment sponsored by the Public Staff that the Commission has accepted related to Catawba deferred costs. During the hearing, the Company revised downward its estimate of fuel savings related to precommercial operation of Catawba I to be included as a reduction to the Catawba deferred costs in this proceeding. At the hearing, Public Staff witness Hoard accepted this amount, subject to review of the Company's June 1985 monthly financial report. Based on this report, the Public Staff in its proposed order adjusted upward the fuel savings related to precommercial operation of Catawba I to $5,456,000. The Commission concludes that the Public Staff amount of $5,456,000 is the most currently available and accurate amount to be used for Catawba I precommercial fuel savings to be used in the calculation of Catawba deferred costs in this proceeding.

Based on the foregoing, the Commission concludes that the proper level of Catawba deferred costs to be recovered, before consideration of return, levelization, or amortization is $29,867,000, excluding gross receipts taxes.

The Commission further concludes that such deferred costs should be reflected in the cost of service levelized over a period of three years including a return on the deferred balance. A three-year levelization period will serve to lessen the immediate impact of the Catawba deferred costs on the Company's retail ratepayers in order to avoid possible rate shock. In this regard, the Commission is of the opinion that the 12- and 15-month amortization periods proposed herein by the Public Staff and the Company for the Catawba deferred costs are inappropriate and would, in effect, promote rate shock in this proceeding. Thus, a three-year levelization period is appropriate for rate-making purposes in this case.

The next item of difference is the reversal by the Public Staff and Attorney General of the Company's $2,261,000 adjustment related to its loss on the disposition of its Eastover properties.

Company witness Stimart 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 the Company's customers.

Public Staff witness Hoard and Attorney General witness Wilson recommended disallowance of the Eastover loss amortization from the cost of service. Witness Hoard based his recommendation on the Commission's treatment of:

1. Duke's gain on both the 1978 Catawba sales and the 1981 bond-stock swap, which were flowed through to Duke's stockholders,

2. The over $90 million in excess coal prices paid by Duke's North Carolina retail ratepayers for Eastover coal purchased between 1975 and November 1, 1982, and

3. The below the line treatment of Duke's dividends on its Martin County Coal Company preferred stocks.

Witness Hoard testified that it would be inequitable to charge ratepayers for this loss in light of these previous gains which have been flowed through to the Company's stockholders.

Attorney General witness Wilson supported his recommendation 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. Dr. 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.

The Commission has again reviewed the matter of the Eastover loss amortization and concludes that it is inappropriate to charge ratepayers for such loss. Therefore, the Commission has reduced the Company's depreciation and amortization expense by $2,261,000 to eliminate the loss on the sale of the Eastover properties. This decision is consistent with its previous decisions in Docket Nos. E-7, Sub 338 and Sub 373.

Another issue of difference relates to the Clinch River Breeder Reactor Reserve. Both the Company and the Public Staff, as well as other intervenors, agree that the reserve should be used to reduce the cost of service, thereby passing back to retail customers amounts previously collected. The Company proposes flowing this amount back over 15 months; whereas both the Public Staff and Attorney General favor a 12-month flow through.

Consistent with our conclusion concerning the appropriate amotization period for the nuclear fuel disposal costs refund, the Commission for the same reasons concludes that a 15-month amortization period is reasonable and appropriate for use herein.

The Attorney General and Wells Eddleman have proposed to discontinue the amortization for Cherokee and Perkins Nuclear Stations and Western Fuels. Company witnesses Lee and Stimart testified that these amortizations should continue to be included in cost of service. The Commission first recognized the amortization of Perkins accumulated expenditures as a reasonable operating expense in 1982 in Docket E-7, Sub 338. Subsequently, in Docket E-7, Sub 358, the Commission again recognized the amortization of Perkins as a reasonable operating expense, and included the amortization of the Cherokee plant as a reasonable operating expense.

In the Commission Order granting Duke a certificate of public convenience and necessity to build the Perkins Nuclear Station and in our 1977, 1978, and 1979 "Analysis of Long Range Needs for Electric Generating Facilities" pursuant to G.S. § 62-110.1, the Commission determined that the Cherokee and Perkins

Nuclear Stations were needed on the Duke system and that nuclear was the most economical base load generation for the future. The expenditures for Perkins were small compared to Cherokee since Duke did not receive a timely construction permit from the Nuclear Regulatory Commission to build Perkins. After it was determined that the need for Perkins was beyond a reasonable planning horizon, Duke cancelled Perkins and the Commission allowed spent costs to be amortized over a five-year period in Docket No. E-7, Sub 338.

Cherokee Units 2 and 3 were cancelled in late 1982, and Cherokee 1 was cancelled early in 1983. Duke sought amortization of Cherokee costs in Docket No. E-7, Sub 358. The Commission conducted a careful examination and received extensive evidence as to the appropriate amortization period in the hearing in Docket No. E-7, Sub 358. During that hearing the Attorney General offered the April 1983 Department of Energy (DOE) report entitled "Nuclear Plant Cancellations: Causes, Cost and Consequences" as an exhibit. The Attorney General took the position in that proceeding that the appropriate amortization period should be 15 years. The Commission selected a 10-year period because the DOE report showed that 10 years were the most commonly used period of amortization by the various regulatory commissions which had considered the matter, and that by using a 10-year period without any carrying cost on the unamortized balance, the cost of cancellation would be shared in the following manner: 30% to ratepayers, 30% to stockholders, and 40% to the taxpayers. This approach seemed fair and reasonable at that time and based on the extensive testimony by witnesses Lee and Stimart in this docket, the Commission continues to be of that opinion.

Attorney General witness Wilson contends that no recovery of sunk costs of Perkins and Cherokee should be allowed because they provide no service to Duke's customers. Witness Wilson misses the reason for the allowance of these costs as reasonable operating expenses. The decisions to build these plants were prudent when made and were only made to serve the needs of Duke's customers at a future time. This is consistent with Duke's public service obligation to provide adequate electric service. The decision to cancel these plants was likewise prudent, because at a later time it was reasonably determined that they were not needed because of changes in load forecasts, or the cost of providing the needed generation on Duke's system could be met by a less costly alternative. This was clearly shown in Duke's report entitled "Future Generation Alternative Study" which was the basis for Duke's decision to cancel Cherokee Unit 1. That study was a part of the record in Docket No. E-7, Sub 358. When the decision to build a future generating plant is prudent and when the decision to cancel a plant is also prudent, it is reasonable and necessary that the sunk costs should be recovered by the Company in a fair and equitable manner. This is what the Commission did in Docket No. E-7, Sub 358, and nothing in this record indicates that a different course of action should be taken in this proceeding. The Commission concludes that expenses reasonably incurred for the benefit of the ratepayer are properly includable in the Company's operating expenses and should be included in the Company's cost of service which is consistent with the Uniform System of Accounts adopted by this Commission. Therefore, the Commission will reject the intervenors' adjustments which discontinue the reasonable and appropriate amortization of abandonment losses.

Finally, CIGFUR witness Falkenberg proposes an adjustment which would reduce depreciation expense. Witness Falkenberg contends that the depreciation

life of Duke's nuclear stations should be longer since plant life is longer than the Company's depreciation period.

Company witness Stimart testified that the two primary factors to consider in setting a depreciable life of a nuclear station are (1) the term of the NRC license and (2) the useful life of the component parts of the plant. Witness Stimart stated that the composite depreciable life of all components at a nuclear station will be substantially lower than the license life because of the shorter useful life of many of the components. In addition, the Company's 4% depreciation rate covers both the original cost of the plant, as well as the expected cost of decommissioning.

Witness Falkenberg stated on cross-examination that his depreciation rate was calculated ignoring the decommissioning cost component of depreciation; that he did not have a study or analysis of the impact of decommissioning costs on his proposed depreciation rate; and that estimates of decommissioning costs are increasing which suggests that the decommissioning cost component of depreciation expense is increasing.

The Commission concludes that it should reject witness Falkenberg's recommendation to reduce depreciation expense.

Based on the foregoing review of the evidence, the Commission concludes that the appropriate level of depreciation and amortization expense for use in this proceeding is $188,892,000.

The Company proposes $98,308,000 as the appropriate level of taxes other than income taxes. The Public Staff proposes $98,289,000, and the Attorney General proposes $97,221,000. The differences between the Company, the Public Staff, and Attorney General are summarized below:

	Taxes Other than Income Taxes (000's)	
Company	$98,308	$98,308
Public Staff	98,289	
Attorney General		97,221
Difference	$ (19)	$(1,087)

Adjustments	Public Staff	Attorney General
1. Elimination of NCMPA renegotiation		
a. Allocation difference	$ 535	
b. Disallowance of McGuire Article 11	(159)	
2. Removal of portion of McGuire	(819)	
3. Revision of weather normalization method	617	
4. Increase in test period # of customers	197	$ 100
5. Adjustment to gross receipts tax	(390)	(82)
6. Elimination of Catawba Unit 1		
a. Allocation difference		(456)
b. Other		(719)
7. Change in customer growth adjustment for kwh sales to existing customers		70
Total difference	$ (19)	$(1,087)

Each of these proposed adjustments relates to contentions which have been considered elsewhere in this Order by the Commission. Therefore, the Commission concludes that the appropriate level of taxes other than income taxes for use in this proceeding is $98,379,000, based on the Commission's decisions found in this entire Order.

The Company proposes income taxes of $188,464,000. The Public Staff originally proposed $251,908,000, and the Attorney General proposed $327,027,000. The differences between the Company and the Public Staff and Attorney General are summarized below:

	Income Taxes (000's)	
Company	$188,464	$188,464
Public Staff	251,908	
Attorney General		327,027
Difference	$ 63,444	$138,563

Adjustments	Public Staff	Attorney General
1. Reduction in required overall rate of return		
a. Intervenor reduction of ROE to 14%		
1. Effect on buy-backs	$ 2,709	
b. Intervenor increase in long-term debt ratio	(2,729)	$ (1,646)
c. Intervenor decrease in cost of long-term debt		501
2. Elimination of NCMPA renegotiation		
a. Allocation difference	(5,245)	
b. Other	20,399	
3. Removal of portion of McGuire	5,399	
4. Reduction of Catawba Unit 1 costs	(1,962)	
5. Elimination of Catawba Unit 1		
a. Allocation difference		3,920
b. Catawba Unit 1 annualization		84,964
c. Catawba Unit 1 deferred costs		13,118
6. Elimination of abandonment losses and Western Fuel		145
7. Adjustment for interest synchronization		
a. Lower Rate Base	5,792	5,067
b. Interest imputation to deferred investment tax credits		(4,744)
8. Income taxes on other differences @ 49.24%	39,081	37,238
Total difference	$63,444	$138,563

The Public Staff changed its level of recommended income taxes in its proposed order, consistent with other changes in said document.

Each adjustment to income taxes proposed by the Public Staff and Attorney General is related to a position or contention that has been considered by the Commission elsewhere herein in this Order, except for Item 7b relating to the tax effect of interest synchronization. Attorney General witness Wilson reduces income taxes in cost of service by imputing an interest deduction based on investment tax credits in the income tax calculation. His support for this adjustment is a proposed rulemaking issued June 21, 1985, by the IRS stating that this adjustment to tax expense will not be a violation of the IRS normalization rules for investment tax credits.

Witness Stimart testified that this rulemaking is just a proposal at this time that may or may not be adopted by the IRS and that if the Commission

accepts Dr. Wilson's adjustment and this rulemaking is not adopted by the IRS, the Company will be in violation of the IRS normalization rules and will be subject to the loss of investment tax credits, thereby increasing cost of service.

The Commission finds that the Company's filing on this matter is consistent with our past decisions and with the 1983 North Carolina Court of Appeals decision regarding this matter in State ex rel. Utilities Commission v. Carolina Telephone, 61 N.C. App. 42 (1983). Therefore, the Commission rejects the adjustment proposed by Dr. Wilson. However, the Commission notes that the proper level of interest to be used in computing income taxes, and based on the Company's treatment for invesment tax credits, should be that associated with the capital structure found to be proper elsewhere herein.

The Commission concludes that the appropriate level of income taxes as an operating revenue deduction for use in this proceeding is $237,516,000, based on all of the Commission's decisions discussed in this Order.

The chart set forth below shows the level of amortization of ITC proposed by the Company and the Public Staff and Attorney General:

	Amortization of ITC (000's)	
Company	$(9,982)	$(9,982)
Public Staff	(10,636)	
Attorney General		(11,602)
Difference	$ (654)	$(1,620)

Adjustments	Public Staff	Attorney General
1. Elimination of NCMPA renegotiaton		
a. Allocation difference	($123)	
b. Disallowance of McGuire Article 11	33	
2. Removal of portion of McGuire	169	
3. Annualization of amortization of ITC	(733)	($1,620)
Total difference	$(654)	$(1,620)

Items 1 and 2 above relate to adjustments already rejected by the Commission. Item 3 relates to the Public Staff's inclusion of a full year's amortization for investment tax credits associated with McGuire Unit 2 and Catawba Unit 1.

Public Staff witness Hoard adjusted the per books amount of McGuire 2 investment tax credit to reflect a first full year's amount. As witness Hoard explained, "Consistent with my other adjustments to reflect McGuire Unit 2's first year commercial operation effects on fuel expenses, operation and maintenance expenses, depreciation expense, property tax, and income taxes, I recommend an adjustment to reflect a first full year's amortization of McGuire Unit 2 investment tax credits. This adjustment to reflect the first year's amortization of investment tax credit was found proper by the Commission with respect to McGuire Unit 2 in the Company's last rate case, Docket No. E-7,

Sub 373." Witness Hoard recommended an analagous adjustment to the amortization of Catawba Unit 1 investment tax credits.

Attorney General witness Wilson recommended that, in addition to the McGuire Unit 2 ITC amortization, the calendar year 1984 ITC amortization be reflected in the cost of service rather than the June 30, 1984, test year ITC amortization. According to Dr. Wilson, the test year ITC amortization is not a good approximation of the ITC amortization, since it only includes major plant additions for the period January through June 1984. Dr. Wilson explained further that his recommendation would not violate the provisions of the Internal Revenue Code, stating, "since none of the ITC amortization booked in 1984 relates to plant additions occurring after the end of the test year, increasing the test-year ITC amortization to the 1984 level plainly will not flow ITC amortization to ratepayers more rapidly than ratepayers are required to pay depreciation expense."

Company witness Stimart, in his rebuttal testimony, stated that the Company continues to believe that the adjustment to ITC amortization poses a risk of violating IRS normalization rules.

Several references were made during the hearings to the Internal Revenue Service rules on the ratable flowback of the investment tax credit. The Commission does not believe that the Public Staff ITC amortization adjustment is in any danger of violating the ratable flowback provisions of the Code since the Public Staff has reflected only the coming year. Based on the foregoing, the Commission has determined that the appropriate level to include for the amortization of investment tax credits is $(10,815,000).

Based on the entire record in this proceeding, the Commission concludes that the level of operating revenue deductions for use in this proceeding under present rates is $1,446,207,000 calculated as follows:

	(000's)
O&M Expenses	
Fuel used in electric generation	$ 414,017
Purchased power and net interchange	146,649
Other O&M expenses	371,088
Depreciation and amortization	188,892
Taxes other than income taxes	98,379
Interest on customer deposits	481
Income taxes	237,516
Amortization of ITC	(10,815)
Total operating revenue deductions	$1,446,207

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 20

The evidence relating to this finding of fact is presented in the testimony and exhibits of Company witnesses Lee, Grigg, Stimart, and Olson, Public Staff witness Johnson, and Attorney General witness Wilson. In its application, the Company utilized its actual per book capital structure as of June 30, 1984, consisting of 44.24% long-term debt, 11.55% preferred stock and 44.21% common equity. During the hearing, witness Stimart and Dr. Olson

updated these figures through May 31, 1985. As of May 31, 1985, the Company's adjusted common equity ratio was 45.73%, the preferred stock ratio was 11.24%, and the long-term debt ratio was 43.03%. Witness Stimart and Dr. Olson testified that it was necessary to update Duke's capital structure as of the most recent date because the strengthening of the Company's capital structure had contributed to a reduction in the Company's required rate of return. Witnesses Lee, Grigg, and Olson testified that the Company's updated capital structure was reasonable and within the range of other AA-rated utilities. Witnesses Lee and Grigg testified that Duke should have some cushion in its capital structure above the bottom of the range for an AA utility because the rating agencies are continuing to upgrade the percentage of common equity required for AA utilities due to the increasing risks to which utilities are exposed.

Public Staff witness Johnson recommended a 43.43% common equity ratio, 45.12% long-term debt ratio, and 11.45% preferred stock ratio. Dr. Johnson's capital structure was based upon the Company's application with certain adjustments.

With respect to the capital structure requested by Duke, Dr. Johnson pointed out that, in its application, the Company had adjusted its June 30, 1984, capital structure by removing term notes advanced to its nonregulated subsidiaries, estimating the amount of pollution control bonds which were actually issued in October associated with a defeasance, and removed the current maturities from long-term debt. To incorporate adjustments which he felt appropriate for rate-making purposes, Dr. Johnson included the current maturities of long-term debt, used the actual amount of pollution control bonds issued to replace certain first mortagage bonds in the defeasance in October, and removed from the equity of Duke the nondebt supported investment in two of the Company's nonregulated subsidiaries. It was the conclusion of Dr. Johnson that although Duke's capital structure was not excessively conservative, it was fairly conservative, and contained slightly more common equity and less debt than the average electric utility.

Attorney General witness Wilson accepted Duke's prefiled capital structure with the caveat that Duke's original 44% common equity ratio was at the top of the reasonable range for electric utilities. Dr. Wilson warned that thick common equity ratios were costly to ratepayers because equity returns (as opposed to debt costs) must be paid out of after-tax income. Dr. Wilson further recommended that the Commission put the management of Duke Power Company on notice that if the Company's common equity ratio continues to increase, such increases will be disallowed in future general rate case proceedings.

The Commission concludes that the Company's proposed May 31, 1985, common equity ratio as updated at the time of the hearing with one modification is reasonable and appropriate for use in this case. In this regard, the Commission agrees with Dr. Johnson that Duke's reasonable capital structure should be adjusted to exclude the Company's equity investment of $24,076,000 in two of its nonregulated subsidiaries (Cresent Land & Timber Corporation and Mill Power Supply Company), particularly in view of the fact that the Company has itself removed $21 million of long-term debt supporting such nonregulated subsidiaries in deriving its proposed May 31, 1985, adjusted capital structure. It would clearly be inconsistent to exclude only the long-term debt portion of

Duke's nonregulated investment in deriving the Company's appropriate capital structure for rate-making purposes. Based upon these conclusions, the Commission finds and concludes that the appropriate capital structure for use in this proceeding is as follows:

	Percent of Total
Long-term debt	43.20
Preferred stock	11.28
Common equity	45.52
	100.00

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 21

The evidence for this finding of fact is contained in the direct testimony of Company witness Olson, Public Staff witness Johnson, Attorney General witness Wilson, and the rebuttal testimony of Company witness Erickson. There was no disagreement concerning the cost of preferred stock to be used in this proceeding. All parties used the embedded cost of Duke's preferred stock of 8.75%.

Both the Company and Dr. Johnson used a cost of long-term debt of 9.62%. Dr. Wilson used a cost of long-term debt of 9.54%. Dr. Wilson testified that his embedded cost of long-term debt reflected a refunding which occurred in the spring of 1985. Witness Stimart, on cross-examination, testified that it would be inappropriate to include this refunding in the Company's cost of long-term debt. Witness Stimart stated that the Company paid an $11 million premium to refund this debt and that it would be proper to include the refunding only if the premium is also included, which would increase the Company's cost of long-term debt to 9.68%, .06% above the Company's recommended cost of long-term debt. Finally, witness Stimart testified that the Company's cost of long-term debt, including the refunding but without the premium, was 9.58%.

The Commission concludes, for the reasons stated by witness Stimart, that it would be improper to include the refunding without also taking into account the premium and that the appropriate cost of long-term debt to be used for this proceeding is 9.62%.

In his prefiled testimony, Company witness Olson recommended a return on common equity of 16% to 16.5%. This testimony was filed on February 15, 1985. Dr. Olson updated his testimony at the time of the hearing. Dr. Olsen testified that due to changes in the capital markets, he currently was recommending a rate of return of 15% to 15.5%. Dr. Olson's approach for determining Duke's cost of common equity was based primarily on the discounted cash flow (DCF) methodology and was checked using an interest premium study and another discounted cash flow study of comparable electric utilities. Dr. Olson's DCF methodology showed a dividend yield of 8.1%, based on a dividend rate of $2.60 and an average of the high and low market prices of the Company's common stock since January 1, 1985. Dr. Olson also determined a growth rate of 6.25% to 6.50%, based on a pay-out ratio of 58% to 59%. Dr. Olson stated that this growth rate was appropriate because investors perceive that future earnings will benefit from several factors: (1) the competitive price of Duke's electricity; (2) the Company has largely completed its construction program;

and (3) the costs associated with the Cherokee and Perkins cancellation are decreasing. When the yield and growth are combined, the result is an investor return requirement of 14.35% to 14.60%, which Dr. Olson factored upward by a factor of 1.06 to reflect financing costs and market considerations to arrive at a return on equity requirement of 15% to 15.5%. Dr. Olson testified that his DCF methodology was confirmed by his risk premium check and by a DCF comparison of comparable utilities.

Dr. Olson testified that the reason it is necessary to make an adjustment for Duke's cost of capital to allow for financing costs and down markets is that a utility should be able to issue common stock at book value, even under adverse market conditions. If the utility's stock is not selling at slightly above book value, when financing costs are taken into account, the issuance of new shares will cause dilution to other shareholders. The same dilution would take place if an adjustment were not made for down markets. Dr. Olson also testified that the rate of return for a utility should be the same whether or not the utility anticipates the need to attract capital in the near future. A reduction in the rate of return in that circumstance would be unfair to existing shareholders and would make it more difficult for the utility to attract new capital on reasonable terms in the future because investors at that time would anticipate that the regulators would reduce the rate of return when it felt that the utility would no longer need to attract capital. This would cause shareholders to lose trust in the regulator which would cause investors to require a higher rate of return.

Public Staff witness Johnson based his recommended rate of return on common equity on two methodologies. The first methodology was the comparable earnings approach which looks to the actual returns that are being achieved by companies in the economy. Dr. Johnson estimated the current cost of equity for unregulated firms to be 14.5% to 15%. From that, he concluded that electric utilities in general have a cost of capital of approximately 13.5% to 14.5%. Dr. Johnson testified that, based upon the winding down of Duke's construction program, he had concluded that Duke was somewhat less risky than the average electric utility and thus his comparable earnings analysis yielded a range of 13.5% to 14% for Duke's cost of common equity.

Dr. Johnson's second methodology was the DCF approach. Based upon his DCF methodology, Dr. Johnson determined a yield in the range of 7.5% to 8.5%, and a growth rate of 5% to 6%. This yielded a cost of equity of 12.5% to 14.5%. Dr. Johnson then adjusted this estimate upward by 4% to reflect issuance costs bringing Duke's cost of capital to 13% to 15.1%. Dr. Johnson pointed out that his estimate was consistent with a discounted cash flow analysis having a dividend yield of 7.50% to 8.50% and a growth rate of 5.0% to 6.0%. Dr. Johnson testified that a growth rate in the 5.0% to 6.0% range was consistent not only with Duke's actual growth rate in the last five and 10 years, but also with the current yield.

Based on the results of two different approaches, Dr. Johnson recommended that the Commission not establish the fair rate of return at either extreme of his 13.0% to 15.1% range. Further, Dr. Johnson recommended that the Commission concentrate on the central area of his range, while giving reasonable weight to both the comparable earnings result of 13.5% to 14.0% and the market approach result of 13.0% to 15.1%. Consequently, Dr. Johnson recommended a fair rate of return on Duke's common equity of 14.0%.

Dr. Wilson recommended a rate of return for Duke Power Company on its common equity of 13%. Dr. Wilson based his conclusion as to the fair rate of return on equity primarily on his DCF model, which employs a regression and correlation analysis of the historical growth rate of 87 electric utilities, including Duke, to derive his estimate of investor growth expectation. Dr. Wilson checked the results of his discounted cash flow approach by an examination of the return of "comparable" companies in prior years.

In this regard, Dr. Wilson employed the DCF model to determine a dividend yield of 8.3%, based upon market prices over the six-month period ended March 1985, and a growth estimate between 3.5% and 5.0%. Dr. Wilson derived this long-term dividend growth estimate of 3.5% to 5.0% for Duke by comparing growth expectations for the electric utility industry and Duke. He compared the returns on common equity earned by 87 electric and combination utilities, excluding those utilities which recently reduced dividends or paid no dividends. He then determined the growth rates for these 87 utilities based upon growth periods of one through 10 years, and concluded that book value growth was the most important of all the three historical growth measures with respect to explaining electric utility common stock prices. Dr. Wilson concluded that the single most important indicator of the dividend growth investors currently expect in the long term, according to pricing patterns established by investors, is the seven-year growth in book value. His figures showed a growth rate of 2.25% for the utility industry as a whole, compared to 4.43% for Duke.

Dr. Wilson also compared the earned return data by industry for the largest U.S. companies for 1983 and 1984. Dr. Wilson concluded from his review of all the comparable earnings data that the return on common equity for all industries (regulated and unregulated) was 11.5% in 1983 and 13.2% in 1984. Duke's earned returns for those same two years were 14.8% and 14.72%, respectively.

Dr. Wilson further concluded that no explicit adjustment to his cost of equity should be made for market pressure and issuance cost for several reasons. First, he concluded that to the extent investors anticipate market fluctuations due to future public offerings, the stock prices used in the DCF yield reflected those expectations. Second, Duke has acknowledged that it does not expect to issue common stock in the foreseeable future. Last, Dr. Wilson concluded that Duke's common equity ratio is presently more than adequate and that it would be unreasonable and unnecessary to include an explicit adjustment for those costs.

Dr. Edward W. Erickson, Director of the Center for Economic and Business Studies and Professor of Economics and Business at North Carolina State University, testified in rebuttal with respect to Dr. Wilson's testimony. Dr. Erickson testified that he had reviewed the economic, statistical, and algebraic logic of Dr. Wilson's model in this case and determined that Dr. Wilson's methodology is essentially the same as that employed by Dr. Caroline Smith in Docket Nos. E-7, Sub 358 and Sub 373. Dr. Erickson testified that he had replicated Dr. Wilson's results using his own data for the 87 companies; that Dr. Wilson's model in this docket continues to omit risk variables and therefore contains the same error in algebraic and statistical logic which invalidated the approach in Docket Nos. E-7, Sub 358 and Sub 373; that Dr. Wilson ignores a statistically significant risk variable produced by

his model which displays a positive relationship between the growth variable and dividend yield which contradicts the fundamental logic of discounted cash flow reasoning and therefore calls into question the whole economic structure of Dr. Wilson's model; that Dr. Wilson's model omits a statistically significant growth variable from the "two most important growth rates" version of his model; and that the invalid statistical results which Dr. Wilson uses are overwhelmingly driven by the statistical constant which derives and accounts for over 95% of the sum of his regression coefficients resulting in little opportunity for individual company characteristics to influence the outcome of an individual company's estimated cost of equity. Based upon these conclusions, Dr. Erickson testified that Dr. Wilson does not have a meaningful estimate of Duke's cost of equity capital.

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, 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 14.90%. The authorized rate of return on common equity of 14.90% allowed herein is consistent with the

evidence offered in this proceeding. Such evidence clearly indicates that interest rates have declined significantly since the Company's last general rate case Order in June 1984, that current interest rates are stable, that during at least the past six months the stock of Duke Power Company has generally traded above book value, and that the Company is a financially healthly utility with a AA bond rating. The 14.90% rate of return on common equity allowed in this proceeding also reflects and recognizes the fact that the risk of the Company has decreased as a result of the higher common equity ratio adopted by the Commission in this Order and the inclusion of Duke's ownership interest of Catawba Unit 1 and the Company's associated purchased power expenses (including levelization) in the cost of service. The Commission further notes that Duke is now winding down its current construction program and presently has approximately $500 million of cash invested in short-term investment. These factors certainly affect the reasonable rate of return which the Company should be allowed in this proceeding. The rate of return allowed by the Commission also includes an adjustment to allow for reasonable stock or issuance financing costs for the reasons generally stated and recommended by Dr. Olson and Dr. Johnson in their testimony in this case. The Commission recognizes that Duke Power Company is an efficient and well-managed electric utility and, in recognition thereof, has authorized an appropriate rate of return in this proceeding which is consistent with such fact and current economic conditions and applicable risk considerations.

The Commission cannot guarantee that Duke Power Company will, in fact, achieve the level of return herein found to be just and reasonable. Indeed, the Commission would not guarantee the authorized rate of return 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 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 its 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 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 made herein by the Commission.

SCHEDULE 1
DUKE POWER COMPANY
North Carolina Retail Operations
Docket No. E-7, Sub 391
Statement of Operating Income
Twelve Months Ended June 30, 1984
(000's)

Item	Present Rates	Increase Approved	After Approved Increase
Operating Revenue			
Net operating revenue	$1,732,580	$164,935	$1,897,515
Operating Revenue Deductions			
Fuel used in generation	414,017		414,017
Purchased power and net interchange	146,649		146,649
Other operating and maintenance	371,088		371,088
Depreciation and amortization	188,892		188,892
Taxes other than income	98,379	5,311	103,690
Interest on customer deposits	481		481
Income taxes	237,516	78,599	316,115
Investment tax credit amortization	(10,815)		(10,815)
Total operating revenue deductions	$1,446,207	$ 83,910	$1,530,117
Net Operating Income for Return	$ 286,373	$ 81,025	$ 367,398

SCHEDULE II
DUKE POWER COMPANY
North Carolina Retail Operations
Docket No. E-7, Sub 391
Schedule of Rate Base and Rate of Return
Twelve Months Ended June 30, 1984
(000's)

Item	Approved Rates
Investment in electric plant	$4,778,744
Less: Accumulated depreciation	(1,461,892)
Accumulated deferred income taxes	(407,047)
Operating reserves	(10,997)
Net investment in electric plant	2,898,808
Allowance for working capital	182,007
Net original cost rate base	$3,080,815
Rate of Return:	
Present	9.30%
Approved	11.93%

SCHEDULE III
DUKE POWER COMPANY
North Carolina Retail Operations
Docket No. E-7, Sub 391
Statement of Capitalization and Related Costs
Twelve Months Ended June 30, 1984
(000's)

Item	Ratio %	Original Cost Rate Base	Embedded Cost %	Net Operating Income
		Present Rates		
Long-term debt	43.20	$1,330,912	9.62	$128,034
Preferred stock	11.28	347,516	8.75	30,408
Common equity	45.52	1,402,387	9.12	127,931
Total	100.00	$3,080,815		$286,373
		Approved Rates		
Long-term debt	43.20	$1,330,912	9.62	$128,034
Preferred stock	11.28	347,516	8.75	30,408
Common equity	45.52	1,402,387	14.90	208,956
Total	100.00	$3,080,815		$367,398

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 23 THROUGH 31

Company witness Denton, Public Staff witness Turner, Carolina Utility Customers Association witness Phillips, Intervenor witness Eddleman, and Carolina Industrial Group for Fair Utility Rates (CIGFUR) witnesses Michael, Baron, and Kennedy presented testimony and evidence regarding rate design.

Interruptible Rates

Witness Lee testified that the Company has a voluntary load management program designed to reduce the growth in peak demand as well as contribute to conservation by reducing total energy use. The Company expects that by 1996 the load management program will result in total reduction of 6,250mW. With a reserve margin of 20%, this will avoid approximately 7,500mW of new construction by 1996, and Duke's customers will thereby avoid having to pay to service the billions of dollars of capital represented by that unbuilt generation. Witness Lee testified that Duke's load management program is the most comprehensive of any utility in this country, has set ambitious goals, and is currently on target toward those goals.

Witness Denton briefly described the Company's various load management programs in the residential, commercial, and industrial sectors. The Company has over 40 individual parts to its overall load management program ongoing at the present time. Witness Denton further testified that the Company is predicating its construction program on the anticipated success of the load management program.

As part of its load management program, the Company offers an interruptible rate to industrial customers capable of temporarily shutting down their processes to avoid contributing to the Company's load at times of high demand for electricity. Witness Denton testified regarding the level of the credit offered under this rate, known as Rider IS (Interruptible Power Service). Currently, the Company pays a credit per kilowatt month ranging from $1.15 to $2.05, depending upon the maximum number of hours (from 200 hours to 600 hours per year) a customer agrees to be subject to interruption. The credit is based upon the calculation of the annual capital cost of a combustion turbine peaking unit which the Company could avoid constructing by virtue of having an equivalent amount of interruptible load. However, as witness Denton testified, at the present time the savings to the Company of having interruptible capability is in reduced operating and fuel costs rather than in reduced capital costs; therefore, interruptible capability at this time represents only a minimal savings to the general body of ratepayers. Witness Denton further explained that, as the Company needs to add capacity in the future, the benefit of having customers with interruptible capability will increase.

CIGFUR witnesses Michael and Baron both testified that the interruptible credit should be increased up to sixfold to $6.77 per kilowatt month and that the maximum hours of interruption should be reduced to 150 per year. In response witness Denton asserted several reasons to reject this recommendation: (1) the credit is correctly priced at present and can be increased at a later time if the need arises and (2) the present level of the credit has to date attracted approximately 40% of the interruptible goal the Company set out to achieve by 1996. As witness Denton further explained, to the extent that the interruptible credit is increased, that cost has to be borne by all the other ratepayers, and at this time such an increase is not cost-justified. Similarly, on cross-examination witness Michael agreed that it is appropriate to price the interruptible credit based upon the benefits received by the total body of ratepayers resulting from interruptible service. He also agreed that the general body of ratepayers should not pay in their rates more than it is worth to them just to enable an industrial customer to receive a higher interruptible credit.

Based upon all the evidence, the Commission concludes that Duke's load management program is comprehensive and necessary. The Commission further decides that the present level of credits under Duke's interruptible Rider IS is sufficient to encourage customers capable of curtailing their operations to opt for this rate and, at the same time, is priced so as not to result in an unnecessary loss of revenue, which would impact adversely upon all other ratepayers. The Commission concludes that it would be inappropriate to mandate any changes in Duke's load management program which is serving ratepayers and investors well.

General Rate Design

Testimony regarding cost of service, rates of return from the respective customers classes, and rates was presented by the Company, the Public Staff, C.U.C.A., CIGFUR, and Wells Eddleman. In addition, although they offered no direct evidence on these issues, the City of Durham and the Attorney General cross-examined various witnesses on these matters. After a careful review of all the evidence, the Commission finds and concludes that the cost of service

and rate of return differentials among the classes are not unreasonable or prejudicial and that the rates proposed by Duke based thereon are not unreasonably discriminatory, preferential, or prejudicial among and within the classes. The Commission's conclusion is based on ample evidence in the record provided by Company witness Denton which the Commission discusses fully later in this section.

In summary, the Company's evidence is that its cost-of-service studies show that for the test year the residential class of customers paid less than its cost of service while the converse was true for the general service and industrial classes. A uniform or across-the-board rate increase would tend to maintain this disparity. In order to move toward equal rates of return for all classes; i.e., cost-based rates, the Company proposed in this case to spread the revenue loss resulting from increased TOU rate availability to all classes of service. Because the residential class will, under this proposal, share in the revenue erosion recovery, the rates of return for all three classes will materially move toward equality. Thus, all classes of customers will be paying rates based more precisely on the actual costs of providing service, which is the Commission's objective. The Commission concludes that Duke's proposal results in just, reasonable, and nondiscriminatory rates and that it should be adopted. Additional discussion supporting this conclusion appears in greater detail later herein.

Public Staff witness Turner testified that the residential class of customers should receive a greater percentage increase in rates than the general service and industrial classes. He referenced his Exhibit 10 as demonstrating the Public Staff's recommended rate design. Close examination of this exhibit reveals that the Public Staff's recommendation results in only slight and, in the Commission's judgment, insignificant changes in the relative class rates of return. Under the Public Staff's proposal, no deviation for any customer class from the average rate of return was improved by as much as four percentage points, a token movement at best. Turner's direct testimony admits that the Public Staff's proposal does not result in rates of return within the 10% band of reasonableness, discussed hereafter, but asserts that the Public Staff's proposal is "a step in the right direction." The Commission declines to adopt the Public Staff's recommendation as it has concluded that Duke's proposal regarding spreading the revenue undercollection due to increased TOU availability results in a longer and more measured stride toward equalizing the respective class rates of return. Also, there is no basis in the record for increasing, as the Public Staff recommends, the rates paid by RC (residential customers meeting strict insulation standards) and RA ("all electric" residential customers) customers 100% more than for industrial and general service customers. The Commission agrees with the Public Staff that an adjustment to bring the respective class rates of return in line with Duke's North Carolina average retail rate of return would result in too large a rate increase to impose on any class at one time. However, the Commission concludes that movement toward equalization of rates of return is necessary in this case. In this regard, the Commission declines to adopt the Public Staff's proposal in this case as the appropriate method of moving toward that equalization.

C.U.C.A. witness Phillips proposed, in summary, that the Commission adopt large power and small power industrial rates and that the industrial class receive only 60% of the average rate increase granted in this case. It was his position that the industrial class was presently subsidizing the other classes

of service. He testified that due to economies of scale it required much less investment and less operating expense on a per kilowatt-hour basis for Duke to serve industrial customers than residential and commercial customers.

While the Commission agrees in part with witness Phillips' cost-based theme, it cannot adopt his recommendations for several reasons. As was pointed out on cross-examination, witness Phillips' recommendation that the industrial class receive only 60% of the average increase would result in a rate increase for the general service and residential classes of unreasonable and burdensome proportions. Nor can the Commission adopt his recommendation regarding adoption of small and large power industrial rates. On cross-examination he acknowledged having done no study to quantify whether and to what extent there would be a revenue undercollection from the industrial class as a result of adoption of the small and large power rates he proposed. Company witness Denton testified that adoption of such small and large power rate schedules was likely to result in a total revenue undercollection of approximately $44 million, rather than the $21 million undercollection dealt with in the Company's proposal discussed hereafter. While the actual amount of the resultant revenue undercollection would be dependent upon a number of variables, including degree of customer acceptance, the Commission is convinced by the evidence that customer movement to such rate schedules would be significant and that the amount of revenue undercollection testified to by witness Denton is not unreasonably high. The Commission, therefore, declines to adopt small power and large power rates in this case.

CIGFUR witness Kennedy also testified that the industrial class was subsidizing the residential class of customers and that the residential class should receive a rate increase of up to 1.5 times the overall average increase granted in this case. In addition, CIGFUR witness Baron testified regarding the subsidy and recommended adoption of an industrial rate schedule he had designed.

Dr. Kennedy explained that a 50% greater than average increase was a "rule of thumb" designating "a maximum tolerable" adjustment in any one case. While the Commission agrees with Dr. Kennedy that movement toward equalization of class rates of return is needed, the Commission rejects his proposal to achieve that goal by precipitous means. The Commission Order in this case takes affirmative steps toward restoring equality among the rates of return for the various classes. It does not accept Dr. Kennedy's recommendation to do more at the expense of the nonindustrial customer classes.

Nor does the Commission accept witness Baron's proposed industrial rate schedule. In short, witness Baron reduced Duke's industrial rate tailblock energy charge to a weighted average of Duke's TOU rate. By removing demand charges from the tailblock (over 400 hours' use) and placing them in the fixed demand charge, witness Baron testified the rate schedule more appropriately reflected Duke's costs. Witness Baron acknowledged that his rate design lacked necessary industrial customer load and cost characteristic information. He further acknowledged that the ultimate cost effect of his proposed rate schedule depended on the customer's load factor and demand level. He also stated that various customers could experience very large rate increases above the average increase if his proposal were adopted. Specifically, he acknowledged that a large low-hours use industrial customer could experience as

much as a 33% increase under his proposed rate. The Commission, therefore, declines to adopt witness Baron's recommendations.

Witness Eddleman's testimony on these subjects was confined to (1) recommending that the customer charge for the residential class be reduced to $2.00 per month; (2) that the RC rate initial block (first 100 kwh) be reduced 1/2 cent; and (3) that the tailblock (over 1900 kwh) be increased by 1/2 cent. He testified that adoption of these proposals would encourage efficiency and conservation. These recommendations are based, from the Commission's study of the record, on Mr. Eddleman's personal energy conservationist viewpoint rather than on supportable or proffered evidence in this proceeding. The Commission, therefore, declines to accept his recommendation.

Having reviewed all of the parties' respective positions, the Commission must now review the applicable legal standard. This Commission recognizes that the North Carolina Supreme Court has dealt with the subject of illegal discrimination in utility rates in two recent cases. The first, State ex rel. Utilities Commission v. N. C. Textile Manufacturers Association, 313 N.C. 217, 328 S.E. 2d 264 (1985), remanded a gas company's general rate increase application because of the Commission's failure to address the question of whether the substantial difference between cost of service and rate of return for various classes of customers resulted in unreasonable discrimination among and within classes of service. The other case, State ex rel. Utilities Commission v. Carolina Utility Customers Association, Inc., et al., decided August 13, 1985 (Duke's last rate case), held that the availability limitation in Duke Power Company's industrial and general service time of use rate schedules did not unreasonably discriminate against Duke's general body of retail customers.

Both cases pointed out that in construing North Carolina's rate nondiscrimination statute, G.S. § 62-140, the question of law with respect to rate differentials "is not whether the differential is merely discriminatory or preferential; the question is whether the differential is an unreasonable or unjust discrimination." In determining the question of unreasonable discrimination, "a number of factors should be considered: '(1) quantity of use, (2) time of use, (3) manner of service, and (4) costs of rendering the two services.'" State ex rel. Utilities Commission v. Textile Mfrs., supra, at p. 269. Based on the foregoing principles, the Commission finds that the competent and material evidence of record in this proceeding is substantial that the cost of service and rate of return difference between the various classes of service is neither unreasonable nor discriminatory.

In past rate filings Duke has used as a "band of reasonableness" for the rates of return for the various classes of customers plus or minus one percentage point of average retail rate of return or approximately 10%. So long as the individual class rates of return are within the band, Duke has considered them to be relatively equal. The cost of service studies filed in the case demonstrate that the residential class of customers is paying less than its costs of service while the opposite is true for the general service and industrial classes. The rates of return for all three classes for the 12 months ended June 30, 1984, are outside the "band of reasonableness."

Recognizing this disparity and in an attempt to move towards equal rates of return for all classes, Duke proposed in this case to spread the revenue undercollection, resulting from increased customer movement to TOU rate schedules, to all classes of service. Since, under this proposal, the residential class of customers will share in the revenue erosion recovery, the class rates of return will move in the direction of the 10% band. Specifically, witness Denton testified that were the Commission to adopt Duke's proposal of spreading to all classes of customers the $21 million revenue erosion it attributes to TOU rates, the rate of return for the industrial class would decline by six points while the rate of return for the residential class would increase by three points. The Commission finds that the result of Duke's proposal in this case is to move the class rates of return toward equality and also that the industrial class rate of return is thereby significantly reduced.

The Commission deems it important to point out Duke witness Denton's testimony on several occasions in this proceeding that Duke's goal is to keep all the class rates of return within a plus or minus 10% range when compared to the overall rate of return; i.e., its goal is cost-based rates. The Commission also notes witness Denton's testimony that if equal rates of return among the classes are not fully achieved in a given rate case, then the Company should work toward that goal in succeeding cases. The Commission concludes that the effect of Duke's rate proposals in this case is to trend toward equal rates of return and cost-based rates. The respective class rates of return resulting from the rates which it approves in this Order are relatively equal and are certainly not unreasonably discriminatory, preferential, or prejudicial.

The Commission also notes and rejects intervenor C.U.C.A.'s position that Duke's proposed $21 million revenue undercollection due to increased TOU rate availability should not be spread over all classes of customers. The Commission finds that such a contention is inconsistent with: (1) C.U.C.A.'s contentions regarding class cross-subsidization; (2) Duke's goal of achieving equal rates of return among classes; and (3) Duke's objective of having cost-based rates. In sum, the Commission specifically approves of the cost-of-service and rate of return differentials in this case. There is substantial evidence that Duke's rate proposals, which the Commission discusses and approves hereafter, will continue this Commission's practice of trending toward equal rates of return for all customer classes. There is no evidence that Duke's proposals will result in its customers paying unreasonably discriminatory, unjust, or prejudicial rates.

TOU Rates Revenue Shortfall

Duke witness Denton testified regarding development of the rates proposed in this proceeding. He explained that the proposed rates were designed by increasing the test year revenues of each of the present rate schedules, excluding outdoor lighting rates, by the same percentage. The outdoor lighting rates were adjusted on an individual luminaire basis to reflect individual varying costs. All the proposed rates included a fuel expense component of 1.2771¢ per kWh in each energy charge. In summary, Duke proposed to recover the approved increase in revenue by a uniform or across-the-board percentage increase of all rate schedules except outdoor lighting schedules. This uniform percentage increase maintains the relationship among rates approved by the Commission in the Company's last rate case, Docket E-7, Sub 373.

The Commission is mindful, and witness Denton pointed out, that modifications made to the Company's rate designs in previous rate cases have contributed to a rate of return imbalance that currently exists between classes of customers. The Commission concludes that this rate of return imbalance will be reduced by our decision discussed below regarding TOU (time of use) rates and, therefore, approves as fair, just, and reasonable Duke's proposed rate schedules. The Commission also specifically approves the Company's proposal to add a 9,500 lumen high pressure sodium vapor fixture on Rate Schedule T2, Outdoor Lighting as well as Duke's proposal to close two of the higher cost units of similar size to new installations.

In compliance with our October 8, 1984, Order in Docket E-7, Sub 373, Duke has proposed in this proceeding to open Rate Schedules GT and IT (General Service and Industrial TOU rates) to all customers served from the Company's transmission lines. Witness Denton testified that the revenue effect of this proposal was an $18,243,000 loss of revenue caused by customers moving to TOU rate schedules unless the approved rates were adjusted to reflect this revenue shortfall. In addition, Duke proposed to continue phasing in TOU rate schedules GT and IT to customers served from the Company's distribution lines, which would result in an additional revenue shortfall of $2,854,000.

The Commission's October 8, 1984, Order also required Duke "to make the necessary revenue reallocations in the next general rate case" to permit TOU rate availability to all transmission level customers. In response, the Company has proposed in this case that all rates be adjusted by a uniform percentage reflecting the total amount of revenue shortfall caused by the increase in availability of Rate Schedules GT and IT. As witness Denton testified, such a uniform allocation would bring the industrial customer class rate of return closer to the average North Carolina retail rate of return and reduce the rate of return imbalance between classes. The Commission concludes that Duke's proposals to increase the availability of TOU rates and to adjust the revenue requirement for all customers to offset losses due to increased use of TOU schedules GT and IT are appropriate and will result in just and reasonable rates for the reasons stated below.

This 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 as a result of the increased availability of time of use rates.

In Docket No. E-7, Sub 373, the Commission approved Duke's request to increase its general service and industrial rate schedules by $1,500,000 in order to recover the level of revenue approved by the Commission. That approval was one of the grounds for an appeal by C.U.C.A. of the Commission's final Order in Docket No. E-7, Sub 373. In its August 13, 1985, decision, the North Carolina Supreme Court upheld the Commission's ruling, holding:

> This increase ($1,500,000) was necessary due to the fact that some customers who switch to time of use rates will be able to reduce their bills without a reduction in power usage and with no corresponding decrease in Duke's cost. Duke calculated the

> $1,500,000 figure by determining which customers would be offered time of use rates and comparing their actual bills during the test year with the bills they would have received under the time of use rate schedule. State ex rel. Utilities Commission v. Carolina Utility Customers Association, Inc., et al., decided August 13, 1985.

The principle of providing for the revenue shortfall brought about by expanded use of TOU rates in this case and the last case is the same and must be consistently applied. Therefore, the Commission concludes that a rate design adjustment is required for the Company to actually collect the revenues approved by this Commission.

Witness Denton testified that, in the same manner as approved by the Supreme Court above, the revenue undercollection amount was calculated by comparing what customers would have been charged under the proposed rates during the test year to what their bills would have been using the proposed TOU rates. This difference in revenue due to bill reductions under TOU rates was accumulated as the total revenue undercollection.

The Commission is mindful of the fact that time of use rates are voluntary and that only those who are able to reduce their bills will adopt time of use rates. However, the evidence in this proceeding is clear that potential savings offered by TOU rates are significant in many cases and that such rates are usually selected once made available. For example, on cross-examination Public Staff witness Turner agreed that his own Exhibit 14 demonstrated when Duke's transmission level customers were offered TOU rates during calendar year 1984, 87% of the revenue at risk to Duke ($2,013,191 of $2,320,893) was taken by customers migrating to TOU rates. On the other hand, the record is devoid of evidence that this movement to TOU rates will not occur.

Any assertions by the intervenors in this case that revenue erosion due to customer movement to TOU rates is speculative, projected, or anticipatory must also be rejected. Identical arguments were expressly held to be without merit in the Supreme Court's recent decision. There C.U.C.A. argued "that because the revenue erosion occasioned by the increase of time of use rates was merely projected and had not actually occurred at the time of the hearing, it was not an 'actual change' which was 'based upon circumstances and events occurring up to the time the hearing is closed.'" Rejecting this argument, the Court held: (1) N.C.G.S. § 62-133(c) requires the Commission to consider ". . . actual changes in costs and revenues occurring within a reasonable time after the test period;" (2) under N.C.G.S. § 62-133(b)(2), ". . . for the Commission to accurately estimate future revenues under the proposed rates it was necessary and proper for the Commission to take into consideration the estimated reduction in revenue which would occur due to the increased availability of time of use rates;" and (3) under N.C.G.S. § 62-133(d), "The projected decrease in revenue to be occasioned by the increased availability of time of use rate schedules is clearly a 'material fact of record' which the Commission was required to take into account when setting Duke's rates." State ex rel. Utilities Commission v. Carolina Utility Customers Association, Inc., et al., decided August 13, 1985. (Emphasis added).

Based on a careful review of all the evidence and the law of this State, the Commission concludes that the Company's rates in this proceeding should be designed by using the proposed uniform percentage reflecting the total amount

of revenue approved in this Order. Those rates should be applied to billing determinants reflecting the voluntary movement of customers to TOU rates to generate the proper revenues. The Commission further concludes that based on an anticipated reduction of load due to increased availability of TOU rates, as set forth in the Company's Application Exhibit D, the rates approved herein are reasonable and fair to the customers and the Company.

The Commission concludes that the proposed $21 million adjustment for revenue shortfall must be discounted by approximately 9% to reflect the difference between the proposed rates and the approved rates; and further discounted by approximately 13% to reflect the fact that previously the Company's actual revenue loss has been approximately 87% of its estimated loss; and further discounted by approximately 8% to account for any delay in customer movement to the rate schedules; thereby resulting in an adjustment of $15.3 million for purposes of this proceeding.

Access to TOU Rate Schedules

Witness Turner testified that residential TOU rate schedules are available only to customers served by substations equipped with power line carrier equipment. He contended that the presence or absence of power line carrier equipment is not a requirement for the provision of time-of-day service and that the availability of the TOU rates should not be based on it. He recommends that rate schedule RT be available to all residential customers who are individually metered in residences, condominiums, mobile homes, or apartments.

In addition witness Turner testified that the availability of TOU rate schedules GT and IT to distribution line customers is also contingent upon the presence of power line carrier equipment which is not required to measure and bill customers on time-of-day rates. He recommends that TOU rate schedules GT and IT be made available to all general service and industrial customers, respectively.

The Commission is of the opinion that the Company should be required to present for consideration and discussion with its next general rate case filing a study which explores expanding the availability of TOU rate schedules RT, GT, and IT to all customers in the respective rate classes. Such study should include all calculations by rate class regarding the number of customers who might transfer to the TOU rates, the revenue effect of such transfers, the time required for such transfers, and the additional cost of making such TOU rates available.

Large Power and Small Power TOU Rates

Witness Phillips proposed that the Commission should adopt large power and small power TOU rates similar to those which the Company proposed in South Carolina. Access to such rates is based on customer demand levels wherein customers with greater than 5000 kW demand would utilize the large power rate instead of the small power rate. On cross-examination, he acknowledged that he had not studied whether and to what extent there would be a revenue undercollection from the industrial class as a result of adoption of large power and small power TOU rates as he proposed.

The Commission is of the opinion that the Company should present for consideration and discussion a large power TOU rate and a small power TOU rate applicable to nonresidential customers with its next general rate case filing. Such rate schedules should be accompanied by a study which includes all calculations by rate class regarding the number of customers who might transfer to said rates, the revenue effect of such transfer, the time required for such transfer, and the additional cost of making such TOU rates available.

Merging Closed Rate Schedules

Access to the residential all-electric rate, or RA rate schedule, has been closed since January 1979. Since that time new all-electric customers have been given the opportunity to choose between the R Schedule and the RC schedule, while customers selecting the RA rate prior to that time still have a rate comparable to the RC rate but do not meet the same energy conservation standards. Witness Turner recommended that a pricing policy and timetable be established to move the RA rates closer to the R rates such that over a set time period the RA rate schedule can be merged with the R rate schedule and/or the RC rate schedule.

Nonresidential customers are also not allowed equal access to Rate Schedules GA and GB. These rate schedules have been closed to new customers since October 3, 1980, and December 1, 1981, respectively. Witness Turner recommends that, since new qualifying customers are not permitted access to these rates, a plan should be developed to gradually move customers from these rate schedules to the appropriate G or I rate schedules. His recommendation was to increase rates for the closed schedules by a greater percentage than for the G and I rate schedules in order to merge the closed rate schedules into Schedules G or I within a set time period.

The Commission is of the opinion that closed rate Schedule GA should be merged into the other available rate schedules and that the Company should file a specific set of alternative plans for accomplishing the merger with its next general rate case filing. Both a five-year plan and a 10-year plan should be included.

The Commission is further of the opinion that the Company should present for consideration and discussion with its next general rate case filing studies which explore merging closed rate Schedule GB into the other available rate schedules and merging closed rate Schedule RA into the other available rate schedules. Such studies should include all calculations by rate class regarding the number of customers affected, the revenue impact of each merger, and the time which should be required for each merger.

Miscellaneous

Public Staff witness Turner also recommended that the residential basic facilities charge be increased by a greater than overall percentage; that the residential water heating discount be either eliminated or applied to all kWh sold under the applicable rate schedule; that the summer/winter differentials in the residential rate schedules either be eliminated or applied to all kWh sold under each respective rate schedule; that the cost differences between comparable levels of usage in rate Schedules G and I either be eliminated or be justified by means of a specific cost study; and that the use of multiple

energy blocks within each hour's use section of the nonresidential rate schedules either be eliminated or be justified by means of a specific cost study.

C.U.C.A. witness Phillips also recommended that the demand ratchet in the nonresidential rates schedules be reduced from 12 months to the four months during the summer.

The Commission has considered each of these recommendations carefully, and concluded that none of them have sufficient merit at this time to warrant their adoption. As discussed earlier herein, the Commission is of the opinion that an across-the-board increase would be appropriate for purposes of this proceeding, except as modified by the revenue adjustment to reflect the transfer of customers to TOU rate Schedules GT and IT and the lesser increase applied to the lighting schedules.

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 $164,935,000 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 rate schedules with the Commission designed to produce the increase in revenues set forth in decretal paragraph number 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 revenue 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 coincident peak; (3) summer coincident peak; (4) winter 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 item 45 (formerly items 31 and 37) of Form E-1 of the minimum filing requirements for general rate applications.

4. That Duke Power Company shall make voluntary time of use rate Schedules GT and IT available to all general service and industrial customers served by the Company's transmission facilities and otherwise qualifying.

5. That the Company shall present for consideration and discussion with its next general rate case filing a study which explores expanding the availability of TOU rate schedules RT, GT and IT to all customers in the respective rate classes. Such study shall include all calculations by rate class regarding the number of customers who might transfer to the respective TOU rates, the revenue impact of such transfer, the time required for such transfer, and the additional cost of making such TOU rates available.

6. That the Company shall present for consideration and discussion with its next general rate case filing a large power TOU rate and a small power TOU rate applicable to nonresidential customers. Such rate schedules shall be accompanied by a study which includes all calculations by rate class regarding the number of customers who might transfer to the large power and small power TOU rates, the revenue impact of such transfer, the time required for such transfer, and the additional cost of making such TOU rates available.

7. That the Company shall present for consideration and discussion with its next general rate case filing a five-year plan and a 10-year plan for merging closed rate schedule GA into the other available rate schedules.

8. That the Company shall present for consideration and discussion with its next general rate case filing a study which explores merging closed rate schedule GB into the other available rate schedules. Such study shall include all calculations by rate class regarding the number of customers affected, the revenue impact of such merger, and the time which should be required for such merger.

9. That the Company shall present for consideration and discussion with its next general rate case filing a study which explores merging closed rate schedule RA into the other available rate schedules. Such study shall include all calculations regarding the number of customers affected, the revenue impact of such merger, and the time which should be required for such merger.

10. That Duke Power Company shall utilize account no. 186, Miscellaneous Deferred Debits, and account no. 405, Amortization of Other Utility Plant, for purposes of accounting for the deferred costs and other transactions associated with the Commission's Catawba levelization decision as reflected herein.

11. 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 B to each of its North Carolina retail customers during the next normal billing cycle following the filing and approval of the rate schedules described in decretal paragraph number 2 above.

12. That any motions heretofore filed in this proceeding and not previously ruled upon are hereby denied.

13. That Duke shall present information to the Commission in its next general rate case 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 17th day of September 1985.

NORTH CAROLINA UTILITIES COMMISSION
(SEAL) Gail L. Mount, Deputy Clerk

APPENDIX A
DOCKET NO. E-7, SUB 391
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. The percentage increase for the outdoor lighting rate schedules T, T2, and T2X shall be one-third of the overall percentage increase determined in Step 1.

b. The $15.3 million revenue adjustment to offset the revenue shortfall due to transfer of general service and industrial customers to TOU rate schedules GT and IT shall be applied across the board in the manner 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 prices in the TOU rate schedules in such a manner that they will remain basically revenue neutral with comparable non-TOU rate schedules, considering projected revenue savings for the TOU 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

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Application by Duke Power Company for	)	NOTICE
Authority to Adjust and Increase Its	)	OF RATE
Electric Rates and Charges	)	INCREASE

On September 17, 1985, the North Carolina Utilities Commission, after several months of investigation and following five weeks of hearings held throughout the State, denied Duke's request for an increase of $340.0 million over rates currently in effect while approving an increase of $165.0 million. The Company's application for rate relief was filed with the Commission on February 15, 1985. During hearings held in July and August the Company reduced its requested increase to $292.8 million. The rate increase allowed by the Commission equates to an overall revenue increase of 9.52% over rates now in effect as compared to an increase of 19.65% which would have resulted had the Company's initial rate increase request been approved.

The Commission estimates that the bill of a typical residential customer using 1000 kWh per month and presently paying approximately $66.10 per month will increase to approximately $6.75 per month or in a range of approximately 10%. Duke's residential rates were increased slightly more than its industrial rates due to the Commission having determined that such a distribution was necessary in order to have each customer class pay its fair share of the cost incurred in providing service.

In allowing the 9.52% 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 cost of its electric plant and facilities. The Commission found the 9.52% rate increase to be the minimum that could be granted and still allow Duke to maintain good service and continue a reasonable construction program in order to meet growth in demand for electric energy.

Among the more controversial issues addressed by the Commission in its Order was the appropriate rate-making treatment to be accorded Unit No. 1 of Duke's Catawba nuclear powered generating station which was recently completed; certain aspects of the agreement between Duke and the North Carolina Municipal Power Agency (NCMPA) pertaining to the sale of a portion of the Catawba facility to the NCMPA; Dukes losses associated with the sale of its wholly owned affiliate Eastover Mining Company; and costs associated with the cleanup of the 1979 accident at Three Mile Island. The Commission concluded that the decision to build and the construction of Catawba Unit No. 1 was reasonable and prudent and in the ratepayers' best interest. The Commission further concluded that the sale of a major portion of the Catawba station was proper and that the net economic benefit of the sale should be apportioned uniformly to ratepayers over the life of the related agreements. Consistent with its earlier decision, the Commission denied, in its entirety, Duke's renewed 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 renewed request that its ratepayers be required to contribute to the cleanup of Three Mile Island.

The increase granted was due principally to the construction of Catawba Unit No. 1 and the impact of general inflation on Duke's costs since its last general rate increase which became effective on June 13, 1984.

The rate increase will become effective for service rendered on and after September 17, 1985.

DOCKET NO. E-7, SUB 391

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Application by Duke Power Company for	)	ERRATA
Authority to Adjust and Increase Its	)	ORDER
Electric Rates and Charges	)	

BY THE COMMISSION: It has come to the attention of the Commission that an arithmetical error exists in the calculation of fuel cost used in the

determination of the Company's total North Carolina retail revenue requirement established by the Commission in its Order Granting Partial Rate Increase issued in this docket (Docket No. E-7, Sub 391) on September 17, 1985. Said error is reflected on page 40 of the Commission's September 17, 1985, Order. Fuel costs related to intersystem sales were inadvertantly added to total system costs; whereas, intersystem sales should have been deducted therefrom. Correction of the fuel calculation results in the appropriate fuel factor to be used in this proceeding of 1.2180¢/kWh. To prevent the potential overcollection of fuel cost, which might otherwise result from the aforementioned error,

IT IS, THEREFORE, ORDERED as follows:

1. That Duke Power Company shall reduce all rate schedules uniformly by a factor of .0228¢ per kWh including gross receipts tax for service rendered on or after the date of this Order. Such revised rate schedules shall be filed with the Commission within 10 working days of the issuance date of this Order.

2. That Duke Power Company, in conjunction with the filing of the revised rates as required by Ordering Paragraph No. 1 above, shall file a refund plan with respect to revenues billed and/or collected as a result of the error as described herein. Such refund plan shall include interest calculated at the rate of 10% per annum.

ISSUED BY ORDER OF THE COMMISSION.
This the 3rd day of October 1985.

NORTH CAROLINA UTILITIES COMMISSION
(SEAL) Gail Mount, Deputy Chief Clerk

DOCKET NO. E-22, SUB 281

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Proceeding to Consider Annual Fuel Charge	)	
Adjustment for Virginia Electric and Power	)	ORDER APPROVING FUEL
Company Pursuant to G. S. 62-133.2	)	CHARGE RATE REDUCTION

HEARD IN: Commission Hearing Room 217, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on Tuesday, November 26, 1985 at 9:30 a.m.

BEFORE: Commissioner Sarah Lindsay Tate, Presiding; and Commissioners Robert K. Koger and A. Hartwell Campbell

APPEARANCES:

For Virginia Electric and Power Company:

Edgar M. Roach, Jr., and Edward S. Finley, Jr., Hunton and Williams, Attorneys at Law, P. O. Box 109, Raleigh, North Carolina 27602

For the Public Staff:

Theodore C. Brown, Jr., Staff Attorney, Public Staff, North Carolina Utilities Commission, P. O. Box 29520, Raleigh, North Carolina 27626-0520
For: The Using and Consuming Public

For the Attorney General:

Karen E. Long, Assistant Attorney General, North Carolina Department of Justice, P. O. Box 629, Raleigh, North Carolina 27602
For: The Using and Consuming Public

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 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. Additional hearings shall be held on an annual basis but only one hearing for each electric utility may be held within 12 months of 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 Order approving a fuel charge rate reduction for Virginia Electric and Power Company (Vepco or Company) was issued by the Commission on November 21, 1984. There has been no review of the Company'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 July 5, 1985, the Commission scheduled an annual fuel charge adjustment proceeding for the Company beginning Tuesday, November 19, 1985, 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 the Company in its last fuel adjustment proceeding held pursuant to G.S. § 62-133.2. Such Order required the Company to file the information specified in 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 October 9, 1985, the Commission rescheduled the hearing for Tuesday, November 26, 1985. Public notice of the rescheduled hearing was given as required by the Commission.

On September 19, 1985, the Company prefiled the testimony and exhibits of M. S. Bolton, Jr., G. P. Rooney and S. A. Hall III, plus the information and work papers specified by NCUC Rule R8-55(b)(1).

On October 16, 1985, the Public Staff requested an extension of time to file its testimony until November 12, 1985.

On October 24, 1985, the Public Staff filed a motion requesting the Commission to require the Company to resubmit its application in this docket using the experience modification method approved in Docket No. E-2, Sub 503, for Carolina Power & Light Company (CP&L) and to place into a memorandum account any undercollections or overcollections of fuel expense from the effective date of the fuel factor to be approved pending further Order of the Commission specifying how these items should be treated in future fuel and/or rate proceedings. On November 4, 1985, the Company responded to the Public Staff's motion and objected to the relief requested insofar as this docket is concerned.

On November 12, 1985, the Public Staff filed the testimony and exhibits of Dennis J. Nightingale. On November 25, 1985, the Company filed supplemental testimony for M. S. Bolton, Jr., and G. P. Rooney.

The matter came on for hearing at the scheduled time and place. The Company presented the direct testimony and exhibits of S. A. Hall III, Director of Rate Application for Vepco; G. P. Rooney, Power Supply Supervisor of Administrative Services for Vepco; and M. S. Bolton, Jr., Director of General Accounting Services for Vepco. The Public Staff presented the testimony and exhibits of Dennis J. Nightingale, Director of the Public Staff Electric Division. In rebuttal, Vepco presented the testimony and exhibits of witness Hall. No public witnesses appeared at the hearing. At the conclusion of the hearing, the Commission denied the request made by the Public Staff to continue the hearing until January 8, 1986, in order to consider the fuel savings related to commercial operation of the Bath County pumped storage facility for purposes of this fuel adjustment proceeding.

On December 10, 1985, the Public Staff filed a motion in this docket whereby the Commission was requested to reconsider the ruling announced at the conclusion of the hearing on November 26, 1985, denying the motion of the Public Staff to keep the proceeding open until all units at the Bath County pumped storage facility are on line and commercially operating, but no later than January 8, 1986.

On December 13, 1985, the Attorney General also filed a motion for reconsideration regarding the Commission ruling concerning Bath County.

On December 17, 1985, Vepco filed a response in opposition to the motions for reconsideration filed by the Public Staff and Attorney General.

On December 19, 1985, the Public Staff filed an addendum to its motion for reconsideration consisting of the affidavit of Dennis J. Nightingale wherein Mr. Nightingale stated that he had been advised by Vepco on December 18, 1985, that 5 of the Bath County units had been declared commercial that day.

Based upon a careful consideration of the entire record in this proceeding, including the testimony and exhibits received into evidence at the hearing, 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 the North Carolina Utilities 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, 1985.

3. Vepco's fuel purchasing practices and power purchasing practices were reasonable and prudent during the test period.

4. It is just and reasonable to establish Vepco's appropriate base fuel component in this proceeding by use of the actual fuel expense incurred by the Company during the test year of $26,039,897 resulting in a fuel factor of 1.406¢/kWh, excluding gross receipts tax, and an experience modification factor reduction of 0.069¢/kWh, excluding gross receipts tax, determined by taking 90% of the $1,413,919 overrecovery which is the difference between the Company's actual test year fuel-related revenues of $27,453,816 and its actual test year fuel-related expense.

5. It is inappropriate to recognize the post-test period in-service dates of the six Bath County pumped storage units in calculating the base fuel component to be used in this case.

6. The base fuel component which is appropriate for use in this proceeding is 1.337¢/kWh, excluding gross receipts tax, resulting in a decrement of 0.204¢/kWh, excluding gross receipts tax (0.211¢/kWh with gross receipts tax), from the 1.541¢/kWh base fuel component previously established for Vepco in Docket No. E-22, Sub 273, the Company's last general rate case. This is also a decrement of 0.135¢/kWh, excluding gross receipts tax (0.139¢/kWh with gross receipts tax), from the 1.472¢/kWh fuel component approved in Vepco's last fuel adjustment proceeding in Docket No. E-22, Sub 278. Said 1.337¢/kWh base fuel component reflects a nuclear capacity factor of 70.8% for the 12-month test period ended September 30, 1985.

7. The fuel charge adjustment approved in this proceeding will result in a reduction in charges to Vepco's retail electric customers in North Carolina of approximately $2.6 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.

8. 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 the Company pursuant to G.S. § 62-133.2 effective for service rendered on and after the date of this Order, resulting in a uniform decrement in base retail rates of 0.135¢/kWh, excluding gross receipts tax. This uniform decrement reflects actual changes experienced by the Company with respect to its costs of fuel and the fuel component of purchased power during the 12 month test period ended September 30, 1985, and a reduction of 0.069¢/kWh, excluding gross receipts tax, to reflect an adjustment in the base fuel component for a past net overcollection of fuel expense occurring in the 12-month period of time ended September 30, 1985. In making this determination, the Commission has carefully considered all 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 the just and reasonable fuel expense prudently incurred by the Company under efficient management and economic operation. Such fuel charge decrement shall remain in effect until changed by the Commission in a subsequent general rate case for the Company pursuant to G.S. § 62-133 or an annual fuel adjustment proceeding pursuant to G.S. § 62-133.2.

The differences between the parties to this case center upon the appropriateness of using actual test period fuel expense to determine the fuel factor or whether to make certain pro forma adjustments to the test period fuel expense in determining the appropriate factor. The Company, through the testimony of its witnesses, recommends a base fuel factor of 1.406¢/kWh based on actual fuel expense for the 12 month test year ending September 30, 1985. The Public Staff recommends a fuel factor of 1.247¢/kWh. To calculate the 1.247¢/kWh fuel factor, the Public Staff started with 1.406¢/kWh as recommended by the Company, subtracted 0.068¢/kWh to reflect the expected fuel savings from operation of all six of the Bath County pumped storage units, and subtracted 0.091¢/kWh for application of an experience modification factor. The experience modification adjustment proposed by the Public Staff would reduce the fuel component by 90 percent of the difference between Vepco's actual fuel recovery revenues and fuel expenses for the ten month period ending September 30, 1985. Company witness Hall further testified on rebuttal that if the Commission decided to accept any of the adjustments to actual test year fuel expense proposed by the Public Staff, the Commission should also incorporate and adopt a generation mix adjustment which would produce a fuel factor of 1.370¢/kWh.

With respect to the Public Staff adjustment to recognize the fuel savings attributable to operation of the six Bath County pumped storage units, the Commission finds that such an adjustment is inappropriate in this proceeding. The Bath County units did not begin commercial operation until after the hearing in this case; thus, in order for the Public Staff's proposed Bath County adjustment to be considered, the Public Staff requested that the record in this case remain open until January 8, 1986. At the conclusion of the hearing in this docket on November 26, 1985, the Commission denied the Public Staff motion and declared the proceeding closed. After the close of the hearing, the Public Staff and the Attorney General filed motions requesting the Commission to reconsider its denial of the Public Staff's motion to hold this

proceeding open until the Bath County pumped storage units are on line and declared commercial, but not later than January 8, 1986. The Commission has carefully considered these motions for reconsideration and Mr. Nightingale's affidavit and finds that the parties have presented no new information that would augment the information previously considered by the Commission in ruling upon the original motion; thus, the Commission concludes that the motions for reconsideration should be denied.

In Vepco's last general rate case, Docket No. E-22, Sub 273, the Commission issued an Order on December 5, 1983, allowing $18,850,000 of construction work in progress (CWIP) to be included in the Company's rate base, all of which was related to the Bath County pumped storage project. This amount of CWIP allowed in rate base represents only a small portion of the total North Carolina jurisdictional cost of the Bath County pumped storage project. For this reason, the Commission finds that if it were to adopt the Public Staff's proposed Bath County adjustment in this proceeding, such action would result in a material mismatching of rate base, revenues, and expense levels since only a small portion of the capital costs and none of the related revenues and additional capacity costs of the Bath County project have been included in the Company's cost of service. It is certainly true that if this were a general rate case filed pursuant to G.S. § 62-133, it would be entirely appropriate and necessary to recognize the fuel savings attributable to the Bath County units if those units were in operation prior to the close of the hearing. It would be appropriate to recognize these adjustments because adjustments to all investment and expenses could be determined so that the resulting rates would be based upon a fully adjusted test year. The same principles, however, do not apply to this G.S. § 62-133.2 fuel adjustment proceeding. The limited purpose of the G.S. § 62-133.2 proceeding is to recognize changes resulting solely from the fluctuation of the costs of generation and is expressly intended to avoid adjustments that change the Company's earnings. Recognition of projected overall fuel savings caused by units not fully in rate base will distort the Company's earnings. Furthermore, the inclusion of the Bath County units in rate base would increase the Company's costs and tend to offset in part some of the fuel savings. The Commission concludes that to avoid the mismatching of rate base, revenues, and expenses relating to the Bath County project and to ensure that the G.S. § 62-133.2 proceeding operates in conjunction with general rate case proceedings as envisioned by the General Assembly, it is necessary to reject the proposed Public Staff adjustment in this proceeding.

When the base fuel component of Vepco's rates is established in the Company's next general rate case subsequent to the beginning of commercial operation of the Bath County pumped storage units, the fuel savings attributable to the operation of the units will be reflected at least in part in the test period experience. This will allow reflection of fuel savings based on actual results to the maximum extent possible, instead of such fuel savings having to be based totally on projections.

Thus, the Commission rejects the Bath County adjustment proposed in this proceeding by the Public Staff.

With respect to the issue of whether or not to use an experience modification factor to reduce the base fuel factor of 1.406¢/kWh based on actual fuel expense for the 12 month test year ending September 30, 1985, the

Commission finds that such an adjustment is appropriate in this proceeding. The Public Staff proposed an experience modification factor reduction of 0.091¢/kWh to the Company's proposed fuel component of 1.406¢/kWh to eliminate from the base fuel component 90% of the difference between Vepco's actual prudently incurred fuel costs and the revenues that were actually collected since the Commission's last estimate of fuel costs in Docket No. E-22, Sub 278. The calculation of the 0.091¢/kWh is based on the period of time from December 1, 1984, through September 30, 1985, (10 months). Public Staff witness Nightingale testified that he incorporated this experience modification factor into his fuel factor because of the Commission's Order entered on September 18, 1985, in Docket No. E-2, Sub 503, wherein the Commission stated "...the Commission firmly believes that any prudent procedure used to set the fuel cost component of prospective rates will take into account past under- and overcollection of prudently incurred fuel costs." Mr. Nightingale also testified that his methodology was the same as that used by the Commission in Docket No. E-2, Sub 503. Witness Nightingale further stated that there is some ambiguity as to the time period reference for determining the experience modification factor in the Commission Order in Docket No. E-2, Sub 503; therefore, he also calculated and testified that for the 12 months ended September 30, 1985, the factor is 0.068¢/kWh and for the period of time from the effective date of the Company's last general rate case (Docket No. E-22, Sub 273), September 9, 1983, through September 30, 1985, the factor was calculated to be 0.073¢/kWh.

The Company's position is that the experience modification factor adjustment advocated by the Public Staff is improper as it incorrectly applies normalization principles and is inconsistent with prior positions taken by the Public Staff, both in cases involving Vepco and those of other electric utilities. Company witness Hall testified that the Public Staff has improperly mixed two basic theories for fuel cost recovery. The Company advocates the use of actual test year results in this case without any adjustment or normalization to forecast costs that should be recovered in the future. Witness Nightingale used the Company's actual test year results but also recognized changes that the Public Staff believes are likely to occur in the future in order to make the test year a more accurate proxy for those future conditions. The Company believes that the Public Staff adjustments for both the Bath County pumped storage project and the experience modification factor are improper adjustments unless the Commission also applies the theory of generation mix normalization rather than the utilization of actual test period results.

Further, Company witness Hall testified that if the Commission should accept any of the adjustments advocated by the Public Staff, it should adopt generation mix normalization as well. If this were done, the Company asserts that the reduction resulting from applying the Commission's theory of using an experience modification factor should be 0.069¢/kWh rather than the 0.091¢/kWh reduction advocated by the Public Staff. The Company's experience modification factor is based on the test period, the 12 months ended September 30, 1985. The Company believes that use of 12 months experience will help avoid seasonal distortions and constitutes more representative information.

The purpose of this G.S. § 62-133.2 proceeding is to adjust Vepco's rates to allow the Company a reasonable opportunity for recovery on a prospective basis, as nearly as possible, of its reasonably expected, prudently incurred

fuel expense. In approving an experience modification adjustment for CP&L in Docket No. E-2, Sub 503, the Commission made clear that by employing such a ratemaking device, it was not making a true-up to offset past underrecovery of fuel expense nor was it ignoring such past underrecovery. The Commission stated that it was merely adjusting test year expense to recognize that historical trends were likely to continue into the future, all other things remaining equal. In the last Vepco fuel adjustment proceeding in Docket No. E-22, Sub 278, the Commission did not normalize generation mix and the Company experienced an actual overrecovery of its reasonable and prudent actual fuel expense. If the Commission does not normalize generation mix in this case, past experience clearly indicates that Vepco may well again overrecover its reasonable level of fuel expense. Many of the inaccuracies which could result from not normalizing the generation mix can be offset by utilizing an experience modification factor.

In adopting an experience modification factor for the first time in Docket No. E-2, Sub 503, the Commission set forth the following rationale in the Order of September 18, 1985, and hereby generally reaffirms said statements in this case for Vepco:

> "It is a well established fundamental principle of regulation that public utility rates should be set to be representative of total costs on an ongoing basis. In other words, rates cannot be totally based on historical test year costs and revenues. Test year data must be normalized to reflect expected or prospective revenues and costs. The Commission has stated this position in its discussion on the need to normalize capacity factors. The rate-making process, thus, inherently requires the forecasting of reasonable and proper levels of revenues and costs for some limited but indefinite time period into the future. The individual revenues and costs items may, in fact, not occur. However it is hopeful that in the aggregate they will approximate the total revenues and expenses of the Company, assuming good management.
>
> "However, the legislature of this State, and every other state that the Commission knows about, has singled out fuel related revenues and costs for different treatment from that accorded to other items of revenue and expense. The reason is that fuel costs account for 30% to 40% of total costs for most utilities (including CP&L) and, therefore, small variances in fuel costs can put the utility company into a position for substantial over- or under-collection of costs and can result in large swings in earnings. When a utility has a large percentage of nuclear power, the swings can be exacerbated even further because of the wide differences in nuclear generated power and fossil generated power costs. Such swings can have significant adverse effects on bond ratings and the resultant cost of money to the utility.
>
> "No doubt, for these reasons, the North Carolina General Assembly enacted its statute requiring the Commission to hold annual hearings to determine the degree of change, if any, to be made to the level of fuel costs reflected in the existing rates of each electric utility. Based on the above stated considerations and absent a showing of imprudence, inefficiency, or malfeasance, it is the

objective of this Commission to adopt rules and employ procedures whereby an electric utility will lawfully be permitted a reasonable opportunity to recover all prudently incurred fuel costs. To achieve this objective, the Commission must exercise its discretionary authority in a responsible and consistent manner so as to facilitate accomplishment of this purpose. As indicated earlier, fuel cost is by far the major component of the total operating costs of a typical electric utility. It is also the most variable. The circumstances and events underlying this variability are to a large extent beyond the control of company management and this Commission. Moreover, given the number and nature of the parameters influencing its widely ranging variability, the reasonable level of fuel costs that a company can be expected to incur prospectively is exceedingly difficult to predict, within reasonable bounds, over relatively short periods of time. Again, due to the magnitude of the costs in question, relatively small variances in fuel costs included in prospective rates from the level of fuel costs actually incurred during the period the rates are in effect will have a significant impact on a company's financial viability. This further magnifies the need for an effective and fair means of determining the level of fuel cost to be included in rates on a representative or prospective (these words are used interchangeably in this Order) basis. Therefore, the Commission believes, in determining the level of fuel costs to be reflected in future rates, that it is necessary to carefully consider the efficacy of past fuel cost determinations. The Commission's authority in this regard is clearly reflected by the unencumbered language of G.S. § 62-133.2(d). Specifically, this subsection of the statute states in pertinent part:

> '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....' (Emphasis added)

"There are, perhaps, several techniques that the Commission could employ in seeking to accomplish its objective of allowing the Company a reasonable opportunity to recover its prudently incurred fuel cost. All such techniques rely to a great extent on historical circumstances and events, and properly so, for past events and historical data are clearly the keys to the future. Since it is the Commission's objective to provide a reasonable opportunity and not a guarantee, the Commission is reluctant to employ a procedure which results in an absolute guarantee of a dollar for dollar true-up of fuel costs. Such true-up mechanisms quite often are viewed as impediments to the incentive for efficiency and as such are considered to be counterproductive techniques. However, the Commission firmly believes that any prudent procedure used to set the fuel cost component of prospective rates will take into account past under- and overcollection of prudently incurred fuel costs. The Commission further believes that the most appropriate fuel costing methodology is the one that will minimize the variability of recovery of prudently incurred fuel costs in the short-run while maximizing

the Company's potential for recovery of such costs in the long-run. Therefore, in its determination of the reasonable and prudent level of fuel costs to be included in rates prospectively, the Commission will incorporate an actual experience modification factor based in part upon the variance of the forecasted level of prudently incurred fuel cost from that actually experienced. For purposes of this proceeding, the Commission concludes that it is appropriate to incorporate an actual experience modification factor of $.00068 per kWh in its determination of the fuel cost increment to be added to the Company's existing base rates. In arriving at this experience modification factor, the Commission has considered the evidence and arguments of the Company and all the intervenors regarding true-ups and retroactive ratemaking. The Commission has been particularly diligent in studying this issue because this is essentially the first controverted fuel clause case held under G.S. § 62-133.2(d) since its enactment.

"The intervenors appear to generally take the position that any consideration of under- or overcollections is likely to result in illegal retroactive ratemaking. On the other hand, the company takes the position that full recovery; i.e., true-ups of all fuel costs, is proper and legal under G.S. § 62-133.2(d). Several of the intervenors also pointed out that the institution of true-ups would remove any incentive for the Company to operate efficiently. The Commission shares in that concern. Also, the Commission concludes that it is improper to consider any over- or undercollections except those which have actually occurred.

"In arriving at an experience factor by which the Commission would adjust its estimate of prospective fuel costs, the Commission has taken the above considerations into account. The $.00068/kWh was arrived at by taking 90% of the difference between actual prudently incurred fuel costs for the test year and the revenues that were actually collected under the Commission's estimate of fuel costs in Docket No. E-2, Sub 481.

"This use of an experience or correction factor constitutes neither a dollar for dollar true-up as proposed by the Company nor a complete ignoring of the likelihood of error by the Commission in setting a representative fuel factor cost as proposed by the intervenors. Assuming a similarly calculated experience or correction factor is applied consistently in future fuel clause cases, then over time the Company's opportunity to collect its reasonably and prudently incurred fuel costs should be significantly enhanced. Likewise, it should minimize any overcollections of fuel costs from customers. Furthermore, arriving at the correction factor by taking 90% of actual revenues minus actual costs should provide sufficient incentive to the Company to hold fuel costs as low as possible. The 90% figure is based upon applying the Commission's own discretion and will be monitored on the basis of the results it produces over time and modified, if necessary."

Based upon the above evidence and the Commission's belief that any prudent procedure used to set the fuel cost component of prospective rates will take

into account past errors, the Commission concludes that the use of an experience modification factor for Vepco is appropriate in this proceeding. The Commission further concludes that 0.069¢/kWh, excluding gross receipts tax, is the correct experience modification factor for use in this case. The Commission has calculated an experience modification factor in this proceeding by taking 90% of the overrecovery of $1,413,919 which is the difference between actual fuel-related revenues of $27,453,816 collected for the 12-month test year from October 1, 1984, through September 30, 1985, and actual fuel-related expenses of $26,039,897 over the same period of time. Thus, the Commission has used 12 months of operating experience to determine the appropriate experience modification factor. The Commission agrees with Vepco in this proceeding that the use of a longer period of time to observe and gauge trends in expense levels or recovery is preferable and the better the experience becomes for predicting future conditions, unless changes in expense levels result from altered circumstances. Furthermore, the Commission concludes that it is appropriate to use 12 months of data so that all the seasons are included in the calculation since recoveries are tied to billings that vary with seasonal weather changes and fuel expense is also tied to unit outages. Planned or maintenance outages are usually scheduled for off-peak months. The Commission finds that it is both fair and reasonable to use 12 months of data to develop a representative experience modification factor. Further, the provisions of G.S. § 62-133.2 likewise suggest that 12 months of experience or data should be used in establishing the appropriate fuel adjustment factor.

Finally, the Commission concludes that it is also appropriate to utilize Vepco's actual test year generating experience rather than a normalized generation mix for purposes of establishing the proper fuel adjustment factor in this case. This conclusion is based upon a careful consideration of the following specific facts. First, Vepco has itself proposed a fuel adjustment factor or decrement in this case based upon the Company's actual test year level of fuel expense for the 12 month period of time ended September 30, 1985. This is entirely consistent with the manner in which the Commission has established Vepco's reasonable base fuel component in the Company's last two general rate cases in Docket Nos. E-22, Sub 265, and E-22, Sub 273, and in the Company's only other fuel adjustment proceeding decided pursuant to G.S. § 62-133.2, Docket No. E-22, Sub 278. Second, the Commission has concluded, for all of the reasons previously set forth in this Order, that it would be inappropriate from a ratemaking standpoint to make a normalization adjustment in this proceeding to recognize fuel savings attributable to the commercial operation of Vepco's Bath County pumped storage facility. Had the Commission adopted the Bath County adjustment proposed by the Public Staff, the Commission would also have then found it necessary to adopt a complete normalization adjustment to generation mix in this case, including an adjustment to the Company's composite test year nuclear capacity factor of 70.8%, and perhaps deferred accounting for the capital and capacity costs associated with the Bath County facility which are not currently reflected in the Company's cost of service. At such time as Vepco files a general rate case to reflect the complete inclusion of the Bath County facility in its cost of service, the Commission anticipates that it will then determine the Company's reasonable level of fuel expense and base fuel cost factor using a normalized generation mix reflecting operation of Bath County and a reasonable and representative level of nuclear generation in lieu of unadjusted actual test year fuel expenses. Third, the Commission has adopted an experience modification factor adjustment in this proceeding which is designed to set a just and reasonable

fuel component in Vepco's rates which will adjust for a past historical overrecovery of fuel costs so as to allow the Company a reasonable opportunity to recover its reasonable and prudent level of fuel costs but not under- or overrecover such costs on a prospective basis. The experience modification factor found reasonable for use in this case by the Commission is not, as contended by the Company, a normalization type adjustment to Vepco's historical test year generation mix which, in and of itself, requires the Commission to normalize generation mix as has generally been done in previous rate cases for Duke Power Company and Carolina Power & Light Company based upon a reasonable and representative level of nuclear generation in particular.

Thus, the Commission concludes that it is fair and reasonable to both Vepco and the Company's retail ratepayers in North Carolina to establish the proper fuel adjustment factor for use in this case based upon the Company's actual test year level of fuel expense reduced by an experience modification factor. This decision is fair to Vepco for the reason that the Commission has not adopted a normalization adjustment related to the commercial operation of the Bath County pumped storage facility in view of the fact that only a small portion of the total North Carolina jurisdictional cost of the project is currently reflected in the cost of service. Thus, the Commission anticipates and expects that Vepco should and will in fact realize certain fuel cost savings as a result of the commercial operation of Bath County during the period of time prior to the Company's Bath County investment, revenues, and expenses being fully included in the cost of service during the Company's next general rate case. At that time, the Commission fully intends to adopt a reasonable base fuel cost based upon traditional normalization techniques. Company witness Hall testified that Vepco will probably file a general rate case in the spring or early summer of 1986. Thus, any cost savings from Bath County will, in the interim, accrue to the benefit of Vepco.

This decision is also fair and reasonable to the using and consuming public for the reason that the fuel adjustment factor approved in this proceeding is based upon Vepco's extremely good test year nuclear capacity factor of 70.8% rather than the national average nuclear capacity factor of approximately 60% normally recommended by the Public Staff. Vepco witness Hall testified that if the Commission normalized the Company's actual test year level of fuel expense to reflect (1) the commercial operation of Bath County and (2) a composite nuclear capacity factor based upon the NERC ten year average (1974 - 1983) for pressurized water reactors of 60.2% and also adopted an experience modification factor of 0.069¢/kWh, the appropriate fuel factor in this proceeding would then be 1.370¢/kWh, excluding gross receipts tax. The Commission notes that this normalized fuel factor of 1.370¢/kWh (or 1.416¢/kWh including gross receipts tax) is 0.033¢/kWh higher than the base fuel component actually adopted in this proceeding, excluding gross receipts tax. This clearly indicates that an adjustment to the test year to normalize the Company's composite nuclear capacity factor down from 70.8% to the NERC ten year average of 60.2% would more than offset the anticipated fuel savings from Bath County if the Company's test year was normalized to include Bath County, as indicated by Vepco witness Hall's rebuttal testimony and his exhibits thereto (Attachments 1 and 2). Furthermore, the Commission has adopted an experience modification factor in this proceeding which reduces the base fuel component requested by Vepco by an additional $1.3 million on an annual basis. Over time, the experience modification factor should operate to ensure that

Vepco and its ratepayers are both treated fairly regarding recovery of only reasonable and prudent fuel expenses.

The Commission further concludes that the evidence in this proceeding clearly indicates that Vepco's fuel purchasing practices were reasonable and prudent during the test period.

IT IS, THEREFORE, ORDERED as follows:

1. That, effective for service rendered on and after the date of this Order, Vepco shall adjust the base fuel component in its North Carolina retail rates by an amount equal to a 0.139¢/kWh decrement, including gross receipts tax, from the base fuel component approved in Docket No. E-22, Sub 278.

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 Monday, January 6, 1986.

3. That Vepco shall notify its North Carolina retail customers of the fuel adjustment decrement approved in this proceeding by including the "Notice to Customers of Rate Reduction" attached to this Order as Appendix A as a bill insert with customer bills rendered during the Company's next normal billing cycle.

4. That the motions for reconsideration filed on December 10, 1985, by the Public Staff and on December 13, 1985, by the Attorney General be, and the same are hereby, denied.

5. That any motions not heretofore ruled upon or granted be, and the same are hereby, denied.

ISSUED BY ORDER OF THE COMMISSION.
This the 27th day of December 1985.

NORTH CAROLINA UTILITIES COMMISSION
(SEAL) Gail Lambert Mount, Deputy Clerk

APPENDIX A
DOCKET NO. E-22, SUB 281

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Proceeding to Consider Annual Fuel Charge	)	
Adjustment for Virginia Electric and Power	)	NOTICE TO CUSTOMERS
Company Pursuant to G.S. 62-133.2	)	OF RATE REDUCTION

NOTICE IS HEREBY GIVEN that the North Carolina Utilities Commission entered an Order in this docket on December 27, 1985, after public hearing approving a $2.6 million reduction in the annual rates and charges paid by the retail customers of Virginia Electric and Power Company (Vepco) in North Carolina. The rate reduction will be effective for service rendered on and after December 27, 1985. The rate decrease was ordered by the Commission after review of Vepco's fuel expenses during the 12-month test period ended

September 30, 1985, and represents actual changes experienced by the Company with respect to its reasonable cost of fuel and the fuel component of purchased power during the test period. This fuel charge reduction will remain in effect unless and until otherwise changed by the Commission in a subsequent general rate case for Vepco or in an annual fuel adjustment proceeding.

The Commission's Order will result in a rate reduction of approximately $1.39 for a typical residential customer using 1,000 kWh per month.

ISSUED BY ORDER OF THE COMMISSION.
This the 27th day of December 1985.

NORTH CAROLINA UTILITIES COMMISSION
Gail Lambert Mount, Deputy Clerk

(SEAL)

DOCKET NO. G-9, SUB 250

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Application of Piedmont Natural Gas Company, Inc., for an Adjustment in its Rate Schedule 107	))	ORDER APPROVING PETITION

HEARD IN: Commission Hearing Room 217, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on June 20-21, 1985

BEFORE: Commissioner Sarah Lindsay Tate, Presiding; and Chairman Robert K. Koger and Commissioner A. Hartwell Campbell

APPEARANCES:

For: Piedmont Natural Gas Company, Inc.:

Jerry W. Amos, Brooks, Pierce, McLendon, Humphrey & Leonard, Attorneys at Law, P. O. Drawer U, Greensboro, North Carolina 27402

For the Public Staff:

Antoinette R. Wike, Chief Counsel, Public Staff-North Carolina Utilities Commission, P. O. Box 29520, Raleigh, North Carolina 27626-0520
For: The Using and Consuming Public

For the Attorney General:

Karen E. Long, Assistant Attorney General, North Carolina Department of Justice, P. O. Box 629, Raleigh, North Carolina 27602
For: The Using and Consuming Public

For the Intervenor:

Jerry B. Fruitt, Attorney at Law, P. O. Box 12547, Raleigh, North Carolina 27605
For: Carolina Utility Customers Association, Inc.

BY THE COMMISSION: This matter arose upon the filing of a petition on February 28, 1985, by Piedmont Natural Gas Company, Inc. ("Piedmont" or "Company"), seeking authority to adjust and increase its Rate Schedule 107, Transportation Service, so that the transportation charge in Rate Schedule 107 would be equal to the rate established by the Commission for Rate Schedule 104, Large General Service, less Transco's CD-2 commodity cost of gas. In other words, Piedmont proposes to make the margin the same on both rate schedules.

The proposed tariff filing was considered during the Commission Staff Conference held March 18, 1985. Counsel for the Public Staff, the Attorney General, and Carolina Utility Customers Association, Inc. (C.U.C.A.), recommended that, since Piedmont had notified the Commission of its intent to file a general rate case on or about April 1, 1985, the Commission should enter

an Order dismissing the filing without prejudice to the right of Piedmont to refile such tariff as part of the Company's next general rate case. Counsel for Piedmont requested that, should the Commission decide to set the matter for hearing, such hearing should be scheduled as soon as possible.

By Order issued March 21, 1985, the Commission, concluding that the case should be designated a complaint proceeding and set for evidentiary hearing, suspended the proposed tariff for up to 270 days pursuant to G.S. 62-134(b), scheduled a hearing thereon as a complaint proceeding to begin June 20, 1985, denied the motions to dismiss made by the Public Staff, the Attorney General, and C.U.C.A., scheduled the prefiling of testimony, and required public notice.

On April 4, 1985, Piedmont filed a motion suggesting that evidence to be presented at the hearing would be helpful to the Commission in future considerations of changes occurring in the natural gas industry and requesting that the matter be heard by the full Commission rather than a panel.

A Petition to Intervene was filed by C.U.C.A. on May 13, 1985, and allowed by Order of May 16, 1985. On May 14, 1985, Piedmont filed an application for a general rate increase in Docket No. G-9, Sub 251, and on May 22, 1985, C.U.C.A. filed a motion requesting the Commission to consolidate the general rate case docket and the instant docket for hearing and decision. Piedmont filed a response on May 29, 1985, requesting that C.U.C.A.'s motion be denied, while the Public Staff filed a response in support of the motion on May 31, 1985. By Order of June 3, 1985, the Commission denied the motion.

The matter came for hearing as scheduled. Piedmont presented the testimony and exhibits of the following witnesses: John J. Esslinger, Vice President of Marketing, Transcontinental Gas Pipe Line Corporation (Transco); John H. Maxheim, Chairman of the Board, President and Chief Executive Officer of Piedmont; and Ware F. Schiefer, the Company's Vice President - Gas Supply and Transportation. Raymond J. Nery, Director of the Public Staff's Natural Gas Division, testified on behalf of the using and consuming public. C.U.C.A. presented the testimony of Ray Mullaney, Senior Contract Administrator, Supply and Distribution, for Celanese Fibers Corporation, and the testimony and exhibits of L. W. Loos, Project Manager in the Management Services Division of Black & Veatch.

Based upon the foregoing, the evidence presented at the hearing, and the entire record in this proceeding, the Commission now makes the following

FINDINGS OF FACT

1. Piedmont Natural Gas Company, Inc., is incorporated under the laws of the State of New York and is duly authorized by its Articles of Incorporation to engage in the business of transporting, distributing and selling natural gas outside the State of New York. It is duly domesticated and is engaged in conducting the business above mentioned in the States of North Carolina, South Carolina, and Tennessee. It is a public utility under the laws of this State and the Company's North Carolina public utility operations are subject to the jurisdiction of this Commission.

2. The Commission has previously granted Piedmont a certificate of public convenience and necessity authorizing the Company to acquire certain gas

franchises and properties in the State of North Carolina. Piedmont now holds franchises and is furnishing natural gas to customers in 42 cities and towns located in fourteen counties in North Carolina.

3. Piedmont presently delivers natural gas to industrial customers under two rate schedules. Piedmont purchases natural gas at wholesale from its pipeline suppliers and resells it to industrial customers under Rate Schedule 104. Piedmont also purchases natural gas (through an affiliated company) from various sources as agent for certain of its industrial customers and transports it to those customers under Rate 107. In addition, Rate 107 is applicable to those cases in which an industrial customer arranges for its own purchases of natural gas and that gas is transported to the customer by Piedmont.

4. Piedmont proposes in this proceeding to increase the margin of Rate 107 so that the margin earned on that rate schedule will be equal to the margin earned on the Company's sales Rate Schedule 104. "Margin" as used herein is defined to mean Piedmont's normal sales rate less Transco's CD commodity charge and less the gross receipts taxes associated with that commodity charge.

5. This matter was properly set for hearing as a "complaint proceeding" within the meaning of G.S. 62-137.

6. Piedmont's present Rate 107 provides preferential treatment to customers eligible to receive transportation services under that schedule.

7. Piedmont's proposed Rate 107 is fair and reasonable and should be approved.

8. Piedmont's proposed Rate 107 should be made effective upon one day's notice.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 1 THROUGH 4

The evidence for these findings of fact is contained in the verified application and the testimony of Company witnesses Maxheim and Schiefer. The evidence was uncontradicted and uncontested. These findings of fact are essentially informational, procedural and jurisdictional in nature.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 5

G.S. 62-136(a) provides in part as follows:

> Whenever the Commission, after a hearing had after reasonable notice upon its own motion or upon complaint of anyone directly interested, finds that the existing rates in effect and collected by any public utility are unjust, unreasonable, insufficient, or discriminatory, or in violation of any provision of law, the Commission shall determine the just, reasonable, and sufficient and nondiscriminatory rates to be thereafter observed and in force, and shall fix the same by order. (Emphasis added).

A proceeding under this section which involves a single rate or a small part of the rate structure of a public utility is called a "complaint

proceeding," and questions involving that single rate schedule (in this case, Rate 107) may be resolved without involving the procedure outlined in G.S. 62-133. Utilities Commission v. Carolina Power & Light Co., 250 N.C. 421, 109 S.E. 2d 253 (1959); Utilities Commission v. Boren Clay Products Co., 48 N.C. App. 263, 269 S.E. 2d 234 (1980), petition for discretionary review denied, 301 N.C. 531, 273 S.E. 2d 461.

In the instant case, Piedmont filed a single rate schedule (Rate 107). In its petition, Piedmont pointed out that "[a]lthough the services rendered by Petitioner are substantially the same under both Rate Schedule 104 and Rate Schedule 107, the margins earned by Petitioner are different." (Petition, paragraph 3). Piedmont witnesses Maxheim and Schiefer and Public Staff witness Nery introduced testimony in this case which indicates that the existing differences in Rates 104 and 107 amount to preferential treatment to Rate 107 customers. Under such circumstances, if the Commission finds this evidence convincing, the Commission is not only authorized to modify Rate 107 to remove the preferential treatment, it is required to do so under the provisions of G.S. 62-136(a).

The Commission also has the authority to end the preferential treatment for Rate 107 customers by increasing that rate. G.S. 62-136(a) provides that the Commission, upon a finding that an existing rate is preferential, shall fix a fair rate to be thereafter charged. Furthermore, both the courts and the utility commissions that have considered the question have held that increasing the preferential rate is a proper remedy. See e.g., Petitions of New England Tel. & Tel. Co. 116 Vt. 519, 80 A. 2d 671 (1951) (the Supreme Court of Vermont upheld an order of the Vermont Public Service Commission raising certain telephone rates to remove discrimination); Burke v. New York Public Service Commission, 39 N.Y. 2d 766, 349 N.E. 2d 879 (1976) (upholding action by the New York Public Service Commission in increasing telephone rates to certain municipalities in a complaint proceeding to eliminate preferential discounts); City of Plainfield v. Public Service Electric and Gas Company, 82 N.J. 245, 412 A. 2d 759 (1980) (electric utility permitted to increase preferential rates previously granted to a municipality); Re Pennzoil Co., 62 PUR 4th 309 at 312 (W. Va. Pub. Serv. Comm'n, 1984) (gas utility ordered to discontinue discounts to customers receiving Social Security benefits). See also St. Joseph Stock Yards Company v. United States, 298 U.S. 38 at 68-69 (1935) (the U.S. Supreme Court upheld an order of the Secretary of Agriculture increasing charges made for the use of feed lot facilities because the existing rates were unjustly discriminatory); American Express Company v. South Dakota, 244 U.S. 617 at 624 (1916) (upholding an order of the Interstate Commerce Commission which required certain express companies to raise their rates to remove discrimination); Antioch Milling Co. v. Public Service Co. of Northern Ill., 4 Ill. 2d 200 at 208, 123 N.E. 2d 302 at 307 (1954) ("The recipient of the benefit of a preferential rate designed to increase off-peak demand has no cause for complaint if it is discontinued."). Cf. Order of the North Carolina Utilities Commission, dated December 19, 1968, in Docket No. G-9, Sub 70, directing Piedmont to discontinue the distribution of gas without charge to new residential subdivisions and apartments for use in outdoor gas lights.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 6

In our determination of whether existing Rate 107 is discriminatory and whether proposed Rate 107 is just and reasonable, the Commission must consider

a number of factors. These factors include cost of service, value of service, quantity of gas used, the time of use, the manner of use, the equipment which the utility must provide and maintain in order to take care of the customers' requirements, competitive conditions, and consumption characteristics. Utilities Commission v. N. C. Textile Asso. 313 N.C. 215, 328 S.E. 2d 264 (1985); Utilities Commission v. Bird Oil Co., 302 N.C. 14, 273 S.E. 2d 232 (1980); and Utilities Commission v. Piedmont Natural Gas Company, 254 N.C. 734, 120 S.E. 2d 77 (1961).

The Commission has considered each of these factors and has concluded that no justification exists for a difference between the margins earned on the two rate schedules.

Cost of Service

Gas sold under Rate 104 is purchased from producers in the Gulf Coast area by Transco (or in some instances by Piedmont directly), transported by Transco to Piedmont and delivered by Piedmont to its industrial customers. Gas transported under Rate 107 is purchased from producers in the Gulf Coast area either by Piedmont's customers or by an affiliate of Piedmont as agent for its customers, transported by Transco to Piedmont and delivered by Piedmont to its industrial customers. In either case, once the gas is delivered to Piedmont, the services performed by Piedmont are the same. The gas flows through the same pipes, the same meters and the same regulators. Piedmont provides the same load balancing and use of storage. The same people read the meters and the same people prepare and send the bills.

Since the services performed by Piedmont are the same under Rate 107 as they are under Rate 104, common sense dictates that the costs of these services under the two rate schedules are the same, and Piedmont's witness Schiefer so testified.

Value of Service

There is no difference between the value of service rendered by Piedmont under Rate 104 and Rate 107. To the industrial customer any differences in the two services are totally transparent. In either case, the natural gas is delivered to the customer at his place of business for use in whatever manner the customer sees fit. To the extent that natural gas competes with alternate fuels under one of the rate schedules, it competes equally under the other rate schedule. No one has suggested, or reasonably could, that gas received under one of the two rate schedules is any more or less valuable than gas received under the other rate schedule.

Quantity of Use

Rate 104 has several blocks. Thus, a customer who purchases more natural gas (and more economically utilizes Piedmont's facilities) receives a lower rate. Proposed Rate 107 tracks the margin of Rate 104 block by block. The amount of margin received by Piedmont under proposed Rate 107 and existing Rate 104 will be the same at every block of the two rates. Thus, proposed Rate 107 fully takes quantity of use into account.

Time of Use

Both Rate 104 and Rate 107 are interruptible. To the extent that service is available from Piedmont under one of the rates, it is available under the other. Thus, there is no difference in the time of use under the two rate schedules, and there is no justification, on this account, for charging different rates.

Manner of Use

Piedmont's industrial customers use gas transported under Rate 107 in the same manner as they use gas purchased under Rate 104. Thus, once again, this factor supports equal rates for the two services.

Equipment Used to Provide and Maintain Service

As pointed out above, Piedmont uses the same equipment to provide service under Rate 107 and Rate 104. In his cost of service study, C.U.C.A. witness Loos eliminated all storage plant and meter and regulator expenses from Rate 107. On cross-examination, however, witness Loos admitted that storage is needed for transportation gas but added "it may be physically stored in a storage facility or it may be locked up in a line pack." Mr. Loos apparently used the possibility that line pack may provide the required storage for transported gas as his excuse to eliminate it in his cost of service study. However, on cross-examination, he admitted that he did not make any studies and does not know how much line pack, if any, is available for storage of Rate 107 gas. In any event, even if transportation gas could be stored in line pack, Mr. Loos offers no explanation as to why a Rate 107 customer should receive a greater advantage from available line pack, if any, than a Rate 104 customer.

Mr. Loos did not justify his proposal not to charge any meter and regulator expenses to Rate 107 customers, and the Commission is convinced that, since it would be impossible for Rate 107 customers to receive service without meters and regulators, such expenses should be shared by Rate 107 customers. Otherwise, other customers would have to pay these expenses.

Competitive Conditions

As indicated above, the same industrial customers are eligible to transport natural gas under Rate 107 or to purchase gas under Rate 104. Thus, these customers have the ability to substitute the same alternate fuels. Furthermore, these customers compete with one another. All of these factors support equal rates for Rates 107 and 104.

Consumption Characteristics

Since the same customers purchase gas under both Rate 107 and Rate 104, their consumption characteristics are the same.

Under the law in North Carolina and elsewhere, the rates charged for identical service should be the same. See e.g., Utilities Commission v. City of Wilson, 252 N.C. 640 at 646, 114 S.E. 2d 786 at 791 (1960) ("A fundamental basis for the regulation of public utilities is to assure that ... the utility will provide all of its customers similarly situated with service

on a reasonably equal basis."); Burke v. New York State Pub. Serv. Comm'n. 39 N.Y. 2d 766, 349 N.E. 2d 879 (1976) (holding that the New York Public Service Commission had the authority to find certain discounted rates for municipalities discriminatory and, upon such finding, to eliminate such discounts); City of Plainfield v. Public Serv. Elec. & Gas Co. 82 N.J. 245, 412 A. 2d 759 (1980).

In Utilities Commission v. Mead Corp., 238 N.C. 449, 78 S.E. 2d 290 (1953), the North Carolina Supreme Court stated the applicable law as follows:

> There must be substantial differences in service or conditions to justify difference in rates. There must be no unreasonable discrimination between those receiving the same kind and degree of service.

In the Mead case, the Court held that Nantahala Power & Light Company could not charge its parent corporation less than it charged another similarly situated industrial customer. Likewise, Piedmont should not be required to charge two industrial customers different rates for substantially identical service.

No convincing evidence has been presented to justify the charging of lower rates for customers receiving gas under Rate 107 than for customer receiving gas under Rate 104. As stated by Public Staff witness Nery: "If transportation rates escape responsibility for full margin, other captive customers will unfairly subsidize transportation customers and will pick up the additional cost." Such a result would be unfair and unlawful.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 7

Having determined that the costs of Rates 104 and 107 are the same and that no justification exists for a difference between the margins earned on the two rate schedules, the Commission must determine a just, reasonable, and sufficient and nondiscriminatory rate to be charged. G.S. 62-136(a). In this case, the Commission concludes that the proper rate under Rate 107 is a rate that permits Piedmont to earn the same margin as it earns under Rate 104. In reaching this conclusion, the Commission has considered the following: (1) Piedmont's present rate of return was based on the assumption that Piedmont would receive margin on its industrial sales equal to the margin provided by Rate 104; (2) the increase in margin for Rate 107 would have produced only $305,505 of additional revenues during the twelve month test period used in this proceeding; (3) Piedmont is presently earning a return less than the return allowed the Company in its last general rate case; and (4) this rate will be reviewed again in Piedmont's pending rate case presently set for hearing in October 1985. In addition, the Commission has considered the cases cited on page 4 of this Order which hold that under the circumstances of this case, the appropriate remedy is to raise the discriminatory rate.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 8

Our determination that proposed Rate 107 should become effective on one day's notice is based on the testimony of Piedmont witnesses Maxheim, Schiefer and Esslinger. It is also based on the provisions of G.S. 62-136(a) which

require this Commission, upon a finding that a rate is discriminatory, to fix a just, reasonable, and nondiscriminatory rate.

The undisputed testimony in this case is that the Federal Energy Regulatory Commission has recently initiated a rule-making proceeding that, in all likelihood, will result in more transportation of customer owned gas. Pending the adoption of those rules, the United States Circuit Court of Appeals for the D. C. Circuit has authorized the continuation of transportation under FERC Order No. 234-B. Piedmont should have a nondiscriminatory rate in effect to take advantage of this transportation. Otherwise, some of Piedmont's customers will continue to receive preferential treatment.

IT IS, THEREFORE, ORDERED as follows:

1. That Rate 107 as proposed by Piedmont be, and the same is hereby, approved to become effective on one day's notice.

2. That Piedmont shall file an appropriate tariff in conformity with this Order no later than ten (10) days from the date of this Order.

ISSUED BY ORDER OF THE COMMISSION.
This the 14th day of August 1985.

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

DOCKET NO. G-9, SUB 251

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Application of Piedmont Natural Gas Company, Inc.,) ORDER GRANTING PARTIAL
for an Adjustment of its Rates and Charges) RATE INCREASE

HEARD IN: Mecklenberg County Office Building, Charlotte, North Carolina, on October 8, 1985; Guilford County Courthouse, Greensboro, North Carolina, on October 9, 1985; and Commission Hearing Room, Dobbs Building, Raleigh, North Carolina, on October 15 - 17, 1985

BEFORE: Commissioner A. Hartwell Campbell, Presiding; and Commissioners Robert K. Koger and Ruth E. Cook

APPEARANCES:

FOR THE APPLICANT:

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

FOR THE PUBLIC STAFF:

Paul L. Lassiter and Michael L. Ball, Staff Attorneys, Public Staff - North Carolina Utilities Commission, Post Office Box 29520,

Raleigh, North Carolina
For: The Using and Consuming Public

FOR THE INTERVENOR:

Jerry B. Fruitt, Fruitt and Austin, Attorneys at Law, P. O. Box 12547, Raleigh, North Carolina 27605
For: Carolina Utility Customers Association, Inc.

BY THE COMMISSION: On May 14, 1985, Piedmont Natural Gas Company, Inc. (Piedmont, the Applicant or the Company), filed an application with the North Carolina Utilities Commission seeking authority to adjust its rates and charges for retail natural gas service in North Carolina effective June 13, 1985, to produce additional annual revenues from the Company's North Carolina operations of approximately $9,115,695. The amount of Piedmont's request was subsequently increased to approximately $10,442,772 to reflect changes which occurred up to the time that the hearing was closed pursuant to G.S. § 62-133(c).

On May 22, 1985, Carolina Utility Customers Association, Inc. (C.U.C.A.), filed a Petition to Intervene, which was allowed by Order of May 28, 1985.

On June 4, 1985, the Commission issued an Order declaring the matter to be a general rate case pursuant to G. S. § 62-137, suspending the proposed rates for a period of up to 270 days from the proposed effective date of June 13, 1985, scheduling the matter for hearing, declaring the test period to be the 12 months ended January 31, 1985, and requiring public notice of the proposed increase and the hearings.

The matter came on for hearing at the places and on the dates scheduled in the Order Setting Hearing. At the hearing in Charlotte on October 8, 1985, George Edward Battle, Jr., and Caroline Love Myers testified as public witnesses. At the hearing in Greensboro on October 9, 1985, Lewis Price testified as a public witness. At the hearings in Raleigh on October 15, 1985, Tenney Deane, a natural gas marketer, testified as a public witness.

The case in chief was heard in Raleigh beginning on October 15, 1985. The Company presented the testimony and exhibits of the following witnesses:

1. John H. Maxheim, Chairman of the Board, President and Chief Executive Officer of Piedmont Natural Gas Company, Inc.;

2. Robert L. Hahne, Certified Public Accountant and Partner, Deloitte, Haskins, & Sells, Accountants;

3. Ware F. Schiefer, Vice President - Gas Supply and Transportation for Piedmont;

4. C. M. Butler, III, Vice President of Kidder, Peabody & Company; and

5. Barry L. Guy, Controller for Piedmont.

C.U.C.A. presented the testimony and exhibits of L. W. Loos, Project Manager in the Management Services Division of Black and Veatch, Engineers - Architects of Kansas City, Missouri.

The Public Staff presented the testimony and exhibits of the following witnesses:

1. Eugene H. Curtis, Jr., Engineer, Natural Gas Division;

2. Kevin W. O'Donnell, Public Utilities Financial Analyst, Economic Research Division;

3. Donald E. Daniel, Assistant Director, Accounting Division; and

4. Elizabeth C. Porter, Accountant, Accounting Division.

The Company presented no rebuttal testimony.

During the course of this proceeding, various motions were made and Orders were entered relating thereto, all of which are matters of record.

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

FINDINGS OF FACT

1. Piedmont Natural Gas Company, Inc., is a duly created and existing New York Corporation authorized to do business, and doing business, in North Carolina as a franchised public utility providing natural gas service in 42 North Carolina communities. Piedmont is properly before the Commission in this proceeding for a determination of the justness and reasonableness of its rates and charges as regulated by the North Carolina Utilities Commission under Chapter 62 of the General Statutes of North Carolina.

2. The test period established by the Commission and utilized by all parties in this proceeding is the 12 months ended January 31, 1985, updated primarily through July 31, 1985, but also updated to reflect certain changes which occurred up to the time the hearing was closed as permitted by G. S. § 62-133(c).

3. By its application, Piedmont sought rates designed to produce additional jurisdictional revenues of $9,115,695. By revised testimony, the Company seeks rates to produce revenues of $276,497,780, an increase of $10,442,772 over rates in effect at July 31, 1985.

4. Piedmont is providing adequate natural gas service to its existing customers.

5. The appropriate amount of cost-free capital to be considered in this proceeding resulting from Transco refunds is $282,327.

6. The reasonable allowance for working capital for Piedmont is $19,033,411.

7. The original cost of Piedmont's plant in service used and useful in providing natural gas service in North Carolina is $212,693,393. To this amount should be added leasehold improvements net of amortization of $202,167 and deducted the accumulated depreciation associated with the original cost of

this plant of $60,763,870, customer advances for construction of $356,452, and accumulated deferred income taxes of $18,245,601, resulting in a reasonable original cost less depreciation or a net gas plant in service of $133,529,637.

8. The reasonable original cost less depreciation of Piedmont's plant in service to its customers in North Carolina of $133,529,637, plus the reasonable allowance for working capital of $19,033,411 less cost-free capital of $282,327, and less unamortized gain from defeasance of $401,690, yields a reasonable net original cost of the Company's property used and useful to North Carolina customers of $151,879,031.

9. The reasonable level of annual volumes that Piedmont can be expected to sell in North Carolina under normal weather conditions is 51,238,677 dekatherms. The total Company supply required to achieve this level of sales is 68,938,700 dekatherms.

10. Piedmont's test year level of operating revenues, after appropriate accounting adjustments, under present rates is $266,236,464.

11. Piedmont's test year level of operating revenue deductions, after appropriate accounting and pro forma adjustments, including taxes and interest on customer deposits, is $251,570,867, which includes the amount of $5,175,781 for actual investment currently consumed through reasonable actual depreciation.

12. The capital structure which is proper for use in this proceeding is as follows:

Long-term debt	53.96%
Common equity	46.04%
Total	100.00%

13. The proper embedded cost of Piedmont's long-term debt is 10.26%. The rate of return which should be applied to the Company's original cost rate base is 12.40%. This return on Piedmont's rate base of 12.40% will allow the Company the opportunity to earn a return on its common equity of 14.9%, after recovery of the embedded cost of debt. Such returns on rate base and common equity will enable Piedmont, by sound management, to produce a fair return for its shareholders, to maintain its facilities and services in accordance with the reasonable requirements of the General Statutes of the State of North Carolina, and to compete in the market for capital funds on terms which are reasonable and fair to both customers and existing investors.

14. The annual revenue requirement approved herein is $274,604,215, an increase of $8,367,751, in Piedmont's gross revenues under rates currently in effect. This revenue requirement will allow the Company a reasonable opportunity to earn the rate of return on its rate base that the Commission has found to be just and reasonable and is based upon the net original cost of Piedmont's property used and useful in providing service to its customers and the Company's reasonable test year operating revenues and expenses as previously set forth in these findings of fact.

15. Piedmont presently delivers natural gas to large industrial customers under two rate schedules. Piedmont purchases natural gas at wholesale from its pipeline suppliers and resells it to large industrial customers under Rate Schedule 104. Piedmont also purchases natural gas (through an affiliated company) from various sources as agent for certain of its industrial customers and transports it to those customers under Rate Schedule 107. In addition, Rate Schedule 107 is applicable to those cases in which an industrial customer arranges for its own purchases of natural gas, and that gas is transported to the customer by Piedmont. A full margin transportation rate is just and reasonable and should be continued in this proceeding. "Margin" as used herein is defined to mean the normal sales rate of Piedmont less Transco's CD commodity charge, and less the associated gross receipts taxes.

16. An Industrial Sales Tracker (IST) should not be adopted and implemented in this proceeding.

17. It would be unjust and unreasonable to establish rates in this proceeding based solely upon equalized rates of return for all customer rate classes. Other relevant factors which must be considered in setting rates in addition to the estimated cost of service include value of service, quantity of natural gas used, the time of use, the manner of use, the equipment which Piedmont must provide and maintain in order to meet the requirements of its customers, competitive conditions, and consumption characteristics.

18. The summer/winter rate differentials proposed by the Company are just and reasonable and should be approved.

19. The rates set forth in Appendix A attached hereto are just and reasonable, do not result in any unjust or unreasonable discrimination or preference between or within classes of customers, and should be approved. These rates will generate the appropriate level of revenue and will afford the Company an opportunity to achieve the overall return of 12.40% approved herein. Said rates should be adjusted for any Transco PGA changes and for any temporary increments or decrements that have been approved since July 31, 1985.

20. The contract between Piedmont and its subsidiary PNG Energy Company should be filed with the Commission pursuant to G.S. § 62-153.

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 setting investigation and hearing, and the testimony and exhibits of Company witnesses Maxheim, Schiefer, and Guy and Public Staff witnesses Curtis, Porter, and O'Donnell. These findings of fact are essentially informational, procedural, and jurisdictional in nature and are uncontested.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 4

The evidence supporting this finding is contained in the record as a whole and is generally uncontested.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 5

Company witness Guy and Public Staff witness Porter offered testimony regarding the appropriate treatment of certain Transco refunds. The Company has accorded no specific treatment to the refunds, thus allowing the refunds to receive the overall rate of return. Witness Porter argued that the refunds, net of taxes, should be deducted from rate base as cost-free capital, thereby allowing no return on the refunds. Ms. Porter stated the refunds should be treated as cost-free capital since Piedmont's ratepayers paid in rates to cover the excessive producer-supplier costs.

Witnesses Guy and Porter both agree that Transco received these monies from producer suppliers as a result of orders of the Federal Power Commission. Transco, in turn, flowed the refunds through to its customers, including the North Carolina natural gas distribution companies. At the time the companies received the refunds, the Public Staff contended that the refunds should be flowed through to their North Carolina retail customers. The companies claimed that refunds were not required and that they should be permitted to retain these monies. Docket No. G-100, Sub 37, was established to determine the proper disposition of these refunds. As a result of proceedings in that docket, the Commission ordered Piedmont and certain of the other companies to refund these monies to their customers. Piedmont and one other company appealed this decision to the North Carolina Court of Appeals. The Court of Appeals reversed the Commission on the grounds that it would not be practicable to make refunds pursuant to G.S. § 62-136(c) to those customers served by the utilities during the period to which the refunds relate. This decision was affirmed by the North Carolina Supreme Court in State ex rel. Utilities Commission v. Public Service Co., 56 N.C. App. 448, 289 S.E. 2d 82 (1982), aff'd, 307 N.C. 474, 299 S.E. 2d 425 (1983).

As a result of the decisions of the Supreme Court and Court of Appeals, Piedmont will permanently retain this capital. Witness Porter contends that ratepayers will not receive a refund of either principal or interest, and, unless the refunds are treated as cost-free capital in this proceeding, the ratepayers will also be required to pay a return on this cost-free capital.

The Company presented evidence concerning whether it should refund the monies in question to ratepayers. Witness Guy stated that the excess costs were charged to expense when incurred and reduced retained earnings. Additionally, witness Guy stated that the refunds were credited to income when received, thereby increasing retained earnings and resulting in a net effect on retained earnings of zero.

Based upon all the evidence presented in this proceeding and taking judicial notice of the decisions rendered by the Court of Appeals and the Supreme Court, the Commission concludes that it is proper to deduct the Transco refunds net of tax as cost-free capital from Piedmont's rate base. The arguments presented by the Company deal with whether the refunds were paid in by customers therefore resulting in cost-free capital. Witness Guy agreed during cross-examination that, had the customers paid in through rates the increased gas costs, it would be proper to treat the refunds as cost-free capital. The issue in this case is the proper ratemaking treatment to be accorded the refunds. By Order dated January 21, 1981, the Commission found in Docket No. G-100, Sub 37, that Piedmont recovered its costs and earned a fair

and reasonable return exclusive of the refunds during the years 1958-1971. During that period, the Company's ratepayers paid in through rates money which allowed Piedmont to recover all of its expenses. The Commission has previously reviewed this same issue on three occasions in Docket Nos. G-5, Subs 181 and 200, and G-21, Sub 235, and found that it was proper to reduce the rate base of Public Service Company and North Carolina Natural Gas Corporation by that portion of capital supplied by ratepayers related to similar Transco refunds which had no cost to those companies.

No evidence has been presented in this proceeding which was not thoroughly examined in the three prior cases, Docket Nos. G-5, Subs 181 and 200, and G-21, Sub 235, and reevaluated by the Commission in this case. Nevertheless, the Commission will further clarify its position on the proper ratemaking treatment to be accorded the Transco refunds.

Here, as in each of the prior cases, the Commission concludes that the excessive producer/supplier costs which generated the Transco refunds were paid in by the ratepayers. Further, the rates established for Piedmont during the periods that the Company was paying the excessive costs to Transco were fixed pursuant to law and therefore must be deemed just and reasonable. It necessarily follows that the Company must have recovered all of its costs of service during the periods in question. The paucity of requests for rate relief during the periods in question strengthens the contention that all costs were in fact recovered. Given the above discussion and the well established fact that the Company has only one source, its ratepayers, from which to recover costs, it is abundantly clear that these costs were recovered and were, of necessity, recovered solely from ratepayers. The Commission takes judicial notice of the Order entered for Piedmont in Docket No. G-100, Sub 37, on January 21, 1981, regarding this issue and incorporates the pertinent findings and conclusions by reference.

Another aspect of this issue which should be addressed is: if this capital exists, where does it reside? There is no dispute that Piedmont received the refunds from Transco. There is also no dispute that the Company recorded the refunds as a reduction of its cost of gas expense in the periods the refunds were received. While the Commission will not discuss all of the intricacies of the accounting procedures which were followed by the Company, it is perfectly clear that the accounting treatment accorded these refunds resulted in the Company's paying the income taxes applicable to refunds to the taxing authorities and that the balance or remainder of the refunds flowed to retained earnings. Therefore, the Company's retained earnings today are $282,327 higher than they would have been had the refunds not been received. Until the Company properly classifies this capital as cost-free, such capital which was provided by ratepayers will continue to reside in retained earnings.

Since the capital was, in fact, provided by the ratepayers, it is therefore cost-free to the Company and the only acceptable ratemaking treatment of this cost-free capital, given the rulings of the courts, is to deduct it from rate base so that ratepayers will not be required to pay a return on capital which they have themselves provided to the Company. The Commission therefore concludes that the $282,327 of Transco refunds should be deducted from the Company's rate base.

The Company further asserts that the Public Staff's proposed accounting treatment is erroneous because the Supreme Court reversed the Commission's decision in its entirety. However, a judgment of reversal is not necessarily an adjudication by the appellate court of any question other than those which were in terms discussed and decided. Chas. Wolff Packing Co. v. Court of Industrial Relations of Kansas, 267 U.S. 552, 69 L. Ed. 785, 45 S. Ct. 441 (1925); 5 AM JUR 2d, Appeal and Error Sec. 955. Further, a decision of the North Carolina Supreme Court is authority only as to matters therein decided. In re West, 212 N.C. 189, 193 S.E. 134 (1937). Review of the Supreme Court's opinion in State ex rel. Utilities Commission v. Public Service, supra, shows that the Court reversed as a matter of the law on the limited grounds discussed above and did not discuss the remaining assignments of error since its first holding required reversal. By its actions, the Supreme Court in effect held that the companies did not have to refund the dollars in question. It did not address the appropriate ratemaking treatment to be accorded these dollars. That issue was not before the Court, and the Company's argument that the Court intended its holding to be determinative of this issue is unpersuasive. The Commission therefore finds and concludes that, since the customers paid in rates to cover the excessive supplier costs which were refunded by Transco and since these dollars cannot be refunded because the Supreme Court held as a matter of law that the practicability requirement contained in G. S. § 62-236(c), prior to amendment, had not been met, it is proper to reduce the rate base by that portion of capital supplied by the ratepayers which has no cost to the Company. This is not retroactive ratemaking as asserted by the Company for the reason that Piedmont is merely being denied a return on such refunds for purposes of prospective ratemaking. The Company will still permanently retain these refunds.

Based on all of the evidence, the Commission concludes that the Transco refunds net of tax of $282,327 do represent cost-free capital to the Company and therefore should be deducted from rate base.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 6

The evidence for this finding of fact is contained in the testimony and exhibits of Company witnesses Guy, Hahne, and Schiefer and Public Staff witness Porter.

A comparison of the components of working capital presented by the parties in their final exhibits is shown below:

	Company	Public Staff Adjustment	Public Staff
Cash - Lead-lag study	$ 503,456	$ -	$ 503,456
Compensating balances	852,287	-	852,287
Cash working funds	92,632	-	92,632
Average prepayments	80,279	-	80,279
Operating & Construction supplies	1,249,751	-	1,249,751
Natural gas stored	18,232,843	(1,106,319)	17,126,524
Customer deposits	(1,977,837)	-	(1,977,837)
Total working capital	$19,033,411	$(1,106,319)	$17,927,092

The various witnesses agree on all of the components of the working capital allowance except for the amount of capital necessary to support stored natural gas. There being no evidence to the contrary, the Commission concludes that those components of working capital on which the parties agree are reasonable and proper.

Both the Company and the Public Staff agree on the proper level of dekatherms for calculating gas stored, the unit cost for pricing inventory, the use of a base inventory, and the allocation factor to determine the North Carolina portion. There being no evidence to the contrary, the Commission concludes that those components of natural gas inventory on which the parties agree are reasonable and proper.

The difference of $1,106,319 between the Company and the Public Staff is due to the treatment accorded natural gas storage costs as a rate base item.

In order to meet the winter peak requirements of its customers, Piedmont has to purchase gas in the summer and place it in storage for withdrawal in the winter. The procedures followed by Piedmont in connection with the payment and recovery of the costs of this storage were described by Piedmont witness Guy. Under its contract with Transco, witness Guy testified that Piedmont begins placing gas in storage in April of each year, continues to place the gas in storage during the summer and early fall, and withdraws it in the winter. Piedmont recovers the carrying charges on the CD-2 demand and commodity rates in its rate base. Piedmont does not, however, recover the carrying charges on the capacity and demand charges it pays for storage while the gas is in inventory. Thus, witness Guy stated that Piedmont proposes to recover these carrying charges in this case.

The Public Staff contends that Piedmont recovers its capacity and demand charges when it sells the storage gas in the winter. Piedmont does not dispute the fact that it recovers these storage charges; however, Piedmont contends it does not presently recover the carrying charges on the storage capacity and demand charges.

After careful review of this matter, the Commission agrees with Piedmont and concludes that the Company should be allowed to recover through rates the carrying charges on these storage capacity and demand charges. Therefore, these storage capacity and demand charges should be included as a component of the Company's working capital allowance. Exclusion of these charges from the working capital allowance would prevent the Company from recovering through rates the associated reasonable carrying costs.

Based on all the foregoing, the Commission concludes that the proper working capital allowance to be used in this proceeding is $19,033,411.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NOS. 7 AND 8

Company witness Guy and Public Staff witness Porter offered testimony regarding Piedmont'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, as reflected in their respective proposed orders:

Line No.	Item	Company	Public Staff	Difference
1.	Gas utility plant in service	$212,693,393	$212,693,393	$ -0-
2.	Leasehold improvements, net of amortization	202,167	202,167	-0-
3.	Accumulated depreciation	(60,763,870)	(60,763,870)	-0-
4.	Customer advances for construction	(356,452)	(356,452)	-0-
5.	Allowance for working capital	19,033,411	17,927,092	(1,106,319)
6.	Cost-free capital - Transco refunds (net of tax)	-0-	(282,327)	(282,327)
7.	Accumulated deferred income taxes	(18,357,894)	(17,850,800)	507,094
8.	Total original cost rate base	$152,450,755	$151,569,203	$ (881,552)

As shown above, the total net difference between the Company and the Public Staff is $881,552. The Company and the Public Staff agreed to the appropriate levels of plant in service, leasehold improvements, accumulated depreciation, and customer advances; therefore, the Commission finds these amounts to be reasonable for use in determining Piedmont's original cost rate base.

The first area of disagreement between the Company and the Public Staff concerns the appropriate level of working capital. The Commission has found in the Evidence and Conclusions for Finding of Fact No. 6 that the appropriate level of working capital for use in this proceeding is $19,033,411 as requested by Piedmont.

The second difference between the Company and the Public Staff concerns the proper treatment of Transco refunds as cost-free capital. The Commission has found in the Evidence and Conclusions for Finding of Fact No. 5 that the deduction of $282,327 as cost-free capital is reasonable in determining the Company's rate base as requested by the Public Staff.

The last item of difference concerns the proper level of accumulated deferred income taxes.

The Company included accumulated deferred income taxes associated with the gain realized on the defeasance of the First Mortgage Bonds. The Public Staff excluded said accumulated deferred income taxes, consistent with its position concerning the defeasance, as spoken to further under Evidence and Conclusions for Finding of Fact No. 12. Under Evidence and Conclusions for Finding of Fact No. 12, the Commission has rejected both the Public Staff's and the Company's proposed ratemaking treatments for the defeasance. Consistent with the appropriate ratemaking treatment spoken to further under Evidence and Conclusions for Finding of Fact No. 12, the Commission concludes that accumulated deferred income taxes should be increased by the amount associated with the defeasance. The Commission notes that consistent with its decision concerning the appropriate allocation factor utilized under Evidence and Conclusions for Finding of Fact No. 10 in determining the proper North Carolina portion of the gain from reacquired debt, the proper allocation factor to be utilized in this adjustment is .6005. This allocation factor takes into

account that the capital structure used herein supports the Company's operations in Tennessee as well as North and South Carolina.

There is one other adjustment that must be made to the rate base sponsored by the Company in this proceeding consistent with the discussion under Evidence and Conclusions for Finding of Fact No. 12. Therefore, the Commission concludes that the net tax unamortized gain from the First Mortgage Bond defeasance should be deducted from rate base.

Based upon the foregoing, the Commission concludes that the appropriate net original cost rate base for use in setting rates in this proceeding is $151,879,031.

Public Staff witness Porter testified that Piedmont should begin using the net of tax overall rate of return for purposes of calculating interest during construction. This proposal was uncontested by the Company. Therefore, the Commission concludes that effective with the date of this Order the net of tax overall rate of return should be used by Piedmont in the calculation of the Company's interest during construction rate.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 9

The levels of supply and sales volumes to be used in this proceeding are found in the testimony of Public Staff witness Curtis and Company witness Schiefer and in the proposed orders of the respective parties. The sales volume utilized by the Public Staff and by the Company is the same for purposes of this general rate case. The sales volume applicable for North Carolina is 51,238,677 dekatherms. The Commission therefore finds the proper level of sales volume for use in this proceeding to be 51,238,677 dekatherms. Similarly, the Commission concludes that the total Company supply of 68,938,700 dekatherms as proposed by the parties is appropriate for determining fair and reasonable rates in this proceeding.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 10

Public Staff witnesses Curtis and Porter and Company witnesses Schiefer and Guy presented testimony concerning the representative end-of-period level of operating revenues.

The end-of-period level of natural gas revenues used by both the Public Staff and Piedmont is the same for purposes of this docket. The end-of-period natural gas revenue level is $265,485,208. The Commission concludes this level is reasonable and proper for use in this proceeding.

The difference between the level of miscellaneous revenues proposed by the Company and the level proposed by the Public Staff concerns the treatment of the gain realized by Piedmont due to the reacquisition of debt. Witness Porter testified that Piedmont has repurchased $1,875,000 of debt to satisfy a sinking fund requirement, at a discount every year since 1981. Each year the Company has recorded the resulting gain as below-the-line income. Witness Porter further stated that the ratepayers have paid in the interest associated with this debt and should therefore receive the benefit of the gain. In its proposed order, the Company proposed a compromise position wherein 50% of the gain would be flowed through to ratepayers and 50% would be retained by the

Company's stockholders. The Company further proposed that the correct allocation factor to be used in this adjustment should take into account the acquisition of Nashville Gas Company.

After a careful review of the record, the Commission concludes that, for the reasons given by the Public Staff, it is proper to include the gain realized on the reacquisition of debt in miscellaneous revenues for purposes of determining the revenue requirement in this proceeding, as proposed by the Public Staff. However, consistent with the capital structure used in this proceeding which includes the effects of the Tennessee acquisition, the Commission has used the allocation factor proposed by the Company, which results in an amount for this adjustment of $181,456.

The Commission therefore concludes that the proper level of operating revenues is $266,236,464, consisting of gas sale revenues of $265,485,208 and miscellaneous revenues of $751,256.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 11

The evidence for this finding of fact is found in the testimony and exhibits of Company witnesses Guy and Schiefer and Public Staff witnesses Porter and Curtis. The following chart sets forth the amounts proposed by the Company and the Public Staff:

Line No.	Item	Company	Public Staff
1.	Cost of gas	$199,284,324	$199,284,324
2.	Operation and Maintenance expenses	29,493,253	29,493,253
3.	Depreciation	5,175,781	5,175,781
4.	Taxes other than income	11,423,737	11,431,242
5.	State income taxes	754,030	784,379
6.	Federal income taxes	5,434,043	5,652,756
7.	Amortization of ITC	(238,565)	(238,565)
8.	Interest on customer deposits	158,227	158,227
9.	Total operating revenue deductions	$251,484,830	$251,741,397

The witnesses agree on the amounts to be included for cost of gas, operation and maintenance expenses, depreciation, amortization of ITC, and interest on customer deposits. The Commission therefore concludes that these amounts are reasonable and proper.

The first difference, that of general taxes, is due to the different levels of end-of-period revenues proposed by the Public Staff and the Company. Since the Commission found under Evidence and Conclusions for Finding of Fact No. 10 that the appropriate level of revenues for the test year is $266,236,464, the Commission concludes that the appropriate level of general taxes for use in this proceeding is $11,429,580.

Since the Commission has not adopted all of the components of taxable income proposed by either party, the Commission concludes that State income tax expense of $763,802 and Federal income tax expense of $5,504,461, based on all the conclusions herein, are the proper amounts to include in determining the cost of service in this proceeding.

Although an adjustment for American Gas Association (AGA) dues was not proposed in this rate case, the Commission, consistent with the most recent rulings for electric and gas cases, concludes that it is proper also to require Piedmont to present in its next general rate proceeding information which will show all direct and indirect contributions to and through AGA from source and all expenditures by program and by system of accounts, thus allowing the Commission to specifically determine the appropriateness of all such expenditures for ratemaking purposes.

Based on the entire record in this proceeding, the Commission concludes that the proper level of operating revenue deductions under present rates is $251,570,867, as shown in the chart below:

Line No.	Item	Amount
1.	Cost of gas	$199,284,324
2.	Operation and maintenance expenses	29,493,257
3.	Depreciation	5,175,781
4.	Taxes other than income	11,429,580
5.	State income taxes	763,802
6.	Federal income taxes	5,504,461
7.	Amortization of ITC	(238,565)
8.	Interest on customer deposits	158,227
9.	Total operating revenue deductions	$251,570,867

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 12

The evidence for this finding of fact is contained in the testimony and exhibits of Company witness Guy and Public Staff witness O'Donnell.

Piedmont recommended that the Commission employ the Company's capitalization ratios at July 31, 1985, with an adjustment to reflect the sale of $30 million of debentures in September 1985. The Public Staff recommended the employment of an average capital structure for the 12 months ended July 31, 1985, including short-term debt at an average daily balance. The one adjustment that the Public Staff performed involved the Company's April 1985 defeasance of low coupon First Mortgage Bonds. In this adjustment the Public Staff included the defeased debt and reduced retained earnings by the net tax gain realized from the defeasance. The following chart compares the capital structures and cost rates proposed by the parties:

PUBLIC STAFF

	Percent	Embedded Cost
Long-term debt	37.61	9.76
Short-term debt	17.72	9.50
Common equity	44.67	
Total	100.00	

COMPANY

	Percent	Embedded Cost
Long-term debt	53.76	10.26
Common equity	46.24	
Total	100.00	

Public Staff witness O'Donnell stated that the capital structure proposed by the Company is inappropriate for use in setting revenue requirements. He felt that the evidence clearly indicated that the Commission should include short-term debt in Piedmont's capital structure, employ the average capital structure during the test year, and should not recognize the defeasance.

The capital structure proposed by the Company includes its April 1985 defeasance of low coupon debt, which Company witness Guy admitted raises Piedmont's embedded cost of the remaining long-term debt and its equity ratio.

Witness John H. Maxheim stated in the summary of his testimony that the defeasance of all of the Company's First Mortgage Bonds resulted in the Company obtaining a lower cost rate on the $30 million debentures issued in September 1985. The Company further asserts that during the period of the remaining life of the defeased bonds all debt issues sold after the defeasance will be sold at a lower rate than if the bonds had not been defeased.

The Commission has carefully considered the proper ratemaking treatment to be afforded the defeasance of all the Company's First Mortgage Bonds. The record is clear that the defeasance has resulted in a higher embedded cost of the remaining long-term debt and a higher equity ratio for Piedmont. The record also supports the conclusion that the cost rate of future debt issues should be less due to the defeasance, during the period of the remaining life of the defeased bonds. Essentially, the Public Staff has treated the Company's capital structure as if the defeasance had not occurred, while the Company's proposed capital structure includes the full effects of the defeasance.

The Commission is concerned that the Company shares no benefits from the defeasance, except for the lower cost of future debt issues, with its ratepayers, whereas the Public Staff treats the defeasance as if it had not occurred. Upon thorough analysis, the Commission concludes that the proper ratemaking treatment to be afforded the defeasance is to (1) amortize the gain from the defeasance as a reduction to the cost of service, over the remaining life of the defeased debt; (2) reduce the Company's rate base by the unamortized gain; (3) reduce the Company's rate base by the accumulated deferred income taxes associated with the gain; and (4) reduce the Company's

retained earnings by the net tax amount of the gain. This treatment flows the gain through to the Company's ratepayers, over the remaining life of the defeased debt. Since the Company's ratepayers have paid rates to support this debt, it is reasonable that ratepayers should receive any benefits from the gain. Similarly, since the Commission has determined that the reasonable amortization period for the gain is the remaining life of the defeased debt, the Commission concludes that the unamortized gain should be deducted from rate base in order to prevent ratepayers from having to pay an unjustified return on such gain. Since the net tax gain is being flowed through to the Company's rate payers, it is necessary also to reduce rate base by the associated deferred income taxes. Finally, the Commission concludes that, since the gain from the defeasance is being flowed back to the Company's ratepayers, it is appropriate to remove the gain from the Company's retained earnings. The Commission notes that the appropriate allocation factor to be used in the instant calculations is .6005, which takes into account the Company's proposed capital structure that supports the Company's operations in Tennessee, as well as North and South Carolina. The Commission concludes that the above-discussed treatment of the defeasance of the Company's First Mortgage Bonds is fair and reasonable to both the Company and its ratepayers.

The Commission further concludes that Piedmont should have sought and obtained approval for the defeasance in conformity with the provisions of G.S. § 62-160 prior to entering into said transaction. The Commission recognizes that Piedmont contends as a matter of law that the defeasance was not a pledge of assets within the meaning of G.S. § 62-160 and that even if the statute does apply the Commission had already authorized the defeasance when it approved the issuance of the bonds in question on terms that permitted them to be extinguished. The Commission rejects Piedmont's positions regarding this matter and affirms the general applicability of G.S. § 62-160 to this and any future defeasance transactions. The Commission believes this course of action to be prudent and warranted in view of the significant impact which defeasance transactions may have on the cost of service to be paid by ratepayers. The Commission recognizes that Piedmont's failure to obtain prior approval of the instant defeasance transaction was not willful, but was based upon its corporate view of the matter. By this Order, the Commission has evaluated the defeasance transaction and has in effect approved that transaction nunc pro tunc by the ratemaking treatment approved with respect thereto.

Public Staff witness O'Donnell offered further testimony regarding why he considered the capital structure proposed by the Company to be inappropriate for use in setting the Company's revenue requirement. Witness O'Donnell stated that, based upon the manner in which the Company finances gas inventories, short-term debt should be included in the capital structure. Witness O'Donnell presented exhibits which tended to show that there is a correlation between the level of gas inventories and short-term debt borrowings. Since gas inventories are a rate base item, the Public Staff proposed the inclusion of short-term debt in the capitalization structure of the Company for purposes of setting rates.

The Company opposes the inclusion of short-term debt in the capitalization structure for several reasons. The Company asserts that the inclusion of short-term debt in the capital structure assumes that short-term debt financing of the Company during the period in which rates established in this proceeding are in effect will mirror the test year daily average short-term borrowings.

Evidence indicates however that the Company's issuance of $30 million in long-term debt in September 1985 replaced much of such short-term debt borrowings. The Company further asserts that the volatility of short-term debt interest rates makes the choice of a reasonable short-term debt cost rate difficult.

The Commission believes that the capital structure proposed in this proceeding by the Company is reasonable, after reducing retained earnings by the net tax gain from the defeasance. Though the exhibits presented in the hearing did tend to show a correlation between short-term debt and gas inventories and thus some merit to the inclusion of short-term debt in the capital structure of the Company, this proposal would ignore the recent issuance of long-term debt amounting to $30 million. The Commission cannot reasonably ignore the fact that the Company issued long-term debt subsequent to the end of the test year and that this permanent debt issue was used generally to replace short-term debt borrowings. The Commission thus finds the Company's proposal in this regard to be more reflective of the underlying facts involved and more representative of a reasonable capital structure for the Company on an ongoing basis. Therefore, the Commission finds the appropriate capital structure for use in this proceeding to be the following, after taking into account its decision concerning the bond defeasance as discussed hereinabove:

Item	Percent
Long-term debt	53.96%
Common equity	46.04%
Total	100.00%

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 13

The evidence supporting this finding of fact is found in the testimony and exhibits of Charles M. Butler of Kidder, Peabody & Co., Inc., who testified on behalf of the Company, and Kevin W. O'Donnell, Public Utilities Financial Analyst of the Public Staff's Economic Research Division, who testified on behalf of the Public Staff.

The only differences between the parties concerning the embedded cost of long-term debt concerned the treatment of the bond defeasance and the $30 million bond issue of September 1985. Consistent with the Commission's conclusions concerning these matters as discussed under Evidence and Conclusions for Finding of Fact No. 12, the Commission concludes that the appropriate embedded cost of debt to be used in this proceeding is 10.26%.

To determine his recommended cost of common equity, witness Butler relied upon a methodology that utilized the Company's 1985 dividend, the Company's 1984 fiscal year ending book value, and an estimate as to Piedmont's proper payout ratio. Specifically, he took the 1985 dividend of $2.32 and divided it by his hypothetical payout ratio of 55% to obtain a hypothetical earnings per share of $4.22. Witness Butler then took this $4.22 estimated earnings per share and divided it by the fiscal year ending 1984 book value of $25.20 to obtain a 16.75% return on equity.

Public Staff witness O'Donnell relied upon the Discounted Cash Flow (DCF) model to determine the cost of common equity to the Company. He performed a DCF analysis on Piedmont as well as a group of gas distribution companies which are similar in risk. To calculate the dividend yield, witness O'Donnell divided the latest known dividend by an average of each company's week ending stock prices for the 26-week period of March 4, 1985, to August 26, 1985. This resulted in a dividend yield of 7.3% for Piedmont and 7.5% for the comparable group. To estimate the expected growth in dividends, he employed a log-linear "least squares" regression technique on earnings, dividends, and book value on a per share basis, the plowback or retention method, and a method adopted from Value Line which calculates the compound growth in earnings, dividends, and book value for the past five- and 10-year intervals. These methods resulted in an average growth rate of 5.8% to 6.9% for Piedmont and 5.8% to 6.2% for the comparable group.

Witness O'Donnell determined the cost of equity to Piedmont to be in the range of 13.5% to 14.0% and recommended that the Commission recognize 13.8% to be its cost to the Company. He then adjusted for the selling expense incurred by the Company in issuing new common stock. He took the selling expense incurred on issues back to 1970, estimated the weighted average selling expense as a percent of common equity as of July 31, 1985, to be 0.42%, and because the Company has issued stock in only three out of the last 15 years, multiplied 3/15 x 0.42% to produce a flotation cost of .08%. Witness O'Donnell added the flotation cost to his previously determined cost of equity range to produce a range of 13.6% to 14.1% and recommended a 13.9% cost.

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 on 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 profit 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 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 Co., 285 N.C. 277, 206 S.E. 2d 269 (1974).

The nature of the evidence in a case such as this makes it extremely difficult to balance all of the opposing interests, since much, if not all, of the evidence is based on individual witnesses' perceptions and interpretations of trends and data from the capital markets. The Commission has considered carefully all of the relevant evidence 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 parties involved are treated fairly and equitably.

Based upon the foregoing and the entire record in this docket, the Commission finds and concludes that the fair rate of return that Piedmont should have the opportunity to earn on its original cost rate base is 12.40%. Such fair rate of return will yield a fair return on common equity of 14.90%.

The Commission cannot guarantee that the Company will, in fact, achieve the level of returns found herein to be just and reasonable. Indeed, the Commission would not guarantee it if it could. Such a guarantee would remove necessary incentives for the Company to undertake to achieve the utmost in operational and managerial efficiency. The Commission believes, and thus concludes, that the level of returns approved herein will afford the Company a reasonable opportunity to earn a reasonable return for its stockholders while providing adequate and economical service to the ratepayers. The Commission can do no more.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 14

The Commission has previously discussed its findings of fact and conclusions regarding the fair rate of return which Piedmont Natural Gas Company, 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.

SCHEDULE I
PIEDMONT NATURAL GAS COMPANY, INC.
Docket No. G-9, Sub 251
Statement of Operating Income For Return
For the Test Year Ended January 31,1985

Item	Present Rates	Increase Approved	After Approved Increase
Operating Revenues:			
Sale of gas	$265,485,208	$8,367,751	$273,852,959
Other revenues	751,256	-0-	751,256
Total operating revenues	266,236,464	8,367,751	274,604,215
Operating Revenue Deductions:			
Cost of gas	199,284,324	-0-	199,284,324
Operating and maintenance expenses	29,493,257	20,367	29,513,624
Depreciation	5,175,781	-0-	5,175,781
Taxes other than income	11,429,580	268,786	11,698,366
State income taxes	763,802	484,716	1,248,518
Federal income taxes	5,504,461	3,493,186	8,997,647
Amortization of ITC	(238,565)	-0-	(238,565)
Interest on customer deposits	158,227	-0-	158,227
Total operating revenue deductions	251,570,867	4,267,055	255,837,922
Net operating income	$ 14,665,597	$4,100,696	$ 18,766,293
Bond defeasance gain amortization	61,020	-0-	61,020
Net operating income for return	$ 14,726,617	$4,100,696	$ 18,827,313

SCHEDULE II
PIEDMONT NATURAL GAS COMPANY, INC.
Docket No. G-9, Sub 251
Statement of Rate Base and Rate of Return
For the Test Year Ended January 31, 1985

Item	Present Rates	After Approved Rates
Gas utility plant in service	$212,693,393	$212,693,393
Leasehold improvements net of amortization	202,167	202,167
Less: Accumulated depreciation	(60,763,870)	(60,763,870)
Customer advances for construction	(356,452)	(356,452)
Accumulated deferred income taxes	(18,245,601)	(18,245,601)
Net plant in service	133,529,637	133,529,637
Allowance for working capital	19,033,411	19,033,411
Cost-free capital - Transco Refunds	(282,327)	(282,327)
Unamortized gain from defeasance	(401,690)	(401,690)
Original cost rate base	$151,879,031	$151,879,031
Rate of Return	9.70%	12.40%

SCHEDULE III
PIEDMONT NATURAL GAS COMPANY, INC.
Docket No. G-9, Sub 251
Statement of Capitalization and Related Costs
For the Test Year Ended January 31, 1985

	Original Cost Rate Base	Ratio %	Embedded Cost %	Net Operating Income
		/ Present Rates		
Long-term debt	$ 81,953,925	53.96%	10.26%	$ 8,408,473
Common equity	69,925,106	46.04%	9.04%	6,318,144
Total	$151,879,031	100.00%		$14,726,617
		Approved Rates		
Long-term debt	$ 81,953,925	53.96%	10.26%	$ 8,408,473
Common equity	69,925,106	46.04%	14.90%	10,418,840
Total	$151,879,031	100.00%		$18,827,313

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 15, 16, 17, 18, AND 19

The evidence concerning rate design issues is found in the testimony of Company witnesses Maxheim and Schiefer, Public Staff witness Curtis, and C.U.C.A. witness Loos.

The parties disagree over a number of rate design issues as follows: (1) use of an industrial sales tracker or IST; (2) transportation rates; (3) customer class rates of return; and (4) summer/winter differentials.

INDUSTRIAL SALES TRACKER

A central issue in this case regarding rate design is whether the Commission should adopt and implement the Industrial Sales Tracker (IST) proposed by Public Staff witness Curtis. The Company took issue with the Industrial Sales Tracker mechanism and did not support the IST methodology as proposed by the Public Staff.

According to Public Staff witness Curtis, the IST mechanism eliminates the problem of determining what volume and at what rate gas will be sold to individual IST customers, reduces the number of general rate cases, stabilizes the margin lost for IST customers leaving the system, affords the Company the opportunity to earn its approved rate of return when the Company must negotiate gas sales, stabilizes the margin when IST customers shift to the transportation rate schedule, and allows for changes in rates based on the differentials in the deferred account due to margin gain or loss.

Piedmont asserts that it is in an entirely different situation from the other gas utilities in the State who have IST mechanisms. Piedmont operates in three states; therefore, the complexities of the IST become even more complex. For example, under the IST, Piedmont asserts that the Company could often be placed in the position where it could sell gas in South Carolina and keep the margin (revenues less cost of gas and associated gross receipts taxes) or sell gas in North Carolina and refund the margin.

Piedmont cited other factors supporting the rejection of the IST. These factors are presented as follows:

1. The IST would likely result in higher residential rates for Piedmont's customers. Piedmont filed this rate case based on the assumption that it will not have to negotiate any lower rates with its industrial customers. If, however, Piedmont were to negotiate rates with its industrial customers at the same level as it did during the test period, Piedmont would lose approximately $2 million in margin. Under the proposed IST, Piedmont would recover this lost margin by increasing its residential rates.

2. The IST would lessen the incentives for Piedmont to lower its gas costs. Without an IST, if Piedmont cannot reduce the cost of its gas to a level that will permit it to earn the full margin under its industrial rates, Piedmont's stockholders suffer the loss. This provides incentives for Piedmont to obtain lower priced gas. Under the proposed IST, however, any such lost margin would be recovered from Piedmont's residential and other nonindustrial customers.

C.U.C.A. witness Loos testified in opposition to implementation of an IST for Piedmont.

The Commission has reviewed the evidence of record concerning the propriety of implementing an IST for Piedmont in the Company's rate structure. It is clear that the Company and C.U.C.A. are against the IST mechanism,

whereas the Public Staff supports it. Based on the entire evidence of record and the Company's filing in this proceeding, the Commission concludes that the IST mechanism should not be established in Piedmont's rate structure in view of the Company's extreme opposition and its expressed willingness on behalf of its shareholders to assume the risks which the IST is designed to ameliorate. Furthermore, the Commission agrees with Piedmont that the fact that the Company operates in three states including North Carolina whereas Public Service and NCNG operate only in North Carolina might well create additional administrative difficulties if an IST was implemented for Piedmont.

The Commission further notes that while witness Curtis states that one of the justifications for the IST is that it alleviates controversy concerning the representative levels of sales volumes for the Company's industrial customers, there is no such controversy in this proceeding.

TRANSPORTATION RATES

C.U.C.A. has raised two issues with respect to the Piedmont Transportation Rate 107 in this case. The first issue, which was raised through the testimony of witness Loos, concerns whether Piedmont should earn the same margin on its Transportation Rate 107 as the Company earns on its Sales Rate 104. This question was extensively briefed in Docket G-9, Sub 250, and was decided by this Commission by Order issued on August 14, 1985. All of the parties to this proceeding were also parties in Docket G-9, Sub 250. In that case, the Commission approved a full margin transportation rate for Piedmont. Both the Company and the Public Staff support continuation of a full margin transportation rate in this case. The Commission hereby incorporates by reference its findings and conclusions as set forth in the Order of August 14, 1985, entered in Docket No. G-9, Sub 250. Nothing has occurred in the intervening four months to cause the Commission to change its decision in that Order.

Specifically, the Commission continues to find no justification for a difference between the margins earned on the Company's sales rate schedule and its transportation rate schedule. In making this determination, the Commission has considered a number of relevant factors, including cost of service, value of service, quantity of gas used, the time of use, the manner of use, the equipment which Piedmont must provide and maintain in order to take care of the requirements of its customers, competitive conditions, and consumption characteristics. Utilities Commission and North Carolina Natural Gas Corporation v. N.C. Textile Manufacturers Association, Inc., 313 N.C. 215, 328 S.E. 2d 264 (1985) (the N.C.N.G. case); Utilities Commission v. Bird Oil Co., 302 N.C. 14, 273 S.E. 2d 232 (1980); and Utilities Commission v. Piedmont Natural Gas Company, 254 N.C. 734, 120 S.E. 2d 77 (1961). It is obvious to the Commission that the services performed by Piedmont are the same whether service is provided under the sales rate or transportation rate. The gas passes through the same pipes, meters, and regulators. The Company provides the same load balancing and use of storage. The same employees perform the billing services. Since the services performed by Piedmont are the same, common sense dictates that the costs would also be the same. Certainly, there is no difference to the customer in the value of service received under the transportation rate schedule from that received under the sales rate schedule. To the industrial customer, any differences in the services are totally transparent. The Company's customers use gas transported under the

transportation rate schedule in the same manner as gas bought on a sales rate schedule. Under either schedule, the customer receives the gas at his place of business to use as he sees fit. In addition, since generally the same customers transport gas as buy on the corresponding sales rate schedule, their consumption characteristics are the same. Natural gas competes equally with alternate fuels under both rate schedules. The same industrial customers are eligible to transport gas as are eligible to purchase it on the sales rate schedule, so they generally have the ability to substitute the same alternate fuels. Both the transportation schedule and the sales rate schedule are interruptible, and to the extent service is available under one, it is available under the other. There also is no difference in time of use under the rate schedules which would justify different margins. All of these factors support continued adoption of a full margin transportation rate in this case.

C.U.C.A. witness Loos also testified that cost-based transportation rates should be flat-rated rather than negotiable.

Since the cost of gas transported under Rate Schedule 107 varies, in order to receive the full margin approved herein, the 107 rate must vary as the cost of gas fluctuates. The Company's transportation tariff may be negotiable, if necessary, to meet alternative fuel prices. Consistent with the theory supporting the Company's regular negotiation tariff available to industrial customers with alternative fuels, the Commission concludes that the transportation tariff should be negotiable, if necessary, to meet alternative fuel prices.

CUSTOMER CLASS RATES OF RETURN

Public Staff witness Curtis and Company witness Schiefer testified that rates should be set to reflect a number of factors, including cost of service, value of service, and others. C.U.C.A. witness Loos testified that rates for the industrial class should be based on strict cost of service principles with attention given to value of service only to the extent value of service considerations (i.e., alternative fuel prices) would result in a rate lower than the strictly cost-based rate.

The Company proposed to increase the rates for its various rate classes by different percentages in order to move the rates of return for those rate classes closer to the overall rate of return. For example, the Company proposed to increase heat only residential Rate Schedule 101 by 11.88%; increase heat only commercial Rate Schedule 102 by 11.64%; and to increase commodity charges under industrial Rate Schedules 103, 104, and 107 only due to rounding adjustments. Thus, Piedmont essentially proposes to keep industrial rates at their present levels.

Public Staff witness Curtis presented the results of eight different cost of service studies based on four different methodologies and pointed out that the results of the studies fluctuated widely depending on the assumptions used in making those studies. The most significant difference between the Company's rate design and witness Curtis' rate design, excluding consideration of the IST, is that witness Curtis places a lower increase on heat only Rate Schedules 101 and 102 and proposes to increase Rate Schedule 103.

The Commission is of the opinion that the cost of service studies presented by the various parties are certainly an important and relevant guide or factor to be weighed in designing rates in this proceeding. Nevertheless, it must be kept in mind that the various cost of service studies presented in this docket are based on different methodologies and such studies reflect a great deal of judgment as to selection of an appropriate methodology depending on one's perception of fairness in allocating common costs among customer classes. The different studies often result in widely varying rates of return by customer class.

Furthermore, the various cost of service studies are not always directly comparable. For example, revenue levels for the industrial classes will fluctuate depending on the level of negotiated rates resulting in different rates of return from those shown by a given cost of service study.

The Commission concludes that the rate designs proposed by the Company should be adopted in principle for this proceeding. This is true, in part, for the reason that the Commission has declined to adopt and implement the IST proposed by the Public Staff. Furthermore, the rate designs proposed by Piedmont will result in rates of return for each rate class which are closer to the Company's overall rate of return and will also reflect the relative risk to the Company of serving each class of customer, while giving appropriate consideration and weight to each of the relevant factors noted by the Company and by the North Carolina Supreme Court in the recent N.C.N.G. case.

Rates of return for customers who have no alternative fuels readily available, such as residential customers, should not be directly compared to rates of return for those customers who do in fact have alternative fuels readily available, such as boiler fuel customers. Thus, rates of return for customers who cannot negotiate their rates with the Company should not be directly compared to rates of return for those customers who can and do in fact negotiate their rates. The services provided in either case are not directly comparable. Thus, the establishment of rates in this proceeding based solely upon equalized rates of return for all rate classes would clearly be unjust and unreasonable and inconsistent with the evidence.

The Commission recognizes that the residential and certain industrial and commercial customers do not generally have the ability to rapidly switch to alternate fuels, nor do they have the possibility of negotiating their rates. The risk to Piedmont of maintaining its profit margins on service to these classes of customers is significantly less than the risk to the Company of maintaining its profit margins on service to large industrial customers.

The relative rates of return for customers in Rate Schedules 101 through 104 also reflect the relative priorities of interrupting service during peak periods. Such priorities reflect the ability of customers to switch to alternative fuels. Currently, the unit prices per dekatherm are highest for heat only residential customers served on Rate Schedule 101 and are progressively lower through Rate Schedule 104.

Finally, anchoring the rate designs at one end of the scale based on value of service (represented by the approximate cost of alternative fuels for Rate Schedule 104) and at the other end of the scale based on priorities of service (represented by priority 1 for Rate Schedule 101) appears to be a just and

reasonable way to establish rate differentials between the various classes of service, especially where such rate differentials are confirmed by the cost of service studies. The fact that such rate differentials cannot be calculated precisely from the cost of service studies reflects the uncertainties inherent in such studies.

Based upon a careful consideration of the evidence in this case, the Commission concludes that the rates set forth in Appendix A attached hereto are just and reasonable, do not result in any unjust or unreasonable discrimination or preference between customers or classes of customers, and should be approved. The Commission is of the opinion that the rates approved in this proceeding result in a fair distribution of the overall rate increase granted to Piedmont among customer classes and that it would be unjust and unreasonable, based upon the evidence presented in this case, to place any greater rate increase on the residential and commercial customers served by the Company who are already paying and will continue to pay the highest unit price rates on the system. Furthermore, the Commission notes that while residential and commercial customers consume less than 50% of the natural gas on Piedmont's system, those same customers will pay in 59% of the Company's revenues during the period the rates approved in this proceeding are expected to be in effect. In arriving at this decision, the Commission has given careful consideration to and has weighed and balanced all of the relevant factors discussed by the North Carolina Supreme Court in its recent opinion in the N.C.N.G. case. Such factors include the estimated cost of service, the ability to negotiate rates, value of service, quantity of natural gas used, the time of use, the manner of use, the equipment which the Company must provide and maintain in order to meet the requirements of its customers, competitive conditions, and consumption characteristics.

SUMMER/WINTER DIFFERENTIALS

Piedmont's present residential and small commercial customers purchasing gas under Rates 101 and 102 pay approximately 50 cents per dekatherm more for gas in the winter than in the summer. Piedmont proposes to increase the differential for Rate 101 and 102 Heating Only customers to approximately $1.00 and to increase the differential for Rate 101 and 102 Year Round customers to approximately $.55. The Public Staff proposes to leave the winter differentials for Rate 101 and 102 Heating Only customers at $.50 and to reduce the winter differentials for Rate 101 and Rate 102 Year Round customers to $.30.

The Commission concludes that the summer/winter differential proposed by Piedmont for Heating Only customers to be appropriate for the following reasons:

1. Rate Schedules 101 and 102 Heating Only customers provide rates of return that are below the average.

2. If Piedmont is to continue to serve these customers, their contribution to costs must be increased.

3. Heating Only customers use little or no gas in the summer; therefore, little would be accomplished by raising their summer rates.

4. These Heating Only customers use a considerable amount of peaking services. In order to continue to serve these customers, Piedmont must purchase additional peaking service in the future, and peaking service is very expensive today.

The Commission further concludes that the summer/winter differential proposed by Piedmont for Rate 101 and 102 Year Round customers is appropriate. These customers also purchase most of their gas in the winter and depend to a large extent upon storage and peaking services. Piedmont only proposes to increase the winter differential for these customers from approximately $.50 to $.55. The Commission is of the opinion that this increase is justified.

Under cross-examination by C.U.C.A., the Company recommended that any difference between the Commission's approved revenue increase and the Company's proposed increase should be used to reduce industrial rates. Consistent with the Commission's discussion elsewhere herein concerning Piedmont's class rate of returns and appropriate revenue requirements, the Commission concludes that this recommendation is reasonable and therefore should be adopted.

Based on the foregoing, the Commission concludes that the rates resulting from the rate guidelines adopted hereinabove are just and reasonable and should be adopted as set forth in Appendix A attached hereto. The Commission further notes that said rates should be adjusted for any Transco PGA Charges and any temporary increments or decrements approved since July 31, 1985.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 20

The evidence for this finding of fact is contained in the testimony of Public Staff witness Daniel and Company witnesses Maxheim and Schiefer.

Public Staff witness Daniel testified that Piedmont has converted 10,000 dekatherms per day of its Transco CD-2 sales contract volumes to firm transportation volumes. He stated that Piedmont was acquiring "off Transco-system" volumes through a subsidiary, PNG Energy Company, and that PNG Energy was then delivering the volumes to Piedmont at a price generally $.10 per Dt below Transco's CD-2 rate. Any remaining cost savings up to $.25 per Dt are being retained by PNG Energy to be split with its partner in a joint venture created to seek out alternate sources of gas supply. Witness Daniel further testified that PNG Energy had retained approximately $600,000 of cost savings to be split with Enmar (its joint venture partner) and that Piedmont's customers received savings of approximately $400,000. He also stated that PNG Energy was nothing more than a conduit whose only legitimate purpose was to satisfy formal requirements of a legal or technical nature that might exist at the federal level. He indicated that PNG Energy has no employees and virtually no assets and that employees of Piedmont are actually negotiating the acquisitions of the volumes at issue.

Witness Daniel contended that Piedmont is obligated under its franchise to provide service to its customers at the lowest possible cost, including the cost of gas required to provide that service. He further contended that it was unreasonable for Piedmont to generate profits by spinning off functions essential to providing utility service to a nonregulated subsidiary.

Witness Daniel also pointed out that Piedmont had indicated that to the extent the price of alternate gas supplies exceeded Transco's price, the Company would anticipate recovering the excess cost through the Purchased Gas Adjustment (PGA) mechanism. Company witness Maxheim agreed, on cross-examination, that the Company would expect to recover increased costs through the PGA.

Witness Daniel further stated that the problems of alternate sources of supply and the pricing of these volumes is not unique to Piedmont and that Transco's proposed restructuring and recent action by the Federal Energy Regulatory Commission in Docket No. RM 85-1-000 will have a substantial impact on the sources and price of gas that North Carolina gas distribution companies will be using.

On cross-examination, witness Daniel testified that affiliates of telephone companies which provide services to the regulated telephone companies are totally different from PNG Energy in that the telephone affiliates are well established, fully staffed operating entities which operate almost independently of the regulated utility, in contrast to PNG Energy which is a shell corporation that has no employees and virtually no assets. He also pointed out that Duke Power Company has an affiliate, Mill Power Supply, which acquires Duke's coal supplies and sells that coal to Duke at cost.

In summary, witness Daniel contended that, as long as the customer is to bear the burden of major cost increases of the Company, the customer is entitled to receive the benefit of any cost savings and that the Company should not be permitted to siphon off profits to a nonregulated subsidiary by having the subsidiary perform the gas supply function which Piedmont should be, and in fact is, itself performing.

Company witness Maxheim testified that Piedmont's innovative efforts have resulted in cost of gas savings of $2.5 million for its customers with additional savings of $2 million going to its industrial customers. He stated that Piedmont is willing to take the risks inherent in new ideas and methods of operation which are beneficial to customers, but that the Company's shareholders should share in the benefits when these risks prove profitable.

Witness Maxheim contended that the Company must have flexibility to utilize all the programs that become available in order to try out new ideas and find out if they work. Witness Maxheim cited FERC Order No. 436 in Docket No. RM 85-1 which stated that:

> "The Commission will not insulate local distribution company markets from the competitive incentives that are the foundation of the final rule. In order to promote economic efficiency, a necessary factor in providing gas to consumers at the lowest reasonable rates, the rule must provide sufficient competitive incentives to all elements of the market. This means making all market participants, including local distribution companies, accountable for the success or failure of their market participation. As for the possibility that local distribution companies will shift costs to the other
>
> customers of large end-users are lost in competition with pipelines. [sic] The Commission does not believe that this is necessary as an

inevitable result. Local distribution companies' rates are regulated by the states, not the Commission. States may, if they choose, prevent such cost shifting by L.D.C.'s that fail to compete aggressively."

Company witness Maxheim further testified that PNG Energy Company and its joint venture partner, Enmar, Inc., find gas in the field, negotiate a contract to purchase the gas, arrange for the construction of transportation facilities from the wellhead to an interstate pipeline, finance those facilities, if necessary, and negotiate with the interstate pipeline for transportation of the gas and for the filing of any applications or reports in connection therewith. Piedmont and PNG Energy Company have a contract pursuant to which PNG Energy Company agrees, from time to time at Piedmont's request, to attempt to find gas for Piedmont at a delivered price equal to Transco's CD-2 Commodity Rate less $.10. If PNG Energy Company finds gas at any price up to $.10 per Dt less than Transco's CD-2 rate, PNG Energy Company sells that gas to Piedmont at cost; therefore, in such a transaction, PNG Energy Company would not be paid anything for its services. If, however, PNG Energy Company can find gas at prices which are at a larger discount, it keeps the excess discount (up to $.25 per Dt). Any additional excess discount is passed on to Piedmont, and, through Piedmont's PGA, to Piedmont's customers. PNG Energy Company has a contract with Enmar, Inc., a nonaffiliated gas marketing company in Houston, Texas, pursuant to which Enmar assists PGN Energy Company in finding gas and arranging for its transportation. Under this contract, PNG Energy Company and Enmar split any markup on any sales in which both perform services.

On cross-examination, witness Maxheim agreed that the Company was legally obligated to control costs to the fullest extent possible. In response to questions regarding the necessity to acquire gas in order to sell it, witness Maxheim testified that Piedmont discharged this aspect of its utility obligation through its Transco contracts and that the Company's contracts with Transco were simply the instruments by which the Company presently fulfills its obligations to acquire gas.

Witness Maxheim further testified on cross-examination that he is President and Chief Executive Officer of PNG Energy, that witness Schiefer is Vice President and that Mr. McCreary is responsible for insuring that the mix of gas from different sources is adequately accounted for. Witness Maxheim described witness Schiefer's responsibilities as working closely with Enmar in acquiring gas, negotiating the gas prices, and assuring that the supplies are available. Witness Maxheim described his own duties as, although not on a daily basis, being involved in active discussions with Enmar on gas supplies for Piedmont from different producer sources. Witness Maxheim stated that "we're as active--we will be under the new rulemaking, in our opinion, as active off-system as we'll be on system."

Company witness Schiefer testified that Piedmont had been advised that it was necessary for the Company to acquire its alternative supplies through another entity in order to ensure compliance with certain requirements at the federal level. In this regard, witness Schiefer stated that Piedmont was advised by its attorneys and by three "high ranking members at the policy level" of the FERC Staff that the Company should not directly participate in

the purchase and sale of natural gas outside of one of the jurisdictions in which it normally resells gas because the Company might become subject to the jurisdiction of the FERC under the Natural Gas Act. Therefore, Piedmont elected to participate in the various gas purchase and transportation arrangements through a wholly owned subsidiary, PGN Energy Company.

In its brief, Piedmont advised the Commission that Piedmont and PGN Energy Company had recently agreed to amend their contract to reflect current marketing conditions and to offer a compromise on this issue. Piedmont states that effective November 1, 1985, the maximum amount that will be payable to PNG Energy Company and Enmar will be reduced to $.10 per Dt.

The Commission considers the acquisition of an adequate natural gas supply to be a fundamental and essential obligation of any natural gas utility. Clearly a company cannot sell gas to its customers without first acquiring the gas. Implicit in the obligation of the natural gas utility to acquire an adequate supply of gas for its customers is its obligation to acquire the gas at the lowest possible cost consistent with maintaining an adequate supply to satisfy the needs of its customers. It is clear and uncontroverted that Piedmont is seeking to acquire adequate supplies to service its customers. The issue raised by the Public Staff in this proceeding is the appropriate distribution of the cost savings achieved through the acquisition of lower cost alternate gas supplies.

G.S. § 62-153 provides in pertinent part that all public utilities shall file copies of contracts with any affiliated or subsidiary purchasing company with the Commission and that the Commission may disapprove, after hearing, any such contract if it is found to be unjust or unreasonable and made for the purpose or with the effect of concealing, transferring, or dissipating the earnings of the public utility. It is clear in this case that Piedmont did not file the initial contract with PNG Energy Company for review by the Commission as required by G.S. § 62-153, and that such contract has recently been amended effective November 1, 1985. In view of the fact that the Public Staff has not proposed a specific test year accounting adjustment in this case, the Commission concludes that it is appropriate to defer ruling on the issue raised by the Public Staff at this time and to require Piedmont to file its contract with PNG Energy Company pursuant to G.S. § 62-153. Once Piedmont files this contract, the Commission will review the record in this case and enter such further Order or Orders as are appropriate regarding the PNG Energy contract.

IT IS, THEREFORE, ORDERED as follows:

1. That Piedmont Natural Gas Company, Inc., be, and is hereby, allowed to increase its rates and charges so as to produce an annual level of revenue of $274,604,215 from its North Carolina customers based on the Company's level of test year operations. Such amount represents an increase of $8,367,751 above the level of revenues that would have resulted from rates in effect during the test year.

2. That the base rates attached hereto as Appendix A be, and the same are hereby, approved effective for service rendered on and after the date of this Order.

3. That the base rates approved herein should be adjusted for any Transco PGA charges and any increments or decrements that have been ordered by the Commission since July 31, 1985.

4. That Piedmont shall file appropriate tariffs in accordance with the provisions of this Order, not later than ten (10) days from the date of this Order.

5. That Piedmont shall send appropriate notice concerning the rates approved herein to its customers as a bill insert in its next billing cycle.

6. That Piedmont shall file its contract with PNG Energy Company pursuant to G. S. § 62-153 for consideration and review by the Commission. Piedmont shall file this contract not later than 20 days from the date of this Order.

7. That Piedmont shall request approval for any future defeasance transactions in conformity with G. S. § 62-160.

8. That effective the date of this Order Piedmont shall use the net of tax overall rate of return for purposes of calculating interest during construction.

9. That Piedmont shall file information in the Company's next general rate proceeding which will show all direct and indirect contributions to and through AGA from source and all expenditures by program and by system of accounts.

ISSUED BY ORDER OF THE COMMISSION.
This the 11th day of December 1985.

NORTH CAROLINA UTILITIES COMMISSION
(SEAL) Gail L. Mount, Deputy Clerk

APPENDIX A
BASE RATES
Docket No. G-9, Sub 251

Rate Schedule	Base Rate
101 - Heating Only	
Facilities Charge	$4.50 per month
Winter (Nov. - Mar.)	.65826 per therm
Summer (Apr. - Oct.)	.55970 per therm
101 - Year Round	
Facilities Charge	$4.05 per month
Winter (Nov. - Mar.)	.61470 per therm
Summer (Apr. - Oct.)	.55970 per therm
101 - Public Housing	
Facilities Charge	none
Winter (Nov. - Mar.)	.61470 per therm
Summer (Apr. - Oct.)	.55970 per therm
102 - Heating Only	

Facilities Charge	$9.50 per month
Winter (Nov. - Mar.)	.65470 per therm
Summer (Apr. - Oct.)	.55470 per therm
102 - Year Round	
Facilities Charge	$9.00 per month
Winter (Nov. - Mar.)	.58970 per therm
Summer (Apr. - Oct.)	.53480 per therm
102B - Air Conditioning	
Facilities Charge	$9.00 per month
Winter (Nov. - Mar.)	.58970 per therm
Summer (Apr. - Oct.)	.48000 per therm
102C - Compressed Motor Fuel	
Facilities Charge	$9.00 per month
Winter (Nov. - Mar.)	.58970 per therm
Summer (Apr. - Oct.)	.53480 per therm
103 - Facilities Charge	$100.00 per month
Winter (Nov. - Mar.)	.50256 per therm*
Summer (Apr. - Oct.)	.47756 per therm*
104 - Facilities Charge	$200.00 per month
First 15,000 therms -	
Winter (Nov. - Mar.)	.47256 per therm*
Next 30,000 therms-	
Winter (Nov. - Mar.)	.46256 per therm*
Next 90,000 therms -	
Winter (Nov. - Mar.)	.45256 per therm*
All Over 135,000 therms -	
Winter (Nov. - Mar.)	.44256 per therm*
First 15,000 therms -	
Summer (Apr. - Oct.)	.45256 per therm*
Next 30,000 therms -	
Summer (Apr. - Oct.)	.44256 per therm*
Next 90,000 therms -	
Summer (Apr. - Oct.)	.42756 per therm*
Next 165,000 therms -	
Summer (Apr. - Oct.)	.41756 per therm*
All Over 300,000 therms -	
Summer (Apr. - Oct.)	.40756 per therm*
105 - Facilities Charge	$7.28 per month
106 - Off-Peak	.77283 per therm
On-Peak	.96273 per therm
107 - Facilities Charge	$200.00 per month
First 15,000 therms -	
Winter (Nov. - Mar.)	.10566 per therm*
Next 30,000 therms -	
Winter (Nov. - Mar.)	.09595 per therm*

Next 90,000 therms -	
Winter (Nov. - Mar.)	.08623 per therm*
All Over 135,000 therms -	
Winter (Nov. - Mar.)	.07652 per therm*
First 15,000 therms -	
Summer (Apr. - Oct.)	.08624 per therm*
Next 30,000 therms -	
Summer (Apr. - Oct.)	.07652 per therm*
Next 90,000 therms -	
Summer (Apr. - Oct.)	.06195 per therm*
Next 165,000 therms -	
Summer (Apr. - Oct.)	.05224 per therm*
All Over 300,000 therms -	
Summer (Apr. - Oct.)	.04253 per therm*

*These rates may be negotiated downward only.

DOCKET NO. G-9, SUB 252

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Application of Piedmont Natural Gas Company,	)	ORDER ESTABLISHING
Inc., for an Adjustment of Its Rates and Charges	)	HANDLING OF DISCOUNTED
Track Changes in Supplier Rates	)	TO SERVICE (DS)

BY THE COMMISSION: On April 2, 1985 Piedmont Natural Gas Company, Inc. (Piedmont) filed an application in which it requested Commission approval of a plan for the disposition of the moneys generated as a result of the DS service and rates established in Transco's settlement in Docket No. RP83-137, as approved by the Federal Energy Regulatory Commission (FERC).

In its application Piedmont states as follows:

"Transco also plans to reduce its cost of gas to Piedmont pursuant to a Settlement Agreement approved by the FERC in FERC Docket No. RP83-137. Under that settlement agreement, it is anticipated that Piedmont will receive up to 4,737,960 dekatherms of gas under Transco's DS Rate Schedule during the months April through October 1985 for use in North Carolina and South Carolina. The exact amount of DS gas to be received will not be known until after October 31, 1985. Piedmont proposes to account for all DS gas received by it during the period April 1, 1985 through October 31, 1985 as follows: The first 2,797,194 dekatherms of DS gas will be placed in storage for withdrawal for sale in North Carolina and South Carolina during the period November 1, 1985 through March 31, 1986. During the withdrawal period, Piedmont's rates will be reduced by an amount to reflect the reduced cost of the DS gas. Any remaining DS gas will be sold during the period April 1, 1985 through October 31, 1985. Any reduction in the cost of that gas from the CD-2 commodity cost (less

the amount, if any, that Piedmont passes through to its customers under its negotiated sales rate schedules) will be placed into Piedmont's Deferred Account No. 253 for future disposition by the Company."

As a result of this filing the Public Staff met with Piedmont. These meetings resulted in the Public Staff and Piedmont recommending the following method for handling the DS service.

Piedmont estimates that it will receive under the first 3% of daily contract and transportation gas volumes some 2,797,194 dekatherms of DS gas which shall be allocated between North Carolina and South Carolina. This allocation will result in North Carolina receiving 2,009,246 DT's (71.83%). This first DS service is made up of 3% of Piedmont's daily contract quantities and transported volumes which qualify under Transco's DS program.

Piedmont proposes that the dollars calculated by this first DS volume (2,009,246 DT's) times the Transco commodity rate minus Transco's DS rate be placed in the deferred account.

Piedmont estimates it is entitled to additional DS volumes, of which North Carolina's portion is 1,101,886 DT's. The dollars generated (volume times the difference in Transco's commodity rate minus Transco's DS rate) shall be placed in the deferred account. These dollars reduced by a factor of .35861 shall be used to offset negotiated rate losses in North Carolina incurred by Piedmont in excess of an amount of seven twelfths of $81,393, or $47,479. The $81,393 is the amount allowed in the last general rate case by the Commission as an amount allowed to offset negotiated rates on an annual basis.

If Piedmont utilized this amount for negotiated sales losses, any additional loss shall be borne by Piedmont. If no negotiations take place during the summer in excess of the $47,479, all excess DS benefits shall be placed in the deferred account.

The Commission is of the opinion that the proposal as described above appears reasonable and should be approved and Piedmont should record these transactions in a separate subaccount of Deferred Account No. 253.

IT IS, THEREFORE, ORDERED that Piedmont shall account for the benefits of the DS gas as outlined above in its next PGA filing.

ISSUED BY ORDER OF THE COMMISSION.
This the 30th day of April 1985.

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

DOCKET NO. G-5, SUB 200

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Application of Public Service Company of North Carolina, Inc., for an Adjustment of Its Rates and Charges	)	ORDER GRANTING PARTIAL RATE INCREASE

HEARD IN: Buncombe County Courthouse, Asheville, North Carolina, on August 8, 1985; City Council Chambers, City Hall, Gastonia, North Carolina, on August 9, 1985; and Commission Hearing Room, Dobbs Building, Raleigh, North Carolina, on August 13-16, 1985, and August 20-23, 1985

BEFORE: Commissioner Sarah Lindsay Tate, Presiding; and Commissioners Ruth E. Cook and Julius A. Wright

APPEARANCES:

For The Applicant:

Graham C. Mullen, Mullen, Holland & Cooper, P.A., Attorneys at Law, Post Office Box 488, Gastonia, North Carolina 28053-0448

F. Kent Burns and James M. Day, Boyce, Mitchell, Burns & Smith, P.A., Attorneys at Law, Post Office Box 2479, Raleigh, North Carolina 27602
For: Public Service Company of North Carolina, Inc.

For The Public Staff:

Lorinzo L. Joyner and Vickie L. Moir, Staff Attorneys, Public Staff - North Carolina Utilities Commission, Post Office Box 29520, Raleigh, North Carolina 27620-0520
For: The Using and Consuming Public

For The Intervenors:

Jerry B. Fruitt, Attorney at Law, 1042 Washington Street, Post Office Box 12547, Raleigh, North Carolina 27605-2547
For: Carolina Utility Customers Association, Inc.

W. I. Thornton, City Attorney, 101 City Hall, Durham, North Carolina 27705
For: The City of Durham

BY THE COMMISSION: On April 19, 1985, Public Service Company of North Carolina, Inc. (Public Service, the Applicant, or the Company), filed an application with the Commission seeking authority to adjust its rates and charges for retail natural gas service in North Carolina.

A Petition to Intervene was filed with the Commission by Carolina Utility Customers Association, Inc. (CUCA), on May 13, 1985. By Commission Order issued May 15, 1985, that intervention was allowed.

On May 15, 1985, the Commission issued an Order declaring the matter to be a general rate case pursuant to G.S. § 62-137, suspending the proposed rates for a period of 270 days from the proposed effective date of May 20, 1985, scheduling the matter for hearing, declaring the test period to be the 12 months ended December 31, 1984, and requiring public notice of the proposed increase and the hearings.

On May 23, 1985, a letter from F. Kent Burns, counsel for the Applicant, was filed with the Commission noting a typographical error in the Public Notice and proposing to correct it.

On June 28, 1985, the Company filed the revised exhibit of Robert S. Jackson.

On July 17, 1985, a copy of CUCA's data request to the Company was filed with the Commission. On July 27, 1985, the Company filed a copy of its response to CUCA's data request with the Commission.

On July 19, 1985, CUCA filed a Petition for Extension of Time in which to file testimony. By Commission Order issued July 23, 1985, CUCA was granted an extension of time to and including July 30, 1985, within which to file its expert testimony.

The City of Durham filed with the Commission a Petition for leave to intervene on July 22, 1985. By Commission Order issued July 24, 1985, the City of Durham was allowed to intervene.

The matter came on for hearing at the places and on the dates scheduled in the Order Setting Hearing. Bruce Byers and Wayne Norman, both of whom are engaged in the propane business, appeared at the Asheville hearing on August 8, 1985, and offered testimony. Jimmy McKinnish appeared and offered testimony at the hearing held in Gastonia on August 9, 1985.

The case in chief was heard in Raleigh beginning on August 13, 1985. The Company presented the testimony of the following witnesses:

1. Charles E. Zeigler, President, Chief Executive Officer, and Chairman of the Board of Directors of Public Service (direct and rebuttal testimony);

2. Joseph F. Noon, Senior Vice President - Engineering and Operations Services and Director of Public Service (direct testimony);

3. C. Marshall Dickey, Vice President - Gas Supply and Transportation (direct and rebuttal testimony);

4. Allen J. Schock, Vice President - Regulatory Affairs (direct testimony);

5. E. L. Flanagan, Jr., Senior Vice President - Finance and Treasurer (direct testimony);

6. Robert S. Jackson, Senior Vice President of Stone & Webster Management Consultants, Inc. (direct testimony); and

7. Hugh A. Gower, Partner in Arthur Andersen & Company (rebuttal testimony).

CUCA presented the testimony and exhibits of L. W. Loos, Project Manager in the Management Services Division of Black & Veatch, Engineers - Architects of Kansas City, Missouri.

The Public Staff presented the testimony and exhibits of the following witnesses:

1. Eugene H. Curtis, Engineer, Natural Gas Division;

2. Raymond J. Nery, Director, Natural Gas Division;

3. Kevin W. O'Donnell, Public Utilities Financial Analyst, Economic Research Division; and

4. John J. Salengo, Accountant, Accounting Division.

Pursuant to various requests made and Commission Orders entered during the hearings, 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.

Based upon the foregoing, the evidence presented at the hearing and the entire record in this proceeding, the Commission makes the following

FINDINGS OF FACT

1. Public Service Company of North Carolina, Inc., is a corporation organized under the laws of and authorized to do business in the State of North Carolina; it is a franchised public utility providing natural gas service to 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 proposed rates and charges.

2. The test period for purposes of this general rate case is the 12 months ended December 31, 1984.

3. Public Service is providing adequate natural gas service to its existing customers.

4. The additional gross revenues sought by Public Service under the rates and volumes originally proposed herein by the Company were $9,562,692. The Company in its proposed order amended its requested gross revenue increase downward to $9,300,572.

5. Public Service's original cost rate base used and useful in providing service to its customers is $143,168,998. This rate base consists of plant-in-service of $216,694,057, plus a plant acquisition adjustment of $348,750 and a working capital allowance of $12,385,456; less accumulated depreciation of $66,281,983, accumulated deferred income taxes of $19,719,282, and cost-free capital of $258,000.

6. Certain adjustments should be made to allocate costs to the Company's nonutility operations.

7. Public Service's operating revenues after appropriate accounting and pro forma adjustments under present rates are $229,695,420 and under the Company's originally proposed rates would be $239,258,112.

8. The test period level of Public Service's operating revenue deductions under present rates after accounting and pro forma adjustments is $215,131,679.

9. The capital structure which is proper for use in this proceeding is the following:

Item	Percent
Long-term debt	53.25%
Preferred stock	4.88%
Common equity	41.87%
Total	100.00%

10. The proper cost rates for long-term debt and preferred stock are 11.02% and 7.06%, respectively. The reasonable rate of return for Public Service to be allowed to earn on common equity is 14.90%. The weighted average cost of capital, derived from the capital structure and cost rates found reasonable and fair herein, is 12.45% to be applied to the Company's original cost rate base. Such rate of return will enable Public Service, by sound management, to produce a fair return for its stockholders, to maintain its facilities and service in accordance with customer requirements, and to compete in the capital markets for funds on terms which are fair to customers and existing investors.

11. Based upon the foregoing, Public Service should be authorized to increase its annual level of gross revenues under present rates by $6,660,683. The annual revenue requirement approved herein is $236,356,103, which will allow Public Service 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 Public Service'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.

12. Public Service presently delivers natural gas to its commercial and industrial customers pursuant to various rate schedules. The Company purchases natural gas at wholesale from its pipeline supplier and resells such gas to its commercial and industrial customers under Rate Schedules 55, 57, 60, 65, 67, 70, 72, and 80. Public Service also transports natural gas for and on behalf of its commercial and industrial customers under Rate Schedules 91 and 92. Full margin transportation rates are fair and reasonable and should be adopted in this proceeding. "Margin" as used herein is defined to mean the normal sales

rate of Public Service less Transco's CD commodity charge and less the gross receipts taxes associated with that commodity charge.

13. Rate Schedules 60 and 65 should not be combined at this time.

14. Declining block rates and summer/winter rate differentials should not be incorporated into the rates of Public Service at this time.

15. It would be unjust and unreasonable to establish rates in this proceeding based upon equalized rates of return for all customer rate classes. Other relevant factors which must be considered in setting rates in addition to the estimated cost of service include value of service, quantity of natural gas used, the time of use, the manner of use, the equipment which Public Service must provide and maintain in order to meet the requirements of its customers, competitive conditions, and consumption characteristics.

16. An Industrial Sales Tracker (IST) is necessary, appropriate, and just and reasonable and should be adopted in this proceeding. The IST should be based on a filed tariff rate which exceeds the current level of negotiated rates and should include those customers on Rate Schedules 65 and 67 who use heavy fuel oil as an alternate fuel plus all customers on Rate Schedules 70 and 72. The IST approved in this proceeding is not unreasonably discriminatory to or within customer classes.

17. The rates set forth in Appendix A attached hereto are just and reasonable, do not result in any unjust or unreasonable discrimination or preference between or within classes of customers, and should be approved. These rates will generate the appropriate level of revenue and will afford the Company an opportunity to achieve the overall return of 12.45% approved herein. Said rates should be adjusted for any Transco PGA changes and for any temporary increments or decrements currently in effect.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 1, 2, AND 4

The evidence for these findings of fact is contained in the verified application, the Commission's files and records, the Order Setting Hearing, the Notice of Hearing, and the testimony and exhibits of Company witnesses Schock and Dickey and Public Staff witnesses Curtis and Salengo. These findings of fact are essentially informational, procedural, and jurisdictional in nature and are, for the most part, uncontested.

In its application, the Company proposed an increase in gross revenues of $9,562,692. Company witness Dickey testified that in calculating its proposed increase, the Company used the current filed tariff rates (those in effect on April 1, 1985) for all customers except those on Rate Schedules 70 and 72.

According to Public Staff witness Curtis, it is appropriate to use the currently filed tariff rate for all customers to determine an end-of-period level of revenues. Use of the filed tariff rate for all customers, including those on Rate Schedules 70 and 72, results in an annual requested revenue increase of $6,235,240, which is approximately $3.3 million less than that proposed in the Company's application. This difference is determined by multiplying the volume of natural gas sold to Rate Schedule 70 and 72 customers by the difference in the rates for Rate Schedules 70 and 72 used by the Company

($.43589/therm) and the published tariff rate at April 1, 1985 ($.46589/therm), both adjusted for all miscellaneous items.

The Company's position is that a rate of $.43589 per therm should be used to calculate end-of-period revenues from sales made to Rate Schedule 70 and 72 because the Company is not entitled to keep revenues from such sales in excess of $.43589 per therm under the present Industrial Sales Tracker (IST). Since the Company is not entitled to keep the 30 cents per decatherm differential but must flow such amount back to its customers via the IST mechanism, the Commission believes that the IST tracked rate of $.43589 is the more reasonable rate with which to calculate end-of-period revenues. The Commission believes that there is in reality no disagreement between the parties as to whether the Company is entitled to the $3.3 million in revenues. While the Company would treat the $3.3 million as a requested revenue increase amount, the Public Staff's treatment reflects the $3.3 million as revenues presently collected by the Company. The Commission recognizes that this issue arises in the case as a result of the IST mechanism and that the gross revenue level found fair by the Commission will remain unchanged regardless of the Commission's decision on the matter. However, the Commission is of the opinion that the Company's approach more accurately depicts the actual underlying facts involved in the matter.

Based on the foregoing, the Commission concludes that it is appropriate to reflect end-of-period revenues under present rates at the level which the Company could retain on an ongoing basis under the rates presently in effect. The Commission therefore finds it an appropriate representation of the underlying facts involved to reflect the requested increase in gross revenues as $9,562,692, as proposed by the Company.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 3

A utility is ordinarily entitled to a rebuttable presumption that its service quality is adequate, absent competent evidence in the record to the contrary. While three public witnesses appeared, none voiced any complaint regarding the quality of service being provided the Company's regulated utility customers. Both of the public witnesses who appeared at the Asheville hearing, Bruce Byers and Wayne Norman, are in the propane business and expressed concern about the Company's nonregulated propane operations. Jim McKinnish, who testified at the hearing in Gastonia, expressed concern regarding the proposed rate increase the Company proposes to place on the residential customers, but voiced no complaint regarding the service he is receiving. In the absence of any complaints as to the quality of service, the Commission concludes that the Company is providing adequate service to its retail customers in North Carolina.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 5

The evidence for this finding of fact is found in the testimony and exhibits of Company witnesses Schock, Zeigler, and Noon; Company rebuttal witness Gower; and Public Staff witness Salengo. The following table sets forth the net original cost rate base as proposed by these witnesses and reflected in the parties' proposed orders:

Item	Company	Public Staff	Difference
Plant in service	$217,079,940	$216,694,057	($385,883)
Acquisition adjustment	348,750	-0-	(348,750)
Accumulated depreciation	(66,509,484)	(66,281,983)	227,501
Net plant in service	150,919,206	150,412,074	(507,132)
Allowance for working capital	12,385,456	12,385,456	-0-
Accumulated deferred income taxes	(19,825,608)	(19,825,608)	-0-
Cost-free capital/Transco refunds	-0-	(258,000)	(258,000)
Original cost rate base	$143,479,054	$142,713,922	$(765,132)

The Company and the Public Staff agree that the proper allowance for working capital is $12,385,456. There being no evidence to the contrary, the Commission concludes that this amount is reasonable and proper.

The Company and the Public Staff differ on the amount of plant in service and the related accumulated depreciation to be included in rate base. The $385,883 difference in plant in service and the $227,501 difference in accumulated depreciation result from the Public Staff's adjustments allocating costs to the Company's nonutility operations. The Commission adopts these adjustments in Finding of Fact No. 6 for the reasons stated therein. Therefore, the Commission concludes that plant in service of $216,694,057 and accumulated depreciation of $66,281,983 are appropriate for use herein.

The next difference between the Company and the Public Staff concerns the proper treatment of the unamortized acquisition adjustment relating to the Hendersonville property acquired by the Company from United Cities Gas Company. The Company proposes to include the unamortized portion of the acquisition adjustment amounting to $348,750 in rate base in this case. Such treatment is consistent with the Commission's findings on this issue in the Company's last general rate proceeding in Docket No. G-5, Sub 181. Public Staff witness Salengo requested that the Commission reevaluate its previous decision on this issue. Witness Salengo contended that the Commission based its decision in the last rate case on erroneous and incomplete information.

The Commission stated the following with regard to this issue in Public Service's last general rate case.

> "The difference between the Company and the Public Staff over the amount of plant in service of $404,860 is brought about by the inclusion by the Company in the rate base of the unamortized portion of the acquisition adjustment of the property acquired by the Company from United Cities Gas Company at Hendersonville. The Public Staff excluded this amount on the grounds that the customers would pay higher rates because Public Service increased its service area through the purchase. The Company responded that the average cost of acquiring the Hendersonville customers, both industrial and residential, including all the backbone plant and the acquisition adjustment was $1,203 per customer, whereas it cost the Company $1,440 to add a new residential customer just by extending the main 100 feet, installing the service, and setting the meter. By adding

these customers, Public Service increased its customer base over which to spread its fixed costs. Public Service also pointed out that other benefits flowed to all customers including lower rates at Hendersonville, more reliable service to customers, and making the Company's Asheville division a more efficient operation.

"While it clearly is the policy of the Commission to look at acquisition adjustments on a case-by-case basis, the evidence here shows benefits from the acquisition accruing to the existing customers of Public Service, the customers in the Hendersonville area, as well as to the Company. Under these circumstances, the Commission believes that it is reasonable to allow the treatment of the acquisition in the way sought by the Company. The Commission therefore approves the inclusion of the unamortized amount of $404,860 in the rate base."

Public Staff witness Salengo testified that the Company's estimated cost to add a new residential customer to its system presented in its last rate proceeding of $1,440 was erroneous since it was based on the cost of setting a meter, installing the service, and extending the main 100 feet using steel pipe. Witness Salengo asserts that the analysis should be made using the cost of a new installation with plastic pipe since the lower cost materials were available for use in 1982. Such an installation would cost approximately $1,098 per customer according to witness Salengo's testimony.

The Company disagrees with the Public Staff's comparison for several reasons. Company witness Noon testified that the cost of providing service to a new customer exceeded the cost of a meter, installing the service, and extending a 100 foot main. The Company maintains that the total cost of adding a new customer including backbone plant cost for 1984 was $2,630 per customer. Such determination was made using the 1984 plant additions divided by 1984 new customers. The Company also asserts that the estimated cost of installation by the Public Staff is too conservative regarding the estimated work involved because it represents the minimum work involved in a new installation. Witness Noon testified that often work in excess of the Public Staff's estimate is required for a new installation.

In the Commission's opinion both the Company and the Public Staff's comparisons are flawed. The amount of $1,098 per customer cited by the Public Staff is flawed since it does not include the cost of backbone plant as does the comparable Hendersonville acquisition amount. Likewise the amount cited by the Company is erroneous since plant additions in 1984 may not relate solely to new customers added. In the Commission's opinion the relevant comparison is the total cost of adding the Hendersonville customers to Public Service's operations including backbone plant cost versus the total cost of adding a like number of new customers to the Company's existing operations. These amounts were not presented by any party in the case.

Although a great deal of time has been spent by the parties debating cost comparisons relating to this issue, the most relevant issue to be determined in this proceeding is whether the acquisition is beneficial to the acquired customers in the Hendersonville area as well as to existing Public Service customers and is thus in the public interest.

In addition to the cost comparison cited in the last rate case Order, the Commission stated additional benefits flowing to the customers of Public Service by virtue of the acquisition. These include lowering rates to Hendersonville customers, providing more reliable service to customers, making the Company's Asheville division a more efficient operation, and spreading fixed costs over a larger customer base.

The Commission is of the opinion that no new evidence has been presented in this proceeding of merit which would lead the Commission to believe its previous decision was in any manner inappropriate. Thus the Commission finds the unamortized plant acquisition adjustment of $348,750 proper for inclusion in rate base in this proceeding.

The Company and the Public Staff also propose $19,825,608 as the amount of deferred income taxes to be deducted from rate base; however, Company rebuttal witness Gower contended that the Public Staff failed to allocate to the nonutility operations the deferred income taxes associated with the assets and accumulated depreciation which it allocated to the nonutility operations. The Commission concludes in Finding of Fact No. 6, that it is appropriate to allocate certain costs to the Company's nonutility operations and likewise finds the allocation of associated deferred income taxes to the nonutility operations to be appropriate. The Commission therefore concludes that the proper level of accumulated deferred income taxes is $19,719,282.

The last remaining difference between the parties concerns the Public Staff's treatment of $258,000 of Transco refunds as cost-free capital. Public Staff witness Salengo offered testimony regarding the treatment of Transco refunds. Witness Salengo argued that the refunds, net of taxes, should be deducted from rate base as cost-free capital, thereby allowing no return on the refunds. He further stated that the refunds should be treated as cost-free capital since the Public Service ratepayers paid in rates to cover the excessive producer-supplier costs related to the Transco refunds considered herein. The Company has accorded no specific treatment of refunds, thus allowing the refunds to receive the overall rate of return.

There is no dispute as to the following facts: Transco received these monies from producer-suppliers as a result of orders of the Federal Energy Regulatory Commission. Transco, in turn, flowed the refunds through to its customers, including the North Carolina natural gas distribution companies. At the time the companies received the refunds, the Public Staff contended that the refunds should be flowed through to their North Carolina retail customers. The companies claimed that refunds were not required and that they should be permitted to retain these monies. Docket No. G-100, Sub 37, was established to determine the proper disposition of these Transco refunds. As a result of proceedings in that docket, the Commission ordered Public Service and certain of the other companies to refund these monies to their customers.

Public Service and one other company appealed this decision to the North Carolina Court of Appeals. The Court of Appeals reversed the Commission on the grounds that G.S. § 62-136(c) required that it must be practicable to make the refunds to the customers who paid the charges and such a refund would be impracticable in this case. This reversal was upheld by the North Carolina Supreme Court. State ex rel. Utilities Commission v. Public Service Company, 56 N.C. App. 448, 289 S.E. 2d 82 (1982); aff'd 307 N.C. 474, 299 S.E. 2d 425

(1983). As a result of this decision, Public Service will permanently retain this capital.

Witness Salengo testified that, since the Commission had found that the customers had paid in rates to cover the costs which were refunded and the courts had determined that it was not practicable to refund these monies to customers, the proper ratemaking treatment is to consider these monies to be cost-free capital which should be deducted from rate base in order to preclude the Company from earning a return on capital provided by ratepayers.

On cross-examination, witness Salengo was asked to provide evidence that the Company had raised its rates to recover the increase in gas costs that later resulted in the refunds from Transco and to provide a listing of the rate cases of the Company between 1958 and 1972 which resulted in increases in the Company's rates. Witness Salengo provided this information in a late filed exhibit. In response to questions from the Company as to how it could recover these costs unless the Company increased its rates, witness Salengo responded, "I assume they got them through rates." He was also asked to explain how the capital arose since the Company recorded the refund as a reduction of expense and he responded that it could be in the form of an asset, but that wherever it is, the refund is being accounted for and the Company is earning a return on it. On redirect examination, witness Salengo stated that the Company recovers all of its costs from ratepayers as long as it has a profit and that the Company has no other source but ratepayers from which to recover its costs. He noted that Company witness Schock also testified that the Company recovered all of its costs from ratepayers. Witness Salengo further testified that the Company always has the option of filing a rate case.

Witness Salengo testified that the Commission adopted this same treatment of Transco refunds in the Company's last general rate case and that the Commission also adopted this cost-free capital treatment in North Carolina Natural Gas Company's (N.C.N.G.) last general rate case in Docket No. G-21, Sub 235. In the N.C.N.G. case, the Company agreed that the treatment was proper.

The is the third time that this issue has come before the Commission since the Supreme Court affirmed the reversal of the Commission's Order entered in Docket No. G-100, Sub 37, on January 21, 1981. In reaching our conclusion that the Transco refunds represent cost-free capital which should be used to reduce rate base, the Commission has relied on the statutes and information contained the Commission's official files and records, as well as knowledge of ratemaking theory, practice, and procedures.

No evidence has been presented in this proceeding which was not thoroughly examined in the two prior cases, Docket Nos. G-5, Sub 181, and G-21, Sub 235, and reevaluated by the Commission in this case. Nevertheless, the Commission will further clarify its position on the proper ratemaking treatment to be accorded the Transco refunds.

Here, as in each of the prior cases, the Commission concludes that the excessive producer/supplier costs which generated the Transco refunds were in fact paid in by the ratepayers. Further, the rates established for Public Service during the periods that the Company was paying the excessive costs to Transco were fixed pursuant to law and therefore must be deemed just and

reasonable. It necessarily follows that the Company must have recovered all of its cost of service during the periods in question. The paucity of requests for rate relief during the periods in question strengthens the contention that all costs were in fact recovered. Given the above discussion and the well established fact that the Company has only one source, its ratepayers, from which to recover costs, it is abundantly clear that these costs were recovered and were, of necessity, recovered solely from ratepayers. The Commission takes judicial notice of the Order entered in Docket No. G-100, Sub 37 on January 21, 1981 regarding this issue and incorporates the pertinent findings and conclusions by reference.

Another aspect of this issue which should be addressed is: If this capital exists, where does it reside? There is no dispute that Public Service received the refunds from Transco. There is also no dispute that the Company recorded the refunds as a reduction of its cost of gas expense in the periods the refunds were received. While the Commission will not discuss all of the intricacies of the accounting procedures which were followed by the Company, it is perfectly clear that the accounting treatment accorded these refunds resulted in the Company paying the income taxes applicable to refunds to the taxing authorities and that the balance or remainder of the refunds flowed to retained earnings. Therefore, the Company's retained earnings today are $258,000 higher than they would have been had the refunds not been received. Until the Company properly classifies this capital as cost-free, such capital which was provided by ratepayers will continue to reside in retained earnings.

Since the capital was, in fact, provided by the ratepayers, it is therefore cost-free to the Company and the only acceptable ratemaking treatment of this cost-free capital, given the rulings of the courts, is to deduct it from rate base so that ratepayers will not be required to pay a return on capital which they have themselves provided to the Company. The Commission therefore concludes that the $258,000 of Transco refunds should be deducted from the Company's rate base.

The Company also tried to show, through cross-examination of witness Salengo, that the Public Staff's proposed accounting treatment is erroneous because the Supreme Court reversed the Commission's decision in its entirety. However, a judgment of reversal is not necessarily an adjudication by the appellate court of any question other than those which were in terms discussed and decided. Chas. Wolff Packing Co. v. Court of Industrial Relations of Kansas, 267 U.S. 552, 69 L. Ed. 785, 45 S. Ct. 441 (1925); 5 AM JUR 2d, Appeal and Error Sec. 955. Further, a decision of the North Carolina Supreme Court is authority only as to matters therein decided. In re West, 212 N.C. 189, 193 S.E. 134 (1937). Review of the Supreme Court's opinion in State ex rel. Utilities Commission v. Public Service, supra, shows that the Court reversed as a matter of the law on the limited grounds discussed above and did not discuss the remaining assignments of error since its first holding required reversal. By its actions, the Supreme Court in effect held that the companies did not have to refund the dollars in question. It did not address the appropriate ratemaking treatment to be accorded these dollars. That issue was not before the Court, and the Company's argument that the Court intended its holding to be determinative of this issue is unpersuasive. The Commission therefore finds and concludes that, since the customers paid in rates to cover the excessive supplier costs which were refunded by Transco and since these dollars cannot be refunded because the Supreme Court held as a matter of law that the

practicability requirement contained in G.S. § 62-136(c), prior to amendment, had not been met, it is proper to reduce the rate base by that portion of capital supplied by the ratepayers which has no cost to the Company.

Based upon the foregoing, the Commission finds and concludes that the appropriate level of net original cost rate base for use in this proceeding is $143,168,998.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 6

The evidence supporting this finding of fact is contained in the direct testimony and exhibits of Company witnesses Schock and Flanagan; Company rebuttal witnesses Gower and Zeigler; and Public Staff witness Salengo.

Evidence presented in the case by witnesses for the Company and the Public Staff indicates that Public Service was involved during the test year in nonregulated activities including merchandising and jobbing activities (M&J), propane sales and exploration of gas. Nonregulated or nonutility operations of the Company are handled at the utility's corporate and district offices and also at separate propane district offices. The issue to be resolved by the Commission is whether there has been a proper allocation of jointly used assets and jointly incurred costs between the Company's utility and nonutility operations.

Public Staff witness Salengo testified that the Company is not allocating the proper level of jointly incurred costs to its nonutility operations. The difference in the levels of costs which the two parties contend should be allocated to the nonutility operations is made up of the following adjustments proposed by the Public Staff:

	Item	Amount
1.	Plant in service	$385,883
2.	Accumulated depreciation	227,501
3.	Rental income	192,495
4.	Depreciation expense	11,216
5.	Insurance and employee benefits expenses	133,954
6.	General and administrative expenses	75,511
7.	Human resources costs	28,032
8.	Property taxes	8,798

Public Staff witness Salengo testified that the nonutility operations of the Company are not bearing their fair and reasonable portion of incurred common costs. In his direct testimony, witness Salengo made several adjustments which took one of two forms. In some instances, he allocated certain items of plant and expenses directly to nonutility operations. In other instances, he computed rental income to compensate the utility operations for the use of utility facilities by the nonutility operations. The computed amount of rental income was included as miscellaneous operating revenues by the Public Staff and considered in determining the end-of-period level of operating revenues for ratemaking purposes. Witness Salengo calculated rental income based on the portion of investment and its associated expenses he believed to be applicable to the nonutility operations.

Company witness Gower presented testimony wherein he stated that Public Service is presently allocating the proper level of joint costs to its nonutility operations. It was witness Gower's position that the merchandising and jobbing operations of the Company currently not only share in common operating costs but also absorb $1.19 million of fixed costs and expenses which would otherwise be borne by regulated ratepayers.

Company rebuttal witness Gower also testified that "the Public Staff is trying to apply a fully distributed method for costing a product (natural gas) and a related by-product (merchandising and jobbing). It is widely accepted in cost accounting practice that the fully distributed method is not appropriate for this purpose insofar as the by-product is concerned. The costs that should be assigned to a by-product are the incremental costs associated with that activity, or the sales value, whichever is lower. The Public Staff's proposed adjustments go far beyond this and assign to M&J an excessive amount of fixed operation costs which is simply not recoverable from M&J revenues."

Under the generally accepted cost accounting definition, a by-product results simultaneously and inextricably from the same operation that produces the main product. Since the sales, installation, and repairs of gas appliances are obviously activities separate and apart from those of the Company's utility operations; namely, the sale and distribution of natural gas, the Commission finds that they are not by-products of the utility operation. Company witness Zeigler indirectly confirmed that M&J sales do not result from utility operations when, on rebuttal, he sponsored an exhibit comparing net income figures of utilities having M&J activities with those that do not. The exhibit suggests that M&J sales are not an integral part of a gas utility's operations but are, in fact, a separate operation in which some but not all utilities engage.

Company witness Gower cited the work of Dr. James C. Bonbright to support his contention that a fully distributed cost allocation method is inappropriate and has only limited usefulness in pricing decisions. The portion of Dr. Bonbright's book referred to by witness Gower is cited below:

> "Even those experts who make and defend these apportioned total costs in rate cases before public service commissioners or courts seldom, if ever, offer them as final measures of reasonable rates and rate relationships. Instead they concede that rates which deviate substantially from the cost apportionments may be justified by a variety of non cost considerations. This concession goes to the point of recognizing the validity and compensatory character of 'competitive' or 'promotional' rates, such as one for large industrial power, which fail to cover the very costs which the analysts have imputed to the class of service in question. (Underlined sentence omitted by Mr. Gower).
>
> "But there remains the question what, if any, significance should be attached to these fully distributed costs even as guides, or even as points of departure for rate determination, in view of the admitted fact that they fail to mark the dividing line between compensatory and noncompensatory charges for particular classes or quantities of service. And to this question the customary answers are woefully

inadequate. . ." (Principles of Public Utility Rates, page 338, emphasis added).

It is apparent from the preceeding quotations that Dr. Bonbright is discussing the allocation of utility costs among classes of customers or classes of service, and not the allocation of costs between utility and nonutility activities. On cross-examination witness Gower conceded that Dr. Bonbright's comments concerned cost allocation within the utility but he asserted that they are relevant also to the subject of allocating costs between merchandising and jobbing and natural gas sales because merchandising "clearly is a class of natural gas service." The Commission does not recognize merchandising or jobbing of appliances to be a "class of natural gas service" and therefore finds Mr. Gower's reliance on Dr. Bonbright's comments misplaced. While it is true that under the Uniform System of Accounts this Commission does have the option of regulating certain merchandising and jobbing activities, it has chosen not to do so for many reasons. In an Order issued by the Commission on December 7, 1951, Piedmont Natural Gas Company, Inc., was ordered to "establish separate accounts for the appliance department, so that it may be shown conclusively that this department is not being supported in any manner from the gas sales of the utility." The Company, in this case, has not produced conclusive evidence that its nonutility operations are not being supported by its utility operation. The Commission concludes that a fully distributed methodology is a just and proper method of allocation of shared costs between the Company's regulated and nonregulated activities.

There are two separate and distinct issues involved with the assignment of a portion of utility plant and expenses to nonutility operations for ratemaking purposes, or the imputation of rental revenues related to property used to provide both regulated gas service and nonregulated products and services. One issue involves the determination of the reasonable level of investment and expenses to allocate to nonutility operations for ratemaking purposes, or the reasonable level of rental revenues to impute to operating revenues. The second issue is whether the Public Staff's methodology of not allocating to nonutility operations the deferred income taxes and investment tax credits associated with the property allocated to nonutility operations, or the failure to allocate any portion of the amortization of investment tax credits associated with jointly used property to nonutility operations is reasonable or will cause the Company to lose all of its accumulated deferred income taxes and investment tax credits. The Commission will first discuss the issue of the appropriate level of investment or expenses to allocate to nonutility operations or the reasonable level of rent revenues to impute to regulated operations for jointly used property.

Company witness Schock, during cross-examination, testified that the Company's M&J operations used utility property such as transportation equipment and data processing equipment and facilities in a manner no different from its utility operations. Public Staff witness Salengo testified that he removed from rate base portions of the Company's investment in computer equipment and transportation equipment and the related accumulated depreciation which should be assigned to the M&J operations. Computer equipment was allocated between utility and nonutility operations on the basis of the percentage of data processing expenses charged to M&J operations during the test year, while transportation equipment was allocated to M&J operations based on the amount of transportation expenses cleared to the M&J operations during the test year.

The Commission finds the allocation of this equipment ($385,883) and its associated accumulated depreciation ($227,501) to nonutility operations to be proper for ratemaking purposes. Since the property is used to provide both utility and nonutility functions, each of these functions should be assigned a portion of the cost of the investment and its associated expenses.

Public Staff witness Salengo included in miscellaneous operating revenues an amount of $192,495 relating to rental income for the use of the utility's facilities by the nonutility operations since the Company had not allocated any of the plant investment in district and general offices to the nonutility operations. Since the Company has attempted physically to separate out amounts related to its subsidiary operations, the $192,495 amount is attributed primarily to the M&J function. Witness Salengo testified that his calculation of rental income was derived by applying gross revenue factors to allocated costs of land, district facilities and office furniture, and related depreciation expense based on payroll distribution with the exception of general office building cost allocation, which was provided by the Company and was based on floor space usage and payroll distribution.

The Commission finds the adjustment proposed by witness Salengo to be reasonable in theory. However, the Commission has adjusted the amount to reflect the capital structure and cost of capital found fair herein. The appropriate rental revenues using the cost of capital approved herein becomes $200,417. The Commission recognizes that a fair rental value may in fact be greater. Again, since both the utility and nonutility functions use these assets, it is reasonable to impute rental revenues to the utility operations for the nonutility operations usage of this property and its associated expenses.

Depreciation expense of $11,216 related to the computer equipment allocated to the Company's M&J activities was deducted from the utility's operating expenses by the Public Staff. Since this expense is a cost component of the rate base allocation approved above by the Commission, consistency requires the allocation of associated deprecation expense to nonutility operations.

The next adjustment proposed by the Public Staff removes $133,954 of insurance and employee benefits expense. A portion of the adjustment was an allocation to nonutility operations, and the remainder adjusted Company pro forma premium increases to reflect actual insurance costs charged to operating expenses during the test year. The Company, through witness Schock, accepted the Public Staff's adjustment of $133,954, except for two items. The Company did not accept adjustments to allocate to M&J the per book costs of the thrift fund, which was subsequently converted to a 401(k) deferred compensation plan ($19,220) and the portion of worker's compensation allocated to M&J ($11,734). Thus, the Company accepted that portion of worker's compensation assigned by the Public Staff to subsidiary operations, mainly propane operations, and also the Public Staff's adjustment to general and automobile liability insurance costs. Since the Company is currently making an allocation of worker's compensation and general liability to M&J on its books, the Commission views the allocation of a portion of other similar insurance and benefits such as the deferred compensation plan costs to nonutility operations appropriate. The Commission thus concludes that the proposed adjustment by the Public Staff should be accepted.

The next adjustment proposed by the Public Staff concerns certain general expenses, such as officers' salaries and outside services which should be assigned to the nonutility operations. Public Staff witness Salengo testified that he had used a three-factor formula to allocate the joint expenses which is calculated by averaging the ratios of revenue, payroll, and assets used in nonutility operations to the totals for the Company.

The Company, through the rebuttal testimony of witness Gower, objected to the Public Staff's indirect allocation of certain officers' salaries to nonutility operations, that is, by treating those salaries as a group as residual expenses. Witness Gower testified that information was provided by the Company which demonstrated direct assignment of officer time spent on nonutility operations. This assignment was based on an annual estimate by salaried employees of what each person does. Witness Gower testified that the Company's cost assignment was proper.

Public Staff witness Salengo testified that of the top 23 officers considered in the Public Staff's adjustment only three assigned any of their time to M&J operations and four to subsidiary operations. Witness Salengo testified that a portion of the officer's time should be allocated to nonutility operations.

The evidence in the case indicates that 57 percent of all employees charged time to nonutility activities and only three or four officers acknowledge any duties concerning these operations. Further, if the remaining officers have allocated no time to nonutility operations, then it is proper to treat those personnel as a group in an allocation. While it may be true that a particular officer has indeed spent an insignificant amount of his time on nonutility matters, there are others who have spent significantly more than the average amount calculated by the Public Staff. The Commission agrees in theory with the adjustment proposed by the Public Staff in this regard. However, the Commission is of the opinion that the appropriate allocation factor in this instance is one based solely on revenues. Based on the Company's 1984 financial statements, the ratio of M&J revenues to total revenues is 1.86% and the ratio of subsidiary revenues to the total Company revenues is 1.47%. Thus the Commission finds it proper to allocate 1.86% of these costs to the M&J operations ($23,919) and 1.47% of the costs to subsidiary operations ($16,793).

The next area of disagreement concerns allocations of costs relating to the human resources department. Public Staff witness Salengo testified that no employees in this department charge time to the nonutility functions and that he had allocated expenses for this department on the basis of the percent of payroll charged to the nonutility operations. Company witness Flanagan admitted on cross-examination that the personnel functions for the nonutility areas are administered by the utility. However he stated that he considered the costs involved to be immaterial. The Commission concludes that allocation of a portion of human resources department costs to the nonutility operations is proper. The Commission therefore accepts the proposed adjustment to human resource expenses of $28,032.

The final area of difference relates to property taxes. Witness Salengo stated that his adjustment concerns property taxes associated with merchandising inventories. The Company did not contest this adjustment. The Commission notes that the Company has previously accepted an adjustment to

remove property taxes on merchandising inventories in Docket No. G-5, Sub 168, and that these taxes are direct costs of the merchandising operations. Based on the foregoing, the Commission accepts the Public Staff's adjustment of $8,798 to remove property taxes associated with M&J activities from the utility's cost of service.

The Commission conclusions thus far on this matter reflect the Commission's opinion that the Company's ratepayers, absent the cost allocations previously discussed, would be paying for costs which are properly allocated to the Company's nonutility activities. Further, the Commission is persuaded that the allocations presented by the Public Staff are a legitimate attempt to deal with the problem. Thus the Commission concludes that these cost allocations are proper and adequate for this hearing. However, the Commission believes that greater refinements in identifying jointly used property and jointly incurred costs and allocation procedures relative to such costs are possible. The Commission suggests that the Company make its own internal study of the matter. The Commission further concludes that the Company should establish such accounts for its nonutility ventures as will ensure that all costs incurred by such activities are allocated in the manner most appropriate. The Commission believes that, given a good faith effort on the part of the Company, subsidization will be minimal, resulting in the Company's regulated operations providing natural gas at rates which are fair to both the customers and to the Company and its nonregulated activities being fair in its competition with others.

Having concluded that assigning a portion of utility plant and its associated accumulated depreciation and expenses to nonregulated operations for ratemaking purposes and imputing of rental revenues on joint-use property is just and proper, the Commission must now determine whether the Public Staff's failure to allocate to nonutility operations deferred income taxes and investment tax credits associated with the jointly used property or the failure to allocate any portion of the amortization of investment tax credits associated with jointly used property to nonutility operations is proper. There is a further contention that the Public Staff's proposal will cause the Company to lose all of its accumulated deferred income taxes and investment tax credits which must be evaluated. Company witness Gower testified that the Public Staff's method of allocation was inappropriate and would cause the Company to lose all of its accumulated deferred income taxes and investment tax credits. Witness Gower testified regarding this matter as follows:

> "The second error also relates to the allocation of investment for district offices, general office furniture, land, transportation equipment, and computer equipment. The Public Staff has allocated a portion of these investments to merchandising and jobbing but ignored the deferred taxes and Investment Tax Credits (ITC) related to these investments.
>
> Therefore, the benefit of the cost-free source of funds provided by deferred taxes on these items is used to reduce utility rate base but the related investment is removed from rate base. Also, cost of service is reduced for the ITC amortization related to these investments which were removed from rate base. This treatment will violate the Internal Revenue code and related regulations under sections 167(1), 168(e) and 46(f). This would result in the

Company's loss of accelerated tax benefits and ITC which would be detrimental to the Company and its customers."

When presenting a summary of his testimony, witness Gower testified as follows:

"Two other areas of criticism -- when those portions of general plant were proposed to be allocated by Public Staff, they made no adjustment for the related deferred taxes and investment tax credit. In my testimony I point out that this is a direct violation of code sections 167(1), 168 (E), and 46(F); and, as the Commission and Staff are well aware, these contain the accounting and ratemaking restrictions, which public utilities to claim accelerated depreciation and investment tax credits which provide significant benefits to the Company and its customers.

"It is not in my summary, but I think it's very relevant, that both of these sections contain what is referred to as 'suicide clauses.' What that means is that, if the Commission renders a decision which is not in compliance with those sections, the taxpayer is required to notify the Internal Revenue Service of that fact within specified time, and to file amended returns deleting their claims to accelerated depreciation and investment credit."

Public Staff witness Salengo testified that it is not necessary to allocate any portion of accumulated deferred income taxes or investment tax credits to nonutility operations based on the type of adjustment proposed by the Public Staff in this proceeding.

This topic is an important issue which the Commission has considered very carefully. The Commission has reviewed the testimony presented in this proceeding, prior decisions of this Commission on similar issues in past cases, Sections 46, 167, and 168 of the Internal Revenue Code and the Internal Revenue Service Regulations associated with those sections of the Code, the "NARUC Uniform System of Accounts for Class A and B Gas Utilities," comparable uniform systems of accounts for electric and telephone utilities, and other documents deemed necessary to reach a decision on this issue.

The initial determination which must be made by the Commission is whether the Public Staff's proposed treatment of deferred income taxes and investment tax credits relating to the Company's nonutility operations is reasonable and equitable. The Commission has previously decided that it is proper to assign a portion of the property to which these tax preferences relate to the Company's nonutility operations. Obviously, the tax benefits under discussion relate to property used jointly for utility and nonutility purposes of which a portion of the investment costs has been allocated to the Company's nonutility operations. It seems only equitable and reasonable to assign the associated tax benefits to the utility and nonutility operations in a similar manner. In the Commission's opinion the Public Staff's approach would allocate the costs to the nonutility operations and retain the associated tax benefits in the utility operations which is clearly inequitable. The Commission therefore finds that investment tax credits, amortization of investment tax credits, and deferred income taxes relating to plant investment previously allocated to nonutility operations

should be apportioned to nonutility operations. Such amounts were filed with the Commission as late filed data on October 31, 1985, and November 4, 1985.

Upon reaching this decision, the Commission believes that the question of whether the Public Staff's accounting treatment does or does not violate Internal Revenue Service codes becomes a moot point. The Commission has allocated the tax benefits between the utility and nonutility operations in a manner consistent with the allocation of the investment itself and thus no violation of income tax regulations occurs.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 7

The evidence for this finding of fact is contained in the testimony and exhibits of Company witnesses Dickey, Schock, Flanagan, and Gower; Public Staff witnesses Curtis and Salengo; and the Notice of Hearing.

The following table sets forth the various differences as filed between the Company and the Public Staff with respect to operating revenues:

Item	Company	Public Staff	Difference
Natural gas sales	$228,947,314	$232,274,766	$3,327,452
Miscellaneous sales	547,689	740,184	192,495
Total operating revenues	$229,495,003	$233,014,950	$3,519,947

Both the Company and the Public Staff were in agreement that the appropriate end-of-period sales volume level for use in this proceeding is 428,342,080 therms. The parties differed however over the rate to apply to certain volumes in order to determine end-of-period natural gas sales revenues.

As discussed in the Evidence and Conclusions for Findings of Fact Nos. 1, 2, and 4, the Company used the filed tariff rates for all rate schedules other than Rate Schedules 70 and 72 to calculate end-of-period revenues. Public Staff witness Curtis used the filed tariff rates effective April 1, 1985, to determine end-of-period revenues for all rate schedules, including Rate Schedule 70.

The Commission has fully discussed this issue in Evidence and Conclusions for Findings of Fact Nos. 1, 2, and 4. Consistent with previous findings, the Commission concludes that end-of-period natural gas sales revenues calculated by the Company are appropriate for reasons previously discussed herein.

The second area of difference between the Company and the Public Staff concerns the rental income from the Company's nonutility operations proposed by the Public Staff. The Commission has found in the Evidence and Conclusions for Finding of Fact No. 6 that $200,417 is the appropriate level of imputed rental revenue resulting from the nonutility operation's use of the utility's assets. The Commission thus finds the appropriate end-of-period level of miscellaneous revenues to be $748,106. Based upon the foregoing the Commission finds the proper amount of end-of-period revenues for Public Service under present rates to be $229,695,420.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 8

The evidence for this finding of fact is found in the testimony and exhibits of Company witnesses Zeigler, Schock, Noon, and Flanagan; Rebuttal witness Gower; and Public Staff witnesses Curtis and Salengo.

The following table sets forth the difference between the Company and the Public Staff with respect to operating revenue deductions:

Item	Company	Public Staff	Difference
Purchased gas	$170,204,253	$170,204,253	$ -
Operations and maintenance	23,053,041	22,372,689	(680,352)
Depreciation and amortization	6,568,319	6,512,103	(56,216)
General taxes	10,169,830	10,277,207	107,377
State income taxes	692,772	988,939	296,167
Federal income taxes	4,596,281	6,730,653	2,134,372
Total operating expenses	$215,284,496	$217,085,844	$1,801,348

The Company and the Public Staff are in agreement that the end-of-period level of purchased gas expenses is $170,204,253. There being no evidence to the contrary the Commission finds end-of-period purchased gas expense to be $170,204,253.

The total difference in operation and maintenance expense shown above of of $680,352 is made up of the following adjustments proposed by the Public Staff:

	Item	Amount
1.	Pro forma payroll and related costs	$327,242
2.	Advertising expenses	82,973
3.	Insurance expense	30,954
4.	Human resources costs	28,032
5.	Uncollectible expense	(10,137)
6.	General expenses	75,511
7.	Miscellaneous expenses	145,777
	Total	$680,352

The differences shown above relating to insurance expense, human resource costs, and general expenses have been previously discussed in Finding of Fact No. 6. The Commission has previously found adjustments decreasing insurance expense by $30,954, human resources costs by $28,032, and general expenses by $40,712 appropriate. The Commission therefore finds these adjustments to be reasonable and proper in determining the Company's cost of service.

As a pro forma adjustment, the Company included in its cost of service salaries and related payroll and pension costs of personnel that the Company planned to hire after the end of the test year. During the hearings in this case Company witness Schock adjusted the original payroll adjustment amount to reflect new personnel actually hired at the time of the hearings. Witness

Schock testified that the new personnel had been planned and approved prior to the end of the test year (in certain instances, for several years). However, the positions had not been filled prior to the end of the test year due to a lack of qualified applicants. Witness Schock testified that the Company had been understaffed during the test year.

Public Staff witness Salengo testified that the Company had made no adjustment beyond the test year to account for customer growth and that it is improper to include new costs in an adjustment without also including associated new revenues. Witness Salengo further testified that had the Company chosen to properly update its data as a whole, its proposal to include planned new employees was still inadequate because the Company failed to consider personnel terminations and the actual level of overtime payroll costs included in test year expense.

The Commission agrees with the Public Staff that the number of employees at the end of the test year was sufficient to provide adequate service for the Company's customers at that date. The matching of revenues, rate base, and expenses at a point in time is central to the test year concept in utility ratemaking. The Commission thus holds that the Company's pro forma adjustment is inappropriate.

The next adjustment proposed by the Public Staff removes $82,973 of advertising expense from test period operation and maintenance expenses. Public Staff witness Salengo initially excluded advertising expenses amounting to $165,946 contained in Account Nos. 909, 913, and 930.10 from test period operation and maintenance expenses. Witness Salengo testified that contained in Account 930.10 were donations to various churches, schools, businesses, and social groups made by the Company during the test period to present a favorable corporate image. Witness Salengo testified that these donations are appropriately the responsibility of the Company's shareholders and should not be paid by the ratepayers of the Company. With respect to Account Nos. 909 and 913, witness Salengo testified that the Public Staff had removed advertising expenses from test period operating expenses relating to essentially promotional type advertising. In witness Salengo's opinion, the advertising which was excluded from test period operating expenses by the Public Staff reflects attempts by the Company to sell appliances or to promote the Company's image and as such should not be accepted as a utility cost of service. The Company took the position that effective advertising will sell appliances which indirectly sells gas and lowers the cost of providing service for everyone. Similarly, the Company asserts that providing demonstrations of and servicing appliances increases the number of gas customers. Since the Company at present has an adequate supply of gas, the actions taken by the Company would ultimately result in lower costs of providing service to customers.

For similar reasons, the Company has entered into agreements with various contractors and residential developers by which the Company is bearing the promotional costs of a gas water heater to be used in conjunction with a duct system and air handling unit that would supply both space heating and electric air conditioning to residences. The direct costs of advertising these units have been included in the Company's utility advertising and amount to $12,254. The Company claims that the advertising supports the sale of gas and increases its customer base. The Public Staff views the advertising as promoting, first,

the sale of residences by the developers, and then, the sales of the gas appliances.

After careful study of the issue of advertising, including the testimony of the witnesses in this proceeding, the Commission has reached these conclusions:

1. The sale of appliances constitutes a Company nonregulated activity and expenses incurred to promote such sales should be disallowed and not paid for by the utility customers.

2. The primary beneficiaries of certain advertising are builders and developers who are able to have their products advertised without bearing any of the burden of associated advertising expenses. The full costs should not be borne by the Company's ratepayers. The Commission also agrees that donations to churches, schools, etc., are more appropriately the responsibility of the Company's shareholders, and ratepayers should not be required to support such activities through rates.

3. The Commission has consistently excluded image advertising from a utility's cost of service; this type of advertising, typically on billboards, is generally expressed on a "Gas is Efficient, Gas is Good, the Company is Good" level of communication. It does not attract industrial customers to the Company's regulated product, in the opinion of the Commission, because these customers are more sophisticated and are more apt to be influenced by price considerations.

After examining the advertising copy attached to witness Salengo's testimony the Commission concurs in part with the Company that in periods of ample gas supply, it is of benefit to the Company's business of selling natural gas to make the public at large aware of its availability and that this type of advertising provides relevant information to the ratepayers.

The Commission notes that the Public Staff altered its position in its proposed order to reflect one-half of the advertising costs in dispute as a reasonable cost of providing natural gas service. This change no doubt reflects the fact that the sale of additional natural gas volumes at present will lower the cost of providing service to customers.

The Commission therefore concludes, based on the overall weight of the evidence, that it is appropriate to reduce the Company's proposed advertising expense by $82,973 as proposed by the Public Staff in its propsoed order for purposes of this proceeding.

The next area of difference concerns miscellaneous expenses. Public Staff witness Salengo testified that he was unable to audit materials including the budget of the American Gas Association (AGA) for lobbying and nonutility advertising expenses because the Company was unwilling to provide such materials. Witness Salengo therefore excluded the dues expenses paid to AGA from test-period operating expenses. According to witness Salengo, the AGA is a major trade association of natural gas distributors, propane dealerships, and gas appliance industries funded through the dues of its members, including utilities, and that the ratepayers have a right to know for what expenses they are paying. The Company through the testimony of Company witness Zeigler

provided the Commission with data concerning the AGA. The Commission will not for purposes of this proceeding make any adjustments to operating expenses relating to dues paid to the AGA. The Commission believes that the Company adequately substantiated the benefits accruing to the ratepayers of Public Service as a result of its membership in the AGA. However, the Commission concludes that it is proper to require Public Service to present in its next general rate proceeding information which will show all direct and indirect contributions to and through AGA from source and all expenditures by program and by system of accounts, thus allowing the Commission to specifically determine the appropriateness of all such expenditures for ratemaking purposes.

The difference in uncollectible expense is simply a function of the difference in revenues proposed by the parties. The Commission found end-of-period revenues to be $229,695,420. The Commission finds a level of uncollectibles expense amounting to .288% of the end-of-period level of operating revenues to be appropriate.

Based on the foregoing, the Commission concludes that the proper level of operation and maintenance expenses is $22,543,705.

The next item of difference relates to depreciation and amortization expense. There are two reasons for the difference. The first deals with the depreciation expense which was allocated to the nonutility operations. The Commission has found in the Evidence and Conclusions for Finding of Fact No. 6 that the allocation of depreciation expense to nonutility operations in the amount of $11,216 is proper. The second reason for the difference relates to the amortization expense in the amount of $45,000 for the plant acquisition adjustment. The Commission determined in the Evidence and Conclusions for Finding of Fact No. 5 that inclusion of the plant acquisition in rate base is proper. The Commission correspondingly finds the related amortization expense proper for inclusion in test period depreciation and amortization expenses. Therefore, the Commission finds that the appropriate level of depreciation and amortization expense to be $6,557,103.

The Company and the Public Staff differed by $107,377 with regard to general taxes. This difference is primarily due to gross receipts taxes which reflects the difference in revenue levels proposed by each party. Consistent with the revenue level found appropriate by the Commission in Finding of Fact No. 7, the Commission finds that gross receipt taxes should be reduced from the level proposed by the Public Staff by $106,581. The remainder of the difference in general taxes is due to the assignment of $8,798 in property taxes to merchandising and jobbing as was found proper in Evidence and Conclusions to Finding of Fact No. 6. Based on the foregoing, the Commission finds the proper level of general taxes to be $10,170,626.

The remaining differences in operating revenue deductions are in State and Federal income tax levels. Based on the Commission's previous findings relating to the Company's revenues and expenses and investment, the Commission concludes that the appropriate level of income tax expense is $5,655,992.

Based on the foregoing evidence, the Commission concludes that the appropriate level of operating revenue deductions is $215,131,679 for this proceeding.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 9

The evidence for this finding is contained in the testimony and exhibits of Company witnesses Schock, Flanagan, Jackson, and Public Staff witness O'Donnell.

The Company recommended that the Commission employ the Company's capitalization ratios at December 31, 1984, with an adjustment to reflect the sale of $18 million of first mortgage bonds in April 1985. Alternatively, the Public Staff recommended the employment of the average capital structure during the test year, the 12 months ended December 31, 1984, including short-term debt at an average daily balance. The capital structure recommended by the Company included only long-term debt, preferred stock, and common equity, while the capital structure recommended by the Public Staff also included short-term debt. The following chart compares the alternative capital structures and cost rates proposed by the parties:

	Company	
	Capitalization Ratios	Embedded Cost or Rate of Return
Long-term debt	53.25%	11.02%
Preferred stock	4.88%	7.06%
Common equity	41.87%	16.40%
Total	100.00%	

	Public Staff	
	Capitalization Ratios	Embedded Cost or Rate of Return
Long-term debt	41.69%	10.42%
Short-term debt	10.24%	9.50%
Preferred stock	5.41%	7.06%
Common equity	42.66%	14.15%
Total	100.00%	

Public Staff witness O'Donnell stated that the capital structure proposed by the Company is inappropriate for use in setting the Company's revenue requirements. Witness O'Donnell stated that based upon the manner in which the Company finances gas inventories short-term debt should be included in the capital structure. Witness O'Donnell presented exhibits which tended to show that there is a strong correlation between the level of gas inventories and short-term debt borrowings. Since gas inventories are a rate base item, the Public Staff proposes the inclusion of short-term debt in the capitalization structure of the Company for purposes of setting rates.

The Company opposes the inclusion of short-term debt in the capitalization structure for several reasons. The Company asserts that the inclusion of short-term debt in the capital structure assumes that short-term debt financing of the Company during the period in which rates established in this proceeding are in effect will mirror the test year daily average short-term borrowings. Evidence indicates however that the Company's issuance of $18 million in long-term debt in April 1985 replaced much if not all of such short-term debt borrowings. The Company further asserts that the volatility of short-term debt

interest rates makes the choice of a reasonable short-term debt cost rate difficult.

The Commission believes that the capital structure proposed by the Company is quite reasonable. Though the exhibits presented in the hearing did tend to show a correlation between short-term debt and gas inventories and thus some merit to the inclusion of short-term debt in the capital structure of the Company, this proposal would ignore the recent issuance of long-term debt amounting to $18 million. The Commission cannot reasonably ignore the fact that the Company issued long-term debt subsequent to the end of the test year and that this permanent debt issue replaced short-term debt borrowings. The Commission thus finds the Company's proposal in this regard to be more reflective of the underlying facts involved and more representative of a reasonable capital structure for the Company on an ongoing basis. The Commission therefore finds the appropriate capital structure for use in this proceeding to be the following:

Item	Percent
Long-term debt	53.25%
Preferred stock	4.88%
Common equity	41.87%
Total	100.00%

The Commission further concludes that the appropriate cost rates for long term debt and preferred stock are 11.02% and 7.06%, respectively.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 10

The evidence supporting this finding is found in the testimony and exhibits of Robert S. Jackson of Stone and Webster Management Consultants, Inc., who testified on behalf of the Company, and Kevin W. O'Donnell, Public Utilities Financial Analyst of the Public Staff's Economic Research Division, who testified on behalf of the Public Staff.

To determine his recommended cost of common equity, witness Jackson relied upon the results of a discounted cash flow (DCF) analysis which he performed on a group of gas distribution companies which in his opinion were of comparable risk. The dividend yield component of the DCF was calculated by dividing the dividends paid by the average market prices in 1983 and for the four quarters ended 1984. The average for the period for the comparable group equaled 9.98%. The growth component of the DCF was calculated by using a "least squares" regression technique on earnings per share, dividends per share, and book value per share over varying time periods. From this analysis, witness Jackson concluded that a growth rate of 4.25% was appropriate. The sum of the 9.98% dividend yield and the 4.25% growth rate equaled 14.23%. However, in order for the market/book ratio to remain at a level above 1.00, witness Jackson divided the dividend yield of 9.98% by .9 and .8 which results in an adjusted dividend yield of 11.09% to 12.48%. This dividend yield range, when added to the 4.2% growth rate, produced a cost of common equity estimate ranging from 15.34% to 16.73%. Witness Jackson also performed a DCF analysis on the entire 33 companies which comprise the gas distribution industry and on Public Service individually. From these studies witness Jackson concluded and recommended the cost of common equity capital that Public Service should be allowed the opportunity to earn to be 16.40%.

Witness Jackson updated his testimony during the hearing to reflect an updated DCF study which yielded a return on common equity range of 14.86% to 16.14% for his comparable group. However, witness Jackson continued to recommend a 16.4% cost of common equity for Public Service since the average capital structure of the comparable group had changed.

Public Staff witness O'Donnell also relied upon the DCF model to determine the cost of common equity to the Company. Witness O'Donnell performed a DCF analysis on Public Service independently as well as a group of gas distribution companies which are similar in risk. To calculate the dividend yield, witness O'Donnell divided the latest known dividend by an average of each company's week-ending stock prices for the 26-week period of December 17, 1984, to June 10, 1985. This resulted in a dividend yield of 8.3% for Public Service and 7.7% for the comparable group. To estimate the expected growth in dividends, witness O'Donnell employed a log-linear "least squares" regression technique on earnings, dividends, and book value on a per share basis, the plowback or retention method and a method adopted from Value Line which calculates the growth in earnings, dividends, and book value from five- and 10-year periods. These methods resulted in an average growth rate of 5.2% to 6.3% for Public Service and 5.2% to 6.1% for the comparable group.

Witness O'Donnell determined the cost of equity to Public Service to be in the range of 13.5% to 14.6% and recommended that the Commission recognize 14.0% to be its cost to the Company. Witness O'Donnell then adjusted the cost of common equity for the selling expense incurred by the Company in issuing new common stock. Witness O'Donnell used the selling expense incurred by the Company on common stock issues from 1969 to the present for purposes of estimating the weighted average selling expense as a percent of book equity. This ratio was calculated to be 0.75% since the Company has issued stock in only three of the last 16 years, the ratio of 0.75% was multiplied by 3/16 to produce a flotation cost of .14%. Witness O'Donnell added the flotation cost to his previously determined barebones cost of equity range to produce a equity cost range of 13.65% to 14.75%. Witness O'Donnell recommended a 14.15% cost of common 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 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 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 nature of the evidence in a case such as this makes it extremely difficult to balance all of the opposing interests, since much, if not all, of the evidence is based on individual witnesses' perceptions and interpretations of trends and data from the capital markets. The Commission has considered carefully all of the relevant evidence presented in this case, with the constant reminder that whatever return is allowed will have an immediate impact on the Company, its stockholders, and its customers. The Commission must use its impartial judgment to ensure that all parties involved are treated fairly and equitably.

Based upon the foregoing and the entire record in this docket, the Commission finds and concludes that the fair rate of return that Public Service should have the opportunity to earn on its original cost rate base is 12.45%. Such fair rate of return will yield a fair return on common equity of approximately 14.90%.

The Commission cannot guarantee that the Company will, in fact, achieve the level of returns herein found to be just and reasonable. Indeed, the Commission would not guarantee it if it could. Such a guarantee would remove necessary incentives for the Company to undertake to achieve the utmost in operational and managerial efficiency. The Commission believes, and thus concludes, that the level of returns approved herein will afford the Company a reasonable opportunity to earn a reasonable return for its stockholders while providing adequate and economical service to the ratepayers. The Commission can do no more.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 11

The Commission has previously discussed its findings and conclusions regarding the fair rate of return which Public Service Company of North Carolina, Inc., should be given the opportunity to earn.

The following schedules summarize the gross revenues and the rates of return which the Company should have a reasonable opportunity to achieve based on the findings and conclusions approved herein. Such schedules, illustrating the Company's gross revenue requirements, incorporate the findings and conclusions heretofore and herein approved by the Commission.

SCHEDULE I
PUBLIC SERVICE COMPANY OF NORTH CAROLINA, INC.
State of North Carolina
STATEMENT OF OPERATING INCOME
Twelve Months Ended December 31, 1984

Item	Present Rates	Increase Approved	After Approved Increased
Operating Revenues:			
Natural gas sales	$228,947,314	$6,660,683	$235,607,997
Miscellaneous	748,106	-	748,106
Total	$229,695,420	$6,660,683	$236,356,103
Operating Revenue Deductions			
Cost of gas	170,204,253	-	170,204,253
Operating and maintenance	22,543,705	19,183	22,562,888
Depreciation and amortization	6,557,103	-	6,557,103
Taxes other than income	10,170,626	213,856	10,384,482
State income taxes	736,945	385,659	1,122,604
Federal income taxes	4,919,047	2,779,313	7,698,360
Total operating revenue deductions	215,131,679	3,398,011	218,529,690
Net operating income	$14,563,741	$3,262,672	$17,826,413

SCHEDULE II
PUBLIC SERVICE COMPANY OF NORTH CAROLINA, INC.
State of North Carolina
STATEMENT OF RATE BASE AND RATE OF RETURN
Twelve Months Ended December 31, 1984

Item	Amount
Investment in Gas Plant	
Gas utility plant in service	$216,694,057
Accumulated depreciation	(66,281,983)
Acquisition adjustment	348,750
Working capital	12,385,456
Accumulated deferred income taxes	(19,719,282)
Cost-free capital - Transco refunds	(258,000)
Original cost rate base	$143,168,998
Rate of Return	
Present rates	10.17%
Approved rates	12.45%

SCHEDULE III
PUBLIC SERVICE COMPANY OF NORTH CAROLINA, INC.
State of North Carolina
STATEMENT OF CAPITALIZATION AND RELATED COSTS
Twelve Months Ended December 31, 1984

Item	Capitalization Ratio %	Original Cost Rate Base	Embedded Cost	Net Operating Income
	Present Rates - Original Cost Rate Base			
Long-term debt	53.25%	$76,237,491	11.02%	$8,401,372
Preferred stock	4.88%	6,986,647	7.06%	493,257
Common equity	41.87%	59,944,860	9.46%	5,669,112
Total	100.00%	$143,168,998		$14,563,741
	Approved Rates - Original Cost Rate Base			
Long-term debt	53.25%	$76,237,491	11.02%	$8,401,372
Preferred stock	4.88%	6,986,647	7.06%	493,257
Common equity	41.87%	59,944,860	14.90%	8,931,784
Total	100.00%	$143,168,998		$17,826,413

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 12 THROUGH 17

The evidence regarding rate design issues is found in the testimony of Public Staff witnesses Curtis and Nery, Company witness Dickey, and CUCA witness Loos.

The parties disagreed over a number of rate design issues. They are: (1) transportation rates; (2) declining block rates; (3) combining Rate Schedules 60 and 65 into Rate Schedule 65; (4) summer-winter differentials; (5) customer class rates of return; and (6) use of an industrial sales tracker.

Transportation Rates

The Company urged continuation of the existing transportation Rate Schedules 91 and 92 since those rates have just recently been approved by the Commission based on a settlement agreement reached by the Company, the Public Staff, and CUCA representing many of the Company's industrial customers. Witness Dickey testified that the only change the Company is proposing for the rate is to increase the facilities charge to the same level as the related sales rates. He noted that Rate Schedules 91 and 92 were implemented in July 1984; that they have not been changed other than the reduction required by the modification of the franchise tax; and that they recover margins similar to the Company's actual sales rate for a given class of customer.

The Public Staff proposed a full margin transportation rate. Witness Nery noted that the transportation rate should be reviewed in a general rate case like all other rates, especially since relative costs and applicable policies change from time to time. He contended that a full margin transportation rate would only require a customer who switches to transportation service to

continue paying the same margin he would have paid under his applicable sales rate.

CUCA witness Loos advocated a redesign of Rate Schedules 60 and 70 to reflect equal rates of return for all rate classes, resulting in a reduction for Rate Schedule 70 and a corresponding reduction in the transportation rates. Witness Loos also contended that adoption of the Public Staff proposal would result in increases of more than 100% in transportation rates.

The Commission concludes that full margin transportation rates are fair and reasonable and should be adopted in this proceeding. The Commission has already adopted full margin transportation rates for Piedmont Natural Gas Company and for North Carolina Natural Gas Corporation. The Commission further notes that the recent establishment of the current transportation rates for Public Service was the result of a settlement conference not subject to public hearing and that the current transportation rates reflect margins which are significantly different from those approved in this general rate case.

The Commission finds no justification for a difference between the margins earned on the Company's sales rate schedules and its transportation rate schedules. In making this determination, the Commission has considered a number of relevant factors, including cost of service, value of service, quantity of gas used, the time of use, the manner of use, the equipment which Public Service must provide and maintain in order to take care of the requirements of its customers, competitive conditions, and consumption characterisics. Utilities Commission and North Carolina Natural Gas Corporation v. N. C. Textile Manufacturers Association, Inc., 313 N.C. 215, 328 S.E. 2d 264 (1985) (the N.C.N.G. case); Utilities Commission v. Bird Oil Co., 302 N.C. 14, 273 S.E. 2d 232 (1980); and Utilities Commission v. Piedmont Natural Gas Company, 254 N.C. 734, 120 S.E. 2d 77 (1961). It is obvious to the Commission that the services performed by Public Service are the same whether service is provided under the sales rate or transportation rate. The gas passes through the same pipes, meters, and regulators. The Company provides the same load balancing and use of storage. The same employees perform the billing services. Since the services performed by Public Service are the same, common sense dictates that the costs would also be the same. Certainly, there is no difference to the customer in the value of service received under the transportation rate schedule from that received under the sales rate schedule. To the industrial customer, any differences in the services are totally transparent. The Company's customers use gas transported under a transportation rate schedule in the same manner as gas bought on a sales rate schedule. Under either schedule, the customer receives the gas at his place of business to use as he sees fit. In addition, since generally the same customers transport gas as buy on the corresponding sales rate schedule, their consumption characteristics are the same. Natural gas competes equally with alternate fuels under both rate schedules. The same industrial customers are eligible to transport gas as are eligible to purchase it on the sales rate schedules, so they generally have the ability to substitute the same alternate fuels. Both the transportation schedules and the sales rate schedules are interruptible, and to the extent service is available under one, it is available under the other. There also is no difference in time of use under the rate schedules which would justify different margins. All of these factors support adoption of full margin transportation rates in this case.

In adopting full margin transportation rates, the Commission has considered the complaint by CUCA that such rates would result in more than 100% increases for some customers. The Commission notes that any 100% increase is in the margin, not the overall rate level applicable to retail sales. Even if such margin applicable to the transportation rate schedules is increased 100%, it still represents exactly the same amount of dollars as the margin applicable to the other customers on the sales rate schedules.

Declining Block Rates

The Public Staff proposed that the Company's Rate Schedules 70 and 72 be designed on a declining block basis. Witness Nery contended that larger customers are able to purchase alternate fuels (i.e., heavy oil) more cheaply than smaller customers, and that a declining block rate for such customers would more nearly approximate competitive conditions in the marketplace. The Company pointed out that it was currently negotiating actual sales rates with its large customers in Rate Schedules 70 and 72 and would continue to do so in the future. The Company contended that since all negotiated rates would be on a flat rate basis regardless of what the tariff rate is, it would be unrealistic to set a declining block tariff rate. CUCA also opposes the Public Staff's proposal regarding declining block rates.

The Commission concludes that Rate Schedules 70 and 72 should continue to reflect flat rates. Under the present competitive conditions, it would appear that little reason exists for using other than flat rates. Since rates for boiler fuel customers are generally negotiated anyway, a simplified tariff rate would be preferable for calculating any margin lost (or gained) due to negotiated rates.

Combining Rate Schedules 60 and 65

The Company proposed combining Rate Schedules 60 and 65 into a single Rate Schedule 65. The Company contends that the present rate differential between the two schedules is less than 1%, or less than 4¢ per dt, and that all customers on the two schedules receive similar services.

The Public Staff pointed out that Rate Schedule 60 (industrial process gas) is a higher priority than Rate Schedule 65 (industrial and large commercial service), thereby resulting in less curtailments for Rate Schedule 60 in winter. CUCA witness Loos also recommended that the Company's proposal to combine Rate Schedules 60 and 65 be denied, contending that such a consolidation would not reflect actual cost differentials based on the results of the cost of service studies.

The Commission concludes that Rate Schedules 60 and 65 should not be combined at this time. The industrial process gas users would appear to be significantly different from other industrial and large commercial users, both from the standpoint of relative priority of curtailment and from the standpoint of the types of alternative fuels which are generally used by the two classes of service. Alternative fuels for Rate Schedule 60 customers would generally be manufactured gas while alternative fuels for Rate Schedule 65 would be fuel oil in many instances.

Summer/Winter Differentials

The Public Staff proposed that the Company's rates all incorporate a summer/winter differential. Witness Nery contended that alternate fuels could be purchased more cheaply in summer than in winter and that a summer/winter rate differential would more nearly approximate competitive conditions in the marketplace for those customers who were able to utilize alternate fuels. He also contended that the additional peaking plant required for the winter heating season was due primarily to residential and small nonresidential customers so that a summer/winter differential would more nearly reflect the actual cost of service to those customers. Public Service pointed out that a summer/winter differential would cause higher revenues in winter at a time when the Company already has excess revenues and lower revenues in summer at a time when it already has insufficient revenues.

The Commission concludes that summer/winter differentials should not be incorporated into the rates approved for Public Service at this time. Under current conditions, the cash flow problems of the Company would be aggravated. Furthermore, the Commission is of the opinion that more levelized rates year-round would be desirable where the Company's residential customers are concerned.

Customer Class Rates of Return

The Company proposed to increase the rates for its various rate classes by different percentages in order to move the rates of return for those rate classes closer to the overall rate of return. For example, the Company proposed to increase residential Rate Schedule 50 by 11.6%; increase commercial Rate Schedule 55 by 9.2%; and decrease industrial Rate Schedules 60, 65, and 70 by 2.2% to 3.6%. Witness Dickey stated that the Company's objective in designing rates was to make the rates of return for large commercial and industrial customers competitive with alternate fuels while still adhering to sound ratemaking principles. He testified that other principles to consider in designing rates in addition to the cost of service include: (1) value of service or competitive conditions existing in the marketplace; (2) historical rate structure and relationship between the various rates; (3) the consumption characteristics of different classes of customers; (4) future prospects of maintaining sales levels to the various classes; (5) the need for conservation; (6) national and state energy policy; and (7) ease of administration.

Witness Dickey testified that if the Company's gas price had not been competitive during the test period, approximately 47% of the Company's large commercial and industrial sales could have switched to No. 6 fuel oil, affecting 25% of the Company's total sales volumes. Witness Dickey stated that the risk to the Company associated with serving its large industrial and commercial customers is very high because of those customers' switching capability and the impact it has on the customers that stay on the system. When a customer is lost from the system, other customers have to pick up the fixed costs associated with the lost customer. Witness Dickey further noted that according to Commission directive any customer in priority 2 and above has to have alternate fuel capability, and that therefore the customers in those classes have the immediate ability to switch to their alternate fuels if competitive conditions so warrant. Witness Dickey's testimony indicated that there is significant competition from No. 6 fuel oil, but that the Company had

been able to keep the affected customers on the system by negotiating to serve them at prices which are competitive with fuel oil.

CUCA witness Loos testified that the Company's proposal to reduce rates applicable to large industrial customers should be expanded. He further testified that even under the Company's proposal, as measured by the cost of service studies, the rates of return for all commercial and industrial rate classes are excessive. Witness Loos also contended that the Company's large commercial and industrial customers are substantially subsidizing residential customers under the Company's existing and proposed rates. Witness Loos contended that the subsidy should be eliminated as rapidly as possible. He recommended a 60¢/dt reduction in the Company's proposed rate for Rate Schedule 60 and a 30¢/dt reduction in proposed rates for Rate Schedules 70 and 72. As an alternative, witness Loos recommended that the Company's proposed rates for Rate Schedules 60, 70, and 72 should be reduced at least 10¢/dt in order to move toward equalized rates of return.

Public Staff witness Curtis presented the results of eight different cost of service studies based on four different methodologies and pointed out that the results of the studies fluctuated widely depending on the assumptions used in making those studies. He contended that all of his studies indicated that residential rates should be increased and that the rates of large boiler fuel customers should be decreased. Witness Curtis recommended that the rate design should begin by establishing the rate for large boiler fuel customers at or near the price level of alternate fuels. He proposed to increase residential Rate Schedule 50 by 5.5.%; increase commercial Rate Schedule 55 by 4.4%; and decrease industrial Rate Schedules 60, 65, and 70 by 0.4% to 3.0%. Witness Curtis contended that such rate designs would move the customer class rates of return in the direction that all of the cost of service studies indicate is appropriate and would be an appropriately moderate response to the cost of service studies in view of the uncertainties inherent in such studies.

The Commission is of the opinion that the cost of service studies presented by the various parties are certainly an important and relevant guide or factor to be weighed in designing rates in this proceeding. Nevertheless, it must be kept in mind that the various cost of service studies presented in this docket are based on different methodologies and such studies reflect a great deal of judgment as to selection of an appropriate methodology depending on one's perception of fairness in allocating common costs among customer classes. The different studies often result in widely varying rates of return depending on the methodology followed and the assumptions involved. For example, Public Staff witness Curtis used four different methodologies for his eight cost of service studies with widely divergent results.

Furthermore, the various cost of service studies are not always directly comparable, For example, the Public Staff and the Company used different prices to calculate revenue levels for Rate Schedule 70 in their respective cost of service studies. Such price and revenue levels will also fluctuate depending on the level of negotiated rates and the operation of an IST, resulting in different rates of return from those shown by a given cost of service study.

The Commission concludes that the rate designs proposed by the Public Staff should be adopted in principle for this proceeding. Such rate designs

will result in rates of return for each rate class which are closer to the overall rate of return and will also reflect the relative risk to the Company of serving each class of customer, while giving appropriate consideration and weight to each of the relevant factors noted by Company witness Dickey and by the North Carolina Supreme Court in the recent N.C.N.G. case.

Rates of return for customers who have no alternative fuels readily available, such as residential customers, should not be directly compared to rates of return for those customers who do in fact have alternative fuels readily available, such as boiler fuel customers. Rates of return for customers who cannot negotiate their rates with the Company should not be directly compared to rates of return for those customers who can and do in fact negotiate their rates. The services provided in either case are not directly comparable. Thus, the establishment of rates in this proceeding based solely upon equalized rates of return for all rate classes would clearly be unjust and unreasonable and inconsistent with the evidence.

The Commission recognizes that the residential and certain industrial and commercial customers do not generally have the ability to rapidly switch to alternate fuels, nor do they have the possibility of negotiating their rates. The risk to Public Service of maintaining its profit margins on service to these classes of customers is significantly less than the risk to the Company of maintaining its profit margins on service to large industrial customers, absent an IST. Furthermore, the use of an IST places the additional obligation on the residential and other customers of participating in the maintenance of profit margins on service to the large industrial customers who negotiate rates. The IST approved herein will spread any loss due to negotiation over any customers in Rate Schedules 50 through 67 who have not negotiated their rates. This fact supports a higher rate of return for industrial and commercial customers who have the capability of switching to alternate fuels and negotiating their rates. In this regard, the Commission recognizes that, when Public Service loses a customer from its system, the Company's other customers must then assume the burden of the carrying costs associated with such lost customer. Because those industrial customers served on Rate Schedules 60, 65, 70, and 72 are large consumers of natural gas, the impact of losing such a customer far exceeds the impact of any one residential or small industrial or commercial customer leaving the system. Thus, the increased risk associated with serving large industrial customers on Rate Schedules 60, 65, 67, 70, and 72 favors a higher rate of return for such Rate Schedules.

The relative rates of return for customers in Rate Schedules 50 through 72 also reflect the relative priorities of interrupting service during peak periods. Such priorities reflect the ability of customers to switch to alternative fuels. Currently, the unit prices per decatherm are highest for residential customers served on Rate Schedule 50 and are progressively lower through Rate Schedule 72. For example, the unit prices per decatherm for Rate Schedule 60 are higher than for Rate Schedule 65 and reflect the fact that Rate Schedule 65 customers would be interrupted more frequently than Rate Schedule 60 customers. The higher unit prices for Rate Schedule 60 than for Rate Schedule 65 also reflect the fact that the cost of alternative fuels is generally higher as a class for Rate Schedule 60 customers than for Rate Schedule 65 customers.

Finally, anchoring the rate designs at one end of the scale based on value of service (represented by the approximate cost of alternative fuels for Rate Schedule 70) and at the other end of the scale based on priorities of service (represented by priority 1 for Rate Schedule 50) appears to be a just and reasonable way to establish rate differentials between the various classes of service, especially where such rate differentials are confirmed by the cost of service studies. The fact that such rate differentials cannot be calculated precisely from the cost of service studies reflects the uncertainties inherent in the cost of service studies.

Based upon a careful consideration of the evidence in this case, the Commission concludes that the rates set forth in Appendix A attached hereto are just and reasonable, do not result in any unjust or unreasonable discrimination or preference between customers or classes of customers, and should be approved. Therefore, residential rates will be increased in this proceeding by 5.5%; rates for small commercial and industrial customers will be increased by 4.4%; and rates will be decreased for those large industrial customers served on Rate Schedules 60, 65, 67, 70, and 72. The Commission is of the opinion that the rates approved in this proceeding result in a fair distribution of the overall rate increase granted to Public Service among customer classes and that it would be unjust and unreasonable, based upon the evidence presented in this case, to place any greater rate increase on the residential and small industrial and commercial customers served by the Company who are already paying and will continue to pay the highest unit price rates on the system. In arriving at this decision, the Commission has given careful consideration to, and has weighed and balanced all of, the relevant factors discussed by the North Carolina Supreme Court in its recent opinion in the N.C.N.G. case. Such factors include the estimated cost of service, the ability to negotiate rates, value of service, quantity of natural gas used, the time of use, the manner of use, the equipment which the Company must provide and maintain in order to meet the requirements of its customers, competitive conditions, and consumption characteristics.

Industrial Sales Tracker

Both the Company and the Public Staff supported the continued implementation of an Industrial Sales Tracker (IST); however, the versions of the IST supported by the Public Staff and the Company differed. CUCA witness Loos testified in opposition to implementation of an IST.

Company witness Dickey stated in his prefiled testimony that the Company was proposing elimination of the IST in view of the recent decision of the North Carolina Supreme Court in the N.C.N.G. case, 313 N.C. 215, 328 S.E. 2d 264 (1985). However, on cross-examination, Company witness Dickey noted that when the Court issued its order in the N.C.N.G. case, the Company had its case prepared and rates designed with the inclusion of an IST. He stated that the Company felt the IST had worked well for both the Company and its customers, and the Company would therefore like to have the IST continue. Witness Dickey pointed out that the Company and the ratepayers benefit from the fact that the IST reduces the number of rate cases and that the IST allows the Company to retain its industrial customers through negotiations and still have the opportunity to earn the allowed return.

CUCA witness Loos contended that the Public Staff's proposed IST is just another tool to manipulate the rates of large industrial customers to maintain them at the highest level possible without risking substantial loss of sales. He further contended that, if cost were used to develop rates for large industrial customers, there would be little need for negotiated rates or an IST.

Public Staff witness Nery testified that the IST has several benefits as follows: (1) The IST eliminates the question of what gas volumes will be sold to the industrial IST customers and at what rate or price and the related need to set the rate for these customers at a level competitive with the lowest price of alternate fuel during the test year. (2) The IST reduces the number of rate cases by making up the margin lost when industrial IST customers leave the system or reduce their sales volumes. (3) The IST allows the utility the opportunity to still earn its approved rate of return when it negotiates lower rates to industrial IST customers because of changes in competitive fuel prices. (4) The IST accounts for any revenue loss if an industrial IST customer shifts to transportation service.

The Commission has taken judicial notice of its previous Orders for Public Service in Docket Nos. G-5, Subs 157, 168, and 181, and finds that the rates approved in the last rate case in which the IST was implemented will have remained in effect longer than the rates approved in either of the prior two cases where there was no IST. During the approximately two years and seven months between the elimination of the Volume Variation Adjustment Factor (VVAF) in Docket No. G-5, Sub 157 (January 12, 1981), and the approval of the IST in Docket No. G-5, Sub 181 (August 18, 1983), there were two rate cases. Thus, the IST does seem to reduce the number of general rate cases.

Company witness Dickey testified that during the test year approximately 47% of Public Service's large commercial and industrial sales could have switched to No. 6 fuel oil had the Company's gas price not been competitive. He indicated that the 47% of large industrial sales represents approximately 25% of the Company's total sales volumes. Witness Dickey further noted, however, that the Company is currently able to recover the majority of the margin lost due to negotiations because the IST approved in the last rate case provides for the recovery of lost margin from customers on Rate Schedule 65 who use heavy fuel oil as their alternate fuel and from all customers on Rate Schedules 70 and 72. Dickey Exhibit No. 2 shows the results of the Company's negotiations with its industrial customers over the last 18 months. The wide fluctuations in the prices at which the Company has negotiated sales of natural gas illustrate the problem of establishing appropriate tariff rates for these customers. Witness Dickey also testified that the Company had experienced substantial loss of large industrial customers and the sales volumes associated with those customers. Such losses would also be recovered through the IST.

The evidence in this proceeding and the past operation of the current IST for Public Service clearly indicate that an IST facilitates the fixing of just and reasonable rates in a general rate case. The evidence also illustrates the significant benefits of a mechanism that largely eliminates the issues of what volumes will be sold to industrial customers and at what rates, while allowing the Company to negotiate with industrial customers so as to retain those sales and still have a reasonable opportunity to earn its allowed rate of return. In addition, Company witness Dickey testified that from the inception of IST

through July 31, 1985, a period of about 23 months, the Company had refunded approximately $450,000 to its customers as a result of operation of the IST and, at the time of the hearing in this case, had an additional $150,000 which it was holding in a reserve account for future refund to customers. Thus, the Commission concludes that the Public Service IST has operated favorably since its inception and has in fact produced significant benefits through refunds payable to those customers not subject thereto.

Both the IST supported by the Public Staff and the IST supported by the Company recover the margin lost on Rate Schedules 60, 65, 67, 70, and 72 due to negotiations. Both the IST supported by the Public Staff and the IST supported by the Company include new customers added on Rate Schedules 70 and 72. However, new customers added on Rate Schedules 60 and 65 would not be included in the IST proposed by the Company while new customers added on Rate Schedules 60 and 65 would be included by the Public Staff.

Another difference between the Company's proposal and the proposal of the Public Staff is that in the Company's plan the filed tariff rate has been set at the current price of alternate fuel, whereas under the Public Staff's plan the filed tariff rate has been set above the current alternate fuel price. The filed tariff rate establishes the margin which is subject to the IST. Under the Public Staff's proposal, if the price of alternate fuel increases, the Company can negotiate a higher actual sales rate (up to the level of the filed tariff rate) and the resulting increased margin flows back through the IST as a rate reduction to all Rate Schedule 50 through 57 customers. If the price of alternate fuel decreases, the Company can negotiate a lower actual sales rate and the resulting margin loss flows back through the IST as a rate increase to all Rate Schedule 50 through 57 customers. Under the Company's plan if the price of alternate fuel increases, the Company cannot negotiate a higher actual sales rate because it cannot exceed the filed tariff rate. The only beneficiary under the Company's plan is the Company and the large industrial customer. The industrial customer benefits if the filed tariff rate is lower than the alternate fuel rate. It also benefits if the filed tariff rate exceeds the competitive fuel rate and the Company has to negotiate a lower sales price to the industrial customer. Under the Public Staff proposal, there is a potential benefit to all Rate Schedule 50 through 57 customers of a lower revenue requirement of approximately $2.6 million in return for the potential risk of a greater revenue requirement of approximately $21.8 million.

Company witness Dickey indicated that one of his reasons for preferring the IST reflected on Public Staff Dickey Cross-Examination Exhibit No. 1 to the IST proposed by the Public Staff was that large amounts would be collected in the deferred accounts under the Public Staff's proposal. He stated that the Public Staff's proposed IST would produce $21.8 million of gross margin subject to the IST and the IST sponsored by the Company would create $6.5 million of gross margin directly subject to the IST.

Witness Dickey also stated that the Company felt the IST it supported was less like the North Carolina Natural IST than the one proposed by the Public Staff. The Commission does not share this view. The Supreme Court stated in its decision in the N.C.N.G. case: "... [W]e hold that excluding new industrial and large commercial customers from the operation of the IST is unjust and unreasonable as a matter of law." The IST approved in this proceeding will be

applicable to all customers, both old and new, in conformity with the North Carolina Supreme Court opinion in the N.C.N.G. case.

Having considered all the evidence, the Commission concludes that an IST is necessary, appropriate, just and reasonable, and should be adopted in this proceeding. The Commission is also confident that the IST approved herein meets the concerns expressed by the North Carolina Supreme Court in the N.C.N.G. case and is not unreasonably discriminatory to or within any customer class.

The Commission agrees with the Public Staff that the filed tariff rate should be set above the price of alternate fuel. It seems only appropriate that if almost all Rate Schedule 50 through 67 customers are going to have to make up margin losses due to negotiations, they should get the benefit if the price of alternate fuel rises.

However, the Commission does not agree that all of the customers on Rate Schedules 60, 65, and 67 should be included in the IST, whether or not they are new or existing customers. The Commission is of the opinion that only those customers on Rate Schedules 65 and 67 who use heavy fuel oil as an alternate fuel should be included in the IST. This would be the same procedure allowed by the Commission for the current IST for both Public Service Company and North Carolina Natural Gas Corporation. Piedmont Natural Gas Company does not have an IST at this time.

The IST is intended to enable the Company to maintain its margins while still negotiating lower rates for industrial sales in order to retain those industrial customers and associated sales. The evidence in this proceeding tends to show that additional sales are anticipated from Rate Schedule 60 and 65 customers, not less sales. The margins from Rate Schedule 60 and 65 sales do not appear to be in unusual jeopardy, except for sales to customers in Rate Schedule 65 who use heavy fuel oil as an alternate fuel. Thus, there is no need to include Rate Schedule 60 and 65 customers in the IST at this time, except for Rate Schedule 65 customers who use heavy fuel oil as an alternate fuel.

General

In addition to the rate design revisions already discussed, the Company proposed several miscellaneous rate changes which were not opposed by any party. Such rate design changes include: (1) increasing the facilities charge on various rate schedules in order to more closely match fixed costs; (2) increasing the charges for outdoor lighting service under closed Rate Schedule 85; and (3) increasing the rates for limited emergency service and peak emergency service under Rider A.

Based on the above, the Commission concludes that the rate designs proposed by the Company should be approved, except as discussed elsewhere in this Order.

IT IS, THEREFORE ORDERED as follows:

1. That Public Service Company of North Carolina, Inc., be, and hereby is, authorized to adjust and increase its rates and charges based upon the Company's level of test year operations by $6,660,683.

2. That Public Service shall file not later than ten (10) days after the date of this Order appropriate tariffs in conformity with the base rates set forth in Appendix A attached hereto properly adjusted for any Transco PGA changes and any temporary increments or decrements currently in effect.

3. That the tariffs filed in response to Ordering Paragraph 2 above shall be approved upon further Order of the Commission.

4. That the IST mechanism as discussed herein and outlined on Appendix B attached hereto is approved and shall be effective for service rendered on and after the effective date of this Order.

5. That Public Service shall file a monthly report with the Commission showing the IST volumes sold and the margin earned compared to the base period IST monthly volumes and margins.

6. That Public Service shall present information to the Commission in its next general rate case concerning the American Gas Association which shows all direct and indirect contributions to and through AGA from all sources and all expenditures by programs.

7. That Public Service shall notify its customers of the increased rates and of the Industrial Sales Tracker (IST) mechanism approved herein by appropriate bill insert in the next billing cycle following the effective date of the new tariffs.

ISSUED BY ORDER OF THE COMMISSION.
This the 20th day of November 1985.

NORTH CAROLINA UTILITIES COMMISSION
Sandra J. Webster, Chief Clerk

(SEAL)

DOCKET NO. G-5, SUB 200

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Application of Public Service Company	)	ORDER APPROVING RIDER C
of North Carolina, Inc., for an Adjustment	)	AND GRANTING MOTION
of Its Rates and Charges	)	SEEKING CLARIFICATION

BY THE COMMISSION: On November 20, 1985, the Commission issued an "Order Granting Partial Rate Increase" in the above-captioned matter requiring, in part, that the Company file appropriate tariffs in conformity with the rates set forth in the Order. On November 22, 1985, the Company filed tariffs to implement the rate increase approved by the Commission, except the Company did not file the Industrial Sales Tracker (IST) as a part of its proposed tariffs.

On December 1, 1985, the Company filed a "Motion Seeking Clarification" in the matter in which it proposed a reworded Appendix B and Finding of Fact No. 12 in the Commission Order of November 20, 1985. The Company contended that the reworded IST in Appendix B and the related rewording of Finding of Fact No. 12 on page 5 of the Commission's Order were necessary in order to

clarify various details discussed therein and to ensure that the IST is in conformity with the intent expressed in the Order.

The Commission concurs with the proposed rewording of the IST and of the proposed rewording of the definition of "margin" in Finding of Fact No. 12 on page 5 of its Order of November 20, 1985, in the matter.

IT IS, THEREFORE, ORDERED as follows:

1. That the proposed Rider C filed by the Company is hereby approved as filed.

2. That the Commission's Order of November 20, 1985, is hereby revised by substituting the proposed Rider C approved herein for Appendix B of said Order.

3. That the Commission's Order of November 20, 1985, is hereby revised by rewording the definition of "margin" contained in Finding of Fact No. 12 of said Order to read:

> "....'Margin' as used herein is defined to mean the normal retail sales rate of Public Service less the gross receipts tax included in said rate and less Transco's CD commodity charge."

ISSUED BY ORDER OF THE COMMISSION.
This the 2nd day of December 1985.

NORTH CAROLINA UTILITIES COMMISSION
(SEAL) Dean Farrar, Deputy Clerk

APPENDIX A
Page 1 of 2

PUBLIC SERVICE COMPANY OF NORTH CAROLINA, INC.
RATES APPROVED IN DOCKET NO. G-5, SUB 200

Rate Schedule	Facilities Charge per Month	Rate Per Therm 1/
50 Residential Service	$5.00	$.58445
55 Commercial & Small Industrial Service	8.00	.57284
57 Incrementally Priced Boiler Fuel 2/ (NCUC Priority 2.1)	8.00	.57284
60 Industrial Process Gas Service	75.00	.50873
65 Industrial & Large Commerical Service	75.00	.49917
67 Incrementally Priced Boiler Fuel 2/ (NCUC Priority 3.2)	75.00	.49917

70 Boiler Fuel	250.00	.45596
72 Incrementally Priced Boiler Fuel 2/ (NCUC Priorities 6-9)	250.00	.45596
85 Outdoor Lighting Service		
Single Upright Mantle	$8.00	
Double Inverted Mantle	8.00	
Additional Upright Mantle	7.50	
Additional Inverted Mantle	4.00	
91 Transportation Service - Large Volume Interruptible Nonboiler Fuel	75.00	$____
92 Transportation Service - Large Volume Interruptible Boiler Fuel		
All gas - April 1 - October 31	250.00	____
All gas - November 1 - March 31	250.00	____
Rider A - Curtailment Priority Plan and Emergency Services		
Limited Emergency Service		.75000
On-Peak Emergency Service		.95000

Fees for item covered in Company's Rules and Regulations

Reconnection Fees - To restore service	$20.00
Reconnection Fees - For gas lights	5.00
Fee for service calls after normal operating hours	7.50

1/ Excluding present temporary increment of $.00012 per therm relating to stored gas inventories.

2/ Rates set monthly by the FERC based on price of alternate fuel. Revenue from rates in excess of the rates shown is placed in a refund account.

APPENDIX B

PUBLIC SERVICE COMPANY OF NORTH CAROLINA, INC.
NATURAL GAS SERVICE
INDUSTRIAL SALES TRACKER - RIDER C

Applicable to Service Rate Schedule Nos. 50, 55, 57, 60, 65, 67, 70, 72, and 80. The intent of the Industrial Sales Tracker (IST) is to stabilize the Company's margin from commercial and industrial sales while taking measures to retain sales to those commercial and industrial customers who can most readily use an alternate fuel or can obtain an independent supply of gas.

1. The Utilities Commission has authorized the Company to negotiate rates for customers who have the capacity to use an alternate fuel. To the extent that such negotiated sales are required to retain Rate Schedule 70 and 72 customers, any loss of margin between the sales price contained on Rate Schedules 70 and 72 established in Docket No. G-5, Sub 200, and the negotiated sales price to said customers will be recovered by the IST. In like manner, to the extent that such negotiated sales are required to retain those Rate Schedule 65 and 67 customers who use heavy fuel oil as an alternate fuel, any loss of margin between the sales price contained on Rate Schedules 65 and 67 established in Docket No. G-5, Sub 200, and the negotiated sales price to said customers will be recovered by the IST.

2. Any loss of margin from those customers on Rate Schedule Nos. 60, 65, 67, 70, and 72 who elect to purchase an independent supply of gas and have that gas transported to them by the Company under Rate Schedule Nos. 91 and 92 shall be recovered by the IST. In addition, any increase or decrease in the margin from those Rate Schedule 70 and 72 customers who do not negotiate a sales price different from the sales price contained on Rate Schedules 70 and 72 established in Docket No. G-5, Sub 200, shall also be included in the IST.

3. No loss of margin from Rate Schedule Nos. 50 through 67 customers will be recovered by the IST, except for: (1) those Rate Schedule 65 and 67 customers who use heavy fuel oil as alternate fuel and negotiate a sales price different from the sales price contained on Rate Schedules 65 and 67 established in Docket No. G-5, Sub 200; and (2) those Rate Schedule 60, 65 and 67 customers who elect to purchase an independent supply of gas and have that gas transported to them by the Company under Rate Schedules 91 and 92. However, the Company may continue to negotiate with Priority 2 through 9 customers in order to retain sales to said customers. All margin from sales to customers under Rate Schedule Nos. 50, 55, 57, 60, 65, 67, and 85 will be retained by the Company, except for margin from sales to Rate Schedule 65 and 67 customers who use heavy fuel oil as an alternate fuel and negotiate a sales price different from the sales price contained on Rate Schedules 65 and 67 established in Docket No. G-5, Sub 200.

4. In calculating the monthly level of margin from Rate Schedules 70 and 72 to be included in the IST, the revenues received from the negotiated energy charge on Rate Schedules 70 and 72 less the cost of gas will be compared to the base period monthly margin (see paragraph 8) and the difference, either positive or negative, will be included in the IST. In calculating the monthly level of margin from Rate Schedule 65 and 67 customers to be included in the IST, the revenues received from the negotiated prices to said customers less the cost of gas will be compared to the revenues which would have been received from those same customers under the applicable prices contained on Rate Schedules 65 or 67, and the difference, either positive or negative, will be included in the IST. The cost of gas in each instance will be calculated by multiplying the quantity actually sold times the then current Transco CD-2 commodity rate per DT plus the applicable 3.22% gross receipts tax.

5. The revenue effect of the difference between Transco's cost of gas and the cost of gas under its Special Marketing Program (SMP) or other similar programs will be included in the IST.

6. A true-up will be filed annually and in the Company's next general rate case. Any overcollection of margin by the IST will be refunded by crediting uniformly on a per therm basis to the bills of Rate Schedule 50 through 67 customers, except to those Rate Schedule 65 and 67 customers who use heavy fuel oil as an alternate fuel and negotiate a sales price different from the sales price contained on Rate Schedules 65 and 67 established in Docket No. G-5, Sub 200. Any undercollection of margin by the IST will be recovered by increasing uniformly on a per therm basis the bills of Rate Schedule 50 through 67 customers, except those Rate Schedule 65 and 67 customers who use heavy fuel oil as an alternate fuel and negotiate a sales price different from the sales price contained on Rate Schedules 65 and 67 established in Docket No. G-5, Sub 200. The revenues from transportation Rate Schedules 91 and 92 and the revenues from emergency gas sales under Rider A in excess of the published rates will be included in the IST true-up.

7. Interim rate corrections will be considered by the Company and the Public Staff on a periodic basis and recommendations on adjustments made to the Commission.

8. The following base period monthly margins on Rate Schedule Nos. 60, 65, 67, 70, and 72 shall be used for the IST.

Test Period Month/Year	Base Period Margin (Excluding Facility Charges but Including Gross Receipts Tax)

9. The Company will file monthly reports of the activity in the IST account with the Commission.

DOCKET NO. B-7, SUB 104

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Greyhound Lines, Inc. - Suspension and Investigation of Proposed Increase in Intercity Bus Passenger Fares, Scheduled to Become Effective on March 1, 1985	)	ORDER GRANTING RATE INCREASE

HEARD IN: Commission Hearing Room, Dobbs Building, 430 North Salisbury Salisbury Street, Raleigh, North Carolina 27602, on May 9, 1985, at 10:00 a.m.

BEFORE: Commissioner Ruth E. Cook, Presiding; and Commissioners A. Hartwell Campbell and Charles E. Branford

APPEARANCES:

For the Respondent:

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

Robert D. Rierson, Attorney at Law, Greyhound Lines, Inc., Greyhound Tower, Phoenix, Arizona 85077

For the Public Staff:

Theodore C. Brown, Jr., Staff Attorney, Public Staff - North Carolina Utilities Commission, P. O. Box 29520, Raleigh, North Carolina 27626-0520
For: The Using and Consuming Public

BY THE COMMISSION: On January 29, 1985, the Commission received Supplement No. 1 to N.C.U.C. No. 31, Greyhound Lines, Inc., North Carolina Local Passenger Tariff and Greyhound Lines, Inc., N. C. Passenger Tariff No. 731-B, N.C.U.C. No. 38, proposing to increase North Carolina intrastate passenger fares and to implement a mileage rate scale.

By Order of February 12, 1985, the Commission suspended the proposed tariff schedules for a period of 270 days, from the proposed effective date of March 1, 1985, and declared the filing to be a general rate case. The Commission requested the Public Staff to investigate and analyze the proposed tariff filing and make a recommendation to the Commission with respect to the reasonableness of the proposed tariff filing.

On April 24, 1985, the Public Staff filed the testimony of James L. Rose, Chief Rate Specialist, Transportation Rates Division.

The matter came on for hearing as scheduled and the parties were present and represented by counsel. Greyhound witness, E. C. Given, testified in support of the application, and Public Staff witness Rose presented the Public Staff's position that Greyhound may need rate relief and that Greyhound would

not experience an unreasonably profitable North Carolina operating ratio if the proposed intrastate fare levels are approved.

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. Greyhound is engaged in the transportation of passengers for compensation in North Carolina intrastate commerce and is subject to the jurisdiction of this Commission under the Public Utilities Act.

2. The proposed North Carolina passenger fares will be at the same level as Greyhound's interstate passenger fares heretofore approved by the Interstate Commerce Commission.

3. North Carolina local mileage scale would be the same as the mileage scale heretofore approved by the Interstate Commerce Commission.

4. The test period in this docket is the twelve-months ended August 31, 1984.

5. The test period present level operating ratio in North Carolina prior to the proposed increase is 151.7 percent. With the proposed increase in passenger revenues of as much as $193,000, or 41 percent, the operating ratio will be 122 percent.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 1

The evidence for this finding comes from the verified application. This finding is essentially informative, procedural, and jurisdictional in nature and is not contested in the record.

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

The evidence supporting these findings is the testimony and exhibits of Greyhound witness E. C. Given. This evidence was uncon-troverted in the record.

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

The evidence supporting these findings is found primarily in the testimony and exhibits of Public Staff witness Rose. This evidence was uncontroverted in the record. Therefore, the Commission concludes that the proposed increase and conversion of point-to-point rates to a mileage scale is appropriate.

IT IS, THEREFORE, ORDERED as follows:

1. That Greyhound Lines, Inc. be, and is hereby, authorized to increase its North Carolina intrastate passenger fares and place into effect a mileage scale as proposed.

2. That the Commission's Order of Suspension and Investigation in this proceeding be, and the same hereby is, vacated and set aside.

3. That Greyhound Lines, Inc. hereby is authorized to put into effect North Carolina Local Passenger Tariff No. 731-B, N.C.U.C. No. 38, providing for the increase and mileage scale set forth in Ordering Paragraph No. 1 above, effective on five days' notice to the Commission and to the public.

ISSUED BY ORDER OF THE COMMISSION.
This the 29th day of May 1985.

NORTH CAROLINA UTILITIES COMMISSION
(SEAL) Gail Lambert Mount, Deputy Clerk

DOCKET NO. T-2398

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Application of Jim's Trucking Company for Contract Carrier Authority to Transport Group 1, General Commodities, Except Commodities in Bulk, in Tank Vehicles, Statewide, Under Continuing Contract With Carolina Aluminum Company	)	FINAL ORDER

ORAL ARGUMENT
HEARD IN: The Commission Hearing Room, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on February 4, 1985, at 11:00 a.m.

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:

Ralph McDonald, Bailey, Dixon, Wooten, McDonald, Fountain, & Walker, Attorneys at Law, P. O. Box 12865, Raleigh, North Carolina 27605-2865
For: Jim's Trucking Company

For the Protestant:

Robert J. Wishart, Wishart, Norris, Henninger & Pittman, Attorneys at Law, P. O. Drawer 519, Burlington, North Carolina 27215
For: Wicker Services, Inc.

BY THE COMMISSION: On January 4, 1985, Hearing Examiner Carolyn D. Johnson entered a Recommended Order in this docket denying the application for contract carrier authority sought by Jim's Trucking Company.

On January 8, 1985, Jim's Trucking Company (Applicant) filed exceptions to the Recommended Order and by Order dated January 10, 1985, the Commission assigned oral argument on Applicant's exceptions at the time and place indicated above.

The matter came before the Commission for oral argument as scheduled and counsel for the Applicant and Protestant, Wicker Services, Inc., were present and offered oral argument.

On the basis of the oral argument and a review of the record as a whole, the Commission finds and concludes that the exceptions filed by the Applicant on January 8, 1985, should be, and the same are hereby, granted in part and denied in part. In so concluding, the Commission finds certain modifications to the Recommended Order to be appropriate so as to exclude those findings of

fact and conclusions that characterize vehicle leases with or without drivers to an authorized motor carrier as being a violation of the Public Utilities Act and has incorporated the same in the present Order.

Upon review of the record as a whole, the Commission makes the following:

FINDINGS OF FACT

1. Applicant is a North Carolina corporation, formed on May 9, 1984, with its principal office and place of business in Burlington.

2. By this application as amended at the hearing, Applicant proposes to engage in the transportation of Group 1, general commodities, except commodities in bulk, in tank vehicles, statewide under continuing contract with Carolina Aluminum Company.

3. Applicant and Carolina Aluminum have entered into a written transportation contract, a copy of which has been introduced in evidence.

4. Carolina Aluminum is a manufacturer of aluminum extrusions. It is a division of New Jersey Aluminum, which is a wholly-owned subsidiary of Easco Corporation (Easco). Easco is headquartered in Baltimore, Maryland.

5. At its Burlington plant, Carolina Aluminum manufactures aluminum tubing for CommScope Corporation (CommScope) in Hickory. CommScope uses the tubing in the manufacture of coaxial cable for the cable television industry.

6. CommScope's Hickory plant operates twenty-four hours a day, seven days a week. CommScope maintains only a small inventory of aluminum tubing. Consequently, constant and dependable resupply is required. CommScope has come to depend upon Carolina Aluminum's being able to furnish tubing within two and a half hours. If aluminum tubing is not provided as required, CommScope will be forced to shut down.

7. On a daily basis, Carolina Aluminum ships an average of five truckloads of aluminum tubing from Burlington to Hickory. The tubing is shipped on wooden spools in van trailers. Shipments range in weight from 9,000 - 17,000 pounds.

8. Sales to CommScope constitute a major part of Carolina Aluminum's business. A competitor of Carolina Aluminum has a facility at CommScope's Hickory plant which provides a percentage of CommScope's aluminum tubing needs. If Carolina Aluminum is not able to meet CommScope's demands, its competitor will obtain a larger percentage of CommScope's business.

9. Carolina Aluminum performs a portion of its transportation to Hickory and other points in its own trucks. Regulated carriers, including the Protestant, are used to supplement its private carriage operation.

10. Carolina Aluminum proposes to use Applicant for contract carrier service between Burlington and Hickory on weekends, holidays and, as needed, at night. Carolina Aluminum will expect Applicant to provide service on demand on weekends, holidays and at night.

11. If the authority sought is granted, Applicant will dedicate its equipment to the exclusive use of Carolina Aluminum.

12. Applicant holds Exemption Certificate E-29186 issued by the Division of Motor Vehicles.

13. Since July 1, 1984, Applicant has leased trucks with drivers to Aluminum Distribution Company (Aluminum Distribution). Aluminum Distribution is a contract carrier operating under Permit No. P-391 which authorizes it to provide service to Carolina Aluminum as a contract carrier. Both Carolina Aluminum and Aluminum Distribution are members of the New Jersey Aluminum - Easco corporate family.

14. If the authority sought is granted, Applicant will terminate its equipment leases with Aluminum Distribution. Applicant will then use its equipment exclusively to provide service to Carolina Aluminum as a contract carrier.

15. Applicant's President is a former officer and manager of Protestant who has had approximately ten years' experience in providing service to Carolina Aluminum. As a result, he is thoroughly familiar with Carolina Aluminum's transportation needs.

16. Protestant operates under Certificate No. C-399 which authorizes it inter alia to provide service as a common carrier to Carolina Aluminum. Protestant has provided common carrier service to Carolina Aluminum for approximately ten years.

17. There was no testimony as to any service deficiencies from Carolina Aluminum and Protestant Wicker Services, Inc., has met the transportation needs of Carolina Aluminum.

WHEREUPON, the Commission reaches the following

CONCLUSIONS

The application for a contract carrier permit is governed by G.S. 62-262(i) which imposes upon the Applicant the burden of proving the following to the satisfaction of the Commission:

"(1) Whether the proposed operations conform with the definition in this chapter of a contract carrier,

"(2) Whether the proposed operations will unreasonably impair the efficient public service of carriers operating under certificates or rail carriers,

"(3) Whether the proposed service will unreasonably impair the use of the highways by the general public.

"(4) Whether the Applicant is fit, willing, and able to properly perform the service proposed as a contract carrier,

"(5) Whether the proposed operations will be consistent with the public interest and the policy declared in this chapter, and

"(6) Other matters tending to qualify or disqualify the Applicant for a permit."

N.C.U.C. Rule R2-15(b) amplifies the burden of proof upon an applicant for a contract carrier permit.

"(b) If the application is for a permit to operate as a contract carrier, proof of a public demand and need for the service is not required; however, proof is required that one or more shippers or passengers have a need for a specific type of service not otherwise available by existing means of transportation, and have entered into and filed with the Commission with a copy to the Public Staff prior to the hearing or at the time of the hearing, a written contract with the applicant for said service, which contract shall provide for rates not less than those charged by common carriers for a similar service."

The supporting shipper, Carolina Aluminum Company, Inc., testified that its needs have been adequately met for the past eight (8) years and could continue to be met by the Protestant who is still providing services to it and who now has idle employees and equipment. The Applicant has failed to carry its burden of showing that there is a specific need for the type of service offered by it not otherwise available by existing means of transportation.

Additionally, the proposed operation, if allowed, would unreasonably impair the efficiency of public service of Protestant, a certificated carrier whose dollar volume of business has decreased by approximately 40% since formation of a lease arrangement between the Applicant and Aluminum Distribution Company.

The Commission takes notice of its Rule R2-6, Use of Rented or Leased Vehicles, and portions thereof which read as follows:

(a)(2) The property transported shall be transported in the name of and under the responsibility of the said lessee, and under the direct supervision and control of the lessee.

(a)(3) The drivers of said leased equipment shall be directly supervised and controlled by lessee.

The evidence relating to whether or not compliance with these two provisions of Rule R2-6 has been met is conflicting. However, the Commission is compelled to bring this to the attention of both the Applicant and Aluminum Distribution Company and to require that any lease arrangement between said parties comply with all of the provisions of Commission Rule R2-6.

IT IS, THEREFORE, ORDERED as follows:

1. That the exceptions filed by Jim's Trucking Company on January 8, 1985, should be, and the same are hereby, denied with the exception of those which have been allowed and included herein.

2. That the application of Jim's Trucking Company for contract carrier authority is hereby denied.

ISSUED BY ORDER OF THE COMMISSION.
This the 12th day of March 1985.

NORTH CAROLINA UTILITIES COMMISSION
Sandra J. Webster, Chief Clerk

(SEAL)

MOTOR TRUCKS - COMMON CARRIER AUTHORITY

DOCKET NO. T-2465

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Donald J. Swicegood, Route 1, Box 292 Statesville, North Carolina 28677 - Application for Common Carrier Authority) FINAL ORDER OVERRULING EXCEPTIONS, AND GRANTING TEMPORARY AUTHORITY

ORAL ARGUMENT HEARD IN:

The Commission Hearing Room, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina 27603, on May 22, 1985, at 10:30 a.m.

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

APPEARANCES:

For the Applicant:

Ralph McDonald, Bailey, Dixon, Wooten, McDonald, Fountain & Walker, Attorneys at Law, P. O. Box 12865, Raleigh, North Carolina 27605-2865

For the Protestant:

Thomas W. Steed, Jr., 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 April 18, 1985, Hearing Examiner Sharpe entered a Recommended Order denying the application filed by Donald J. Swicegood (Applicant) for authority to transport Group 21, cement and fly ash, statewide.

By Order entered on May 3, 1985, the Commission denied Applicant's Motion for reconsideration of the Recommended Order, to reopen the hearing for receipt of additional evidence and for a grant of emergency and temporary authority. Said Order further extended the date for the filing of any exceptions to and including Friday, May 10, 1985.

On May 9, 1985, Applicant filed its Exceptions to the Recommended Order and requested that oral argument before the Commission be scheduled on the Exceptions. Also, on May 9, 1985, Applicant filed a Petition for Emergency and Temporary Operating Authority.

A Response to Applicant's Petition was filed on May 15, 1985, by Protestant Fleet Transport Company, Inc.

By Order entered on May 13, 1985, oral argument on Applicant's Exceptions and Petition for Emergency and Temporary Operating Authority was scheduled for May 20, 1985, and subsequently continued to the time and place indicated above.

The matter came before the Commission for oral argument as scheduled, and counsel for the Applicant and Protestant were present and offered oral argument.

On the basis of the oral argument and a review of the record as a whole, the Commission finds and so concludes that the exceptions filed by Applicant should be denied and the Recommended Order entered on April 18, 1985, affirmed.

In so concluding, the Commission recognizes that the Applicant has engaged in substantial unauthorized transportation services for the supporting shipper in this docket and in no way condones such activity. However, the Commission also recognizes its responsibility and obligation to assure that the general public receives adequate and responsive service to meet its transportation needs. Based upon the oral argument of counsel on May 22, 1985, the Commission further concludes that a temporary need has been shown sufficient to grant Applicant temporary authority to transport Group 21, fly ash, between the facilities of Monier Resources, Incorporated, and points in North Carolina, pending hearing and decision by the Commission on its application filed on May 13, 1985, in Docket No. T-2465, Sub 1.

IT IS, THEREFORE, ORDERED as follows:

1. That the Exceptions filed on May 9, 1985, by Donald J. Swicegood are hereby denied and the Recommended Order entered in this matter on April 18, 1985, is hereby affirmed.

2. That Donald J. Swicegood is hereby granted temporary authority to transport Group 21, fly ash, between the facilities of Monier Resources, Incorporated, in the one hand, and, on the other, points in North Carolina, pending disposition by the Commission of the application for permanent authority in Docket No. T-2465, Sub 1.

3. That Applicant, to the extent he has not already done so, shall file with the North Carolina Division of Motor Vehicles evidence of insurance, a list of equipment, and a designation of a process agent and shall file with this Commission a tariff schedule of rates and charges and shall otherwise comply with rules and regulations of this Commission, all of which shall be accomplished within thirty (30) days from the date this Order becomes effective and final, unless such time is extended by the Commission upon written request.

4. That unless the Applicant complies with the requirements set forth in decretal paragraph 3 above and begins operating as herein authorized within thirty (30) days after this Order becomes final, unless such time is extended in writing by the Commission upon written request for such an extension, the operating authority granted herein will cease.

5. That the Applicant shall not, in the future, operate without proper authority from this Commission. Should the Applicant engage in any

unauthorized operations in the future, such operations shall serve as a basis for revoking the operating authority granted by this Order.

ISSUED BY ORDER OF THE COMMISSION.
This the 29th day of May 1985.

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

DOCKET NO. P-147, SUB 1

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Application of ALLTEL Mobile Communications of the Carolinas for a Certificate of Public Convenience and Necessity and for Approval of Initial Rates, Charges and Regulations	)	ORDER DENYING APPLICATION

HEARD IN: Commission Hearing Room, Dobbs Building, Raleigh, North Carolina, On January 10, 1985

BEFORE: Commissioner A. Hartwell Campbell, Presiding; and Commissioners Robert K. Koger; Sarah Lindsay Tate; Ruth E. Cook; Charles E. Branford and Hugh A. Crigler, Jr.

APPEARANCES:

For the Applicant:

F. Kent Burns, Boyce, Mitchell, Burns & Smith, Post Office Box 2479, Raleigh, North Carolina 27602 and John F. Kelly, Thompson, Hines & Flory, 1920 North Street, N.W., Suite 700, Washington, D. C.
For: ALLTEL Mobile Communications of the Carolinas, Inc.

For the Intervenors:

Jerry B. Fruitt, 1042 Washington Street, Post Office Box 12547, Raleigh, North Carolina 27605
For: Tarheel Association of Radiotelephone Systems, Inc.

BY THE COMMISSION: On August 20, 1984, ALLTEL Mobile Communications of the Carolinas, Inc. ("ALLTEL Mobile") filed an Application for a Certificate of Public Convenience and Necessity to provide wide area paging service in and between Charlotte, Monroe, Gastonia, Concord, Salisbury and Lexington, North Carolina. The Applicant proposed to offer one-way, tone only digital numeric display and digital alpha numeric display paging and authority to provide all technical services incidental thereto.

By Order dated September 21, 1984, the Commission scheduled the matter to be heard January 8, 1985. On November 29, 1984, a Petition to Intervene and Motion to Dismiss was filed by Tarheel Association of Radiotelephone Systems, Inc. ("TARS"). The Commission, by Order dated December 6, 1984, allowed the Petition to Intervene filed by TARS. On January 7, 1985, TARS made an Oral Motion to Continue Hearings until January 10, 1985. By Order dated January 7, 1985, the Commission rescheduled the hearings herein for January 10, 1985.

The hearing commenced as scheduled on January 10, 1985, in the Commission Hearing Room. At the hearing, Mr. Samuel M. Patterson of Bow Water Carolina Company, Mr. John Dunbar, President of ALLTEL Mobile Communications, Inc., Mr. Donald Steely, Vice President of ALLTEL Mobile Communications, Inc., and Mr. David F. Martin, President of Area Marketing/Research Associates, Inc.,

testified on behalf of the Applicant. Mr. David Odom, Vice President - Operations of Carolinas RCC, testified on behalf of TARS.

After a review of the evidence presented and consideration of the entire record in this proceeding, the Commission makes the following

FINDINGS OF FACT

1. That ALLTEL Mobile Communications of the Carolinas, Inc., is a Delaware corporation, and a wholly owned subsidiary of ALLTEL Corporation. The principal place of business of ALLTEL Mobile is 100 Executive Parkway, Hudson, Ohio 44235.

2. That ALLTEL Mobile seeks a Certificate to provide radio common carrier messaging services in the areas of Charlotte, Monroe, Gastonia, Concord, Salisbury and Lexington, North Carolina.

3. That ALLTEL Mobile asserts through its testimony that its proposed wide area paging is not duplicative of existing signalling devices and that there is a demand for and public interest in making its proposed services available.

4. That the proposed service area is in and between Charlotte, Monroe, Gastonia, Concord, Salisbury and Lexington, North Carolina. The Applicant proposed to offer one-way, tone only digital numeric display and digital alpha numeric display paging and authority to provide all technical services incidental thereto.

5. That there are presently radio common carriers certificated to provide similar messaging services within the respective service areas covered by ALLTEL Mobile's Application operating under Certificates issued by this Commission, pursuant to Article 6A of Chapter 62 of the North Carolina General Statutes.

6. That is a Certificate was granted to ALLTEL Mobile in accordance with its application herein, ALLTEL Mobile would be authorized to provide radio common carrier messaging services in competition with some of the presently certificated radio common carrier utilities in North Carolina.

7. That ALLTEL Mobile asserts that the granting of its application would be in the public interest because ALLTEL Mobile would offer a service that is presently not available from the currently certificated radio common carrier utilities in North Carolina.

8. That the services that ALLTEL Mobile proposed to offer are not substantially different in kind from the messaging services presently offered by currently certificated radio common carrier utilities in the applied for areas.

9. That to the extent that ALLTEL Mobile's proposed service offerings 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.

10. That there is no convincing evidence that the messaging services of any existing utilities is inadequate, or that any existing utility would be unable or unwilling to duplicate any of the service offerings proposed by ALLTEL Mobile, if ordered to do so by this Commission.

WHEREUPON, The Commission reaches the following:

CONCLUSIONS OF LAW

N.C.G.S. 62-123 provides that:

"Granting of certificate for operation in established service area of another carrier. - The Commission shall not grant a certificate for a proposed radio common carrier operation or extension thereof into the established service area which will be in competition with or duplication of any other radio common carrier unless it shall first determine that the existing service is inadequate to meet the reasonable needs of the public and that the person operating the same is unable to or refuses or neglects after hearing on reasonable notice to provide reasonably adequate service."

In its Application ALLTEL Mobile seeks a Certificate of Public Convenience and Necessity. In order to establish that the public convenience and necessity requires the issuance of such a Certificate, ALLTEL Mobile must prove: (1) that the existing service is inadequate to meet the reasonable needs of the public; and (2) that the person operating the same is unable to or refuses or neglects, after hearing on reasonable notice, to provide reasonably adequate service. The foregoing requirements are set forth in N.C.G.S. 62-123 and 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 previously authorized motor carriers 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 v. 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 filed. 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. 3d 328; Citizens Valley View Co. 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), Supra page 271.

In the instant case the evidence clearly indicates that the services which ALLTEL Mobile proposes to offer are similar in nature to the services already offered by the existing certificated radio common carriers. ALLTEL Mobile has made no showing that the existing radio common carriers cannot or will not provide the service in question, in fact services almost identical to those proposed by ALLTEL Mobile are presently being offered, or soon to be offered, by the existing utilities. The Commission cannot conclude that a certificate should be issued to ALLTEL Mobile under the standards enunciated in N.C.G.S. 62-123 and by the North Carolina Supreme Court as set forth above.

Having found that under the facts of this case competition in the provision of radio common carrier services 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 ALLTEL Mobile's Application to be certificated as a radio common carrier to provide messaging services should, therefore, be denied.

IT IS, THEREFORE, ORDERED that the Application by ALLTEL Mobile Communications of the Carolinas, Inc., for a Certificate of Public Convenience and Necessity be denied.

ISSUED BY ORDER OF THE COMMISSION.
This the 20th day of March 1985.

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

DOCKET NO. P-143

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Application of Millicom Information Services, Inc., for a Certificate of Public Convenience and Necessity to Provide Radio Common Carrier Messaging Services to High Point and Raleigh-Durham, North Carolina	)	ORDER DENYING APPLICATION

HEARD IN: Commission Hearing Room, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on July 19, 1984

BEFORE: Commissioner A. Hartwell Campbell, Presiding; and Commissioners Robert K. Koger and Charles E. Branford

APPEARANCES:

For the Applicant:

Mark J. Prak, Tharrington, Smith & Hargrove, Attorneys at Law, Suite 300, BB&T Building, P. O. Box 1151, Raleigh, North Carolina 27602

Deborah A. Schloss, Millicom Information Services, Inc., 1799 Swann Street, N. W., Washington, D. C. 20009
For: Millicom Information Services, Inc.

For the Intervenors:

Jerry B. Fruitt, Attorney at Law, P. O. Box 2507, Raleigh, North Carolina 27602
For: Tarheel Association of Radiotelephone Systems, Inc.

BY THE COMMISSION: On February 10, 1984, Millicom Information Services, Inc. ("MIS"), filed an application seeking a certificate of public convenience and necessity to construct, install, own and operate a radio messaging system providing one-way alphanumeric tone optical messaging services in the cities of High Point and Raleigh-Durham and specified surrounding areas.

By Order dated April 6, 1984, the Commission scheduled the matter to be heard June 21 and 22, 1984. On May 17, 1984, a Petition to Intervene and Motion to Dismiss was filed by Tarheel Association of Radiotelephone Systems, Inc. ("TARS"). The Commission, by Order dated May 21, 1984, allowed the Petition to Intervene filed by TARS. On May 24, 1984, MIS filed a Motion to Continue Hearings until July 19, 1984. By Order dated May 25, 1984, the Commission rescheduled the hearings herein for July 19, 1984, and required MIS to give public notice and file a tariff setting forth the rates and regulations applicable to the proposed service. The Applicant, on July 18, 1984, filed Opposition to Motion to Dismiss the Motion filed by TARS on May 17, 1984.

The hearing was held on July 19, 1984, and testimony and exhibits were received concerning MIS's application. The following members of the public testified as to their desire to subscribe to Millicom's proposed service: Dr. Deborah L. Radisch, John B. Neal, Nancy M. Harper, Carl V. Venters III, and Tom Jarvis. In addition, the following persons testified on behalf of MIS: Phillip D. Callahan, Dennis Finnerman, and William Kenny. Cecil L. Duffie, Jr., and David L. Odom testified for TARS.

Based upon MIS's application, the evidence presented, relevant law, and the entire record in this proceeding, the Commission makes the following

FINDINGS OF FACT

1. That Millicom Information Services, Inc., is a Delaware corporation with its principal place of business at 733 3rd Avenue, 12th Floor, New York, New York 10017. MIS is a wholly owned subsidiary of Millicom Incorporated.

2. That MIS seeks a certificate to provide radio common carrier messaging services in the areas of High Point and Raleigh-Durham, North Carolina.

3. That MIS asserts through its testimony that its proposed messaging technology is not duplicative of existing signalling devices and that there is a demand for and public interest in making available this new technology.

4. That the proposed High Point service area consists of the area within a 20 mile radius of an antenna to be located at 704 Tate Street. High Point, North Carolina. (Coordinates 35.56.48 N. LAT; 79.59.59 W. LONG.). This would encompass all of High Point, most of Greensboro and Winston-Salem metropolitan areas, including most of Guilford, parts of Forsyth, Davidson and Randolph Counties, and very small portions of Rockingham and Stokes Counties.

5. That the proposed Raleigh-Durham service area consists of the area within a 20 mile radius of an antenna to be located at 10020 Strickland Road, Six Forks (coordinates 35.54.05 N. LAT; 78.39.43 W. LONG.) This would encompass the greater Raleigh and Durham metropolitan areas including most of Wake County, parts of Durham, Franklin and Granville Counties, and very small portions of Orange and Johnston Counties.

6. That there are presently radio common carriers certificated to provide messaging services within the respective service areas covered by MIS application operating under certificates issued by this Commission, pursuant to Article 6A of Chapter 62 of the North Carolina General Statutes.

7. That if a certificate were granted to MIS in accordance with its application herein, MIS would be authorized to provide radio common carrier messaging services in competition with the presently certificated radio common carrier utilities in North Carolina.

8. That MIS asserts that the granting of its application would be in the public interest because MIS would offer a service that is presently not available from the currently certificated radio common carrier utilities in North Carolina.

9. That the services that MIS proposes to offer are not substantially different in kind from the messaging services presently offered by currently certificated radio common carrier utilities.

10. That to the extent that MIS's proposed service offerings 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.

11. That there is no convincing evidence that the messaging services of any existing utilities is inadequate, or that any existing utility would be unable or unwilling to duplicate any of the service offerings proposed by MIS, if ordered to do so by this Commission.

WHEREUPON, the Commission reaches the following

CONCLUSIONS OF LAW

N.C.G.S. Subsection 62-123 provides that:

> "Granting of certificate for operation in established service area of another carrier. - The Commission shall not grant a certificate for a proposed radio common carrier operation or extension thereof into the established service area which will be in competition with or duplication of any other radio common carrier unless it shall first determine that the existing service is inadequate to meet the reasonable needs of the public and that the person operating the same is unable to or refuses or neglects after hearing on reasonable notice to provide reasonably adequate service."

In its application, MIS seeks a certificate of public convenience and necessity. In order to establish that the public convenience and necessity requires the issuance of such a certificate, MIS must prove: (1) that the existing service is inadequate to meet the reasonable needs of the public; and (2) that the person operating the same is unable to or refuses or neglects, after hearing on reasonable notice, to provide reasonably adequate service. The foregoing requirements are set forth in N.C.G.S. 62-123 and 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 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 v. 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 392; 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) Supra page 271.

In the instant case the evidence clearly indicates that the services which MIS proposes to offer are similar in nature to the services already offered by the existing certificated radio common carriers. Inasmuch as MIS has made no showing that the existing radio common carriers cannot or will not provide the

service in question, in fact, services almost identical to those proposed by MIS are to be offered by the existing utilities very soon; the Commission cannot conclude that a certificate should be issued to MIS under the standards enunciated in N.C.G.S. 62-123 and by the North Carolina Supreme Court as set forth above.

Having found that under the facts of this case competition in the provision of radio common carrier services 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 MIS's application to be certificated as a radio common carrier to provide messaging services should, therefore, be denied.

IT IS, THEREFORE, ORDERED that the application by Millicom Information Services, Inc., for a certificate of public convenience and necessity be denied.

ISSUED BY ORDER OF THE COMMISSION.
This the 9th day of January 1985.

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

TELEPHONE - CERTIFICATES

DOCKET NO. P-149

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Application of ALLTEL Cellular Associates of the Carolinas for a Certificate of Public Convenience and Necessity and for Approval of Initial Rates, Charges and Regulations	)))))	ORDER GRANTING CERTIFICATE AND ORDERING THE FILING OF REVISED RATES AND TARIFFS

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

BEFORE: Commissioner A. Hartwell Campbell, Presiding, Commissioner Edward B. Hipp and Commissioner Sarah Lindsay Tate

APPEARANCES:

For the Applicant:

F. Kent Burns, Boyce, Mitchell, Burns & Smith, P.A., Post Office Box 2479, Raleigh, North Carolina 27606
and
Jon F. Kelly, Thompson, Hine & Flory, 1920 N. Street, N.W., Suite 700, Washington, D. C. 20036 For: ALLTEL Cellular Associates of the Carolinas

For the Public Staff - North Carolina Utilities Commission

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

For the Other Intervenors:

R. Stephen Berry and Jonathan V. Cohen, Fleischman and Walsh, P.C., 1725 N. Street, N.W., Washington, D. C. 20036
and
Arthur W. O'Connor, Jr., Moore, Ragsdale, Liggett, Ray & Foley, Post Office Box 349, Raleigh, North Carolina 27602-0349 For: Metro Mobile CTS, Inc.

Jerry B. Fruitt, Attorney at Law, Post Office Box 12547, Raleigh, North Carolina 27605-0349
For: Two-Way Radio of Carolina, Inc.

BY THE COMMISSION: On June 29, 1984, ALLTEL Mobile Communications of the Carolinas, Inc., filed an application for a certificate of public convenience and necessity to provide cellular mobile radio telephone service in the Charlotte/Gastonia/Monroe metropolitan statistical area and for approval of initial rates and tariffs. Subsequently, on October 31, 1984, the original applicant filed an amendment to the application asking that the certificate be

issued in the name of ALLTEL Cellular Associates of the Carolinas (hereinafter ALLTEL Cellular). An amended proposed tariff was filed by ALLTEL Cellular on November 26, 1984.

This docket was originally designated as Docket No. P-147; however, with the change of applicant, the Commission issued an Order on December 6, 1984, designating this docket as Docket No. P-149.

On October 16, 1984, the original applicant filed with the Commission a copy of a construction permit granted by the Federal Communications Commission (hereinafter FCC) and asked this Commission to permit construction to commence on an interim basis. By Order issued on November 5, 1984, the Commission allowed ALLTEL Cellular to begin interim construction.

The Public Staff intervened on behalf of the using and consuming public by notice of October 12, 1984. On November 2, 1984, Two-Way Radio of Carolina, Inc., (hereinafter Two-Way) filed a Petition to Intervene. The petition was allowed by Order of November 12, 1984. On November 5, 1984, Metro Mobile CTS, Inc., (hereinafter Metro Mobile) filed a Petition to Intervene which was allowed by Order of November 15, 1984.

In addition to the foregoing, there were other motions and orders not specifically mentioned herein which the record will adequately reflect.

The application came on for hearing on December 17, 1984, as previously scheduled and noticed. The Applicant ALLTEL Cellular presented the testimony and exhibits of Mr. John Dunbar, President of ALLTEL Mobile Communications of the Carolinas, Inc., and Mr. Donald E. Steely, Vice-President of Administration for ALLTEL Mobile Communications, Inc. The Public Staff presented the testimony of Mr. Millard N. Carpenter, an engineer with the Communications Division of the Public Staff.

Based upon the testimony and the exhibits presented at the hearing and the entire record in this proceeding, the Commission makes the following:

FINDINGS OF FACT

1. The Applicant, ALLTEL Cellular, is a limited partnership in which ALLTEL Mobile Communications of the Carolinas, Inc., is the general partner and 70% owner and in which BellSouth Mobility, Inc., is a 23% limited partner, GTE Mobilnet, Inc., is a 5% limited partner, and United Telespectrum, Inc., is a 2% limited partner.

2. The FCC has preempted the states with respect to the market structure pursuant to which cellular mobile radio telephone service will be offered. The FCC has reserved to the states jurisdiction with respect to the charges, classifications, practices, services, facilities, and regulations for service.

3. ALLTEL Cellular has been designated and licensed by the FCC as a wireline carrier authorized to provide cellular mobile radio telephone service on a wholesale basis in the subject service area.

4. ALLTEL Cellular is financially and technically qualified to provide the subject service in the subject service area.

5. ALLTEL Cellular should be granted a certificate of public convenience and necessity authorizing it to provide cellular mobile radio telephone service on a wholesale basis in the Charlotte/Gastonia/Monroe metropolitan statistical area as authorized by the FCC.

6. Certain aspects of ALLTEL Cellular's proposed rates and tariff, which are identified hereinafter, must be modified since, as presently written, they are either in need of clarification or would allow ALLTEL Cellular an unfair competitive advantage during the headstart period. ALLTEL Cellular should file amended rates and tariffs subject to approval by further order of the Commission.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 1

The evidence supporting this finding of fact is contained in the application as filed and as subsequently amended and in the testimony of witness Dunbar. This finding is essentially uncontested.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 2

By a series of recent orders, the FCC has specified certain aspects of the way in which cellular mobile radio telephone service will be provided to the public. See An Inquiry Into The Bans 825-845 MHz and 870-890 MHz for Cellular Communications Systems; and Amendment of Parts 2 and 22 of the Commission's Rules Relative to Cellular Communications Systems (CC Docket No. 79-318) 86 F.C.C.2d 469 (1981) ("Final Decision"), modified 89 F.C.C.2d 58 (1982) ("Reconsideration Order"), and further modified FCC 82-308 (released July 8, 1982) ("Further Reconsideration Order"). By these Orders, the FCC has found that there is an immediate need for cellular mobile radio telephone service, that two blocks of frequencies should be reserved for this service, and that the service should be provided in each metropolitan statistical area by two competing carriers--one a wireline carrier and the other a nonwireline carrier. The decisions of the FCC provide for resale of the services provided by the two competing carriers, and FCC licensing of the carriers prior to state certification. They recognize complimentary state certification procedures that do not frustrate the federal purposes. Specifically, the FCC has reserved to the states jurisdiction with respect to the charges, classifications, practices, services, facilities, and regulations for service by the licensed carriers.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 3

The evidence supporting this finding of fact is contained in the FCC's Approval of Cellular Settlement of Charlotte/Gastonia, N.C. Wireline Partnership Agreement dated October 1, 1984, a copy of which was attached as Exhibit A to the Motion that was filed herein by ALLTEL Cellular on October 16, 1984, and in the testimony of witness Dunbar.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 4

The evidence for this finding of fact is contained in the testimony of witnesses Dunbar and Steely. ALLTEL, Inc., a holding company with assets of over $1.3 billion and a bank have indicated that they will provide a line of credit far in excess of the capital needs for construction and the expected

operating losses in the first two years of operation. ALLTEL Mobile, the general partner, is authorized to make expenditures on behalf of the partnership, to call for capital contributions from the limited partners, and to reduce the share of the limited partners if they fail to make the required contributions. ALLTEL Mobile will operate the cellular system, and it has available to it personnel who are well experienced in the telephone and paging business..

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 5

Having found that the FCC has preempted the states with respect to the market structure pursuant to which cellular mobile radio telephone service will be offered, that ALLTEL Cellular has been designated and licensed by the FCC as a wireline carrier authorized to provide this service, and that ALLTEL Cellular is financially and technically qualified to provide this service, the Commission concludes that a certificate of public convenience and necessity should be issued to ALLTEL Cellular authorizing it to provide cellular mobile radio telephone service on a wholesale basis in the Charlotte/Gastonia/Monroe metropolitan statistical area as authorized by the FCC.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 6

The evidence supporting this finding of fact is contained in the testimony and cross-examination of witnesses Dunbar, Steely, and Carpenter.

The terms of ALLTEL Cellular's proposed rates and tariff were the primary issues contested by the intervenors in this case. This is an area over which this Commission clearly has jurisdiction, and we find that certain aspects of ALLTEL Cellular's proposed rates and tariffs must be modified, either for purposes of clarification or to promote fair competition between the wireline and the nonwireline carrier. The FCC foresaw that one carrier would be able to begin operation before the other, and, therefore, that there would be a "headstart" period during which only one carrier would be offering wholesale services. In the interest of promoting competition even during this period, the FCC specifically provided that the second carrier may resell the wholesale services of the first carrier during this headstart period on a nondiscriminatory basis. ALLTEL Cellular will have a headstart over its competitor in the Charlotte/Gastonia/Monroe metropolitan statistical area since it has already been licensed and has commenced construction while no application for an FCC license has yet been filed by a competing nonwireline carrier. It does appear from the interventions filed herein that a competing nonwireline carrier will be forthcoming. This Commission will act on any application filed by such a competitor in the present metropolitan statistical area as expeditiously as possible when it is filed. In the interim, we will address ourselves to the rates and tariff to be offered by ALLTEL Cellular in order to ensure that they provide for fair competition during the headstart period.

The Commission finds that the following aspects of ALLTEL Cellular's proposed rates and tariffs must be modified:

(a) ALLTEL Cellular proposes to require all its resellers to buy numbers from it in an initial block of 100 numbers with additional increments of 25 numbers each. It proposes a minimum contract term of six months which will be

automatically renewed for another term unless notice of termination is given three months in advance. Its proposed tariff originally provided for early termination charges with three aspects: access, minimum usage, and cancellation. It has since modified its proposal to eliminate the early termination charge for minimum usage.

Applicant sought to justify the minimum purchase of 100 numbers as a good business practice. Witness Steely asserted that this was an industry standard and it would help eliminate insincere or unstable resellers. This proposal was attacked by intervenors as anticompetitive. We are persuaded that the minimum purchase of an initial block of 100 numbers with additional increments of 25 numbers each is reasonable. We believe that there are justifiable business reasons for such a scheme. ALLTEL Cellular will be required for planning purposes to make available to each reseller a block of numbers dedicated to its use and to provide switching capacity for these numbers. The minimum initial block of 100 numbers is not excessively large. We note that ALLTEL Cellular proposes to activate the numbers one at a time as they are sold. Thus, we conclude that this aspect of the proposed tariff need not be changed.

We reach a different conclusion, however, as to the contract term proposed by ALLTEL Cellular. The minimum term and the automatic renewal provision will tend to impede resellers and end-users from switching to the nonwireline competitor at the end of the headstart period. These provisions, together with the termination charges considered hereinafter, tend to lock customers in to the wireline system. While such a desire is understandable from ALLTEL Cellular's viewpoint, it is inconsistent with the competitive scheme decreed by the FCC. In order for competition to be successful, resellers must have flexibility to switch from the wireline system to the competing nonwireline system. ALLTEL Cellular's justification--to eliminate insincere or unstable resellers--is not convincing. We conclude that an initial minimum contract term of six months for each reseller is sufficient to promote stability and is justifiable. However, at the end of this initial term, the contract should be subject to being extended for additional periods of only 30 days each. Further, 30 days advance notice of termination is sufficient. We order that ALLTEL Cellular so revise its tariff.

The changes in the contract term ordered above, together with the elimination of the minimum usage termination charge proposed by ALLTEL Cellular, substantially reduces the exposure of resellers to early termination charges. The Public Staff and Metro Mobile urge the Commission to approve no charges for early termination of a contract; however, we believe that the reduced termination charge now proposed by ALLTEL Cellular provides some degree of stability during the initial six month minimum contract required of each reseller. We will approve the imposition of early termination charges based on access and cancellation during the initial six month contract term. After the initial contract term, we have ordered that contracts be subject to termination on only 30 days advance notice, and therefore there is no need for the scheme of early termination charges proposed by ALLTEL Cellular. The tariff must be revised along the line provided herein.

(b) ALLTEL Cellular does not propose any special treatment for resellers, such as intervenors Metro Mobile and Two-Way, that intend to switch over to the wholesale services of the competing nonwireline carrier when the competing system becomes operational. Such resellers desire to have their own NNX

numbers programmed into ALLTEL Cellular's system so that they can transfer these numbers (and their customers) to the competing system without the customers having to change their telephone numbers. Requiring customers to change their telephone numbers (and thus all of their cards, stationery and advertising) in order to follow their reseller to the competing system would put such resellers at a substantial disadvantage during the headstart period, and fair competition between the competing carriers would be impaired.

Metro Mobile cross-examined witness Dunbar regarding ALLTEL Cellular's ability and willingness to allow resellers to use separate NNX numbers during the headstart period and to provide for a smooth transition later on. Witness Dunbar indicated that he was not aware of any technical reason why the equipment would not allow resellers to have separate NNX numbers, although there would be an additional expense. He stated that ALLTEL Cellular would be willing to permit use of separate NNX numbers on certain specified conditions, including the conditions that the reseller desiring its own NNX number produce a construction permit from the FCC for a wholesale operation, be certified as a reseller by this Commission, obtain assignment of an NNX from the local telephone operating company, obtain necessary regulatory authorization and pay the additional costs. Intervenors find these conditions unduly restrictive, and we agree.

We conclude that use of separate NNX numbers should be allowed any reseller on the condition that the reseller obtain the NNX from the local telephone operating company and stand willing to bear all reasonable cost to ALLTEL Cellular for programming its switch to handle the separate NNX and for transferring the NNX to the competing nonwireline system if and when that system becomes operational and the reseller desires to operate from that competing system. We order as a condition of the certificate granted herein that during the headstart period ALLTEL Cellular stand ready to enter into reasonable arrangements with any reseller that wishes its own NNX on the conditions provided hereinabove and, further, that ALLTEL Cellular cooperate with the reseller in transferring the NNX to the competing nonwireline system at the reseller's request.

(c) ALLTEL Cellular proposes to provide a recorded message which a caller to a cellular unit on the system will receive when the unit called does not answer. This message will include the name "ALLTEL." Witness Dunbar justified inclusion of the name "ALLTEL" by stating that the caller "could have dialed the number incorrectly and could have reached some other system. . ." However, during cross-examination witness Dunbar agreed that the message could simply ask the caller to make sure that he had dialed the correct number.

The Commission agrees that inclusion of the name "ALLTEL" could mislead customers of resellers other than ALLTEL Mobile and could give ALLTEL Mobile a competitive advantage over other resellers. On the other hand, we recognize ALLTEL Cellular's desire to cite their name on their system. We believe that both concerns can be addressed through the framework of separate NNX numbers provided for hereinabove. A reseller who procures a separate NNX should not have the name of ALLTEL or any other competing reseller cited on calls to its end user customers. Such resellers may desire a separate message including their own trade names and, if they are willing to bear the additional costs, ALLTEL Cellular should provide for such. If there is some technical reason as

to why separate messages can not be offered, then the name "ALLTEL" must be taken off all recorded messages.

(d) Metro Mobile and the Public Staff both express concerns about possible cross-subsidization. One area of concern is that favored treatment of ALLTEL Cellular by its affiliate landline telephone company, ALLTEL Carolina, Inc., could result in the subsidization of the cellular operation by the landline network's ratepayers. Another area of concern arises from the fact that ALLTEL Mobile will use its employees and certain common facilities in provided both the wholesale service of ALLTEL Cellular and its own resale service. Thus, ALLTEL Cellular could absorb at the wholesale level certain costs which should properly be allocated to ALLTEL Mobile's resale operation, thus giving ALLTEL Mobile an unfair advantage in the resale market. Metro Mobile urged us to require ALLTEL Cellular to disclose its interconnection arrangements with ALLTEL Carolina, Inc., in advance and to require periodic, independent audits of the resource and cost allocations between ALLTEL Cellular's wholesale operation and ALLTEL Mobile's resale operation.

Although the Commission recognizes the possibility of cross-subsidization, the Commission does not believe that the likelihood of it is such as to require the special measures suggested by Metro Mobile. Both the Commission and the Public Staff have the legal right to investigate any possible cross-subsidization on their own motion or upon complaint of any interested party. The Commission believes and concludes that careful and detailed records should be maintained regarding how any and all common facilities and common personnel are used as between the wholesale and resale operation as well as a clear statement of the exact formula basis upon which any common costs or expenses are allocated. Such recordkeeping will facilitate an investigation should such be undertaken in the future. The Commission is confident that it will be able to take appropriate remedial measures following such an investigation.

Metro Mobile also expressed concern about the possibility of numbers that it has sold being revealed to personnel of its competing reseller ALLTEL Mobile, thus enabling ALLTEL Mobile to identify and solicit Metro Mobile's customers. Metro Mobile urged us to require confidentiality agreements of ALLTEL Cellular personnel. Witness Dunbar asserted that such a practice would be contrary to his company's policy and that ALLTEL Mobile would take such measures as necessary to prevent the practice from occurring. While we recognize that Metro Mobile has legitimate concern, we believe, in view of witness Dunbar's assurances, that no confidentiality agreements are necessary. Metro Mobile should be in a position to discover if such a practice were to occur, and it could complain to this Commission. Barring such a complaint, we believe it sufficient to urge ALLTEL Cellular to take such measures as necessary to ensure that the identify of customers of competing resellers not be revealed.

(e) ALLTEL Cellular's proposed tariff provides for deposits "in accordance with Rule R12 (sic) of the North Carolina Utilities Commission." Two-Way urges us to require amendment of the tariff so as to provide for establishing credit by means other than cash deposits. The Public Staff also feels that the tariff provision is in need of clarification so as to bring it in line with our Rule R12-2 and R12-4. We agree with the Intervenors and order

ALLTEL Cellular to revise its tariffs so as to bring the provisions for establishing credit and for deposits in line with our Rule R12-2 and R12-4.

(f) ALLTEL Cellular proposes rates that would be maximum rates subject to being adjusted downward on ALLTEL Cellular's own action. ALLTEL Cellular asserts that the competitive market structure decreed by the FCC requires such flexibility. The Public Staff asserts that such flexibility is not allowed by our statutes and that Commission approval, or acquiescence, must be obtained as to each change of rates.

We agree with the Public Staff that any change of rates must be undertaken in the context of our statutes. G. S. 62-134(a) provides that no public utility shall make any change of rates except after 30 days' notice to the Commission and such further notice as the Commission may order. However, the statute provides that the Commission may, for good cause, allow changes in rates without requiring 30 days' notice. Recognizing the competitive market structure of this industry and the resulting need for greater rate setting flexibility than in other areas of public utility service, we will approve maximum rates subject to downward adjustments on 14 days' notice to the Commission and ALLTEL Cellular's wholesale customers. The Commission of course retains the authority under G. S. 62-134(b) to suspend any rate change and to undertake a hearing thereon.

(g) The Public Staff recommends that the proposed tariff be amended to allow sale only to resellers (termed wholesale customers in the proposed tariff) that have obtained a certificate of public convenience and necessity from this Commission. The Public Staff argues that such a provision will not burden ALLTEL Cellular and will help this Commission carry out its certification duties. We agree and we order the tariff so amended.

In a similar vein, Metro Mobile argues that the tariff, as presently worded, would allow customers who are in fact end users of the service, rather then genuine resellers, to take service at the wholesale rate. The Public Staff also is concerned that large customers would be able to get service from ALLTEL Cellular rather than a reseller.

ALLTEL Cellular stated that it did not propose to provide service to such end users and that it would not oppose stating in its tariff that its service would be offered only to resellers for the purpose of resale to the public. We believe that the tariff should be so clarified. However, we recognize the need of resellers to make some use of the numbers to which it subscribes for demonstration purposes and otherwise. Therefore, the tariff should provide that a reseller may make use of up to 5% of the numbers for which it has subscribed for purposes other than resale.

(h) ALLTEL Cellular's proposed tariff provides for discounts based upon the length of the reseller's contractual commitment. Both Metro Mobile and the Public Staff argue that these discounts discriminate against those resellers who will switch over to the nonwireline system as soon as it is operational. We agree.

The FCC has provided that the nonwireline carrier may resell the wholesale services of the wireline carrier until it can get its own competing wholesale service operational. The nonwireline resellers will wish to contract for the

services of ALLTEL Cellular only on a temporary basis. They are not in a position to enter into long-term contracts. Other resellers, such as ALLTEL Mobile, that intend to stay with a wireline system could enter into long-term contracts and, under the present proposed tariff, obtain discounts that will give them a competitive advantage. We therefore conclude that the scheme of allowing discounts for increased contract periods is anti-competitive and discriminatory during the headstart period and must be removed from ALLTEL Cellular's proposed tariff. Our objection to this scheme will no longer exist after the competing nonwireline system becomes operational. If ALLTEL Cellular wishes to reinstate these discounts at that time, it can make application to the Commission.

(i) Finally, questions have been raised as to the area of service covered by the certificate granted herein. We believe that this is a matter on which we should defer to the authorization granted ALLTEL Cellular by the FCC. The area of service covered by our certificate of public convenience and necessity shall be defined by the reach of the transmitters authorized by the FCC. Following the hearing on January 28, 1985, ALLTEL Cellular filed a map showing the reliable calling area and local calling area of its proposed operations. This map may be appended to ALLTEL Cellular's tariff as an illustration; however, we do not order it incorporated into the tariff as a limitation of ALLTEL Cellular's area. The service area of this tariff will be as defined by the authorization of the FCC.

The possibility of ALLTEL Cellular introducing foreign exchange (FX) lines into its switch was raised by the testimony. We wish to make clear that the present certificate does not provide for FX service and that such service, if it is to be provided, must be subject to specific future approval by this Commission.

IT IS, THEREFORE, ORDERED as follows:

1. ALLTEL Cellular shall file with the Commission and serve upon all parties a revised version of its rates and tariffs reflecting the revisions ordered herein within two weeks from the date of this Order.

2. All parties shall have a period of one week after the filing of the revised rates and tariffs within which to file written comments thereon with the Commission.

3. The revised rates and tariffs shall become effective upon further order of the Commission following consideration of the written comments of the parties.

4. ALLTEL Cellular shall be granted a certificate of public convenience and necessity authorizing it to provide wholesale cellular mobile radio telephone service in the Charlotte/Gastonia/Monroe metropolitan statistical area upon Commission approval of revised rates and tariffs as provided for herein.

ISSUED BY ORDER OF THE COMMISSION.
This the 26th day of February 1985.

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

DOCKET NO. P-147, SUB 2

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Application of ALLTEL Mobile Communications of the Carolinas, Inc., for a Certificate of Public Convenience and Necessity to Resell Cellular Radio Telecommunications Service and for Approval of Initial Tariff Containing Rates and Regulations	ORDER GRANTING CERTIFICATE AND ORDERING THE FILING OF REVISED RATES AND TARIFFS

HEARD IN: Commission Hearing Room, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina on January 29, 1985

BEFORE: Commissioner A. Hartwell Campbell, Presiding, Commissioners Sarah Lindsay Tate and Hugh A. Crigler, Jr.

APPEARANCES:

For the Applicant:

F. Kent Burns, Boyce, Mitchell, Burns & Smith, P.A., Post Office Box 279, Raleigh, North Carolina 27606
For: ALLTEL Mobile Communications of the Carolinas, Inc.

For the Public Staff - North Carolina Utilities Commission:

G. Clark Crampton, Staff Attorney, Post Office Box 29520, Dobbs Building, Raleigh, North Carolina 27626-0520
For: The Using and Consuming Public

For the Intervenors:

R. Stephen Berry, Fleischman and Walsh, P.C., 1725 N. Street, N.W., Washington, D.C. 20035, and Arthur W. O'Connor, Jr., Moore, Ragsdale, Liggett, Ray & Foley, Post Office Box 349, Raleigh, North Carolina 27602-0349
For: Metro Mobile CTS, Inc.

Jerry B. Fruitt, Attorney at Law, Post Office Box 12547, Raleigh, North Carolina 27605-2547
For: Two-Way Radio of Carolina, Inc.

BY THE COMMISSION: On November 21, 1984, ALLTEL Mobile Communications of the Carolinas, Inc. (hereinafter "ALLTEL Mobile") filed an application for a certificate of public convenience and necessity to resell cellular mobile radio telephone service in the Charlotte/Gastonia/Monroe metropolitan statistical area and for approval of initial rates and tariffs. The Commission scheduled a public hearing on the application and provided for the publication of notice of the hearing by Order of November 30, 1984.

On January 3, 1985, the Public Staff of the North Carolina Utilities Commission filed notice of intervention on behalf of the using and consuming

public. On January 4, 1985, Metro Mobile CTS, Inc. (hereinafter "Metro Mobile") filed a petition to intervene and a motion to defer the hearing date. Intervention was allowed by Order of January 11, 1985, but the motion to defer the hearing date was denied. On January 15, 1985, Two-Way Radio of Carolina, Inc. (hereinafter "Two-Way") filed its petition to intervene and a motion for a continuance. Intervention was allowed by Order of January 17, 1985, but the motion for a continuance was denied.

The hearing was held as scheduled on January 29, 1985. John T. Dunbar, President of ALLTEL Mobile, presented testimony and exhibits on behalf of the Applicant. The Public Staff presented the testimony of Millard N. Carpenter, III, an engineer with the Communications Division.

Based upon the verified application, the testimony and other evidence presented at the hearing and upon the entire record in this proceeding, the Commission makes the following:

FINDINGS OF FACT

1. The Applicant, ALLTEL Mobile, is a North Carolina corporation that plans to resell at retail cellular mobile radio telephone service in the Charlotte/Gastonia/Monroe metropolitan statistical area. ALLTEL Mobile is the general partner of ALLTEL Cellular Associates of the Carolinas (hereinafter "ALLTEL Cellular"), a partnership that has been authorized by the FCC and this Commission to provide cellular mobile radio telephone service in the Charlotte/Gastonia/Monroe metropolitan statistical area on a wholesale basis to resellers.

2. The FCC has preempted the states with respect to the market structure pursuant to which cellular mobile radio telephone service will be offered. The FCC has mandated that there will be two competing wholesale cellular carriers in each metropolitan statistical area and resale of the service by competing resellers. The FCC has reserved to the states jurisdiction with the respect to the charges, classification, practices, services, facilities, and regulations for service.

3. ALLTEL Mobile is financially and technically qualified to provide the subject service in the subject service area.

4. ALLTEL Mobile should be granted a certificate of public convenience and necessity authorizing it to provide the resale of cellular mobile radio telephone service on a retail basis in the Charlotte/Gastonia/Monroe metropolitan statistical area.

5. Certain aspects of ALLTEL Mobile proposed rates and tariffs, which are identified hereinafter, must be modified in the manner and for the reasons specified in the following discussion of the evidence and conclusions for this finding.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 1

The evidence supporting this finding of fact is contained in the application, in the testimony of witness Dunbar, and in the record of this

Commission's proceedings in Docket No. P-149, which is judicially noticed. This finding is essentially uncontested.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 2

By a series of recent orders, the FCC has specified certain aspects of the way in which cellular mobile radio telephone service will be provided to the public. See An Inquiry Into The Bans 825-845 MHz and 870-890 MHz for Cellular Communications Systems; and Amendment of Parts 2 and 22 of the Commission's Rules Relative to Cellular Communications Systems (CC Docket No. 79-318) 86 F.C.C.2d 469 (1981) ("Final Decision"), modified 89 F.C.C.2d 58 (1982) ("Reconsideration Order"), and further modified FCC 82-308 (released July 8, 1982) ("Further Reconsideration Order"). By these Orders, the FCC has found that there is an immediate need for cellular mobile radio telephone service, that two blocks of frequencies should be reserved for this service, and that the service should be provided in each metropolitan statistical area by two competing carriers--one a wireline carrier and the other a nonwireline carrier. The decisions of the FCC provide for resale of the services provided by the two competing carriers, and FCC licensing of the carriers prior to state certification. They recognize complimentary state certification procedures that do not frustrate the federal purposes. Specifically, the FCC has reserved to the states jurisdiction with respect to the charges, classifications, practices, services, facilities, and regulations for service by the licensed carriers.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 3

The evidence for this finding of fact is contained in the testimony of witness Dunbar. ALLTEL Mobile is a wholly owned subsidiary of ALLTEL Mobile Communications, Inc., which is in turn owned by ALLTEL, Inc., a holding company listed on the New York Stock Exchange with assets in excess of $1.3 billion. Both ALLTEL, Inc. and a bank have indicated that they will provide ALLTEL Mobile a line of credit far in excess of the capital needs and the operating losses expected to be incurred in the first two years of operation, before the operation becomes profitable. ALLTEL Mobile will operate the wholesale cellular system as general partner of ALLTEL Cellular in addition to its proposed operation as a reseller. It has available to it personnel who are well experienced in the telephone business and the paging business. We conclude that ALLTEL Mobile is financially able and has available the necessary technical support personnel to provide the resale of cellular mobile radio telephone service to the public at retail on a continuing basis.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 4

Having found that the FCC has preempted the states with respect to the market structure pursuant to which cellular mobile radio telephone service will be offered and has provided for resale of such service and that ALLTEL Mobile is financially and technically qualified to provide this service, the Commission concludes that a certificate of public convenience and necessity should be issued to ALLTEL Mobile authorizing it to provide the resale of cellular mobile radio telephone service on a retail basis in the Charlotte/Gastonia/Monroe metropolitan statistical area.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 5

The evidence supporting this finding of fact is contained in the testimony and cross-examination of witnesses Dunbar and Carpenter and in the briefs and proposed orders filed by the parties.

The terms of ALLTEL Mobile's proposed rates and tariff were the primary issues contested by the intervenors in this case. The Commission concludes that many of the objections raised relate to aspects of the rates and tariffs of the wholesale cellular carrier, ALLTEL Cellular. These issues either were or should have been raised in the context of the proceeding on ALLTEL Cellular's application, and they are not appropriate for consideration in the present proceeding. Other objections involve either interpretations of ALLTEL Mobile's proposed tariff with which the Commission does not agree or matters which the Commission feels it appropriate to leave to the realm of competition in light of the market structure decreed by the FCC. Still other objections are meritorious, and we find that the following aspects of ALLTEL Mobile's proposed rates and tariffs and practices must be modified in the manner indicated:

(a) Metro Mobile, an intervenor that intends to compete with ALLTEL Mobile as a reseller of cellular service is concerned that the wholesaler, ALLTEL Cellular, may give its affiliate, ALLTEL Mobile, a more favorable contract than other resellers. Metro Mobile asks the Commission to require all reseller contracts to be filed with the Commission prior to the time they become effective.

Metro Mobile is really seeking relief as to the wholesaler, ALLTEL Cellular, which is not a party to the present proceeding. We will not order the relief requested. Still, in light of the affiliation between ALLTEL Mobile and ALLTEL Cellular and in order to complete the public record, the Commission will order ALLTEL Mobile to file with the Commission a copy of the contract that it enters into with the wholesaler ALLTEL Cellular. If any party feels that the contract does not comply with the rates and tariffs ordered by this Commission and that he is aggrieved thereby, a complaint proceeding may be filed.

(b) Metro Mobile brought out during cross-examination of witness Dunbar that ALLTEL Mobile will be using agents to resell cellular service, that there will be an agreement between ALLTEL Mobile and these agents, and that the present draft of this agreement provides that the agents may not work for any competing reseller for six months after termination of the agency agreement. Metro Mobile argues that such a clause is not necessary and that it will inhibit competition between resellers. Witness Dunbar defended the provision as one commonly used in similar business situations. He testified that in his opinion competition would not be inhibited since there will be a lot of qualified people to serve as agents.

The Commission agrees that similar contract provisions are used in many business relationships, and the Commission feels that such provisions are proper so long as the limitations are reasonable. Agents will have the training provided by the original reseller and information as to the marketing strategy and customers of the reseller. However, a six-month period (which is effectively seven months considering the 30-day notice that an agent must give

prior to terminating an agreement) appears, in the judgment of the Commission, to be excessive in light of the competitive environment foreseen by the FCC. The Commission orders that the agency agreement be modified to provide that agents may not work for any competing reseller within the original reseller's territory for a period of four months after terminating the agency agreement. We believe that this will more properly balance the interests of the parties involved.

(c) ALLTEL Mobile's proposed tariff provides for deposits "in accordance with Rule R12 (sic) of the North Carolina Utilities Commission." The Public Staff feels that the tariff ignores the full effect of our Rules. We agree, and we order ALLTEL Mobile to revise its tariff so as to bring the provisions for establishing credit and for deposits in line with our Rules R12-2 and R12-4.

(d) The Public Staff argues that Section 4.1.2.A of the proposed tariff should be revised to reflect ALLTEL Mobile's intention to offer a local calling scope equal to the local calling area of a landline station served by the Charlotte exchange. ALLTEL Mobile agrees that the tariff should be amended to provide that toll charges will apply to charges outside the local calling area of the NNX of the wholesaler. We order that the tariff be so revised.

(e) ALLTEL Mobile's proposed tariff provides that rate changes will be effective on 30 days notice to customers, unless contrary action is taken by this Commission, but that rates may be decreased at ALLTEL Mobile's discretion provided the decreases do not exceed 50% of the approved rates. The Public Staff finds this scheme to be in conflict with our statutes.

The Commission recognizes ALLTEL Mobile's desire for flexibility, but we agree with the Public Staff that any change of rates must be undertaken in the context of our statutes. G.S. 62-134(a) provides that no public utility shall make any change of rates except after 30 days' notice to the Commission and such further notice as the Commission may order. However, the statute provides that the Commission may, for good cause, allow changes in rates without requiring 30 days' notice. Recognizing the competitive market structure of this industry and noting the rate structure which the Commission approved for the wholesale carrier ALLTEL Cellular, we will allow ALLTEL Mobile to decrease its rates on 14 days' notice to the Commission and its retail customers. Rate increases may only be made after 30 days' notice to the Commission and the retail customers. In either case, the Commission retains the authority given it by G.S. 62-134(b) to suspend any rate change and to undertake a hearing thereon.

(f) The Public Staff would have ALLTEL Mobile's proposed tariff modified to eliminate the requirement of a written 30-day advance notice of termination of service and to eliminate the proposed $40 charge for disconnection of service, as provided by Sections 3.2.1.A and 4.1.5.B(3) of the proposed tariff. The Commission orders ALLTEL Mobile to insure that these provisions are carefully explained to prospective customers. Such provisions may prove unpopular or difficult to enforce. If so, competing resellers may take advantage of their unpopularity by offering service without such requirements. As to this industry, we believe that the forces of competition are a better solution than Commission decree for fine tuning service provisions such as these.

IT IS, THEREFORE, ORDERED as follows:

1. That ALLTEL Mobile shall file with the Commission and serve upon all parties a revised version of its rates and tariffs reflecting the revisions ordered herein within two weeks from the date of this Order;

2. That all parties shall have a period of five working days after the filing of the revised rates and tariffs within which to file written comments thereon with the Commission;

3. That revised rates and tariffs shall become effective upon further order of the Commission following consideration of the written comments of the parties; and

4. That ALLTEL Mobile shall be granted a certificate of public convenience and necessity authorizing it to provide the resale of cellular mobile radio telephone service on a retail basis in the Charlotte/Gastonia/Monroe metropolitan statistical area upon Commission approval of revised rates and tariffs as provided for herein.

ISSUED BY ORDER OF THE COMMISSION.
This the 15th day of March 1985.

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

DOCKET NO. P-165

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Application of Business Telecom, Inc., for a Certificate of Public Convenience and Necessity to Provide IntraLATA and InterLATA Telecommunications Services as a Public Utility Within the State of North Carolina on a Resale Basis and for the Establishment of Initial Rates	)	ORDER GRANTING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY SUBJECT TO COMPLIANCE WITH COMPENSATION PLAN

HEARD IN: Commission Hearing Room 217, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on Tuesday, September 24, 1985, at 9:30 a.m.

BEFORE: Commissioner Ruth E. Cook, Presiding; and Commissioners Robert K. Koger and Julius A. Wright

APPEARANCES:

For the Applicant:

Walter E. Daniels and Linda Marcus Daniels, Law Firm of Walter E. Daniels, P.A., Attorneys at Law, 200 Park Offices, Suite 200, P.O.

Drawer 13039, Research Triangle Park, North Carolina 27709
For: Business Telecom, Inc.

For the Southern Bell Telephone and Telegraph Company:

J. Billie Ray, Jr., General Attorney, Southern Bell Telephone and Telegraph Company, P. O. Box 30188, 1012 Southern National Center, Charlotte, North Carolina 28230
and
Shirley A. Ransom, Attorney, Southern Bell Telephone and Telegraph Company, 675 West Peachtree Street, 4300 Southern Bell Center, Atlanta, Georgia 30375
For: Southern Bell Telephone and Telegraph Company

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

Michael W. Tye, Attorney, AT&T Communications of the Southern States, Inc., 1200 Peachtree Street, N.E., Atlanta, Georgia 30352
For: AT&T Communications of the Southern States, Inc.

For the Public Staff:

Theodore C. Brown, Jr., Staff Attorney, Public Staff - North Carolina Carolina Utilities Commission, Post Office Box 29520, Raleigh, North Carolina 27626-0520
For: The Using and Consuming Public

For the Attorney General:

Jo Anne Sanford, Special Deputy Attorney General, North Carolina Department of Justice, P.O. Box 629, Raleigh, North Carolina 27602
For: The Using and Consuming Public

BY THE COMMISSION. On July 26, 1985, Business Telecom, Inc., (BTI, Applicant or Company) filed an application with the North Carolina Utilities Commission seeking a certificate of public convenience and necessity to provide intraLATA and interLATA long distance telecommunications services in North Carolina on an intrastate basis. The Commission, being of the opinion that the application affected the public interest, entered an Order in this docket on August 15, 1985 scheduling the matter for hearing on September 24, 1985 at 9:30 a.m.

Notice or petitions to intervene were filed by the Attorney General of North Carolina on August 9, 1985, by AT&T Communications of the Southern States, Inc., on September 11, 1985, and by Southern Bell Telephone and Telegraph Company on September 13, 1985. Orders allowing these interventions were subsequently entered in this docket by the Commission.

On September 17, 1985, the Attorney General filed a motion whereby the Commission was requested to require BTI to post a bond in an amount equal to the maximum annual amount of customer deposits, customer prepaid accounts and customer paid hook-up fees as a condition to the granting of a certificate. The Attorney General withdrew this motion during the course of the hearing in this case.

On September 19, 1985, BTI filed a revised tariff for resale service and a motion to amend the Company's application for a certificate of public convenience and necessity.

The matter came on for hearing as scheduled and all parties were present and represented by counsel. The Applicant presented the testimony and exhibits of Larry Edward Daniels, Controller for BTI, and Peter T. Loftin, President of BTI. At the conclusion of the hearing, the Public Staff, joined by the Attorney General, moved to dismiss or strike that portion of BTI's application and tariff whereby the Company seeks a grant of intraLATA intrastate long distance operating authority. This motion to dismiss or strike was granted by the Hearing Panel Chairman.

On September 26, 1985, BTI filed a motion for reconsideration in this docket whereby the Commission was requested to reconsider the ruling made at the conclusion of the hearing by the Hearing Panel Chairman to dismiss or strike that portion of the Company's application and tariff seeking a grant of intraLATA intrastate operating authority.

On October 3, 1985, the Public Staff filed a motion whereby the Commission was requested to dismiss BTI's motion for reconsideration.

On October 25, 1985, the Public Staff filed a motion in this docket whereby the Commission was requested to require BTI to file a plan detailing a proposed methodology for determining unauthorized intraLATA conversation minutes in compliance with the terms of the compensation plan set forth in the "Order Authorizing Intrastate Long Distance Competition" entered in Docket No. P-100, Sub 72, on February 22, 1985.

On November 4, 1985, the Attorney General filed a motion whereby the Commission was requested to combine Docket Nos. P-100, Sub 72, and P-165, for the limited purpose of providing a full evidentiary record of BTI's fitness to serve customers in North Carolina.

On November 12, 1985, BTI filed a response in opposition to the above-referenced motion of the Public Staff.

On November 25, 1985, BTI filed a response in opposition to the motion of the Attorney General regarding combining Docket Nos. P-100, Sub 65, and P-165.

On November 25, 1985, Southern Bell filed a response in support of the Public Staff motion to require the filing of a compensation plan.

On November 25, 1985, the Commission entered an Order in this docket whereby BTI was required to file a proposed plan for determining unauthorized intraLATA conversation minutes or appropriate affidavit. By Order dated December 9, 1985, BTI was granted an extension of time until Wednesday, December 18, 1985, to file such compensation plan or appropriate affidavit.

On December 18, 1985, BTI filed a proposed compensation plan for consideration by the Commission stating how the Company proposes to account for unauthorized intraLATA conversation minutes of use on a monthly basis. This proposed compensation plan was filed in response to the Commission Order previously entered in this docket on November 25, 1985.

On December 27, 1985, BTI filed a motion in this docket whereby the Company requested authority to amend its application and Sections III.A.4. and III.B.3. of its proposed tariff for resale service as set forth in said motion. The Commission concludes that good cause exists to grant this motion to amend rates.

The Commission, having carefully reviewed the entire record in this proceeding, now makes the following

FINDINGS OF FACT

1. Business Telecom, Inc., seeks a certificate of public convenience and necessity to offer and provide, on a resale basis, both interLATA and intraLATA long distance telecommunications services as a public utility in North Carolina.

2. BTI is fit, capable, technically qualified, and financially able to render interLATA and intraLATA long distance telecommunications services on a resale basis as a public utility in the State of North Carolina.

3. The long distance telecommunications services proposed by BTI in North Carolina are required to serve the public interest effectively and adequately and will not jeopardize reasonably affordable local exchange service.

4. BTI agrees to abide by all applicable rules and regulations of the Commission and the findings, conclusions, terms, and conditions set forth in all applicable Commission Orders.

5. BTI will be required to compensate the local exchange telephone companies for all revenue losses resulting from the completion of unauthorized or incidental intraLATA calls made by its customers on and after the date of this Order pursuant to the compensation plan adopted by the Commission in Docket No. P-100, Sub 72.

6. BTI may offer, subject to prior Commission review, promotional rates which are offered on a completely non-discriminatory basis.

7. BTI proposes to resell 800 Service (In-WATS). It is in the public interest that this should be allowed, provided that BTI pays all applicable access charges for its use of the local switched network to terminate calls originating over the resold 800 Service.

8. The proposed tariff for resale service filed by BTI does not include a 50% discount from applicable long distance charges for certified hearing or speech impaired customers who communicate on the telephone by use of a special telecommunications device or a provision for free directory assistance service for those customers who are unable to use the telephone directory. It is in the public interest that BTI should be required to include such provisions in its tariff.

WHEREUPON, the Commission reaches the following

CONCLUSIONS

On February 22, 1985, the North Carolina Utilities Commission entered an Order in Docket No. P-100, Sub 72, entitled "Order Authorizing Intrastate Long-Distance Competition." By this Order, the Commission found that the authorization of intrastate interLATA competition by other common carriers (OCCs) and resellers in North Carolina was then in the public interest and would not jeopardize reasonably affordable local telephone service. The Commission further found that intraLATA competition would be in the public interest, subject to the resolution of certain important issues related thereto during a transition period; that intraLATA resale competition would be authorized no later than January 1, 1986; that intraLATA facilities-based competition would be authorized after a transition period of approximately two years on or about January 1, 1987; that the public interest then required that interLATA competition through resale should be limited to resale of WATS and MTS services; that intrastate interLATA Feature Group A (FGA) and Feature Group B (FGB) access charges should be discounted by 25% from Feature Group C (FGC) or premium access on an originating basis only; and that access charges for FGA/FGB on the terminating end would be the same as for FGC.

BTI seeks authority in this docket to provide both interLATA and intraLATA long distance telecommunications services as a public utility in North Carolina. BTI contends that it is appropriate for the Company to be granted authority for both services at this time since the Commission stated in its February 22, 1985 Order in Docket No. P-100, Sub 72, that intraLATA resale competition would be authorized no later than January 1, 1986. The Commission notes that intraLATA resale competition by resellers of WATS and MTS was in fact authorized effective January 1, 1986, by Order recently entered in Docket No. P-100, Sub 72, on December 19, 1985. Thus, after reconsideration and for the above-stated reasons, the Commission concludes that it is entirely appropriate in this proceeding to grant BTI a certificate of public convenience and necessity to provide both interLATA and intraLATA long distance telecommunications services as a reseller in North Carolina on the condition that the Company shall pay all compensation amounts for unauthorized intraLATA traffic which accrue on and after the date of this Order as further discussed below.

In this regard, the Commission has established a compensation plan in Docket No. P-100, Sub 72, whereby resellers are required to compensate the local exchange companies for revenue losses resulting from the completion of unauthorized intraLATA calls. BTI did not file a proposed compensation plan or methodology to determine the unauthorized intraLATA conversation minutes on its facilities each month in conjunction with its application for a certificate. On November 25, 1985, and December 9, 1985, the Commission entered Orders in this docket requiring BTI to file such a proposed compensation plan or affidavit for consideration by the Commission not later than December 18, 1985. On December 18, 1985, BTI filed its proposed compensation plan for consideration by the Commission stating how the Company proposes to account for unauthorized intraLATA conversation minutes of use on a monthly basis. The Commission will defer ruling on the appropriateness of the proposed compensation plan filed by BTI in order to allow all interested parties, including the Public Staff, Attorney General, and the LECs, a reasonable opportunity to study and evaluate such plan and to file appropriate written comments regarding the Company's proposed compensation plan. Thus, the grant

of intrastate operating authority made to BTI by this Order will be made on a conditional basis subject to the payment of appropriate compensation by the Company for all unauthorized intraLATA traffic completed by BTI's customers on and after the date of this Order.

The Commission also concludes that the following specific changes and revisions must be made in BTI's proposed tariff for resale service prior to approval thereof:

1. BTI has not provided a special provision for subscribers using telecommunications devices for the deaf (TDD) equipment or a directory assistance provision for those customers who are unable to use the telephone directory. Although BTI does not itself offer directory assistance service, the Company does allow access to the service as provided by facilities-based carriers and proposes to charge its customers $0.60 for each such directory assistance call. BTI contends that it does not get a price break from AT&T for these services and that since it provides a discount to all of its customers, the Company should not have to offer further discounts for those using TDD equipment or those unable to use the telephone directory. The Commission is of the opinion that services such as these are of public benefit and in the public interest and should generally be offered by carriers such as BTI so that consumers who must avail themselves of these services will also share in the benefits of competition. For the above stated reasons, the Commission will require BTI to include in its tariff a 50% discount on applicable long distance charges for all customers using TDD equipment to communicate and a provision to allow free directory assistance service to customers who are unable to use the telephone directory.

2. The references to equipment on Page 3 under Section II.A. of the proposed tariff entitled "Description of Service" should be deleted. This section refers to the Company being able to provide adequate equipment for its services. Equipment is a deregulated item and these references should be removed from the tariff.

3. BTI should clarify its proposed tariff provisions on special services. Under the North Carolina general statutes, the Company must file all rates regarding regulated services with the Commission and the Commission may then either approve, suspend, or disapprove the rates. If BTI has a need to contract with a specific customer, the Company should advise the customer that the negotiated price must be filed with the Commission for review. BTI should clarify the special service provisions in its tariff to provide that rates and terms for regulated special services must be filed with the Commission for review at least 14 days before the date upon which the proposed rates are to become effective. Upon a showing of good cause, the Commission will entertain motions on a case-by-case basis to shorten the minimum notice period when necessary to consider specific special service arrangements for regulated services on less than 14 days' notice

4. During the hearing in this docket, BTI either proposed or agreed to amend the Company's proposed tariff as follows:

(a) By amending Section II.G. entitled "Customer Obligations" by deleting all but the first sentence from that paragraph; and

(b) By deleting Section III.A.5. since this paragraph refers to a service to be offered in the future.

The Commission concludes that these proposed tariff changes are appropriate and should be approved.

5. BTI should either delete or amend Section II.H.2.d. of the proposed tariff. This provision again references equipment which is deregulated and also refers to Company facilities. The Company has no facilities; therefore, a reference to Company facilities is improper, ambiguous, and may be misconstrued. BTI should delete the reference to equipment from this section. The Company should also either delete the section in its entirety regarding the reference to facilities or amend and clarify the section to provide that all facilities used for which BTI renders a bill for payment (such as access facilities provided by the LECs) are considered to be provided by the Company whether or not such facilities are owned and operated by BTI.

6. The Company should delete provisions 2 and 5 under Section II.I. of its proposed tariff entitled "Limitation of Company's Liability." These provisions refer to equipment which is deregulated and Company facilities of which the Applicant has none. The Commission has no jurisdiction over deregulated equipment and it is not appropriate to attempt to limit liability by tariff regarding items over which the Commission has no authority. These provisions involve contractual and civil matters and therefore should be deleted from the tariff.

7. BTI proposes to offer promotional rates from time to time under Section III.E. of its tariff. The Company's tariff should be amended to provide that such promotional rates will only be offered on a completely nondiscriminatory basis for a specific period of time and shall be filed with the Commission for review at least 14 days prior to implementation.

8. BTI should revise Section II.A. of the Company's proposed tariff to list the exchanges in which it offers service. BTI presently only lists the counties in which the Company offers service. Since access must be obtained from the LECs on an exchange basis and since exchange boundaries and county boundaries do not normally coincide, listing of the served communities by exchange appears to be the more reasonable and accurate approach. In addition, as a matter of practicality, the Commission has compiled the areas served by all long distance carriers by exchanges. BTI is one of only two applicants out of a total of 15 carriers who list service areas by county. Therefore, the Commission will require BTI to revise its tariff to list the exchanges served rather than the counties.

9. BTI should amend Section II.H.1. entitled "Cancellation by Customer" by deleting the word "written" in order to allow for other means of cancellation. The Commission does not believe that a customer should be required to give written notice of cancellation of service.

10. BTI should revise Section III.A. of its proposed tariff to clarify and list information regarding the timing of calls. The Company states that charges will be based on distance, time of day, and duration. However, it is unclear when the timing of a call starts (e.g., when the customer accesses the Company's switch, when the called party answers, etc.) and ends. The

Commission believes that because the rates of BTI are based upon the duration of a call, it is essential for the tariff to state when the timing of a call begins and ends. Therefore, BTI should include specific information regarding the timing of calls in the revised tariff to be filed pursuant to this Order.

IT IS, THEREFORE, ORDERED as follows:

1. That BTI be, and the same is hereby, granted a certificate of public convenience and necessity pursuant to G.S. 62-110 to provide interLATA and intraLATA long distance telecommunications services in North Carolina subject to the following terms and conditions:

A. BTI shall abide by all applicable rules and regulations of the North Carolina Utilities Commission, and the findings, conclusions, restrictions, and conditions set forth in the Orders heretofore entered in Docket No. P-100, Sub 72, and all other applicable Commission Orders entered in relevant dockets.

B. BTI shall compensate the local exchange companies for all revenue losses resulting from the completion of unauthorized intraLATA calls made by its customers pursuant to the compensation plan adopted by the Commission in Docket No. P-100, Sub 72, subject to any subsequent changes as may be approved by the Commission. BTI shall compensate the LECs for all such intraLATA revenue losses resulting from the completion of any unauthorized intraLATA calls made by its customers on and after the date of this Order. The Commission hereby defers ruling on the appropriateness of the proposed compensation plan filed in this docket by BTI on December 18, 1985, pending receipt and review of any written comments regarding such plan which may be filed by the parties to this proceeding.

C. BTI shall not use or construct any facilities designed to bypass the access or local exchange facilities of the local exchange telephone companies.

D. BTI shall not hereafter abandon or discontinue service under its certificate in North Carolina, unless the Company has received approval from the Commission to do so upon such terms and conditions as the Commission may prescribe.

E. BTI shall pay all applicable access charges to the LECs for the Company's use of the local switched network to terminate calls over resold 800 Service. BTI shall report such minutes of use to the LECs and shall report to the Commission whether the Company can provide or implement procedures to provide minutes of use for traffic originating on Band 0 In-WATS as compared with Bands 1-5 In-WATS for determining apparent North Carolina intrastate calls such that access charges may be applied for completion of such calls terminating in North Carolina. BTI shall report on a monthly basis the magnitude in minutes of use of traffic originating on its In-WATS services terminating in North Carolina and compare this with all other traffic apparently originating in North Carolina and terminating in North Carolina in order to assist the Commission in evaluating the impact of such traffic and the determination of access charges therefor.

F. BTI shall make the tariff revisions required above and shall also add appropriate tariff provisions for Commission approval designed to offer (1) a 50% discount from applicable long distance charges for certified hearing or speech impaired customers who communicate on the telephone by use of a special telecommunications device and (2) free directory assistance service to those customers unable to use the telephone directory. Such revised tariff shall be filed with the Commission and all parties not later than Friday, January 10, 1986. Comments regarding the revised tariff shall be filed by the parties, if any comments there be, not later than Friday, January 17, 1986.

2. That the motion for reconsideration filed in this docket by BTI on September 26, 1985, be, and the same is hereby, granted.

3. That this Order shall itself constitute the certificate of public convenience and necessity granted to BTI by the North Carolina Utilities Commission to provide long distance telecommunications services on a resale basis in North Carolina.

4. That the revised tariff to be filed by BTI under the conditions set forth in this Order shall become effective upon further Order.

5. That the motion to combine Docket Nos. P-100, Sub 65, and P-165 for a limited purpose as filed by the Attorney General on November 4, 1985, be, and the same is hereby, granted.

6. That the motion to amend rates filed in this docket by BTI on December 27, 1985, be, and the same is hereby, granted.

7. That any motions not heretofore ruled upon or granted be, and the same are hereby, denied.

ISSUED BY ORDER OF THE COMMISSION.
This the 31st day of December 1985.

NORTH CAROLINA UTILITIES COMMISSION
(SEAL) Gail Lambert Mount, Deputy Clerk

DOCKET NO. P-171

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Application of Discount Watts Line, Inc., for a Certificate of Public Convenience and Necessity to Provide IntraLATA and InterLATA Telecommunications Services as a Public Utility Within the State of North Carolina on a Resale Basis and for the Establishment of Initial Rates	)	ORDER GRANTING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY SUBJECT TO COMPLIANCE WITH COMPENSATION PLAN

HEARD IN: Commission Hearing Room 217, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on Tuesday, September 24, 1985, at 9:30 a.m.

BEFORE: Commissioner Ruth E. Cook, Presiding; and Commissioners Robert K. Koger and Julius A. Wright

APPEARANCES:

For the Applicant:

Walter E. Daniels and Linda Marcus Daniels, Law Firm of Walter E. Daniels, P.A., Attorneys at Law, 200 Park Offices, Suite 200, P.O. Drawer 13039, Research Triangle Park, North Carolina 27709
For: Discount Watts Line, Inc.

For Southern Bell Telephone and Telegraph Company:

J. Billie Ray, Jr., General Attorney, Southern Bell Telephone and Telegraph Company, P. O. Box 30188, 1012 Southern National Center, Charlotte, North Carolina 28230
and
Shirley A. Ransom, Attorney, Southern Bell Telephone and Telegraph Company, 675 West Peachtree Street, 4300 Southern Bell Center, Atlanta, Georgia 30375
For: Southern Bell Telephone and Telegraph Company

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

Michael W. Tye, Attorney, AT&T Communications of the Southern States, Inc., 1200 Peachtree Street, N.E., Atlanta, Georgia 30352
For: AT&T Communications of the Southern States, Inc.

For the Public Staff:

Theodore C. Brown, Jr., Staff Attorney, Public Staff - North Carolina Carolina Utilities Commission, Post Office Box 29520, Raleigh, North Carolina 27626-0520
For: The Using and Consuming Public

For the Attorney General:

Jo Anne Sanford, Special Deputy Attorney General, North Carolina Department of Justice, P.O. Box 629, Raleigh, North Carolina 27602
For: The Using and Consuming Public

BY THE COMMISSION. On July 26, 1985, Discount Watts Line, Inc., (DWL, Applicant or Company) filed an application with the North Carolina Utilities Commission seeking a certificate of public convenience and necessity to provide intraLATA and interLATA long distance telecommunications services in North Carolina on an intrastate basis. The Commission, being of the opinion that the application affected the public interest, entered an Order in this docket on August 15, 1985 scheduling the matter for hearing on September 24, 1985 at 9:30 a.m.

Notice or petitions to intervene were filed by the Attorney General of North Carolina on August 9, 1985, by AT&T Communications of the Southern States, Inc., on September 11, 1985, and by Southern Bell Telephone and Telegraph Company on September 13, 1985. Orders allowing these interventions were subsequently entered in this docket by the Commission.

On September 17, 1985, the Attorney General filed a motion whereby the Commission was requested to require DWL to post a bond in an amount equal to the maximum annual amount of customer deposits, customer prepaid accounts and customer paid hook-up fees as a condition to the granting of a certificate. The Attorney General withdrew this motion during the course of the hearing in this case.

On September 19, 1985, DWL filed a revised tariff for resale service and a motion to amend the Company's application for a certificate of public convenience and necessity.

The matter came on for hearing as scheduled and all parties were present and represented by counsel. The Applicant presented the testimony and exhibits of Larry Edward Daniels, Controller for DWL, and Peter T. Loftin, President of DWL. At the conclusion of the hearing, the Public Staff, joined by the Attorney General, moved to dismiss or strike that portion of DWL's application and tariff whereby the Company seeks a grant of intraLATA intrastate long distance operating authority. This motion to dismiss or strike was granted by the Hearing Panel Chairman.

On September 26, 1985, DWL filed a motion for reconsideration in this docket whereby the Commission was requested to reconsider the ruling made at the conclusion of the hearing by the Hearing Panel Chairman to dismiss or strike that portion of the Company's application and tariff seeking a grant of intraLATA intrastate operating authority.

On October 3, 1985, the Public Staff filed a motion whereby the Commission was requested to dismiss DWL's motion for reconsideration.

On October 25, 1985, the Public Staff filed a motion in this docket whereby the Commission was requested to require DWL to file a plan detailing a proposed methodology for determining unauthorized intraLATA conversation minutes in compliance with the terms of the compensation plan set forth in the "Order Authorizing Intrastate Long Distance Competition" entered in Docket No. P-100, Sub 72, on February 22, 1985.

On November 4, 1985, the Attorney General filed a motion whereby the Commission was requested to combine Docket Nos. P-100, Sub 72, and P-171, for the limited purpose of providing a full evidentiary record of DWL's fitness to serve customers in North Carolina.

On November 12, 1985, DWL filed a response in opposition to the above-referenced motion of the Public Staff.

On November 25, 1985, Southern Bell filed a response in support of the Public Staff motion to require the filing of a compensation plan.

On November 25, 1985, the Commission entered an Order in this docket whereby DWL was required to file a proposed plan for determining unauthorized intraLATA conversation minutes or appropriate affidavit. By Order dated December 9, 1985, DWL was granted an extension of time until Wednesday, December 18, 1985, to file such compensation plan or appropriate affidavit.

On December 18, 1985, DWL filed a proposed compensation plan for consideration by the Commission stating how the Company proposes to account for unauthorized intraLATA conversation minutes of use on a monthly basis. This proposed compensation plan was filed in response to the Commission Order previously entered in this docket on November 25, 1985.

On December 27, 1985, DWL filed a motion in this docket whereby the Company requested authority to amend its application and Sections III.A.1. and III.B.3. of its proposed tariff for resale service as set forth in said motion. The Commission concludes that good cause exists to grant this motion to amend rates.

The Commission, having carefully reviewed the entire record in this proceeding, now makes the following

FINDINGS OF FACT

1. Discount Watts Line, Inc., seeks a certificate of public convenience and necessity to offer and provide, on a resale basis, both interLATA and intraLATA long distance telecommunications services as a public utility in North Carolina.

2. DWL is fit, capable, technically qualified, and financially able to render interLATA and intraLATA long distance telecommunications services on a resale basis as a public utility in the State of North Carolina.

3. The long distance telecommunications services proposed by DWL in North Carolina are required to serve the public interest effectively and adequately and will not jeopardize reasonably affordable local exchange service.

4. DWL agrees to abide by all applicable rules and regulations of the Commission and the findings, conclusions, terms, and conditions set forth in all applicable Commission Orders.

5. DWL will be required to compensate the local exchange telephone companies for all revenue losses resulting from the completion of unauthorized or incidental intraLATA calls made by its customers on and after the date of this Order pursuant to the compensation plan adopted by the Commission in Docket No. P-100, Sub 72.

6. DWL may offer, subject to prior Commission review, promotional rates which are offered on a completely non-discriminatory basis.

7. DWL proposes to resell 800 Service (In-WATS). It is in the public interest that this should be allowed, provided that DWL pays all applicable access charges for its use of the local switched network to terminate calls originating over the resold 800 Service.

8. The proposed tariff for resale service filed by DWL does not include a 50% discount from applicable long distance charges for certified hearing or speech impaired customers who communicate on the telephone by use of a special telecommunications device or a provision for free directory assistance service for those customers who are unable to use the telephone directory. It is in the public interest that DWL should be required to include such provisions in its tariff.

WHEREUPON, the Commission reaches the following

CONCLUSIONS

On February 22, 1985, the North Carolina Utilities Commission entered an Order in Docket No. P-100, Sub 72, entitled "Order Authorizing Intrastate Long-Distance Competition." By this Order, the Commission found that the authorization of intrastate interLATA competition by other common carriers (OCCs) and resellers in North Carolina was then in the public interest and would not jeopardize reasonably affordable local telephone service. The Commission further found that intraLATA competition would be in the public interest, subject to the resolution of certain important issues related thereto during a transition period; that intraLATA resale competition would be authorized no later than January 1, 1986; that intraLATA facilities-based competition would be authorized after a transition period of approximately two years on or about January 1, 1987; that the public interest then required that interLATA competition through resale should be limited to resale of WATS and MTS services; that intrastate interLATA Feature Group A (FGA) and Feature Group B (FGB) access charges should be discounted by 25% from Feature Group C (FGC) or premium access on an originating basis only; and that access charges for FGA/FGB on the terminating end would be the same as for FGC.

DWL seeks authority in this docket to provide both interLATA and intraLATA long distance telecommunications services as a public utility in North Carolina. DWL contends that it is appropriate for the Company to be granted authority for both services at this time since the Commission stated in its February 22, 1985 Order in Docket No. P-100, Sub 72, that intraLATA resale competition would be authorized no later than January 1, 1986. The Commission notes that intraLATA resale competition by resellers of WATS and MTS was in fact authorized effective January 1, 1986, by Order recently entered in Docket No. P-100, Sub 72, on December 19, 1985. Thus, after reconsideration and for the above-stated reasons, the Commission concludes that it is entirely appropriate in this proceeding to grant DWL a certificate of public convenience and necessity to provide both interLATA and intraLATA long distance telecommunications services as a reseller in North Carolina on the condition that the Company shall pay all compensation amounts for unauthorized intraLATA traffic which accrue on and after the date of this Order as further discussed below.

In this regard, the Commission has established a compensation plan in Docket No. P-100, Sub 72, whereby resellers are required to compensate the local exchange companies for revenue losses resulting from the completion of unauthorized intraLATA calls. DWL did not file a proposed compensation plan or methodology to determine the unauthorized intraLATA conversation minutes on its facilities each month in conjunction with its application for a certificate. On November 25, 1985, and December 9, 1985, the Commission entered Orders in

this docket requiring DWL to file such a proposed compensation plan or affidavit for consideration by the Commission not later than December 18, 1985. On December 18, 1985, DWL filed its proposed compensation plan for consideration by the Commission stating how the Company proposes to account for unauthorized intraLATA conversation minutes of use on a monthly basis. The Commission will defer ruling on the appropriateness of the proposed compensation plan filed by DWL in order to allow all interested parties, including the Public Staff, Attorney General, and the LECs, a reasonable opportunity to study and evaluate such plan and to file appropriate written comments regarding the Company's proposed compensation plan. Thus, the grant of intrastate operating authority made to DWL by this Order will be made on a conditional basis subject to the payment of appropriate compensation by the Company for all unauthorized intraLATA traffic completed by DWL's customers on and after the date of this Order.

The Commission also concludes that the following specific changes and revisions must be made in DWL's proposed tariff for resale service prior to approval thereof:

1. DWL has not provided a special provision for subscribers using telecommunications devices for the deaf (TDD) equipment or a directory assistance provision for those customers who are unable to use the telephone directory. Although DWL does not itself offer directory assistance service, the Company does allow access to the service as provided by facilities-based carriers and proposes to charge its customers $0.60 for each such directory assistance call. DWL contends that it does not get a price break from AT&T for these services and that since it provides a discount to all of its customers, the Company should not have to offer further discounts for those using TDD equipment or those unable to use the telephone directory. The Commission is of the opinion that services such as these are of public benefit and in the public interest and should generally be offered by carriers such as DWL so that consumers who must avail themselves of these services will also share in the benefits of competition. For the above stated reasons, the Commission will require DWL to include in its tariff a 50% discount on applicable long distance charges for all customers using TDD equipment to communicate and a provision to allow free directory assistance service to customers who are unable to use the telephone directory.

2. The references to equipment on Page 3 under Section II.A. of the proposed tariff entitled "Description of Service" should be deleted. This section refers to the Company being able to provide adequate equipment for its services. Equipment is a deregulated item and these references should be removed from the tariff.

3. DWL should clarify its proposed tariff provisions on special services. Under the North Carolina general statutes, the Company must file all rates regarding regulated services with the Commission and the Commission may then either approve, suspend, or disapprove the rates. If DWL has a need to contract with a specific customer, the Company should advise the customer that the negotiated price must be filed with the Commission for review. DWL should clarify the special service provisions in its tariff to provide that rates and terms for regulated special services must be filed with the Commission for review at least 14 days before the date upon which the proposed rates are to become effective. Upon a showing of good cause, the Commission will entertain

motions on a case-by-case basis to shorten the minimum notice period when necessary to consider specific special service arrangements for regulated services on less than 14 days' notice

4. During the hearing in this docket, DWL either proposed or agreed to amend the Company's proposed tariff as follows:

(a) By amending Section II.G. entitled "Customer Obligations" by deleting all but the first sentence from that paragraph; and
(b) By deleting Section III.A.2. since this paragraph refers to a service to be offered in the future.

The Commission concludes that these proposed tariff changes are appropriate and should be approved.

5. DWL should either delete or amend Section II.H.2.d. of the proposed tariff. This provision again references equipment which is deregulated and also refers to Company facilities. The Company has no facilities; therefore, a reference to Company facilities is improper, ambiguous, and may be misconstrued. DWL should delete the reference to equipment from this section. The Company should also either delete the section in its entirety regarding the reference to facilities or amend and clarify the section to provide that all facilities used for which DWL renders a bill for payment (such as access facilities provided by the LECs) are considered to be provided by the Company whether or not such facilities are owned and operated by DWL.

6. The Company should delete provisions 2 and 5 under Section II.I. of its proposed tariff entitled "Limitation of Company's Liability." These provisions refer to equipment which is deregulated and Company facilities of which the Applicant has none. The Commission has no jurisdiction over deregulated equipment and it is not appropriate to attempt to limit liability by tariff regarding items over which the Commission has no authority. These provisions involve contractual and civil matters and therefore should be deleted from the tariff.

7. DWL proposes to offer promotional rates from time to time under Section III.E. of its tariff. The Company's tariff should be amended to provide that such promotional rates will only be offered on a completely nondiscriminatory basis for a specific period of time and shall be filed with the Commission for review at least 14 days prior to implementation.

8. DWL should revise Section II.A. of the Company's proposed tariff to list the exchanges in which it offers service. DWL presently only lists the counties in which the Company offers service. Since access must be obtained from the LECs on an exchange basis and since exchange boundaries and county boundaries do not normally coincide, listing of the served communities by exchange appears to be the more reasonable and accurate approach. In addition, as a matter of practicality, the Commission has compiled the areas served by all long distance carriers by exchanges. DWL is one of only two applicants out of a total of 15 carriers who list service areas by county. Therefore, the Commission will require DWL to revise its tariff to list the exchanges served rather than the counties.

9. DWL should amend Section II.H.1. entitled "Cancellation by Customer" by deleting the word "written" in order to allow for other means of cancellation. The Commission does not believe that a customer should be required to give written notice of cancellation of service.

10. DWL should revise Section III.A. of its proposed tariff to clarify and list information regarding the timing of calls. The Company states that charges will be based on distance, time of day, and duration. However, it is unclear when the timing of a call starts (e.g., when the customer accesses the Company's switch, when the called party answers, etc.) and ends. The Commission believes that because the rates of DWL are based upon the duration of a call, it is essential for the tariff to state when the timing of a call begins and ends. Therefore, DWL should include specific information regarding the timing of calls in the revised tariff to be filed pursuant to this Order.

IT IS, THEREFORE, ORDERED as follows:

1. That DWL be, and the same is hereby, granted a certificate of public convenience and necessity pursuant to G.S. 62-110 to provide interLATA and intraLATA long distance telecommunications services in North Carolina subject to the following terms and conditions:

A. DWL shall abide by all applicable rules and regulations of the North Carolina Utilities Commission, and the findings, conclusions, restrictions, and conditions set forth in the Orders heretofore entered in Docket No. P-100, Sub 72, and all other applicable Commission Orders entered in relevant dockets.

B. DWL shall compensate the local exchange companies for all revenue losses resulting from the completion of unauthorized intraLATA calls made by its customers pursuant to the compensation plan adopted by the Commission in Docket No. P-100, Sub 72, subject to any subsequent changes as may be approved by the Commission. DWL shall compensate the LECs for all such intraLATA revenue losses resulting from the completion of any unauthorized intraLATA calls made by its customers on and after the date of this Order. The Commission hereby defers ruling on the appropriateness of the proposed compensation plan filed in this docket by DWL on December 18, 1985, pending the receipt and review of any written comments regarding such plan which may be filed by the parties to this proceeding.

C. DWL shall not use or construct any facilities designed to bypass the access or local exchange facilities of the local exchange telephone companies.

D. DWL shall not hereafter abandon or discontinue service under its certificate in North Carolina, unless the Company has received approval from the Commission to do so upon such terms and conditions as the Commission may prescribe.

E. DWL shall pay all applicable access charges to the LECs for the Company's use of the local switched network to terminate calls over resold 800 Service. DWL shall report such minutes of use to the LECs and shall report to the Commission whether the Company can provide or implement procedures to provide minutes of use for traffic originating on Band 0

In-WATS as compared with Bands 1-5 In-WATS for determining apparent North Carolina intrastate calls such that access charges may be applied for completion of such calls terminating in North Carolina. DWL shall report on a monthly basis the magnitude in minutes of use of traffic originating on its In-WATS services terminating in North Carolina and compare this with all other traffic apparently originating in North Carolina and terminating in North Carolina in order to assist the Commission in evaluating the impact of such traffic and the determination of access charges therefor.

F. DWL shall make the tariff revisions required above and shall also add appropriate tariff provisions for Commission approval designed to offer (1) a 50% discount from applicable long distance charges for certified hearing or speech impaired customers who communicate on the telephone by use of a special telecommunications device and (2) free directory assistance service to those customers unable to use the telephone directory. Such revised tariff shall be filed with the Commission and all parties not later than Friday, January 10, 1986. Comments regarding the revised tariff shall be filed by the parties, if any comments there be, not later than Friday, January 17, 1986.

2. That the motion for reconsideration filed in this docket by DWL on September 26, 1985, be, and the same is hereby, granted.

3. That this Order shall itself constitute the certificate of public convenience and necessity granted to DWL by the North Carolina Utilities Commission to provide long distance telecommunications services on a resale basis in North Carolina.

4. That the revised tariff to be filed by DWL under the conditions set forth in this Order shall become effective upon further Order.

5. That the motion to combine Docket Nos. P-100, Sub 65, and P-171 for a limited purpose as filed by the Attorney General on November 4, 1985, be, and the same is hereby, granted.

6. That the motion to amend rates filed in this docket by DWL on December 27, 1985, be, and the same is hereby, granted.

7. That any motions not heretofore ruled upon or granted be, and the same are hereby, denied.

ISSUED BY ORDER OF THE COMMISSION.
This the 31st day of December 1985.

NORTH CAROLINA UTILITIES COMMISSION
Gail Lambert Mount, Deputy Clerk

(SEAL)

DOCKET NO. P-154

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Application of Econowats, Inc., for a Certificate of Public Convenience and Necessity to Provide InterLATA Telecommunications Services as a Public Utility within the State of North Carolina	) RECOMMENDED ORDER) GRANTING CERTIFICATE) OF PUBLIC CONVENIENCE) AND NECESSITY

HEARD IN: Commission Hearing Room, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on June 7, 1985, at 10:00 a.m.

BEFORE: Commissioner Sarah Lindsay Tate, Presiding; and Commissioners Ruth E. Cook and Charles E. Branford. (Commissioner Branford retired from the Commission on June 30, 1985, and did not participate in the decision making process.)

APPEARANCES:

For the Applicant:

James W. Lea III, Shipman and Lea, Attorneys at Law, 615 Princess Street, Wilmington, North Carolina 28402

For the Intervenors:

Wade H. Hargrove, Tharrington, Smith & Hargrove, Attorneys at Law, P. O. Box 1151, Raleigh, North Carolina 27601
For: AT&T Communications of the Southern States, Inc.

Lawrence E. Gill, Attorney at Law, Southern Bell Legal Department, 4300 Southern Bell Center, 675 West Peachtree Street, Atlanta, Georgia 30375
For: Southern Bell Telephone and Telegraph Company

Michael L. Ball, Staff Attorney, Public Staff, P. O. Box 29520, Raleigh, North Carolina 27626-0520
For: The Using and Consuming Public

Karen E. Long, Assistant Attorney General, North Carolina Department of Justice, P. O. Box 629, Raleigh, North Carolina 27602
For: The Using and Consuming Public

BY THE COMMISSION: On April 1, 1985, Econowats, Inc. (Econowats), filed a Petition Requesting Issuance of Certificate in the instant docket whereby Econowats requested that the North Carolina Utilities Commission issue an appropriate certificate to Econowats consistent with the Commission's decision of February 22, 1985, in Docket No. P-100, Sub 72, and that Econowats' proposed tariff of rates and charges attached to said petition be approved.

On April 4, 1985, the Commission issued an Order Scheduling Hearing to commence on May 16, 1985.

On April 10, 1985, the Attorney General filed a Notice of Intervention, and on April 12, 1985, the Attorney General filed a Motion Requiring Tariffs and Bonds.

On April 17, 1985, Southern Bell Telephone and Telegraph Company filed a Petition to Intervene and the Public Staff filed a Motion to Require Tariffs and Plan. On April 18, 1985, the Commission issued an Order Granting Southern Bell's Petition to Intervene. On April 23, 1985, the Commission issued an Order Granting the Public Staff's Motions to Require Filing of Tariffs and Plan.

On April 23, 1985, AT&T of the Southern States, Inc., filed a Petition for Leave to Intervene. This petition was granted by Commission Order issued April 25, 1985.

On May 1, 1985, in response to an oral motion made by Econowats, the Commission issued an Order Rescheduling Hearing to May 31, 1985, and Requiring Filing of Tariffs.

On May 15, 1985, Econowats filed an Amendment to Petition Requesting the Issuance of Certificate as follows:

"1. The tariffs reflecting the services to be offered, including rates and regulations applicable to each service are hereby amended to read as set forth in Exhibit A attached hereto and made a part hereof.

"2. A description of the billing practice of Econowats to be utilized for the determination of the monthly quantity of intrastate, (interLATA and intraLATA) access minutes on its system in North Carolina (8) and for the determination of the unauthorized intraLATA conversation minutes occurring on its facilities each month (9) is further described on Exhibit B attached hereto and made a part hereof.

"3. The plan detailing Econowats' proposed accounting methodology and necessary allocation procedures required to provide to the Commission the North Carolina intrastate jurisdictional financial operating results of Econowats is further detailed on Exhibit C attached hereto and made a part hereof.

"4. That Econowats has no objection to the reporting and payment under the compensation plan being on a monthly basis.

"5. That the Petition Requesting Issuance of Certificate filed by Econowats on April 1, 1985, is incorporated herein by reference except as modified herein."

On May 29, 1985, Econowats filed Exhibit C relating to its computerized double-entry bookkeeping system. On the same day, in response to oral motion made by counsel for Econowats, the Commission rescheduled the hearing to commence June 7, 1985.

The matter came on for hearing as scheduled and the parties aforementioned were present and represented by able counsel. Subsequent to the hearing, Southern Bell, the Public Staff, the Attorney General, and Econowats filed comments on the hearing.

The Commission having reviewed the entire record in this proceeding now makes the following

FINDINGS OF FACT

1. The Applicant initially proposes to charge an $80.00 hook-up fee for customers in Wilmington and a $100.00 hook-up fee for customers outside of Wilmington. On July 19, 1985, Applicant filed a statement agreeing to charge a $40.00 hook-up fee throughout Applicant's service area.

2. The Applicant proposes to resell 800 service (also known as In-WATS). It is in the public interest that this be allowed, provided that the Applicant pays access charges for its use of the local switched network to terminate calls originating over the resold 800 service. Such access charges shall be considered provisional and subject to refund pending final resolution of the matter in Docket No. P-100, Sub 72.

3. The use of foreign exchange, private line, access facilities, or any facilities other than MTS and WATS, to complete intrastate intraLATA calls would result in a revenue drain to Southern Bell and other local exchange companies.

4. The Applicant has agreed to provide all information necessary for administration of this Commission's compensation plan relating to unauthorized intraLATA calls, and has further agreed that as to any requisite information which the Applicant's equipment cannot compile automatically, the Applicant will compile by hand. It is in the public interest to allow the Applicant to proceed on this basis.

5. The Applicant should file an appropriate undertaking for Commission approval.

WHEREUPON the Commission reaches the following

CONCLUSIONS

1. With respect to Finding of Fact No. 1, it is clear that the Applicant's initial proposal constitutes geographical deaveraging. However, Applicant's subsequent filing indicating that hook-up charges will be $40.00 in all of its service areas is acceptable to this Commission. Applicant should file a tariff to reflect this uniform $40.00 hook-up fee.

2. With respect to Finding of Fact No. 2, the Commission notes that Econowats is the first applicant proposing to resell 800 service. The Commission concludes that this proposed service falls within the spirit of the Commission's Order Authorizing Long Distance Competition in Docket No. P-100, Sub 72, provided that access charges are properly paid. 800 service is the converse of out-WATS service; thus, full switched access charges are paid by AT&T on the originating (i.e., "open") end of the 800 call, and a Dedicated Access Line charge is paid in lieu of a Carrier Common Line Charge on the terminating (i.e., "closed") end. Therefore, given that the terminating end of the 800 service is analogous to the originating end of out-WATS service for access purposes, it is appropriate that the Applicant should pay full Switched Access Charges for terminating 800 calls over the local switched network. Such

Switched Access Charges are to be considered provisional and subject to refund pending hearing and final approval of the Commission.

The Commission notes that under the present level of access charges, no compensation is required to be paid under the Commission's compensation plan for unauthorized intraLATA calls completed over resold intrastate WATS. Because the rates and access charges are similar for WATS and 800 service, the same exemption should apply. Of course, should the level of access charges required to be paid by the Applicant change during the course of proceedings in Docket No. P-100, Sub 72, or otherwise, then this issue will have to be revisited, and a method established for determining the volume of 800 service traffic subject to compensation.

3. In its Order of February 22, 1985, in Docket P-100, Sub 72, the Commission found that the resale of intrastate interLATA long distance service should be limited to the resale of WATS and MTS only. Further, the Commission expressly stated that "the tariffs for other services, such as FX and private line services, will require more detailed and examination before they can be made available for resale."

In its Order of February 22, 1985, in Docket No. P-100, Sub 72, the Commission exempted resellers from having to pay intraLATA compensation only when calls are routed over "resold services" (i.e., intrastate WATS and MTS only). Therefore, any usage of facilities other than WATS and MTS should be subject to the interim compensation plan. Such compensation is necessary to ensure that local exchange companies are kept whole for unauthorized incidental intraLATA calls completed over facilities other than WATS and MTS.

4. With respect to Finding of Fact No. 4, concerning the reporting of information necessary for administration of the compensation plan, no significant controversy exists because the Applicant has agreed to provide all required information, and to compile it by hand if it is not otherwise available. However, other parties at the hearing expressed a concern that such reports must be sufficiently detailed to allow a determination as to exactly what facilities an intraLATA call is completed over. This is a legitimate concern. In Docket No. P-100, Sub 72, the Commission has exempted from compensation only those unauthorized intraLATA calls that are completed over "resold services" (i.e., intrastate WATS and MTS, which were the only services authorized to be resold in that docket). The reports that the Applicant provides, therefore, must be in sufficient detail to allow the terminating facilities to be identified.

5. The Commission has carefully reviewed the extensive cross-examination of Applicant's witness Pridemore conducted by the Attorney General relating to Applicant's financial stability. The Commission recognizes that as Applicant extends its service areas the initial profits will be diminished. However, the Commission feels that in this competitive environment to require Applicant to secure a bond while requiring only an undertaking from Applicant's competitors would place an unfair hardship upon Applicant. Therefore, the Commission concludes that based on the evidence here presented, Applicant should, for the time being, be allowed to file an undertaking.

IT IS, THEREFORE, ORDERED as follows:

1. That Econowats be, and the same is hereby, granted a certificate of public convenience and necessity pursuant to G.S. 62-110 to provide interLATA long distance telecommunications services in North Carolina subject to the following terms and conditions:

A. Applicant shall abide by all applicable rules and regulations of the North Carolina Utilities Commission and the findings, conclusions, restrictions, and conditions set forth in the "Order Authorizing Intrastate Long-Distance Competition" entered in Docket No. P-100, Sub 72, on February 22, 1985; and all other applicable Commission Orders.

B. Applicant shall compensate the local exchange companies for revenue losses resulting from the completion of unauthorized intraLATA calls by its customers pursuant to the compensation plan adopted by the Commission in Docket No. P-100, Sub 72, until such time as the Commission authorizes intraLATA competition in North Carolina and discontinues such compensation plan upon approval of appropriate intraLATA access charges.

C. Applicant shall not use or construct any facilities designed to bypass the access or local exchange facilities of the local exchange telephone companies.

D. Applicant shall not hereafter abandon or discontinue service under its interLATA certificate in North Carolina, unless the Company has received approval from the Commission to do so upon such terms and conditions as the Commission may prescribe.

E. Applicant is required to submit monthly reports summarizing among other data, the quantities of calls and usage in minutes, segmented by the type of facilities and services that were used for the completion of any unauthorized intraLATA calls. Any usage of services or facilities other than WATS or MTS for the completion of unauthorized intraLATA calls shall be subject to interim compensation, as required by the Commission for all nonresale applicants in Docket P-100, Sub 72.

F. Applicant shall file a revised tariff to reflect a hook-up fee to reflect a charge of $40.00 for all intrastate service areas.

G. Applicant's proposal to resell 800 service is allowed provided that the Applicant shall pay full Switched Access Charges for terminating 800 calls over the local switched network on a provionsal basis pending hearing and final Commission approval of the matter in Docket No. P-100, Sub 72.

2. That this Order shall itself constitute the certificate of public convenience and necessity granted to Econowats by the North Carolina Utilities Commission to provide interLATA long distance telecommunications services in North Carolina.

3. That Econowats shall file an appropriate undertaking for Commission approval whereby the Company agrees and binds itself, if ordered to do so by the Commission, to refund any customer deposits, prepaid accounts, and hook-up fees on such terms and conditions as the Commission may prescribe to those

customers who may become entitled thereto. Said undertaking to refund shall be filed in this docket not later than ten (10) days from the date of this Order.

4. That Econowats shall, prior to providing any services under the certificate of public convenience and necessity granted by this Order, file appropriate tariffs for consideration and approval by the Commission. As part of such proposed tariff filing, Econowats shall specify the areas and/or routes to be served by the Company in North Carolina and the effective date of the proposed services.

ISSUED BY ORDER OF THE COMMISSION.
This the 26th day of July 1985.

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

DOCKET NO. P-141

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of	
Application of MCI Telecommunications Corporation	) RECOMMENDED ORDER
for a Certificate of Public Convenience and	) GRANTING CERTIFICATE OF
Necessity to Provide InterLATA Telecommunications	) PUBLIC CONVENIENCE
Services in North Carolina	) AND NECESSITY

HEARD IN: Commission Hearing Room, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on April 11, 1985, at 9:30 a.m.

BEFORE: Commissioner Sarah Lindsay Tate, Presiding; and Commissioners A. Hartwell Campbell and Hugh A. Crigler (Commissioner Crigler resigned from the Commission on May 10, 1985, and did not participate in the decision-making process.)

APPEARANCES:

Charles Meeker and Hugh Stevens, Attorneys at Law, Sanford, Adams, McCuller and Beard, P. O. Box 389, Raleigh, North Carolina 27602
For: MCI Telecommunications Corporation

Larry B. Sitton, Smith, Moore, Smith, Schell & Hunter, Attorneys at Law, P. O. Box 21927, Greensboro, North Carolina 27420
For: GTE Sprint

Wade H. Hargrove, Tharrington, Smith & Hargrove, Attorneys at Law, P. O. Box 1151, Raleigh, North Carolina 27602
For: AT&T Communications of the Southern States, Inc.

J. Billie Ray, General Counsel, Southern Bell Telephone and Telegraph Company, 1012 Southern National Center, Charlotte, North Carolina 28230
For: Southern Bell Telephone and Telegraph Company

For the Public Staff:

Michael L. Ball, Staff Attorney, Public Staff - North Carolina Utilities Commission, P. O. Box 29520, Raleigh, North Carolina 27626-0520
For: The Using and Consuming Public

For the Attorney General:

Karen E. Long, Assistant Attorney General, North Carolina Department of Justice, P. O. Box 629, Raleigh, North Carolina 27602
For: The Using and Consuming Public

BY THE COMMISSION: This proceeding was initiated by MCI Telecommunications Corporation (MCI) on December 7, 1983, by the filing of an application with the North Carolina Utilities Commission seeking a certificate of public convenience and necessity to provide interLATA telecommunications service as a public utility within the State of North Carolina. By Order issued December 30, 1983, the Commission suspended MCI's tariff filing pending investigation and hearing and scheduled the matter for public hearing beginning on March 6, 1984.

On February 9, 1984, MCI requested that the Commission postpone the public hearing to a date to be set after July 25, 1984.

By Order issued February 17, 1984, the Commission indicated that the hearing scheduled for March 6, 1984, would be held as scheduled for the limited purpose of receiving testimony from public witnesses and that a further hearing on the application would be scheduled by subsequent Order of the Commission.

On February 22, 1985, the Commission entered an Order in Docket No. P-100, Sub 72, entitled "Order Authorizing Intrastate Long-Distance Competition."

On March 22, 1985, MCI filed additional documentation in Docket No. P-141 in support of its application for a certificate of public convenience and necessity. This additional documentation was filed in compliance with the Commission Order entered in Docket No. P-100, Sub 72.

By Order issued March 27, 1985, a hearing was scheduled for Tuesday, April 9, 1985, to consider MCI's pending application for a certificate of public convenience and necessity.

Subsequently, the hearing was rescheduled to commence on April 11, 1985.

Interventions were filed by Carolina Telephone and Telegraph Company, Southern Bell Telephone and Telegraph Company, Central Telephone Company, AT&T Communications of the Southern States, Inc., the Public Staff of the North Carolina Utilities Commission, and General Telephone of the Southeast, and Orders allowing these interventions were issued by the Commission.

Harry Miller, Manager of Regulatory Affairs for MCI Telecommunications - Southeast Division, presented testimony in support of MCI's application.

Southern Bell presented the testimony of Raymond B. Vogel, Manager of Rates, Costs, and Tariffs Department.

AT&T Communications presented the testimony of Bruce H. Branyon, Southern Regional Manager for Regulatory Affairs.

At the end of the hearing the presiding Chairman granted requests of the Public Staff to hold the record open to receive additional material and to hold further hearing of the parties, so requested.

On May 6, 1985, MCI filed Supplemental Documentation in Support of MCI's Application.

On May 24, 1985, the Public Staff filed a motion stating that the information contained in MCI's Supplemental Documentation is generally satisfactory and in compliance with the Commission's generic Order in Docket No. P-100, Sub 72. However, the Public Staff indicated that MCI's proposed tariff as revised contains features that are unacceptable to the Public Staff. In lieu of an evidentiary hearing, the Public Staff requested that the Commission issue an Order establishing a ten (10) day period for the parties to file specific comments on MCI's tariffs.

On May 29, 1985, the Commission issued an Order concluding that further hearings were not necessary but allowing the parties to file comments. The Public Staff, Attorney General, and Southern Bell filed comments regarding MCI's supplemental filing and tariffs.

The Commission having reviewed the entire record in this proceeding now makes the following

FINDINGS OF FACT

1. MCI Telecommunications Corporation is regulated as a common carrier by the Federal Communications Commission (FCC) and seeks a certificate of public convenience and necessity to provide interLATA long distance telecommunications services as a public utility in North Carolina on an intrastate basis. MCI presently operates an interstate network within the bounds of North Carolina.

2. MCI filed Supplemental Documentation and proposed tariffs in support of its application on May 6, 1985.

3. MCI is fit, capable, technically qualified, and financially able to render interLATA long distance telecommunications services as a public utility in the State of North Carolina.

4. The interLATA long distance telecommunications services proposed by MCI in North Carolina are required to serve the public interest effectively and adequately and will not jeopardize reasonably affordable local exchange service.

5. MCI agrees to abide by all applicable rules and regulations of the Commission and the findings, conclusions, terms, and conditions set forth in all applicable Commission Orders.

6. MCI agrees to compensate the local exchange telephone companies for revenue losses resulting from the completion of unauthorized or incidental intraLATA calls by its customers pursuant to the compensation plan adopted by the Commission in Docket No. P-100, Sub 72.

7. MCI proposes to reduce the intrastate access minutes by 15% and assign this 15% deduction to the interstate jurisdiction.

8. MCI proposes to offer a credit card calling service plan which provides that, if a customer places a credit card phone call from certain cities in North Carolina, that customer pays a lower rate than if the credit card call is placed from other places in North Carolina where the call comes into MCI's system over an 800 number.

9. The filed tariffs of MCI do not include a 50% discount from applicable interLATA long distance charges for certified hearing or speech impaired customers who communicate on the telephone by use of a special telecommunications device.

WHEREUPON the Commission reaches the following

CONCLUSIONS

Based upon the foregoing findings of fact and the entire record in this proceeding, the Commission concludes that MCI should be granted a certificate of public convenience and necessity pursuant to G.S. 62-110 to provide interLATA long distance telecommunications services as a public utility in North Carolina and that the Company's Tariff NCUC No. 1 filed in this docket on May 6, 1985, should be approved subject to the following terms and conditions:

MCI proposes that, for reporting and access charge purposes, the "apparent" intrastate minutes on its network be discounted by 15% to account for certain minutes that are allegedly interstate in nature.

MCI gives the following rationale for proposing the discount: In order to pay interstate and intrastate access charges, MCI must compute the amount of minutes of use of its system each month that is allocable to each jurisdiction. Due in part to the lack of Automatic Number Identification (ANI) on Feature Group A service, however, MCI cannot measure precisely the quantity of minutes which should be allocated to interstate jurisdiction and intrastate jurisdiction, respectively. By using billing records based on customers' addresses, MCI is able to estimate the approximate allocation.

MCI described two types of situations in which customer minutes may appear to be intrastate minutes on billing records but may instead be interstate minutes. These two situations involve "leaky" PBXs and resellers. According to MCI witness Miller, the "leaky" PBX phenomenon occurs when a private-line call is placed from out of state to a North Carolina PBX, which then completes the call to another location in North Carolina. When the North Carolina portion of the telephone call is completed over MCI's system, MCI's customer billing record would reflect that call as an intrastate call even though the call was interstate in nature. The second situation involves customers who may dial from out of state into MCI's network in North Carolina and then complete that call in North Carolina. As in the "leaky" PBX situation, MCI's billing

record would reflect that call as an intrastate call even though the call in fact is an interstate call. MCI contends that both these situations occur because MCI does not know where a call originates and can only use the point of entry on its system in its initial determination of which jurisdictional access charge should apply.

MCI since May 25, 1984, has reported access minutes in accordance with the National Exchange Carriers Association (NECA) tariff. In so doing, 15% of the "apparent" intrastate minutes are allocated to the interstate jurisdiction. MCI relies on the 15% allocation factor as its best estimate on a nationwide basis. MCI states that this estimate includes all factors related to MCI's percentage of interstate use, including factors which might tend to make an intrastate call look like an interstate call. Moreover, MCI contends that the allocation of "apparent" intrastate minutes to the interstate jurisdiction affects only a small percentage of MCI's business in North Carolina. MCI gives the following example to support its contention: Since MCI's intrastate business in North Carolina is approximately 20% of its total interstate and intrastate business, allocation of 15% of the intrastate business results in only 3% of the overall traffic being moved from the intrastate jurisdiction. Hence, MCI contends that the impact of this allocation is minuscule in relation to the total amount of MCI's business which originates within the State of North Carolina.

The Attorney General strongly opposed this proposal alleging that it does not attempt to reflect true calling patterns in North Carolina, that it violates the spirit of the Commission Order in Docket P-100, Sub 72, allowing telephone long-distance competition in this jurisdiction, and that it requests preferential treatment not requested or granted other long-distance telephone common carriers in this jurisdiction.

The Attorney General asserts that the proposal to discount minutes of use by 15% is a policy that MCI has vigorously pursued in other states and at the national level. Apparently disagreeing with state regulatory decisions which required it to sample and report actual intrastate/interstate minutes of use, MCI petitioned the Federal Communications Commission on September 7, 1984, to preempt state jurisdiction over the allocation of OCC access minutes of use between intrastate and interstate jurisdictions and to preempt state jurisdictional reporting requirements. This petition was vigorously opposed by 18 of 22 commentators including the Kentucky Public Service Commission, the Attorney General of Ohio, United Telephone System, Inc., the Pennsylvania Public Utility Commission, the Attorney General of North Carolina, Bell Atlantic, AT&T, Southwestern Bell, and representatives of the states of Oklahoma, Colorado, Wisconsin, Iowa, New York, West Virginia, Mississippi, and California. Most commentators in opposition to the petition pointed out that MCI had presented no factual basis for its request for preemption. The FCC has so far declined to preempt state jurisdiction over this matter.

The Commission takes judicial notice of the testimony of witness Michael A. Beach (Director, State Policy, MCI), before the Missouri Public Utilities Commission August 6, 1984, relating to the derivation of the 15% allocation number by MCI (Exhibit B). The testimony of witness Beach tends to substantiate the assertion made by the Public Staff, Attorney General, and AT&T that the 15% discount does not reflect true calling patterns in North Carolina.

Furthermore, AT&T indicates that MCI can determine whether calls originate and terminate in North Carolina for billing purposes. Moreover, AT&T contends that the "leaky PBX" phenomenon referred to by MCI is equally applicable to AT&T and its customers; therefore, MCI should not be allowed a 15% discount on the "leaky PBX" theory.

The Commission concludes that the Applicant's 15% discount proposal is inconsistent with the intent of the Commission Order in Docket P-100, Sub 72, which allows long distance telephone competition so long as reasonably affordable local telephone rates are not jeopardized. By arbitrarily assigning 15% of intrastate use to interstate allocation without sampling, MCI would discount the intrastate access charge dollars it must pay the local exchange companies, and reduce intrastate revenue from what it otherwise might be. The Commission cannot conclude that such a discount will not jeopardize reasonably affordable local exchange service. Nor can the Commission conclude that MCI should be treated differently from other interLATA telecommunications carriers. Only MCI, of all OCCs and resellers who have so far applied for certification in North Carolina, has requested a set discount of intrastate minutes of use. AT&T, the Public Staff, and the Attorney General assert that the 15% discount proposed by MCI is unsupported by any study or written analysis but is merely based on an assertion by MCI that possibly certain calls billed as intrastate may actually originate or terminate in another jurisdiction. Although the Commission finds some merit in the contentions made by MCI, it is the conclusion of this Commission that the position stated by the Attorney General, Public Staff, and AT&T represents sounder principle. Therefore, the Commission concludes that the proposal by MCI to discount by 15% the "apparent" intrastate minutes of use should be denied.

In Section C-3.03 of MCI's tariff filed May 6, 1985, MCI sets forth its proposal relating to credit card service (Exhibit A, page 3). In essence, MCI's Option B (or credit card) calling service plan provides that if a customer places a credit card phone call from certain cities in North Carolina, that customer pays a lower rate than if the credit card call is placed from other places in North Carolina where the call comes into MCI's system over an 800 number.

The Public Staff and Attorney General opposed the proposed Option B of MCI's tariff, Section C-3.03 believing that the rates are geographically deaveraged. For example, a credit card call from Raleigh would cost less than a call with the same duration, distance, and time of day made from other cities which MCI serves. The Public Staff contends that this differential in rates conflicts with the Commission's policy of maintaining uniform toll rates. The Public Staff recommended that Option B should be revised to eliminate the differential.

MCI indicates that both the Public Staff and the Attorney General misconstrue the nature of the services which are being offered. MCI discusses the meaning of the above-mentioned tariff and example as follows: A caller in Raleigh may dial MCI's local access number (950-1022) directly and will be charged for a credit card call. That same caller in Raleigh may dial a toll-free 800 number to reach another MCI switch. The charge for the second type of credit card call is $1.00. Likewise, a customer outside Raleigh also must dial a toll-free 800 number to reach an MCI switch. The charge for this type of credit card call is $1.00 as well. The reason for the difference in

charge between the two types of calls is related directly to the differences in costs incurred by MCI. Thus, according to MCI, Option B reflects no more than two different credit card services, with a different set of costs offered by MCI. The Commission concludes that the proposed credit card rates are in effect deaveraged and agrees with the Attorney General that deaveraging long distance tariffs is unwise, and a contradiction of the Commission Order in Docket No. P-100, Sub 72.

MCI has not provided a special provision for hearing or speech impaired persons who use a TTD in transmitting or receiving messages. The Commission concludes that MCI should add to its tariff the discount provision with which AT&T and the local operating companies now comply. Both certificated carriers, TSI and SouthernNet, Inc., have agreed to comply with this provision.

The Commission makes the following conclusions regarding certain specific tariffs filed by MCI (Exhibit A):

In Section A of the tariff, MCI makes reference to Option C in the definition of "accounting code." There is no Option C in MCI's tariff, so this reference should be removed.

The provision on deposits in Section B.7.03 is incomplete. Commission Rule R12 clearly states when a deposit may be collected and the amount of that deposit. MCI must follow the provisions outlined in Commission Rule R12 and the tariff should so state.

Section B-7.04 is excessively broad and should be clarified. It is not sufficient to say that installations made under abnormal conditions will be subject to additional charges. The provisions of AT&T Communications' tariff Section A2.3.8 more directly address the problems broadly referred to in B-7.04 and should be used in lieu thereof.

In Section B-16, MCI should add that these charges will be filed with the North Carolina Utilities Commission. General Statute 62-138 and the public interest require that such rates be filed with the Commission.

It is unclear what is meant in Section B-15.04. This provision should either be clarified or deleted.

MCI shall abide by all applicable rules and regulations of the North Carolina Utilities Commission; and the findings, conclusions, restrictions, and conditions set forth in the "Order Authorizing Intrastate Long-Distance Competition" entered in Docket No. P-100, Sub 72, on February 22, 1985; and all other applicable Commission Orders.

MCI shall compensate the local exchange companies for revenue losses resulting from the completion of unauthorized intraLATA calls by its customers pursuant to the compensation plan adopted by the Commission in Docket No. P-100, Sub 72, until such time as the Commission authorizes intraLATA competition in North Carolina and discontinues such compensation plan upon approval of appropriate intraLATA access charges.

MCI shall not use or construct any facilities designed to bypass the access or local exchange facilities of the local exchange telephone companies.

MCI shall not hereafter abandon or discontinue service under its interLATA certificate in North Carolina, unless the Company has received approval from the Commission to do so upon such terms and conditions as the Commission may prescribe.

IT IS, THEREFORE, ORDERED as follows:

1. That MCI be, and the same is hereby, granted a certificate of public convenience and necessity pursuant to G.S. 62-110 to provide interLATA long distance telecommunications services in North Carolina subject to the following terms and conditions:

A. MCI shall abide by all applicable rules and regulations of the North Carolina Utilities Commission and the findings, conclusions, restrictions, and conditions set forth in the "Order Authorizing Intrastate Long-Distance Competition" entered in Docket No. P-100, Sub 72, on February 22, 1985; and all other applicable Commission Orders.

B. MCI shall compensate the local exchange companies for revenue losses resulting from the completion of unauthorized intraLATA calls by its customers pursuant to the compensation plan adopted by the Commission in Docket No. P-100, Sub 72, until such time as the Commission authorizes intraLATA competition in North Carolina and discontinues such compensation plan upon approval of appropriate intraLATA access charges.

C. MCI shall not use or construct any facilities designed to bypass the access or local exchange facilities of the local exchange telephone companies.

D. MCI shall not hereafter abandon or discontinue service under its interLATA certificate in North Carolina, unless the Company has received approval from the Commission to do so upon such terms and conditions as the Commission may prescribe.

E. MCI shall not reduce the apparent intrastate access minutes by 15%.

F. MCI shall delete from its tariffs all references to MCI's furnishing of terminal equipment.

G. MCI shall make tariff revisions indicated on Exhibit A and add appropriate tariffs for Commission consideration and approval designed to offer a 50% discount from applicable intraLATA long distance charges for certified hearing or speech impaired customers who communicate on the telephone by use of a special telecommunications device. Such tariffs shall be filed with all parties and three days shall be allowed for comments by the parties.

2. That this Order shall itself constitute the certificate of public convenience and necessity granted to MCI by the North Carolina Utilities Commission to provide interLATA long distance telecommunications services in North Carolina.

3. That tariffs filed by MCI under the conditions set forth in this Order shall become effective upon further order of the Commission.

4. That the Undertaking filed by MCI in this docket on May 6, 1985, be, and the same is hereby, approved.

ISSUED BY ORDER OF THE COMMISSION.
This the 9th day of July 1985.

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

EXHIBIT A
DOCKET NO. P-141
Revisions to MCI Tariffs

SECTION A - DEFINITION OF TERMS

Access Line

"A dedicated arrangement which connects a customer location to an MCI terminal location or an MCI switching center."

Revision: A dedicated arrangement leased by MCI from the local operating telephone company which connects a customer location to an MCI terminal location or an MCI switching center.

Accounting Code

"A two-digit code which is available to subscribers of Option C (MCI WATS) which enables them to identify individual users and thereby allocate the cost of their long distance service."

Revision: Delete until "Option C" is available.

SECTION B - RULES AND REGULATIONS

4. LIABILITY

.06 MCI is not liable for any defacement of, or damage to, the premises of a customer resulting from the furnishing of channel facilities or the attachment or instruments, apparatus and associated wiring furnished by MCI on such customer's premises or by the installation or removal thereof, when such defacement or damage is not the result of MCI negligence. No agents or employees of other participating carriers shall be deemed to be agents or employees of MCI.

Revisions: The Company is not liable for any defacement of or damage to the premises of a subscriber resulting from the furnishing of service when such defacement or damage is not the result of negligence of employees of the Company or agents of the Company.

7. PAYMENT ARRANGEMENTS

.02 Billing will be payable upon receipt. Interest at the rate of 1.00% per month (unless proscribed by law, in which event at the highest rate allowed by law) will accrue upon any unpaid amount commencing 35 days after date of

billing. MCI offers prepayment credits which are considered to be financial transactions and are the subject of separate letter agreements.

NOTE: MCI should follow Commission Rule R12 re: Deposits.

.03 "Applicants or customers whose financial condition is not acceptable to MCI, or is not a matter of general knowledge may be required at any time to make a deposit not to exceed three times the average bill during the preceding six month period...."

Revision: Revise pursuant to Commission Rule R12-4.

.04 The charges set forth in this tariff for channel terminations contemplate installations made in normal locations and under normal working conditions. Any installations to be made under other circumstances are subject to additional charges.

Revision: The rates and charges specified in this Tariff contemplate that all work in connection with furnishing (not repairing) or rearranging service be performed during regular working hours. Whenever a subscriber requests that work necessarily required in the furnishing (not repairing) or rearranging of his service be performed outside the Company's regular working hours or that work once begun be interrupted, so that the Company incurs costs that would not otherwise have been incurred, the subscriber may be required to pay, in addition to the other rates and charges specified in this Tariff, the amount of additional costs incurred by the Company as a result of the subscriber's special requirements.

A subscriber may also be required to pay the amount of additional costs incurred by the Company resulting from the subscriber's special requests. The subscriber will be informed of such estimated costs prior to their incurrence by the Company.

15. INTERCONNECTION WITH OTHER CARRIERS

.02 Any special interface equipment or facilities necessary to achieve compatibility between the facilities of MCI and other participating carriers shall be provided at the customer's expense. Upon customer request and acting as his authorized agent, MCI will attempt to make the necessary arrangements for such interconnection.

Revision: Delete last sentence because it relates to MCI's unregulated activities.

.04 Intercarrier connection is offered between MCI and the following and other carriers which are lawfully tariffed. If no tariff is referenced MCI maintains a contractual arrangement with that company.

Revision: Unclear statement. Clarify or Delete.

16. SPECIAL CUSTOMER ARRANGEMENTS

.01 In cases where a customer requests special arrangements which may include engineering, installation, construction, facilities, assembly, purchase or lease of facilities, and/or other special services not offered under this tariff, MCI, at its option, will provide the requested services. Appropriate recurring and/or nonrecurring charges will be developed accordingly.

Revision: Add statement: "Charges will be filed with the North Carolina Utilities Commission."

SECTION C - SERVICE DESCRIPTIONS AND RATES

1. GENERAL DESCRIPTION OF INTERCITY TELECOMMUNICATIONS SERVICES

.03 A customer may provide his own dedicated facilities to access MCI's terminal where such dedicated facilities are required.

Revision: Delete.

3. METERED USE SERVICE

.03 Option B (Credit Card)

Metered Use Service Option B is a one-way, dial-in-dial-out multipoint service. Credit card customers may originate calls from, and terminate calls to other cities within the State of North Carolina not located in the same LATA or MSA. Subscribers who originate calls from the locations listed in Section C-t, Table II can access MCI via MCI provided facilities by dialing a toll free 800 number. Two-tier pricing for both usage charges and surcharges is applicable and is based upon the two separate types of access. Option B may be provided as a Standalone Service or as an Enhanced Service. If a customer subscribes solely to Option B he will be designated as a Standalone Credit Card Customer and will be assessed a one time $10 initiation-of-service charge (Section C-3, 0331). If a customer chooses Credit Card in conjunction with, or as an enhancement to, his or her existing MCI Service (any MCI Service other than Option B), he or she will be designated as an Enhanced Credit Card customer. All credit card calls are rounded to the next higher full minute.

Revision: Revise Option B to eliminate differential.

EXHIBIT B

Testimony of Michael A. Beach, (Director, State Policy, MCI), August 6, 1984, before the Missouri PUC in TA. Nos. 84-82 and 84-114, Tr. 50-51, relating to the derivation of 15% allocation number by MCI:

Q. And what Missouri data do you rely upon to come up with that figure for Missouri?

A. The 15 percent number is not a state specific number. It's a number that would apply to each of the states.

Q. And how was that developed?

A. It was developed based on a reasonable estimate pursuant to the federal order, which says that carriers should determine a reasonable estimate of their interstate traffic.

Q. And how do you develop that reasonable estimate?

A. Based on discussions within the company on what seemed to be a reasonable amount considering the various types of calling arrangements that could create the situation for interstate calls appearing to be intrastate.

Q. So this was something that was strictly within the company you talked about among yourselves and came up with a number that you thought reasonable?

A. That's right.

Q. Is that analysis reduced to writing and is there some study that supports it that you could provide to us?

A. The analysis of the development of the 15 percent number?

Q. Yes, sir.

A. No, it's not.

DOCKET NO. P-141

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Application of MCI Telecommunications Corporation) for a Certificate of Public Convenience and) Necessity to Provide InterLATA Telecommunications) Services in North Carolina)	ORDER OVERRULING EXCEPTIONS AND AFFIRMING RECOMMENDED ORDER

HEARD IN: Commission Hearing Room, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on August 19, 1985, at 11:00 a.m.

BEFORE: Commissioner A. Hartwell Campbell, Presiding; and Commissioners Sarah Lindsay Tate, Robert O. Wells, and Julius A. Wright

APPEARANCES:

Charles Meeker and Hugh Stevens, Attorneys at Law, Sanford, Adams, McCullough & Beard, P.O. Box 389, Raleigh, North Carolina 27602
For: MCI Telecommunications Corporation

Larry B. Sitton, Smith, Moore, Smith, Schell & Hunter, Attorneys at Law, P. O. Box 21927, Greensboro, North Carolina 27420
For: GTE Sprint

Wade H. Hargrove, Tharrington, Smith & Hargrove, Attorneys at Law, P. O. Box 1151, Raleigh, North Carolina 27602
For: AT&T Communications of the Southern States, Inc.

J. Billie Ray, General Counsel, Southern Bell Telephone and Telegraph Company, 1012 Southern National Center, Charlotte, North Carolina 28230
For: Southern Bell Telephone and Telegraph Company

For the Public Staff:

Michael L. Ball, Staff Attorney, Public Staff - North Carolina Utilities Commission, P. O. Box 29520, Raleigh, North Carolina 27626-0520
For: The Using and Consuming Public

For the Attorney General:

Karen E. Long, Assistant Attorney General, North Carolina Department of Justice, P. O. Box 629, Raleigh, North Carolina 27602
For: The Using and Consuming Public

BY THE COMMISSION: On July 9, 1985, the Commission issued a "Recommended Order Granting Certificate of Public Convenience and Necessity" allowing MCI to provide interLATA telecommunications services in North Carolina.

On July 25, 1985, MCI filed "Exceptions to Recommended Order Granting Certificate of Public Convenience and Necessity" and requested oral argument before the Commission on certain provisions in the Order.

Oral argument on the exceptions was scheduled and held on August 19, 1985. Counsel for MCI, the Public Staff and the Attorney General were present and stated their respective positions. Counsel for AT&T was present but did not state a position.

Based upon a careful examination of the entire record in this proceeding, including the exceptions and oral argument of able counsel relating to the exceptions, the Commission is of the opinion, finds and concludes that all of the findings, conclusions, and decretal paragraphs contained in the Recommended Order of July 9, 1985, are fully supported by the record and should be affirmed. Accordingly, the Commission finds and concludes that the exceptions filed by MCI on July 25, 1985, should be overruled and denied.

IT IS, THEREFORE, ORDERED as follows:

1. That each of the exceptions filed in this docket on July 25, 1985, by MCI are denied; and

2. That the Recommended Order entered in this docket on July 9, 1985, is affirmed.

ISSUED BY ORDER OF THE COMMISSION.
This the 28th day of August 1985.

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

DOCKET NO. P-166

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Application of Phone America of Carolina, Inc., for a Certificate of Public Convenience and Necessity to Provide IntraLATA and InterLATA Telecommunications Services as a Public Utility Within the State of North Carolina on a Resale Basis and for the Establishment of Initial Rates	)))))	ORDER GRANTING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY SUBJECT TO COMPLIANCE WITH COMPENSATION PLAN

HEARD IN: Commission Hearing Room 217, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on Tuesday, September 24, 1985, at 2:00 p.m.

BEFORE: Commissioner Ruth E. Cook, Presiding; and Commissioners Robert K. Koger and Julius A. Wright

APPEARANCES:

For the Applicant:

Linda Marcus Daniels, Law Firm of Walter E. Daniels, P.A., Attorneys at Law, 200 Park Offices, Suite 200, P. O. Drawer 13039, Research Triangle Park, North Carolina 27709
For: Phone America of Carolina, Inc.

For Southern Bell Telephone and Telegraph Company:

J. Billie Ray, Jr., General Attorney, Southern Bell Telephone and Telegraph Company, P. O. Box 30188, 1012 Southern National Center, Charlotte, North Carolina 28230
and
Shirley A. Ransom, Attorney, Southern Bell Telephone and Telegraph Company, 675 West Peachtree Street, 4300 Southern Bell Center, Atlanta, Georgia 30375
For: Southern Bell Telephone and Telegraph Company

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

Michael W. Tye, Attorney, AT&T Communications of the Southern States, Inc., 1200 Peachtree Street, N.E., Atlanta, Georgia 30352
For: AT&T Communications of the Southern States, Inc.

For the Public Staff:

Michael L. Ball, Staff Attorney, Public Staff - North Carolina Utilities Commission, Post Office Box 29520, Raleigh, North Carolina 27626-0520
For: The Using and Consuming Public

For the Attorney General:

Jo Anne Sanford, Special Deputy Attorney General, North Carolina Department of Justice, P.O. Box 629, Raleigh, North Carolina 27602
For: The Using and Consuming Public

BY THE COMMISSION. On July 26, 1985, Phone America of Carolina, Inc., (Phone America, Applicant or Company) filed an application with the North Carolina Utilities Commission seeking a certificate of public convenience and necessity to provide intraLATA and interLATA long distance telecommunications services in North Carolina on an intrastate basis. The Commission, being of the opinion that the application affected the public interest, entered an Order in this docket on August 15, 1985 scheduling the matter for hearing on September 24, 1985, at 2:00 p.m.

Notice or petitions to intervene were filed by the Attorney General of North Carolina on August 9, 1985, by AT&T Communications of the Southern States, Inc., on September 11, 1985, and by Southern Bell Telephone and Telegraph Company on September 13, 1985. Orders allowing these interventions were subsequently entered in this docket by the Commission.

On September 17, 1985, the Attorney General filed a motion whereby the Commission was requested to require Phone America to post a bond in an amount equal to the maximum annual amount of customer deposits, customer prepaid accounts and customer paid hook-up fees as a condition to the granting of a certificate.

On September 19, 1985, Phone America filed a revised tariff for resale service and a motion to amend the Company's application for a certificate of public convenience and necessity.

The matter came on for hearing as scheduled and all parties were present and represented by counsel. The Applicant presented the testimony and exhibits of Roger Henry, President of Phone America. At the beginning of the hearing, Phone America amended and deleted those portions of the Company's application and tariff whereby the Company seeks a grant of intraLATA intrastate long distance operating authority.

On September 26, 1985, Phone America filed a motion for reconsideration in this docket whereby the Commission was requested to allow the Company to reinstate that portion of its application and tariff seeking a grant of intraLATA intrastate operating authority.

On October 25, 1985, the Public Staff filed a motion in this docket whereby the Commission was requested to require Phone America to file a plan detailing a proposed methodology for determining unauthorized intraLATA conversation minutes in compliance with the terms of the compensation plan set

forth in the "Order Authorizing Intrastate Long Distance Competition" entered in Docket No. P-100, Sub 72, on February 22, 1985.

On November 12, 1985, Phone America filed a response in opposition to the above-referenced motion of the Public Staff.

On November 25, 1985, Southern Bell filed a response in support of the Public Staff motion to require the filing of a compensation plan.

On November 25, 1985, the Commission entered an Order in this docket whereby Phone America was required to file a proposed plan for determining unauthorized intraLATA conversation minutes or appropriate affidavit. By Order dated December 9, 1985, Phone America was granted an extension of time until Wednesday, December 18, 1985, to file such compensation plan or appropriate affidavit.

On December 18, 1985, Phone America filed a proposed compensation plan for consideration by the Commission stating how the Company proposes to account for unauthorized intraLATA conversation minutes of use on a monthly basis. This proposed compensation plan was filed in response to the Commission Order previously entered in this docket on November 25, 1985.

On December 27, 1985, Phone America filed a motion in this docket whereby the Company requested authority to amend its application and Sections I.L., I.Q. and III of its proposed tariff for resale service as set forth in said motion. The Commission concludes that good cause exists to grant this motion to amend tariff.

The Commission, having carefully reviewed the entire record in this proceeding, now makes the following

FINDINGS OF FACT

1. Phone America of Carolina, Inc., seeks a certificate of public convenience and necessity to offer and provide, on a resale basis, both interLATA and intraLATA long distance telecommunications services as a public utility in North Carolina.

2. Phone America is fit, capable, technically qualified, and financially able to render interLATA and intraLATA long distance telecommunications services on a resale basis as a public utility in the State of North Carolina.

3. The long distance telecommunications services proposed by Phone America in North Carolina are required to serve the public interest effectively and adequately and will not jeopardize reasonably affordable local exchange service.

4. Phone America agrees to abide by all applicable rules and regulations of the Commission and the findings, conclusions, terms, and conditions set forth in all applicable Commission Orders.

5. Phone America will be required to compensate the local exchange telephone companies for all revenue losses resulting from the completion of unauthorized or incidental intraLATA calls made by its customers on and after

the date of this Order pursuant to the compensation plan adopted by the Commission in Docket No. P-100, Sub 72.

6. Phone America may offer, subject to prior Commission review, promotional rates which are offered on a completely non-discriminatory basis.

7. Phone America proposes to resell 800 Service (In-WATS). It is in the public interest that this should be allowed, provided that the Company pays all applicable access charges for its use of the local switched network to terminate calls originating over the resold 800 Service.

8. The revised tariff for resale service filed by Phone America on December 27, 1985, includes a 50% discount from applicable long distance charges for certified hearing or speech impaired customers who communicate on the telephone by use of a special telecommunications device and a provision for free directory assistance service for those customers who are unable to use the telephone directory. It is in the public interest that such provisions have been included by Phone America in its tariff.

9. Phone America should file an appropriate undertaking for Commission approval regarding refund of customer deposits, prepaid accounts, processing fees, and hook-up fees.

WHEREUPON, the Commission reaches the following

CONCLUSIONS

On February 22, 1985, the North Carolina Utilities Commission entered an Order in Docket No. P-100, Sub 72, entitled "Order Authorizing Intrastate Long-Distance Competition." By this Order, the Commission found that the authorization of intrastate interLATA competition by other common carriers (OCCs) and resellers in North Carolina was then in the public interest and would not jeopardize reasonably affordable local telephone service. The Commission further found that intraLATA competition would be in the public interest, subject to the resolution of certain important issues related thereto during a transition period; that intraLATA resale competition would be authorized no later than January 1, 1986; that intraLATA facilities-based competition would be authorized after a transition period of approximately two years on or about January 1, 1987; that the public interest then required that interLATA competition through resale should be limited to resale of WATS and MTS services; that intrastate interLATA Feature Group A (FGA) and Feature Group B (FGB) access charges should be discounted by 25% from Feature Group C (FGC) or premium access on an originating basis only; and that access charges for FGA/FGB on the terminating end would be the same as for FGC.

Phone America seeks authority in this docket to provide both interLATA and intraLATA long distance telecommunications services as a public utility in North Carolina. Phone America contends that it is appropriate for the Company to be granted authority for both services at this time since the Commission stated in its February 22, 1985 Order in Docket No. P-100, Sub 72, that intraLATA resale competition would be authorized no later than January 1, 1986. The Commission notes that intraLATA resale competition by resellers of WATS and MTS was in fact authorized effective January 1, 1986, by Order recently entered in Docket No. P-100, Sub 72, on December 19, 1985. Thus, after reconsideration

and for the above-stated reasons, the Commission concludes that it is entirely appropriate in this proceeding to grant Phone America a certificate of public convenience and necessity to provide both interLATA and intraLATA long distance telecommunications services as a reseller in North Carolina on the condition that the Company shall pay all compensation amounts for unauthorized intraLATA traffic which accrue on and after the date of this Order as further discussed below.

In this regard, the Commission has established a compensation plan in Docket No. P-100, Sub 72, whereby resellers are required to compensate the local exchange companies for revenue losses resulting from the completion of unauthorized intraLATA calls. Phone America did not file a proposed compensation plan or methodology to determine the unauthorized intraLATA conversation minutes on its facilities each month in conjunction with its application for a certificate. On November 25, 1985, and December 9, 1985, the Commission entered Orders in this docket requiring Phone America to file such a proposed compensation plan or affidavit for consideration by the Commission not later than December 18, 1985. On December 18, 1985, Phone America filed its proposed compensation plan for consideration by the Commission stating how the Company proposes to account for unauthorized intraLATA conversation minutes of use on a monthly basis. The Commission will defer ruling on the appropriateness of the proposed compensation plan filed by Phone America in order to allow all interested parties, including the Public Staff, Attorney General, and the LECs, a reasonable opportunity to study and evaluate such plan and to file appropriate written comments regarding the Company's proposed compensation plan. Thus, the grant of intrastate operating authority made to Phone America by this Order will be made on a conditional basis subject to the payment of appropriate compensation by the Company for all unauthorized intraLATA traffic completed by Phone America's customers on and after the date of this Order.

The Commission further concludes that, for the time being, Phone America should be required to file an undertaking to refund, rather than a bond as requested by the Attorney General, to cover any customer deposits, prepaid accounts, processing fees, and hook-up fees. This treatment is consistent with what the Commission has required from all other competing long distance carriers who have recently been certificated.

The Commission also concludes that the following specific changes and revisions must be made in Phone America's proposed tariff for resale service prior to approval thereof:

1. Phone America has now revised its proposed tariff for resale service to include a special provision for subscribers using telecommunications devices for the deaf (TDD) equipment and a directory assistance charge waiver provision for those customers who are unable to use the telephone directory. The Commission concludes that this is in the public interest.

2. The references to equipment on Page 3 under Section II.A. of the proposed tariff entitled "Description of Service" should be deleted. This section refers to the Company being able to provide adequate equipment for its services. Equipment is a deregulated item and these references should be removed from the tariff.

3. Phone America should clarify its proposed tariff provisions on special services. Under the North Carolina general statutes, the Company must file all rates regarding regulated services with the Commission and the Commission may then either approve, suspend, or disapprove the rates. If Phone America has a need to contract with a specific customer, the Company should advise the customer that the negotiated price must be filed with the Commission for review. Phone America should clarify the special service provisions in its tariff to provide that rates and terms for regulated special services must be filed with the Commission for review at least 14 days before the date upon which the proposed rates are to become effective. Upon a showing of good cause, the Commission will entertain motions on a case-by-case basis to shorten the minimum notice period when necessary to consider specific special service arrangements for regulated services on less than 14 days' notice

4. During the hearing in this docket, Phone America either proposed or agreed to amend the Company's proposed tariff as follows:

(a) By amending Section II.G. entitled "Customer Obligations" by deleting all but the first sentence from that paragraph;

(b) By deleting Section III.F. since this paragraph refers to services to be offered in the future;

(c) By amending the fifth sentence of the first paragraph of Section II.A. of the proposed tariff to read as follows: "Equal access service is available to Company's customers in the following central offices: Asheville, O'Henry Street; Asheville, Enka; Clyde, Main Street; Hendersonville, Church Street; Hendersonville, Edneyville; and Waynesville, Main Street." The sixth sentence of this section of the tariff shall be deleted;

(d) By amending the last sentence of the first paragraph of Section II.A. of the proposed tariff to read as follows: "In conjunction with its service, Company makes available a Travel Service, the Phone Home Service, for calls not originating from Customer's primary telephone, equal access, and speed dialing." The Company should also delete Section I.V. from the proposed tariff regarding the definition of "800 Incoming WATS Service"; and

(e) By amending Section II.E.1. entitled "Deposit" by adding the following sentence at the end of that section: "All deposits shall be assessed and collected in accordance with Chapter 12 of the applicable rules and regulations of the North Carolina Utilities Commission."

The Commission concludes that these proposed tariff changes are appropriate and should be approved.

5. Phone America should either delete or amend Section II.H.2.d. of the proposed tariff. This provision again references equipment which is deregulated and also refers to Company facilities. The Company has no facilities; therefore, a reference to Company facilities is improper, ambiguous, and may be misconstrued. Phone America should delete the reference to equipment from this section. The Company should also either delete the

section in its entirety regarding the reference to facilities or amend and clarify the section to provide that all facilities used for which Phone America renders a bill for payment (such as access facilities provided by the LECs) are considered to be provided by the Company whether or not such facilities are owned and operated by Phone America.

6. The Company should delete provisions 2 and 5 under Section II.I. of its proposed tariff entitled "Limitation of Company's Liability." These provisions refer to equipment which is deregulated and Company facilities of which the Applicant has none. The Commission has no jurisdiction over deregulated equipment and it is not appropriate to attempt to limit liability by tariff regarding items over which the Commission has no authority. These provisions involve contractual and civil matters and therefore should be deleted from the tariff.

7. Phone America proposes to offer promotional rates from time to time to meet competitive market conditions under Section III.H. of its tariff. The Company's tariff should be amended to provide that such promotional rates will only be offered on a completely nondiscriminatory basis for a specific period of time and shall be filed with the Commission for review at least 14 days prior to implementation.

8. Phone America should revise Section II.A. of the Company's proposed tariff to list the exchanges in which it offers service. Phone America presently only lists the counties in which the Company offers service. Since access must be obtained from the LECs on an exchange basis and since exchange boundaries and county boundaries do not normally coincide, listing of the served communities by exchange appears to be the more reasonable and accurate approach. In addition, as a matter of practicality, the Commission has compiled the areas served by all long distance carriers by exchanges. Phone America is one of only two applicants out of a total of 15 carriers who list service areas by county. Therefore, the Commission will require Phone America to revise its tariff to list the exchanges served rather than the counties.

9. Phone America should amend Section II.H.1. entitled "Cancellation by Customer" by deleting the word "written" in order to allow for other means of cancellation. The Commission does not believe that a customer should be required to give written notice of cancellation of service.

10. Phone America should revise its proposed tariff to clarify and list information regarding the timing of calls. The Company states that charges will be based on distance, time of day, and duration and that no charges will be made for calls that terminate in less then 36 seconds after connection. However, it is unclear when the timing of a call starts (e.g., when the customer accesses the Company's switch, when the called party answers, etc.) and ends. The Commission believes that because the rates of Phone America are based upon the duration of a call, it is essential for the tariff to state when the timing of a call begins and ends. Therefore, Phone America should include specific information on the timing of calls in the revised tariff to be filed pursuant to this Order.

IT IS, THEREFORE, ORDERED as follows:

1. That Phone America be, and the same is hereby, granted a certificate of public convenience and necessity pursuant to G.S. 62-110 to provide interLATA and intraLATA long distance telecommunications services in North Carolina subject to the following terms and conditions:

A. Phone America shall abide by all applicable rules and regulations of the North Carolina Utilities Commission, and the findings, conclusions, restrictions, and conditions set forth in the Orders heretofore entered in Docket No. P-100, Sub 72, and all other applicable Commission Orders entered in relevant dockets.

B. Phone America shall compensate the local exchange companies for all revenue losses resulting from the completion of unauthorized intraLATA calls made by its customers pursuant to the compensation plan adopted by the Commission in Docket No. P-100, Sub 72, subject to any subsequent changes to the plan as may be approved by the Commission. Phone America shall compensate the LECs for all such intraLATA revenue losses resulting from the completion of any unauthorized intraLATA calls made by its customers on and after the date of this Order. The Commission hereby defers ruling on the appropriateness of the proposed compensation plan filed in this docket by Phone America on December 18, 1985, pending the receipt and review of any written comments regarding such plan which may be filed by the parties to this proceeding.

C. Phone America shall not use or construct any facilities designed to bypass the access or local exchange facilities of the local exchange telephone companies.

D. Phone America shall not hereafter abandon or discontinue service under its certificate in North Carolina, unless the Company has received approval from the Commission to do so upon such terms and conditions as the Commission may prescribe.

E. Phone America shall pay all applicable access charges to the LECs for the Company's use of the local switched network to terminate calls over resold 800 Service. Phone America shall report such minutes of use to the LECs and shall report to the Commission whether the Company can provide or implement procedures to provide minutes of use for traffic originating on Band 0 In-WATS as compared with Bands 1-5 In-WATS for determining apparent North Carolina intrastate calls such that access charges may be applied for completion of such calls terminating in North Carolina. Phone America shall report on a monthly basis the magnitude in minutes of use of traffic originating on its In-WATS services terminating in North Carolina and compare this with all other traffic apparently originating in North Carolina and terminating in North Carolina in order to assist the Commission in evaluating the impact of such traffic and the determination of access charges therefor.

F. Phone America shall make the tariff revisions required above and shall file such revised tariff for Commission approval. Such revised tariff shall be filed with the Commission and all parties not later than Friday, January 10, 1986. Comments regarding the revised tariff shall be filed by

the parties, if any comments there be, not later than Friday, January 17, 1986.

2. That the motion for reconsideration filed in this docket by Phone America on September 26, 1985, be, and the same is hereby, granted.

3. That this Order shall itself constitute the certificate of public convenience and necessity granted to Phone America by the North Carolina Utilities Commission to provide long distance telecommunications services on a resale basis in North Carolina.

4. That the revised tariff to be filed by Phone America under the conditions set forth in this Order shall become effective upon further Order.

5. That Phone America shall file an appropriate undertaking for Commission approval whereby the Company agrees and binds itself, if ordered to do so by the Commission, to refund any customer deposits, prepaid accounts, processing fees and hook-up fees on such terms and conditions as the Commission may prescribe to those customers who may become entitled thereto. Said undertaking to refund shall be filed in this docket not later than 20 days from the date of this Order.

6. That the motion to amend tariff filed in this docket by Phone America on December 27, 1985, be, and the same is hereby, granted.

7. That any motions not heretofore ruled upon or granted be, and the same are hereby, denied.

ISSUED BY ORDER OF THE COMMISSION.
This the 31st day of December 1985.

NORTH CAROLINA UTILITIES COMMISSION
(SEAL) Gail Lambert Mount, Deputy Clerk

DOCKET NO. P-148

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Application of Raleigh-Durham MSA Limited Partnership for a Certificate of Public Convenience and Necessity to Provide Wholesale Cellular Radio Telecommunications Service and for Approval of Initial Tariff	)	RECOMMENDED ORDER GRANTING CERTIFICATE AND ORDERING THE FILING OF REVISED TARIFFS

HEARD IN: Hearing Room 213, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on Monday, February 21, 1985

BEFORE: Sammy R. Kirby, Hearing Examiner

APPEARANCES:

For the Applicant:

A. Rodman Johnson, General Attorney, United TeleSpectrum, Inc., Post Office Box 70, Kansas City, Missouri 64141, and Robert F. Page, Crisp, Davis, Schwentker, Page & Currin, Post Office Box 751, Raleigh, North Carolina 27602
For: Raleigh-Durham MSA Limited Partnership

For the Public Staff-North Carolina Utilities Commission:

Michael L. Ball, Staff Attorney, Post Office Box 29250, Raleigh, North Carolina 27626-0520
For: The Using and Consuming Public

For the Intervenor:

Jerry B. Fruitt, Attorney at Law, Post Office Box 12547, Raleigh, North Carolina 27605
For: CARS of the Triangle, Inc.

KIRBY, HEARING EXAMINER: On November 13, 1984, Raleigh-Durham MSA Limited Partnership (hereinafter the Applicant) filed an application for a certificate of public convenience and necessity to provide cellular radio telecommunications services at wholesale in the Raleigh-Durham Standard Metropolitan Statistical Area serving the counties of Wake, Durham, and Orange and the cities of Raleigh, Durham, and Chapel Hill including the Research Triangle area. In response thereto, the Commission issued an Order on November 30, 1984, scheduling the matter for hearing at the time and place indicated above and requiring publication of notice to the using and consuming public.

On December 13, 1984, the Applicant filed a motion seeking authority to begin construction of its cellular system on an interim basis. Interim authority to begin such construction was allowed by Commission Order issued on December 21, 1984. Petitions to intervene were filed on behalf of Metro Mobile CTS, Inc., and Carolina Advanced Radio Systems (CARS) of the Triangle, Inc. These interventions were allowed by Commission Orders dated, respectively, January 9, 1985, and February 18, 1985. Metro Mobile CTS, Inc., did not participate any further; it subsequently withdrew its intervention. The Notice of Intervention of the Public Staff was recognized pursuant to G.S. 62-15.

The application came on for hearing on February 21, 1985, as previously scheduled and noticed. The Applicant presented the testimony and exhibits of Mr. Robert J. Marino, President of United TeleSpectrum, Inc., the general or managing partner of the Raleigh-Durham MSA Limited Partnership; Mr. Robert Baranek, Director-Administration for United TeleSpectrum; and Mr. Harry S. Midgley, Engineering Manager for United TeleSpectrum. No evidence, other than evidence on cross-examination, was presented by either the Public Staff or the Intervenor. Following the close of the hearings each party was afforded the opportunity to file a proposed order and a brief.

Based upon the verified application, the testimony and exhibits presented at the hearing, the proposed orders and briefs, and the entire record in this proceeding, the Examiner now makes the following

FINDINGS OF FACT

1. The Applicant is a limited partnership organized under the laws of the State of Delaware. United TeleSpectrum, Inc., is the general partner and Carolina Cellular Radio Telephone Systems, Inc., Bell South Mobility, Inc., and GTE Mobilnet, Inc., are the limited partners. Applicant proposes to provide cellular mobile radio telephone service at wholesale in the Raleigh-Durham metropolitan statistical area serving the counties of Wake, Durham, and Orange.

2. The FCC has preempted the states with respect to the market structure pursuant to which cellular mobile radio telephone service will be offered. The FCC has reserved to the states jurisdiction with respect to the charges, classifications, practices, services, facilities, and regulations for service.

3. Applicant has been designated and licensed by the FCC as the wireline carrier authorized to provide cellular mobile radio telephone service in the subject service area.

4. Applicant is financially and technically qualified to provide cellular mobile radio telephone services in the subject service area.

5. Applicant should be granted a certificate of public convenience and necessity authorizing it to provide cellular mobile radio telephone service on a wholesale basis for resale in the Raleigh-Durham metropolitan statistical area as authorized by the FCC.

6. Applicant's proposed tariff must be modified in the manner and for the reasons specified in the following discussions of the evidence and the conclusions for this finding. The proposed tariff, as so modified, should be approved.

7. The Applicant's proposal to bypass the toll facilities to complete land-to-mobile and mobile-to-land calls should be denied until a determination can be made of whether or not the proposal should be implemented and, if so, what charges should apply to the Applicant for the use of local telephone company facilities and what additional compensation, if any, should be charged by the local telephone companies for the resulting loss of intraLATA MTS revenue.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 1

The evidence supporting this finding of fact is contained in the application as filed and in the testimony of witness Marino. This finding is uncontested.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 2

By a series of recent Orders, The FCC has specified certain aspects of the way in which cellular mobile radio telephone service will be provided to the public. See An Inquiry Into The Band 825-845 MHZ and 870-890 MHZ for

Cellular Communications System; and Amendment of Parts 2 and 22 of the Commission's Rules Relative to Cellular Communications Systems (CC Docket No. 79-318) 86 F.C.C.2d. 469 (1981) ("Final Decision"), modified 89 F.C.C.2d 58 (1982) ("Reconsideration Order"), and further modified FCC 82-308 (released July 8, 1982) ("Further Reconsideration Order"). By these orders, the FCC has found that there is an immediate need for cellular mobile radio telephone service, that two blocks of frequencies should be reserved for this service, and that the service should be provided in each metropolitan statistical area by two competing carriers--one a wireline carrier and the other a nonwireline carrier. The decisions of the FCC provide for resale of the services provided by the two competing carriers and FCC licensing of the carriers prior to state certification. They recognize complementary state certificate procedures that do not frustrate the federal purposes. Specifically, the FCC has reserved to the states jurisdiction with respect to the charges, classifications, practices, services, facilities, and regulations for service by the licensed carriers.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 3

The evidence supporting this finding of fact is contained in the FCC's Approval of Cellular Settlement Raleigh-Durham, North Carolina Wireline Partnership Agreement, dated October 9, 1984, a copy of which was attached as Exhibit 4(a) to the application which was filed by Applicant on November 13, 1984, and which was discussed in the testimony of witness Marino.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 4

The evidence for this finding of fact is contained in the application and in the testimony of witnesses Moreno and Baranek. United TeleSpectrum, Inc., is a wholly owned subsidiary of United Telecommunications, Inc. United Telecommunications is a holding company with assets in excess of five billion dollars and annual revenues in excess of two billion dollars. United Telecommunications has indicated that it would provide a line of credit far in excess of the capital needs and operating losses expected to be incurred in the initial years of operation of this cellular system. By the limited partnership agreement, United TeleSpectrum is authorized to make expenditures on behalf of the partnership, to call for capital contributions from the limited partners, and to reduce the share of the limited partners if they fail to make the required contributions. United TeleSpectrum will operate the cellular system, and it has available to it management expertise, experienced personnel, and other necessary resources to provide cellular mobile radio telephone service to the public on a continuing basis.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 5

Having found that the FCC has preempted the states with respect to the market structure pursuant to which cellular mobile radio telephone service will be offered, that Applicant has been designated and licensed by the FCC as the wireline carrier authorized to provide this service, and that Applicant is financially and technically qualified to provide this service, the Commission concludes that a certificate of public convenience and necessity should be issued to the Applicant authorizing it to provide cellular mobile radio telephone service on a wholesale basis in the Raleigh-Durham metropolitan statistical area as authorized by the FCC.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 6

The evidence supporting this finding of fact is contained in the testimony and cross-examination of witnesses Marino and Baranek.

The terms of Applicant's proposed rates and tariff were the primary issues contested by the parties in this case. This is an area over which the Commission clearly has jurisdiction, and the Hearing Examiner finds that certain aspects of Applicant's proposed rates and tariff must be modified as herein discussed. Except as ordered herein, the remaining portions of the proposed rates and tariff have been considered by the Hearing Examiner and have been found just and reasonable at this time.

The Hearing Examiner finds that the following aspects of Applicant's proposed rates and tariff must be modified:

(a) The Public Staff asserts that the proposed tariff should be amended to limit wholesale customers to resellers holding a certificate of public convenience and necessity from this Commission. At the hearing, witness Marino testified that he saw no problem with such a restriction. Although the Applicant argues against such a restriction in its post-hearing brief, the Hearing Examiner concludes that such a restriction is within the Commission's authority, that the restriction will not burden the Applicant, and that the restriction will help this Commission in carrying out its certification duties. The Hearing Examiner orders that the tariff be so modified.

(b) The Public Staff objects to the Applicant offering discounts to wholesale customers who contract for service over an extended period of time. The Public Staff asserts that there may be a headstart period in the Raleigh-Durham area during which resellers who hope to establish a competing wholesale system will be reselling the wholesale services of the Applicant until the competing system is operational. The discounts proposed by the Applicant would put such resellers at a competitive disadvantage since they would not be in a position to contract for the longer periods of time. The Hearing Examiner agrees. The Examiner concludes that the scheme of allowing discounts for increased contract periods is anti-competitive and discriminatory during the headstart period and must be removed from Applicant's proposed tariff. This objection will no longer exist after the competing nonwireline system becomes operational. If Applicant wishes to reinstate these discounts at that time, it can make application to the Commission.

(c) Applicant proposed a range of minimum and maximum rates within which its actual rates could fluctuate without further action by the Commission. Applicant filed an exhibit termed its Wholesale Price List setting forth the rates, within the range, that it intended to charge initially. The Public Staff asserts that this scheme is inconsistent with our statutes, and the Hearing Examiner agrees.

Any change of rates must be undertaken in the context of our statutes. G.S. 62-134(a) provides that no public utility shall make any change of rates except after 30 days' notice to the Commission and such further notice as the Commission may order. However, the statute provides that the Commission may, for good cause, allow changes in rates without requiring 30 days' notice. Recognizing the competitive market structure of this industry and the resulting

need for greater rate setting flexibility than in other areas of public utility service, the Examiner will approve the rates set forth in the Applicant's Wholesale Price List as the initial rates of the Applicant subject to downward adjustment on 14 days' notice to the Commission and Applicant's wholesale customers. These rates will be subject to upward adjustments in accordance with the provisions prescribed by our statutes. The Commission retains authority to suspend any rate change and to undertake a hearing thereon. The proposed rates and tariff must be modified to reflect the rates approved herein, rather than a range of rates, and to reflect the manner in which the approved rates are subject to change.

In addition to the modifications ordered above, the Hearing Examiner notes that the Applicant's witnesses testified at the hearing that Applicant would be willing to enter into reasonable arrangements with any reseller that wishes its own transferable NXX numbers. As the Commission has ordered in other proceedings, see e.g. Docket No. P-149, the Hearing Examiner orders that as a condition of the certificate granted herein Applicant stand ready during any headstart period to enter into reasonable arrangements with any reseller that wishes its own NXX numbers. Should any controversy arise that cannot be resolved by the parties involved, the Commission stands ready to consider the matter in the context of a complaint proceeding.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 7

The Applicant proposes to provide calling throughout its service area by using its own private microwave facilities to connect its switch in Raleigh to its several cell sites and by using a Type 2A connection (a trunk side connection) to interconnect its mobile telephone switching office and Southern Bell's Raleigh tandem. Similarly, Applicant proposes to use Type 2A trunks to connect their cell sites to a central office in each local calling area, thereby making it possible through these interoffice trunks for Applicant to offer local calling throughout its service area. Both mobile-to-land and land-to-mobile calls could be made without having to access the landline toll facilities.

Since Applicant is proposing to offer long distance service within the Raleigh LATA through the use of its own facilities, its proposal is analogous in that respect to intraLATA long distance service provided by a facility-based carrier such as MCI. The Commission has considered the issue of intraLATA competition and has indicated that further hearings will be required prior to implementation and that facilities-based intraLATA competition will not be authorized before January 1, 1987. A separate generic proceeding, Docket No. P-100, Sub 79, has been established to consider the tariff provisions applicable to the facilities provided by local exchange companies to cellular carriers. A hearing is scheduled in this proceeding for June 25, 1985.

The Hearing Examiner recognizes that the FCC has required that cellular companies be given full interconnection with the landline network. This effectively requires that cellular companies be allowed to use intraLATA and interLATA MTS as well as local exchange service in the provision of their cellular service. However, the FCC has not dictated that cellular companies must be allowed to use their own facilities to provide state-prohibited intraLATA toll services.

Applicant denies that its proposed network constitutes a competitive intraLATA toll network. It cites various FCC rulings to argue that its cellular geographic service area is a "local service area" and that because cellular service is distinct from landline telephone service and is local in nature, any bypass of the MTS toll network is not a relevant consideration for this Commission. However, Applicant does not cite any ruling in which the FCC has explicitly and clearly defined the cellular geographic service area as a "local service area." Therefore, the Hearing Examiner cannot find a preemption of this Commission's authority.

The Hearing Examiner concludes that he should move cautiously in lifting current prohibitions against interLATA long distance competition and in allowing cellular companies to bypass the toll facilities of the local exchange companies. These issues can more adequately be addressed in the Commission's proceedings in the other dockets cited above. Pending those proceedings, Applicant herein should restrict its use of the local exchange facilities of any exchange, other than that in which its switching office is located, to cellular customers who choose that exchange as their local exchange, assuming that Applicant will elect to subscribe to numbers with more than one exchange. Additionally, Applicant should restrict the use of its microwave facilities to use as an alternative to private line facilities which would otherwise be required between the cell sites and the customers' side of the switching office. Long distance traffic on the exchange access side of the switching office should be handled over MTS facilities of the authorized intraLATA toll network.

IT IS, THEREFORE, ORDERED as follows:

1. That Applicant shall file with the Commission and serve upon all parties a revised version of its rates and tariffs reflecting the revisions ordered herein within two weeks of the issuing date of this Order.

2. That all parties shall have a period of one week after the filing of the revised rates and tariffs within which to file written comments thereon with the Commission.

3. That the revised rates and tariffs shall become effective upon further Order of the Hearing Examiner following consideration of the written comments of the parties; and

4. That Applicant shall be granted a certificate of public convenience and necessity authorizing it to provide wholesale cellular mobile radio telephone service in the Raleigh-Durham metropolitan statistical area upon further Order of the Hearing Examiner approving the revised rates and tariffs as provided for herein.

ISSUED BY ORDER OF THE COMMISSION.
This the 13th day of May 1985.

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

DOCKET NO. P-148

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Application of Raleigh-Durham MSA Limited Partnership for a Certificate of Public Convenience and Necessity to Provide Wholesale Cellular Radio Telecommunications Service and for Approval of Initial Tariff	)))))	FINAL ORDER RULING ON EXCEPTIONS

ORAL ARGUMENT
HEARD IN: Hearing Room 217, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on Monday, June 17, 1985

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

APPEARANCES:

For the Applicant:

A. Rodman Johnson, General Attorney, United TeleSpectrum, Inc., Post Office Box 70, Kansas City, Missouri 64141, and Robert F. Page, Crisp, Davis, Schwentker, Page & Currin, Post Office Box 751, Raleigh, North Carolina 27602
For: Raleigh-Durham MSA Limited Partnership

For the Public Staff:

Michael L. Ball, Staff Attorney, Post Office Box 29250, Raleigh, North Carolina 27626-0520
For: The Using and Consuming Public

For the Intervenor:

Jerry B. Fruitt, Attorney at Law, Post Office Box 12547, Raleigh, North Carolina 27605
For: Carolina Metronet, Inc.

BY THE COMMISSION: On May 13, 1985, Hearing Examiner Sammy R. Kirby entered a recommended order in this docket granting a certificate of public convenience and necessity to Raleigh-Durham MSA Limited Partnership ("Applicant" or "Company") to provide cellular radio telecommunications services at wholesale in the Raleigh-Durham metropolitan statistical area serving the counties of Wake, Durham, and Orange and the cities of Raleigh, Durham, and Chapel Hill, including the Research Triangle area. The Company was ordered to file revised tariffs in conformity with the pertinent provisions of the recommended order.

On May 28, 1985, the Applicant filed certain exceptions to the recommended order pursuant to G.S. 62-78 and Commission Rule R1-26 and requested oral argument thereon before the full Commission.

By Commission Orders dated June 3, 1985, and June 11, 1985, the Company's exceptions were scheduled for oral argument before the full Commission on June 17, 1985.

On June 13, 1985, Central Telephone Company and Alltel Cellular Associates of the Carolinas filed petitions in this docket whereby the Commission was requested to allow those companies to intervene and participate in the oral argument on exceptions to be held on June 17, 1985, regarding those issues common to all cellular carriers operating in North Carolina.

On June 14, 1985, the Commission entered Orders in this docket allowing Central Telephone Company and Alltel Cellular Associates of the Carolinas to intervene and participate in the oral argument on exceptions to be held on June 17, 1985.

On June 17, 1985, the Public Staff filed a motion whereby the Commission was requested to reconsider its Orders dated June 14, 1985, whereby Central and Alltel Cellular Associates were allowed to intervene in this docket and, after such reconsideration, to deny the motions made by such companies to intervene in this proceeding.

Upon call of the matter for oral argument at the appointed time and place, the following parties were represented by counsel: Raleigh-Durham MSA Limited Partnership; the Public Staff; Carolina Metronet, Inc.; Greensboro Cellular Telephone Company; Alltel Cellular Associates of the Carolinas; Central Telephone Company; and Metro Mobile CTS, Inc. As the first order of business, the Commission heard oral argument from all parties on the Public Staff's motion to reconsider, which motion was thereafter granted by the Commission. The Commission then heard oral argument from the parties regarding the exceptions filed in this docket by Raleigh-Durham MSA Limited Partnership.

Subsequent to the oral argument, the Commission entered an Order in this docket on July 8, 1985, whereby the Public Staff was requested to file comments regarding the offer of the Applicant during oral argument to file an appropriate undertaking on guarantee pending the outcome of Docket No. P-100, Sub 79, as a condition to allowing the Company to fully utilize its microwave system at such time as that system becomes operable.

On July 12, 1985, the Public Staff filed its comments in response to the Commission Order dated July 8, 1985.

On July 19, 1985, Raleigh-Durham MSA filed a response to the above-referenced comments filed by the Public Staff.

Based upon a careful consideration of the entire record in this proceeding, including the recommended order, the exceptions filed by the Applicant and the oral argument heard thereon from the parties, the Commission concludes that the exceptions filed by the Raleigh-Durham MSA Limited Partnership should be granted in part and denied in part and that the recommended order entered in this proceeding on May 13, 1985, should be affirmed in part and modified in part. In this regard, the Commission reaches the following conclusions regarding the exceptions carried forward by the Applicant:

A. The discount tariff provision proposed by the Applicant for wholesale customers who contract for service over an extended period of time should be denied without prejudice and should be removed from the Company's proposed tariffs during the cellular start-up or headstart period until such time as the competing nonwireline system to be operated in the Raleigh-Durham area by Carolina Metronet, Inc., becomes operational. Carolina Metronet, Inc., is the competing nonwireline carrier certificated by the FCC. Based upon testimony given by Carolina Metronet, Inc., in Docket No. P-153, the Commission expects the competing nonwireline system to be operational not later than January 1, 1986, and hopefully before. Therefore, the Applicant's assertion that the "duration" of the headstart period was not specified by the Hearing Examiner is clearly without merit. The recommended order states that Raleigh-Durham MSA can refile its proposed discount tariff at such time as the competing nonwireline system to be operated by Carolina Metronet, Inc., becomes operational, thus signaling the end of the headstart period. The Applicant's exceptions regarding this issue are without merit and should be denied. Nevertheless, denial of this proposed tariff provision is also made without prejudice to the right of Raleigh-Durham MSA to refile same if any undue or unwarranted delay should become apparent with respect to the construction of the Carolina Metronet cellular system which would serve to unreasonably lengthen the headstart period.

B. The Applicant has also filed exceptions with respect to finding of fact number 7 of the recommended order and the evidence and conclusions set forth in support thereof. Finding of fact number 7 provides as follows:

"7. The Applicant's proposal to bypass the toll facilities to complete land-to-mobile and mobile-to-land calls should be denied until a determination can be made of whether or not the proposal should be implemented and, if so, what charges should apply to the Applicant for the use of local telephone company facilities and what additional compensation, if any, should be charged by the local telephone companies for the resulting loss of intraLATA MTS revenue."

The Commission concludes that the above-quoted finding of fact should be rescinded and amended to read as follows:

7. Raleigh-Durham MSA Limited Partnership is authorized to fully utilize its proposed microwave system to complete calls within its cellular service area at such time as that system becomes operational, subject to the filing of an appropriate undertaking for Commission approval whereby the Company agrees to maintain all necessary records and to compensate the appropriate local telephone companies in such manner as the Commission may determine reasonable in Docket No. P-100, Sub 79.

The Commission is of the opinion that finding of fact number 7 as set forth in the recommended order should be rescinded and amended as set forth above and that the evidence and conclusions for such finding of fact should also be rescinded for the reasons generally set forth by the Applicant during

oral argument on June 17, 1985, and in its response filed in this docket on July 19, 1982. The Applicant's offer to file an appropriate undertaking or guarantee pending the outcome of Docket No. P-100, Sub 79, as a condition to being authorized to fully utilize its microwave system at such time as that system becomes operational is clearly reasonable and sensible from a regulatory standpoint. Thus, Applicant's exceptions regarding this issue have merit and should be granted.

Accordingly, the Commission concludes that the recommended order entered in this docket on May 13, 1985, should be affirmed in part and modified in part in conformity with the provisions of this Order.

IT IS, THEREFORE, ORDERED as follows:

1. That finding of fact number 7 of the recommended order entered in this docket on May 13, 1985, be, and the same is hereby, rescinded and amended to read as follows:

> 7. Raleigh-Durham MSA Limited Partnership is authorized to fully utilize its proposed microwave system to complete calls within its cellular service area at such time as that system becomes operational, subject to the filing of an appropriate undertaking for Commission approval whereby the Company agrees to maintain all necessary records and to compensate the appropriate local telephone companies in such manner as the Commission may determine reasonable in Docket No. P-100, Sub 79.

2. That the evidence and conclusions for finding of fact number 7 set forth on pages 5 and 6 of the recommended order be, and the same is hereby, rescinded

3. That Raleigh-Durham MSA Limited Partnership shall file an appropriate undertaking in conformity with the provisions of this Order for Commission approval not later than 14 days from the date of this Order.

4. That, except as modified and amended as set forth hereinabove, the recommended order entered in this docket on May 13, 1985, be, and the same is hereby, otherwise affirmed.

5. That, except as allowed hereinabove, the exceptions filed in this docket by Raleigh-Durham MSA Limited Partnership be, and the same are hereby, denied.

ISSUED BY ORDER OF THE COMMISSION.
This the 7th day of August 1985.

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

Commissioner Hipp did not participate in the decision of this case.

DOCKET NO. P-146

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Amended Application of SouthernNet of North Carolina, Inc., for a Certificate of Public Convenience and Necessity to Provide Wholesale Intrastate InterLATA Telecommunications Services in North Carolina	)	ORDER GRANTING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

HEARD IN: Commission Hearing Room 217, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on Wednesday, May 15, 1985, at 9:30 a.m.

BEFORE: Chairman Robert K. Koger, Presiding; and Commissioners Edward B. Hipp and Charles E. Branford

APPEARANCES:

For the Applicant:

Jerry B. Fruitt, Attorney at Law, P. O. Box 12547, Raleigh, North Carolina 27605
For: SouthernNet of North Carolina, Inc.

For the Public Staff:

Michael L. Ball, Staff Attorney, Public Staff - North Carolina Utilities Commission, P. O. Box 29520, Raleigh, North Carolina 27626-0520
For: The Using and Consuming Public

For the Attorney General:

Karen E. Long, Assistant Attorney General, North Carolina Department of Justice, P. O. Box 629, Raleigh, North Carolina 27602
For: The Using and Consuming Public

For the Intervenors:

J. Billie Ray, Jr., General Attorney, Southern Bell Legal Department, 1012 Southern National Center, Charlotte, North Carolina 28230
For: Southern Bell Telephone and Telegraph Company

Lawrence E. Gill, Solicitor, Southern Bell Legal Department, 4300 Southern Bell Center, Atlanta, Georgia 30375
For: Southern Bell Telephone and Telegraph Company

Mark J. Prak, Tharrington, Smith & Hargrove, Attorneys at Law, P. O. Box 1511, 209 Fayetteville Street Mall, Raleigh, North Carolina 27602
For: AT&T Communications of the Southern States, Inc.

BY THE COMMISSION: This proceeding was initiated by SouthernTel, Inc., on March 15, 1985, by the filing of an application with the North Carolina Utilities Commission seeking a certificate of public convenience and necessity to provide intrastate interexchange telecommunications services throughout North Carolina.

On April 22, 1985, SouthernTel, Inc., filed a motion to amend application and request for hearing date, thereby requesting authority to change the name of the applicant to SouthernNet of North Carolina, Inc., and to apply solely for wholesale operating authority to construct and maintain a facilities-based intrastate long-distance telecommunications system.

On May 1, 1985, the Commission entered an Order in this docket granting SouthernTel's motion to amend its application and scheduling a public hearing for Wednesday, May 15, 1985. The Applicant's name was then changed to SouthernNet of North Carolina, Inc. (SNC, Company, or Applicant).

On May 10, 1985, Southern Bell Telephone and Telegraph Company (Southern Bell) filed a petition for leave to intervene.

On May 14, 1985, the Commission entered an Order allowing Southern Bell to intervene in this proceeding, and the Attorney General filed a notice of intervention on behalf of the using and consuming public pursuant to G.S. 62-20. On this same date, the Attorney General also filed a motion whereby the Commission was requested to require SNC to post a bond in an amount equal to the maximum annual amount of customers' deposits, prepaid accounts, and customer paid hook-up fees (if any) as a condition of this certification.

Upon call of the matter for hearing at the appointed time and place, SNC presented testimony in support of its application by witness David H. Jones, Director of Regulatory Affairs and Tariffs, SouthernNet, Inc. Raymond B. Vogel, Operations Manager in the Rates and Costs Department, testified on behalf of Southern Bell Telephone and Telegraph Company. No other party to the proceeding offered any testimony.

On May 22, 1985, SNC filed its official exhibits, and in response to requests made by parties at the hearing, SNC amended the proposed tariffs.

On June 5, 1985, the Public Staff filed certain comments and recommendations for consideration by the Commission regarding proposed provisions to be included in this Order.

Accordingly, the Commission now makes the following findings of fact after consideration and careful review of the entire record in this proceeding.

FINDINGS OF FACT

1. SouthernNet of North Carolina, Inc., is a North Carolina corporation which seeks a certificate of public convenience and necessity to provide interLATA intrastate telecommunications services on a wholesale basis as a public utility in the State of North Carolina.

2. SNC is fit, capable, technically qualified, and financially able to render interLATA long-distance telecommunications services as a public utility in the State of North Carolina.

3. The interLATA long distance telecommunications services proposed by SNC in North Carolina on a wholesale basis are required to serve the public interest effectively and adequately and will not jeopardize reasonably affordable local exchange service.

4. SNC agrees to abide by all applicable rules and regulations of the Commission and the findings, conclusions, terms, and conditions set forth in all applicable Commission orders.

5. SNC has represented that it will provide service only to other carriers or resellers who would be subject to the reporting and other requirements associated with the Commission's intraLATA compensation plan. Therefore the Company requests a waiver of those requirements. SNC further requests that since it will not be purchasing access service from the local exchange companies, it should also be relieved from those reporting and other requirements associated with the payment of access charges. SNC's requests for waiver should be granted on the condition that the Company's certificated operating authority will be limited to the provision of interLATA services only to other carriers certificated by the Commission and on the further condition that the Company should be prohibited from subscribing to access services from the local exchange companies.

WHEREUPON, the Commission reaches the following

CONCLUSIONS

Based upon the foregoing findings of fact and the entire record in this proceeding, the Commission concludes that SouthernNet of North Carolina, Inc., should be granted a certificate of public convenience and necessity pursuant to G.S. 62-110 to provide interLATA long-distance telecommunications services on a wholesale basis as a public utility in North Carolina, subject to the following terms and conditions:

A. SNC shall abide by all applicable rules and regulations of the North Carolina Utilities Commission and the findings, conclusions, restrictions, and conditions set forth in the "Order Authorizing Intrastate Long-Distance Competition" entered in Docket No. P-100, Sub 72, on February 22, 1985, and all other applicable Commission Orders.

B. SNC shall not use or construct any facilities designed to bypass the facilities of the local exchange telephone companies.

C. SNC shall not hereafter abandon or discontinue service under its interLATA certificate in North Carolina, unless the Company has received approval from the Commission to do so upon such terms and conditions as the Commission may prescribe.

As set forth above in Finding of Fact No. 5, SNC has represented itself as a "wholesaler" or "carrier's carrier," which will serve the public only through

resellers, and the Company has therefore requested relief from various reporting and other requirements for purposes of access charges and the intraLATA compensation plan. So long as the carriers who resell the services of SNC properly report and pay both access charges and compensation monies, no harm will be done to the local exchange companies or their ratepayers by such a procedure. In order to ensure that all access and conversation minutes are properly reported and all appropriate monies paid, the Commission concludes that SNC's certificated intrastate operating authority should be limited to the provision of service to carriers certificated by this Commission. Those carriers will be responsible for purchasing all access services used to provide service to the public over the facilities of SNC, for reporting all access and conversation minutes occurring over SNC's facilities pursuant to the Commission Order in Docket No. P-100, Sub 72, and for making all payments thereunder. Inasmuch as SNC will be paying no compensation monies, any interLATA calls completed by a reseller over the facilities of SNC will be subject to the payment of compensation under the intraLATA compensation plan. The Commission further concludes that as a condition to the granting of the relief or waiver sought in this docket by SNC, the Company should be required to inform its customers of their reporting and payment obligations under the terms of this Order and the Order in Docket No. P-100, Sub 72.

IT IS, THEREFORE, ORDERED as follows:

1. That SouthernNet of North Carolina, Inc., be, and the same is hereby, granted a certificate of public convenience and necessity pursuant to G.S. 62-110 to provide interLATA long distance telecommunications services as a wholesaler in North Carolina subject to the following terms and conditions:

A. SNC shall abide by all applicable rules and regulations of the North Carolina Utilities Commission and the findings, conclusions, restrictions, and conditions set forth in the "Order Authorizing Intrastate Long-Distance Competition" entered in Docket No. P-100, Sub 72, on February 22, 1985, and all other applicable Commission Orders.

B. SNC shall be relieved of the requirements to report intrastate access minutes and intraLATA conversation minutes and to pay access charges and compensation thereon. The Company shall provide intrastate services only to carriers certificated by this Commission, shall not purchase any access services, and shall inform each carrier subscribing to its services that it is said carrier's responsibility to make all reports and pay all monies required by this Commission in Docket No. P-100, Sub 72, with respect to services provided through resale of services provided by SNC.

C. SNC shall not use or construct any facilities designed to bypass the facilities of the local exchange telephone companies.

D. SNC shall not hereafter abandon or discontinue service under its interLATA certificate in North Carolina, unless the Company has received approval from the Commission to do so upon such terms and conditions as the Commission may prescribe.

2. That this Order shall constitute the certificate of public convenience and necessity granted to SNC by the North Carolina Utilities Commission to provide interLATA long distance telecommunications services in North Carolina.

3. That SNC shall file an appropriate undertaking for Commission approval whereby the Company agrees and binds itself, if ordered to do so by the Commission, to refund any customer deposits, prepaid accounts, and hook-up fees on such terms and conditions as the Commission may prescribe to those customers who may become entitled thereto. Said undertaking to refund shall be filed in this docket not later than ten (10) days from the date of this Order.

4. That SNC shall, prior to providing any services under the certificate of public convenience and necessity granted by this Order, file appropriate tariffs for consideration and approval by the Commission. As part of such proposed tariff filing, SNC shall specify the areas and/or routes to be served by the Company in North Carolina and the effective date of the proposed services.

ISSUED BY ORDER OF THE COMMISSION.
This the 7th day of June 1985.

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

DOCKET NO. P-156

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Application of SouthernNet Services, Inc.,) for a Certificate of Public Convenience and) Necessity to Provide InterLATA Long Distance) Telecommunications Services as a Reseller in) North Carolina on an Intrastate Basis)	ORDER GRANTING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

HEARD IN: Commission Hearing Room 217, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on Wednesday, May 15, 1985, at 9:30 a.m.

BEFORE: Chairman Robert K. Koger, Presiding; and Commissioners Edward B. Hipp and Charles E. Branford

APPEARANCES:

For the Applicant:

Jerry B. Fruitt, Attorney at Law, P. O. Box 12547, Raleigh, North Carolina 27605
For: SouthernNet Services, Inc.

For the Public Staff:

Michael L. Ball, Staff Attorney, Public Staff - North Carolina Utilities Commission, P. O. Box 29520, Raleigh, North Carolina 27626-0520
For: The Using and Consuming Public

For the Attorney General:

Karen E. Long, Assistant Attorney General, North Carolina Department of Justice, P. O. Box 629, Raleigh, North Carolina 27602 For: The Using and Consuming Public

For the Intervenors:

J. Billie Ray, Jr., General Attorney, Southern Bell Legal Department, 1012 Southern National Center, Charlotte, North Carolina 28230
For: Southern Bell Telephone and Telegraph Company

Lawrence E. Gill, Solicitor, Southern Bell Legal Department, 4300 Southern Bell Center, Atlanta, Georgia 30375
For: Southern Bell Telephone and Telegraph Company

Mark J. Prak, Tharrington, Smith & Hargrove, Attorneys at Law, P. O. Box 1511, 209 Fayetteville Street Mall, Raleigh, North Carolina 27602
For: AT&T Communications of the Southern States, Inc.

BY THE COMMISSION: This proceeding was initiated by SouthernNet Services, Inc. (SouthernNet), on April 11, 1985, by the filing of an application with the North Carolina Utilities Commission seeking a certificate of public convenience and necessity to provide interLATA long distance telecommunications services as a reseller in North Carolina on an intrastate basis.

On April 12, 1985, the Commission entered an Order in this docket scheduling a public hearing for Wednesday, May 15, 1985, to consider SouthernNet's application.

On April 17, 1985, the Attorney General filed a notice of intervention on behalf of the using and consuming public pursuant to G.S. 62-20.

On April 23, 1985, AT&T Communications of the Southern States, Inc., (AT&T) filed a petition for leave to intervene.

On April 24, 1985, Southern Bell Telephone and Telegraph Company (Southern Bell) filed a petition for leave to intervene.

On April 26, 1985, the Commission entered an Order allowing both AT&T and Southern Bell to intervene in this proceeding.

On May 14, 1985, the Attorney General filed a motion whereby the Commission was requested to require SouthernNet to post a bond in an amount equal to the maximum annual amount of customers' deposits, customer prepaid

accounts and customer paid hook-up fees (if any) as a condition of this certification.

Upon call of the matter for hearing at the appointed time and place, SouthernNet presented testimony in support of its application by witness David H. Jones, Director of Regulatory Affairs and Tariffs for SouthernNet, Inc. Raymond B. Vogel, Operations Manager in the Rates and Costs Department, testified on behalf of Southern Bell. No other party to the proceeding offered any testimony.

On May 22, 1985, in response to requests made by parties at the hearing, SouthernNet filed as late-filed exhibits certain revisions and explanations.

On June 5, 1985, the Public Staff filed certain comments and recommendations for consideration by the Commission regarding proposed provisions to be included in this Order.

Accordingly, the Commission now makes the following findings of fact after consideration and careful review of the entire record in this proceeding.

FINDINGS OF FACT

1. SouthernNet Services, Inc., is a Georgia corporation duly authorized to do business in North Carolina which seeks a certificate of public convenience and necessity to provide interLATA long distance telecommunications services as a reseller in North Carolina on an intrastate basis. SouthernNet is a reseller which, directly and through its North Carolina predecessor, Heins Systems, Inc., has provided interstate long distance telephone services in North Carolina since July 1982, using circuits and services obtained from others and switching equipment owned by the Company.

2. SouthernNet is fit, capable, technically qualified, and financially able to render interLATA long distance telecommunications services as a public utility in the State of North Carolina.

3. The interLATA long distance telecommunications services proposed by SouthernNet in North Carolina on a resale basis are required to serve the public interest effectively and adequately and will not jeopardize reasonably affordable local exchange service.

4. SouthernNet has filed appropriate tariffs for Commission consideration and approval designed to offer a 50% discount from applicable interLATA long distance charges for certified hearing or speech impaired customers who communicate on the telephone by use of a special telecommunications device.

5. SouthernNet agrees to abide by all applicable rules and regulations of the Commission and the findings, conclusions, terms, and conditions set forth in all applicable Commission Orders.

6. SouthernNet agrees to compensate the local exchange telephone companies for revenue losses resulting from the completion of unauthorized or incidental intraLATA calls by its customers pursuant to all applicable provisions of the compensation plan adopted by the Commission in Docket No. P-100, Sub 72.

WHEREUPON, the Commission reaches the following

CONCLUSIONS

Based upon the foregoing findings of fact and the entire record in this proceeding, the Commission concludes that SouthernNet Services, Inc., should be granted a certificate of public convenience and necessity pursuant to G.S. 62-110 to provide interLATA long distance telecommunications services as a reseller and public utility in North Carolina and that the Company's NCUC Tariff No. 1 filed in this docket should be approved, subject to the following terms and conditions:

A. SouthernNet shall abide by all applicable rules and regulations of the North Carolina Utilities Commission and the findings, conclusions, restrictions, and conditions set forth in the "Order Authorizing Intrastate Long-Distance Competition" entered in Docket No. P-100, Sub 72, on February 22, 1985, and all other applicable Commission Orders.

B. SouthernNet shall compensate the local exchange companies for revenue losses resulting from the completion of unauthorized intraLATA calls by its customers pursuant to all applicable provisions of the compensation plan adopted by the Commission in Docket No. P-100, Sub 72, until such time as the Commission authorizes intraLATA competition in North Carolina and discontinues such compensation plan upon approval of appropriate intraLATA access charges.

C. SouthernNet shall not use or construct any facilities designed to bypass the facilities of the local exchange telephone companies.

D. SouthernNet shall not hereafter abandon or discontinue service under its interLATA certificate in North Carolina, unless the Company has received approval from the Commission to do so upon such terms and conditions as the Commission may prescribe.

Some concern was expressed at the hearing as to whether SouthernNet Services, Inc., and its corporate affiliate, SouthernNet of North Carolina, Inc., could evade the obligation to pay intraLATA compensation through the use of their corporate structure. This concern was grounded on the request of SouthernNet of North Carolina, Inc., to be relieved of reporting and payment obligations based on its intent to market its services only through resellers, who would be subject to the reporting and payment requirements. If SouthernNet Services, Inc., were to consider itself exempt from the compensation plan under the terms of that plan by virtue of its status as a "reseller" of services of SouthernNet of North Carolina, Inc., then that concern might be well-founded. However, at the hearing, SouthernNet explicitly disclaimed any intent to evade its compensation obligation. Moreover, the Commission notes that its Order of February 22, 1985, in Docket No. P-100, Sub 72, exempted "resellers" from having to pay intraLATA compensation only when the calls were routed over "resold services" (i.e., intrastate WATS and MTS, which were the only services which that Order authorized to be resold). The concern raised in this certification proceeding highlights the fact that with the advent of competition in North Carolina, authorized intrastate telecommunications

services other than those of the established carriers may be resold. The Commission in Docket No. P-100, Sub 72, did not intend that resellers in conjunction with facilities-based carriers should be able to escape their lawful obligations. The Commission accepts the assurances of SouthernNet that such is not its intention and the Company's guarantee that such will not occur. Therefore, the Commission concludes that its decision in Docket No. P-100, Sub 72, is a sufficient protection to ensure that all appropriate reports are made and all appropriate monies paid.

IT IS, THEREFORE, ORDERED as follows:

1. That SouthernNet be, and the same is hereby, granted a certificate of public convenience and necessity pursuant to G.S. 62-110 to provide interLATA long distance telecommunications services as a reseller in North Carolina subject to the following terms and conditions:

A. SouthernNet shall abide by all applicable rules and regulations of the North Carolina Utilities Commission and the findings, conclusions, restrictions, and conditions set forth in the "Order Authorizing Intrastate Long-Distance Competition" entered in Docket No. P-100, Sub 72, on February 22, 1985, and all other applicable Commission Orders.

B. SouthernNet shall compensate the local exchange companies for revenue losses resulting from the completion of unauthorized intraLATA calls by its customers pursuant to all applicable provisions of the compensation plan adopted by the Commission in Docket No. P-100, Sub 72, until such time as the Commission authorizes intraLATA competition in North Carolina and discontinues such compensation plan upon approval of appropriate intraLATA access charges.

C. SouthernNet shall not use or construct any facilities designed to bypass the facilities of the local exchange telephone companies.

D. SouthernNet shall not hereafter abandon or discontinue service under its interLATA certificate in North Carolina, unless the Company has received approval from the Commission to do so upon such terms and conditions as the Commission may prescribe.

2. That this Order shall constitute the certificate of public convenience and necessity granted to SouthernNet by the North Carolina Utilities Commission to provide interLATA long distance telecommunications services as a reseller in North Carolina.

3. That NCUC Tariff No. 1 filed herein by SouthernNet be, and the same is hereby, approved.

4. That SouthernNet shall file an appropriate undertaking for Commission approval whereby the Company agrees and binds itself, if ordered to do so by the Commission, to refund any customer deposits, prepaid accounts, and hook-up fees on such terms and conditions as the Commission may prescribe to those

customers who may become entitled thereto. Said undertaking to refund shall be filed in this docket not later than ten (10) days from the date of this Order.

ISSUED BY ORDER OF THE COMMISSION.
This the 7th day of June 1985.

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

DOCKET NO. P-133

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Application of Telecommunications Systems, Inc., for a Certificate of Public Convenience and Necessity to Provide Telephone and Radio Common Carrier Services to the General Public, for Compensation, Between Points and Places in the State of North Carolina	))))	ORDER GRANTING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

HEARD ON RECONSIDERATION IN: Commission Hearing Room 217, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on Tuesday, April 9, 1985, at 2:00 p.m.

BEFORE: Chairman Robert K. Koger, Presiding; and Commissioners Ruth E. Cook and Charles E. Branford

APPEARANCES:

For the Applicant:

C. Dukes Scott, Willoughby & Scott, Attorneys at Law, 1430 Blanding Street, Columbia, South Carolina 29201
For: Telecommunications Systems, Inc.

For the Public Staff:

Michael L. Ball, Staff Attorney, Public Staff - North Carolina Utilities Commission, P. O. Box 29520, Raleigh, North Carolina 27626-0520
For: The Using and Consuming Public

For the Attorney General:

Karen E. Long, Assistant Attorney General, North Carolina Department of Justice, P. O. Box 629, Raleigh, North Carolina 27602
For: The Using and Consuming Public

For the Intervenors:

Wade H. Hargrove, Tharrington, Smith & Hargrove, Attorneys at Law, 209 Fayetteville Street Mall, Raleigh, North Carolina 27601
For: AT&T Communications of the Southern States, Inc.

J. B. 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

Charles C. Meeker, Sanford, Adams, McCullough & Beard, Attorneys at Law, P. O. Box 389, Raleigh, North Carolina 27602
For: MCI Telecommunications Corporation

Larry B. Sitton, Smith, Moore, Smith, Schell & Hunter, Attorneys at Law, 500 NCNB Building, 101 West Friendly Avenue, P. O. Box 21917, Greensboro, North Carolina 27420
For: GTE Sprint Communications Corporation

BY THE COMMISSION: This proceeding was originally initiated by Telecommunications Systems, Inc. ("TSI," "Company," or "Applicant") on January 22, 1982, by the filing of an application with the North Carolina Utilities Commission seeking a certificate of public convenience and necessity authorizing said Company to provide end-to-end intrastate telecommunications services throughout the State of North Carolina. Specifically, TSI requested a certificate of public convenience and necessity pursuant to G.S. 62-110 and 62-3(23) as follows:

> 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 matter originally came on for hearing March 27, 1984, before a Commission Hearing Panel consisting of Commissioner A. Hartwell Campbell, Presiding, and Commissioners Sarah Lindsay Tate and Ruth E. Cook.

Prior to the presentation of evidence at the hearing, arguments were heard on a motion made by Patterson Anserphone to dismiss the application. This motion was joined in by the Public Staff, Carolina Telephone Company and Southern Bell. After the arguments on this motion, counsel for TSI verbally amended the application and withdrew that portion of such 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 the remaining portion of the application, the Commission deferred its ruling until after the receipt of evidence and legal briefs.

TSI presented testimony in support of its application by the following witnesses: Talmadge M. Crews, Vice President of TSI; Robert J. Zuelsdorf, Director of the Economics Division at Wilbur Smith & Associates, Inc.; David B. Cohen, Senior Consultant in the Management Advisory Services Division of Deloitte, Haskins & Sells; J. Finley Lee, Ph.D., Julian Price Professor of Business Administration and Director of the Masters Program in Business Administration at the University of North Carolina at Chapel Hill; Edward F. Warren, Director of Engineering for TSI; Charles M. Alexander, Treasurer of TSI; Oscie O. Brown III, Director of Rates and Tariffs for TSI; and Walter R. Pettiss, President of TSI. In addition, several public witnesses testified in favor of TSI's application. These witnesses were as follows: Louis R. Jones, Telecommunications Analyst, Burlington Industries, Inc., testifying on behalf of the North Carolina Telecommunications Association; Don M. Shanks, Vice

President of Customer Relations with Piedmont Airlines; Larry D. Brown, Manager of Corporate Telecommunications with Cone Mills Corporation; Arthur L. Allen, Vice President of Telecommunications with Northwestern Bank; and Wilbert R. Littleton, Director of Office Automation and Telecommunication with J. P. Stevens & Co., Inc.

Central Telephone Company presented the testimony of R. Chris Harris, Manager of Operational Planning.

Carolina Telephone Company presented the testimony of Wallace O. Powers, General Network Planning Manager.

General Telephone Company of the Southeast presented the testimony of Joseph W. Wareham, Business Relations Director with the Company.

AT&T Communications of the Southern States, Inc., presented the testimony of R.E Fortenberry, Vice-President - Regulatory Affairs.

The Public Staff and Southern Bell Telephone and Telegraph Company did not present any testimony.

On June 1, 1984, the Commission entered an Order in this docket denying TSI's application for a certificate of public convenience and necessity as a matter of law.

On July 10, 1984, TSI filed a motion in this docket entitled "Petition for Reconsideration, Oral Argument and/or Rehearing" whereby TSI requested the Commission to reconsider the "Order Denying Application" entered in this docket on June 1, 1984, in view of certain amendments to G.S. 62-110 which had recently been enacted by the North Carolina General Assembly authorizing the Commission to permit intrastate long distance competition in North Carolina.

On August 28, 1984, the Commission entered an Order in this docket granting TSI's motion for reconsideration in accordance with standards and procedures to be developed in generic proceedings then pending in Docket No. P-100, Sub 72.

On February 22, 1985, the Commission entered an Order in Docket No. P-100, Sub 72, entitled "Order Authorizing Intrastate Long-Distance Competition."

On February 28, 1985, TSI filed a petition in this docket whereby the Commission was requested to grant TSI a certificate, as appropriate, to provide intrastate long distance telecommunication services in North Carolina.

On March 22, 1985, TSI filed an amendment to its petition for certificate and the affidavit of Oscie O. Brown III.

On March 25, 1985, the Public Staff filed a response in support of TSI's petition for certificate.

On March 27, 1985, the Commission entered an Order in this docket scheduling a public hearing for Tuesday, April 9, 1985, to consider TSI's petition for a certificate of public convenience and necessity to provide

interLATA long distance telecommunications services in North Carolina on an intrastate basis.

On April 1, 1985, the Attorney General filed a response in this docket in support of TSI's petition for certificate.

Upon call of the matter for hearing on reconsideration, TSI presented the testimony of Oscie O. Brown III in support of its petition for certificate. The Company offered in evidence an "Undertaking" signed by its Treasurer, Charles M. Alexander, in response to the motion of the Attorney General dated April 1, 1985, seeking an Order requiring TSI to provide an undertaking or to post a bond in an amount equal to the maximum amount of customer deposits and customer prepaid accounts that will be held by TSI.

No other party to the proceeding offered any testimony during the hearing held on April 9, 1985.

Accordingly, the Commission now makes the following findings of fact after reconsideration and careful review of the entire record in this proceeding.

FINDINGS OF FACT

1. Telecommunications Systems, Inc., is a South Carolina corporation which seeks a certificate of public convenience and necessity to provide interLATA long distance telecommunications services as a public utility in North Carolina on an intrastate basis. TSI is 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 resale services throughout the contiguious United States, District of Columbia, Hawaii and Puerto Rico.

2. TSI is fit, capable, technically qualified, and financially able to render interLATA long distance telecommunications services as a public utility in the State of North Carolina.

3. The interLATA long distance telecommunications services proposed by TSI in North Carolina are required to serve the public interest effectively and adequately and will not jeopardize reasonably affordable local exchange service.

4. TSI will file appropriate tariffs for Commission consideration and approval designed to offer a 50% discount from applicable interLATA long distance charges for certified hearing or speech impaired customers who communicate on the telephone by use of a special telecommunications device.

5. TSI agrees to abide by all applicable rules and regulations of the Commission and the findings, conclusions, terms, and conditions set forth in all applicable Commission Orders.

6. TSI agrees to compensate the local exchange telephone companies for revenue losses resulting from the completion of unauthorized or incidental intraLATA calls by its customers pursuant to the compensation plan adopted by the Commission in Docket No. P-100, Sub 72.

WHEREUPON, the Commission reaches the following

CONCLUSIONS

Based upon the foregoing findings of fact and the entire record in this proceeding, the Commission concludes that TSI should be granted a certificate of public convenience and necessity pursuant to G.S. 62-110 to provide interLATA long distance telecommunications services as a public utility in North Carolina and that the Company's Tariff NCUC No. 1 filed in this docket on March 22, 1985, should be approved, subject to the following terms and conditions:

A. TSI shall abide by all applicable rules and regulations of the North Carolina Utilities Commission and the findings, conclusions, restrictions, and conditions set forth in the "Order Authorizing Intrastate Long-Distance Competition" entered in Docket No. P-100, Sub 72, on February 22, 1985, and all other applicable Commission Orders.

B. TSI shall compensate the local exchange companies for revenue losses resulting from the completion of unauthorized intraLATA calls by its customers pursuant to the compensation plan adopted by the Commission in Docket No. P-100, Sub 72, until such time as the Commission authorizes intraLATA competition in North Carolina and discontinues such compensation plan upon approval of appropriate intraLATA access charges.

C. TSI shall not construct any facilities designed to bypass the facilities of the local exchange telephone companies.

D. TSI shall not hereafter abandon or discontinue service under its interLATA certificate in North Carolina, unless the Company has received approval from the Commission to do so upon such terms and conditions as the Commission may prescribe.

IT IS, THEREFORE, ORDERED as follows:

1. That TSI be, and the same is hereby, granted a certificate of public convenience and necessity pursuant to G.S. 62-110 to provide interLATA long distance telecommunications services in North Carolina subject to the following terms and conditions:

A. TSI shall abide by all applicable rules and regulations of the North Carolina Utilities Commission and the findings, conclusions, restrictions, and conditions set forth in the "Order Authorizing Intrastate Long-Distance Competition" entered in Docket No. P-100, Sub 72, on February 22, 1985, and all other applicable Commission Orders.

B. TSI shall compensate the local exchange companies for revenue losses resulting from the completion of unauthorized intraLATA calls by its customers pursuant to the compensation plan adopted by the Commission in Docket No. P-100, Sub 72, until such time as the Commission authorizes intraLATA competition in North

Carolina and discontinues such compensation plan upon approval of appropriate intraLATA access charges.

C. TSI shall not construct any facilities designed to bypass the facilities of the local exchange telephone companies.

D. TSI shall not hereafter abandon or discontinue service under its interLATA certificate in North Carolina, unless the Company has received approval from the Commission to do so upon such terms and conditions as the Commission may prescribe.

2. That this Order shall itself constitute the certificate of public convenience and necessity granted to TSI by the North Carolina Utilities Commission to provide interLATA long distance telecommunications services in North Carolina.

3. That Tariff NCUC No. 1 filed herein by TSI on March 22, 1985, be, and the same is hereby, approved.

4. That the "Undertaking" filed by TSI in this docket on April 9, 1985, be, and the same is hereby, approved.

ISSUED BY ORDER OF THE COMMISSION.
This the 12th day of April 1985.

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

DOCKET NO. P-167

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Application of TelaMarketing Communications of Charlotte for a Certificate of Public Convenience and Necessity to Provide IntraLATA and InterLATA Telecommunications Services as a Public Utility Within the State of North Carolina on a Resale Basis and for the Establishment of Initial Rates	)	ORDER GRANTING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY SUBJECT TO COMPLIANCE WITH COMPENSATION PLAN

HEARD IN: Commission Hearing Room 217, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on Thursday, September 26, 1985

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

APPEARANCES:

For the Applicant:

Linda Marcus Daniels, Law Firm of Walter E. Daniels, P.A., Attorneys at Law, 200 Park Offices, Suite 200, P.O. Drawer 13039, Research Triangle Park, North Carolina 27709
For: TelaMarketing Communications of Charlotte

For the Intervenors:

Shirley A. Ransom, Attorney, Southern Bell Telephone and Telegraph Company, 675 West Peachtree Street, 4300 Southern Bell Center, Center, Atlanta, Georgia 30375
For: Southern Bell Telephone and Telegraph Company

Michael W. Tye, Attorney, AT&T Communications of the Southern States, Inc., 1200 Peachtree Street, N.E., Atlanta, Georgia 30352
For: AT&T Communications of the Southern States, Inc.

For the Public Staff:

Theodore C. Brown, Jr., Staff Attorney, Public Staff - North Carolina Carolina Utilities Commission, Post Office Box 29520, Raleigh, North Carolina 27626-0520
For: The Using and Consuming Public

For the Attorney General:

Karen E. Long, Assistant Attorney General, North Carolina Department of Justice, P.O. Box 629, Raleigh, North Carolina 27510
For: The Using and Consuming Public

BY THE COMMISSION. On August 5, 1985, TelaMarketing Communications of Charlotte (TMC/C, Applicant, or Company) filed an application with the North Carolina Utilities Commission seeking a certificate of public convenience and necessity to provide intraLATA and interLATA long distance telecommunications services in North Carolina on an intrastate basis. The Commission, being of the opinion that the application affected the public interest, entered an Order in this docket on August 15, 1985 scheduling the matter for hearing on September 26, 1985 at 9:30 a.m.

Notices or petitions to intervene were filed by the Attorney General of North Carolina on August 20, 1985, by AT&T Communications of the Southern States, Inc., on September 11, 1985, and by Southern Bell Telephone and Telegraph Company on September 13, 1985. Orders allowing these interventions were subsequently entered in this docket by the Commission. On September 17, 1985, the Attorney General filed a motion whereby the Commission was requested to require TMC/C to post a bond in an amount equal to the maximum annual amount of customer deposits, customer prepaid accounts and customer paid hook-up fees as a condition to the granting of a certificate.

On September 20, 1985, TMC/C filed a revised tariff for resale service and a motion to amend the Company's application for a certificate of public convenience and necessity.

The matter came on for hearing as scheduled and all parties were present and represented by counsel. The Applicant presented the testimony and exhibits of William Neil Farfour, President of Tone Communications Management, and Burl Eddy, Vice President and Territorial Manager of TMC/C.

Subsequent to the hearing, the Applicant filed certain late-filed exhibits for the record on October 9, 1985, and October 11, 1985.

On October 25, 1985, the Public Staff filed a motion in this docket whereby the Commission was requested to require TMC/C to file a plan detailing a proposed methodology for determining unauthorized intraLATA conversation minutes in compliance with the terms of the compensation plan set forth in the "Order Authorizing Intrastate Long Distance Competition" entered in Docket No. P-100, Sub 72, on February 22, 1985.

On November 12, 1985, TMC/C filed a response in opposition to the above-referenced motion of the Public Staff.

On November 25, 1985, Southern Bell filed a response in support of the Public Staff motion to require the filing of a compensation plan.

On November 25, 1985, the Commission entered an Order in this docket whereby TMC/C was required to file a proposed plan for determining unauthorized intraLATA conversation minutes or appropriate affidavit. By Order dated December 9, 1985, TMC/C was granted an extension of time until Wednesday, December 18, 1985, to file such compensation plan or appropriate affidavit.

On December 18, 1985, TMC/C filed the affidavit of Burl Eddy, Vice President and Territorial Manager for the Company, wherein it was stated that TMC/C does not terminate intraLATA calls over long distance facilities other than MTS or WATS leased from LECs.

On December 27, 1985, TMC/C filed a motion in this docket whereby the Company requested authority to amend its application and Sections III.B.5. and III.C.5. of its proposed tariff for resale service as set forth in said motion. The Commission concludes that good cause exists to grant this motion to amend rates.

The Commission, having carefully reviewed the entire record in this proceeding, now makes the following

FINDINGS OF FACT

1. TelaMarketing Communications of Charlotte seeks a certificate of public convenience and necessity to offer and provide, on a resale basis, both interLATA and intraLATA long distance telecommunications services as a public utility in North Carolina.

2. TMC/C is fit, capable, technically qualified, and financially able to render interLATA and intraLATA long distance telecommunications services on a resale basis as a public utility in the State of North Carolina.

3. The long distance telecommunications services proposed by TMC/C in North Carolina are required to serve the public interest effectively and

adequately and will not jeopardize reasonably affordable local exchange service.

4. TMC/C agrees to abide by all applicable rules and regulations of the Commission and the findings, conclusions, terms, and conditions set forth in all applicable Commission Orders.

5. TMC/C will be required to compensate the local exchange telephone companies for all revenue losses, if any there be, resulting from the completion of unauthorized or incidental intraLATA calls made by its customers on and after the date of this Order pursuant to the compensation plan adopted by the Commission in Docket No. P-100, Sub 72.

6. TMC/C's "Calling Home Service" and "Anywhere to Anywhere Service" are two different services which utilize different equipment. The Company's proposal to charge different rates for the two services is just, reasonable, and appropriate.

7. TMC/C may offer, subject to prior Commission review, promotional rates which are offered on a completely non-discriminatory basis.

8. TMC/C proposes to resell 800 Service (In-WATS). It is in the public interest that this should be allowed, provided that TMC/C pays all applicable access charges for its use of the local switched network to terminate calls originating over the resold 800 Service.

9. The proposed tariff for resale service filed by TMC/C does not include a 50% discount from applicable long distance charges for certified hearing or speech impaired customers who communicate on the telephone by use of a special telecommunications device or a provision for free directory assistance service for those customers who are unable to use the telephone directory. It is in the public interest that TMC/C should be required to include such provisions in its tariff.

10. TMC/C should file an appropriate undertaking for Commission approval regarding refund of customer deposits, prepaid accounts, processing fees, and hook-up fees.

WHEREUPON, the Commission reaches the following

CONCLUSIONS

On February 22, 1985, the North Carolina Utilities Commission entered an Order in Docket No. P-100, Sub 72, entitled "Order Authorizing Intrastate Long-Distance Competition." By this Order, the Commission found that the authorization of intrastate interLATA competition by other common carriers (OCCs) and resellers in North Carolina was then in the public interest and would not jeopardize reasonably affordable local telephone service. The Commission further found that intraLATA competition would be in the public interest, subject to the resolution of certain important issues related thereto during a transition period; that intraLATA resale competition would be authorized no later than January 1, 1986; that intraLATA facilities-based competition would be authorized after a transition period of approximately two years on or about January 1, 1987; that the public interest then required that

interLATA competition through resale should be limited to resale of WATS and MTS services; that intrastate interLATA Feature Group A (FGA) and Feature Group B (FGB) access charges should be discounted by 25% from Feature Group C (FGC) or premium access on an originating basis only; and that access charges for FGA/FGB on the terminating end would be the same as for FGC.

TMC/C seeks authority in this docket to provide both interLATA and intraLATA long distance telecommunications services as a public utility in North Carolina. TMC/C contends that it is appropriate for the Company to be granted authority for both services at this time since the Commission stated in its February 22, 1985 Order in Docket No. P-100, Sub 72, that intraLATA resale competition would be authorized no later than January 1, 1986. The Commission notes that intraLATA resale competition by resellers of WATS and MTS was in fact authorized effective January 1, 1986, by Order recently entered in Docket No. P-100, Sub 72, on December 19, 1985. Thus, the Commission concludes that it is entirely appropriate in this proceeding to grant TMC/C a certificate of public convenience and necessity to provide both interLATA and intraLATA long distance telecommunications services as a reseller in North Carolina, on the condition that the Company shall pay all applicable compensation amounts for unauthorized intraLATA traffic, if any there be, which accrue on and after the date of this Order as further discussed below.

In this regard, the Commission has established a compensation plan in Docket No. P-100, Sub 72, whereby resellers are required to compensate the local exchange companies for revenue losses resulting from the completion of unauthorized intraLATA calls. TMC/C did not file a proposed compensation plan or methodology to determine the unauthorized intraLATA conversation minutes on its facilities each month in conjunction with its application for a certificate. On November 25, 1985, and December 9, 1985, the Commission entered Orders in this docket requiring TMC/C to file such a proposed compensation plan or affidavit for consideration by the Commission not later than December 18, 1985. On December 18, 1985, TMC/C filed the affidavit of Burl Eddy for consideration by the Commission stating that the Company does not terminate intraLATA calls over long distance facilities other than MTS or WATS leased from the LECs. The Commission will defer ruling on the appropriateness of this affidavit in order to allow all interested parties, including the Public Staff, Attorney General, and the LECs, a reasonable opportunity to study and evaluate such affidavit and to file appropriate written comments. Thus, the grant of intrastate operating authority made to TMC/C by this Order will be made on a conditional basis subject to final approval of the Company's proposed affidavit as filed or subject to such amendments to said affidavit as the Commission may ultimately require. Should the Commission not ultimately be able to approve this affidavit either as filed or as amended, TMC/C is hereby placed on notice that compensation for unauthorized intraLATA calls shall begin to accrue and the Company shall be held liable for payment of same on and after the date of this Order.

The Public Staff and Attorney General have suggested that TMC/C's "Calling Home Service" and "Anywhere to Anywhere Service," two services for which different rates are proposed to be charged, represent geographical deaveraging of rates and should be disapproved.

TMC/C presented evidence that the Company proposes to offer two separate and distinct services, each using different equipment, and that the rates for

each service are identical for all customers using a service, regardless of the customer's geographic location. Witness Eddy testified that the "Calling Home Service" is a call made from any location over an 800 In-WATS line to the switch and which is then terminated over the local trunk. Mr. Eddy further explained that the "Anywhere to Anywhere Service" is a call made from any location over an 800 In-WATS line to the switch and then switched to an outgoing WATS line for termination at any location. Clearly, these are different services and cost differentiation is attributable to the fact that they are different services. The Commission concludes that these services are just and reasonable in a competitive environment and should be approved, notwithstanding the objections lodged by the Public Staff and Attorney General.

TMC/C proposes to resell 800 Service (In-WATS). In Docket No. P-154, the Commission concluded that the resale of 800 In-WATS Service is in the public interest and falls within the spirit of the "Order Authorizing Intrastate Long Distance Competition" entered in Docket No. P-100, Sub 72, provided that access charges are properly paid for use of the local switched network to terminate calls originating over the resold 800 Service. Thus, TMC/C should be allowed to resell 800 Service on the condition that the Company pays all applicable access charges.

The Commission further concludes that, for the time being, TMC/C should be required to file an undertaking to refund, rather than a bond as requested by the Attorney General, to cover any customer deposits, prepaid accounts, processing fees, and hook-up fees. This treatment is consistent with what the Commission has required from all other competing long distance carriers who have recently been certificated.

The Commission also concludes that the following specific changes and revisions must be made in TMC/C's proposed tariff for resale service prior to approval thereof:

1. TMC/C has not provided a special provision for subscribers using telecommunications devices for the deaf (TDD) equipment or a directory assistance provision for those customers who are unable to use the telephone directory. Although TMC/C does not itself offer directory assistance service, the Company does allow access to the service as provided by facilities-based carriers and proposes to charge its customers $0.60 for each such directory assistance call. TMC/C contends that it does not get a price break from AT&T for these services and that since it provides a discount to all of its customers, the Company should not have to offer further discounts for those using TDD equipment or those unable to use the telephone directory. The Commission is of the opinion that services such as these are of public benefit and in the public interest and should generally be offered by carriers such as TMC/C so that consumers who must avail themselves of these services will also share in the benefits of competition. For the above stated reasons, the Commission will require TMC/C to include in its tariff a 50% discount on applicable long distance charges for all customers using TDD equipment to communicate and a provision to allow free directory assistance service to customers who are unable to use the telephone directory.

2. The references to equipment on Page 3 under Section II.A. of the proposed tariff entitled "Description of Service" should be deleted. This section refers to the Company being able to provide adequate equipment for its

services. Equipment is a deregulated item and these references should be removed from the tariff.

3. TMC/C should clarify its proposed tariff provisions on special services. Under the North Carolina general statutes, the Company must file all rates regarding regulated services with the Commission and the Commission may then either approve, suspend, or disapprove the rates. If TMC/C has a need to contract with a specific customer, the Company should advise the customer that the negotiated price must be filed with the Commission for review. TMC/C should clarify the special service provisions in its tariff to provide that rates and terms for regulated special services must be filed with the Commission for review at least 14 days before the date upon which the proposed rates are to become effective. Upon a showing of good cause, the Commission will entertain motions on a case-by-case basis to shorten the minimum notice period when necessary to consider specific special service arrangements for regulated services on less than 14 days' notice.

4. During the hearing in this docket, TMC/C either proposed or agreed to amend the Company's proposed tariff as follows:

(a) By amending Section II.H. entitled "Customer Obligations" by deleting the second and third sentences from that paragraph;
(b) By amending Section II.I.1. entitled "Cancellation by Customer" by deleting the word "written" in order to allow for other means of cancellation;
(c) By amending Section III.G. entitled "Promotional Rates" to add the following sentence at the end of that paragraph: "Promotional rates shall be filed with the Commission for review at least 14 days prior to implementation."
(d) By amending Section I. entitled "Definition of Terms" by adding the following definition between the definitions of "Customer" and "Free Call Area":
"Department Codes: A numeric code assigned to a department by a Commercial Customer which enables that customer to allocate all calls made by each department and to allocate customer's bill to each department."
(e) By amending Section III.B. to insert the following new subsection and by renumbering the subsequent subsections:
"4. Department Codes: $5.00 per month regardless of the number of codes. Production of bills by Department Code is included in this fee."
(f) By amending Section II.I.2.a. to substitute the number "45" for the number "60"; and
(g) By deleting Section III.C.4.

The Commission concludes that these proposed tariff changes are appropriate and should be approved.

5. TMC/C should either delete or amend Section II.I.2.d. of the proposed tariff. This provision again references equipment which is deregulated and also refers to Company facilities. The Company has no facilities; therefore, a reference to Company facilities is improper. TMC/C should delete the reference to equipment from this section. The Company should also either delete the section in its entirety regarding the reference to facilities or amend and

clarify the section to provide that all facilities used for which TMC/C renders a bill for payment (such as access facilities provided by the LECs) are considered to be provided by the Company whether or not such facilities are owned and operated by TMC/C.

6. The Company should delete provisions 2 and 5 under Section II.J. of its proposed tariff entitled "Limitation of Company's Liability." These provisions refer to equipment which is deregulated and Company facilities of which the Applicant has none. The Commission has no jurisdiction over deregulated equipment and it is not appropriate to attempt to limit liability by tariff regarding items over which the Commission has no authority. These provisions involve contractual and civil matters and therefore should be deleted from the tariff.

7. TMC/C proposes to completely waive processing fees from time to time if necessary to compete for customers under Section II.E.1. of its tariff. This provision could allow TMC/C to discriminate between different customers for the same service in contravention of G.S. 62-140. Therefore, this tariff provision should either be deleted or amended to provide that any waiver of processing fees will only be offered on a completely nondiscriminatory basis for a specific period of time and shall be filed with the Commission for review at least 14 days prior to implementation. A tariff provision which would allow arbitrary waiving of processing fees cannot be approved.

8. TMC/C should revise Section III.A. of its proposed tariff to clarify and list information regarding the timing of calls. The Company states that charges will be based on distance, time of day, and duration and that no charges will be made for calls that terminate in less then 60 seconds. However, it is unclear when the timing of a call starts (e.g., when the customer accesses the Company's switch, when the called party answers, etc.) and ends. The Commission believes that because the rates of TMC/C are based upon the duration of a call, it is essential for the tariff to state when the timing of a call begins and ends. Therefore, TMC/C should include specific information on the timing of calls in the revised tariff to be filed pursuant to this Order.

IT IS, THEREFORE, ORDERED as follows:

1. That TMC/C be, and the same is hereby, granted a certificate of public convenience and necessity pursuant to G.S. 62-110 to provide interLATA and intraLATA long distance telecommunications services in North Carolina subject to the following terms and conditions:

A. TMC/C shall abide by all applicable rules and regulations of the North Carolina Utilities Commission, and the findings, conclusions, restrictions, and conditions set forth in the Orders heretofore entered in Docket No. P-100, Sub 72, and all other applicable Commission Orders entered in relevant dockets.

B. TMC/C shall compensate the local exchange companies for all revenue losses, if any there be, resulting from the completion of unauthorized intraLATA calls made by its customers on and after the date of this Order pursuant to the compensation plan adopted by the Commission in Docket No. P-100, Sub 72, subject to any subsequent changes to the plan as may be

approved by the Commission. The Commission hereby defers ruling on the appropriateness of the affidavit filed in this docket by John Allen Farfour on behalf of TMC/C on December 18, 1985, pending receipt and review of any written comments regarding such affidavit which may be filed by the parties to this proceeding.

C. TMC/C shall not use or construct any facilities designed to bypass the access or local exchange facilities of the local exchange telephone companies.

D. TMC/C shall not hereafter abandon or discontinue service under its certificate in North Carolina, unless the Company has received approval from the Commission to do so upon such terms and conditions as the Commission may prescribe.

E. TMC/C shall pay all applicable access charges to the LECs for the Company's use of the local switched network to terminate calls over resold 800 Service. TMC/C shall report such minutes of use to the LECs and shall report to the Commission whether the Company can provide or implement procedures to provide minutes of use for traffic originating on Band 0 In-WATS as compared with Bands 1-5 In-WATS for determining apparent North Carolina intrastate calls such that access charges may be applied for completion of such calls terminating in North Carolina. TMC/C shall report on a monthly basis the magnitude in minutes of use of traffic originating on its In-WATS services terminating in North Carolina and compare this with all other traffic apparently originating in North Carolina and terminating in North Carolina in order to assist the Commission in evaluating the impact of such traffic and the determination of access charges therefor.

F. TMC/C shall make the tariff revisions required above and shall also add appropriate tariff provisions for Commission approval designed to offer (1) a 50% discount from applicable long distance charges for certified hearing or speech impaired customers who communicate on the telephone by use of a special telecommunications device and (2) free directory assistance service to those customers unable to use the telephone directory. Such revised tariff shall be filed with the Commission and all parties not later than Friday, January 10, 1986. Comments regarding the revised tariff shall be filed by the parties, if any comments there be, not later than Friday, January 17, 1986.

2. That this Order shall itself constitute the certificate of public convenience and necessity granted to TMC/C by the North Carolina Utilities Commission to provide long distance telecommunications services on a resale basis in North Carolina.

3. That the revised tariff to be filed by TMC/C under the conditions set forth in this Order shall become effective upon further Order.

4. That TMC/C shall file an appropriate undertaking for Commission approval whereby the Company agrees and binds itself, if ordered to do so by the Commission, to refund any customer deposits, prepaid accounts, processing fees and hook-up fees on such terms and conditions as the Commission may prescribe to those customers who may become entitled thereto. Said undertaking

to refund shall be filed in this docket not later than 20 days from the date of this Order.

5. That the motion to amend rates filed in this docket by TMC/C on December 27, 1985, be, and the same is hereby, granted.

6. That any motions not heretofore ruled upon or granted be, and the same are hereby, denied.

ISSUED BY ORDER OF THE COMMISSION.
This the 31st day of December 1985.

NORTH CAROLINA UTILITIES COMMISSION
(SEAL) Gail Lambert Mount, Deputy Clerk

DOCKET NO. P-164

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Application of TelaMarketing Communications of Columbia, S. C./Fayetteville, N. C. for a Certificate of Public Convenience and Necessity to Provide IntraLATA and InterLATA Telecommunications Services as a Public Utility Within the State of North Carolina on a Resale Basis and for the Establishment of Initial Rates	))))))	ORDER GRANTING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY SUBJECT TO COMPLIANCE WITH COMPENSATION PLAN

HEARD IN: Commission Hearing Room 217, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on Wednesday, September 25, 1985, at 9:30 a.m.

BEFORE: Commissioner Edward B. Hipp, Presiding; and Chairman Robert O. Wells and Commissioner A. Hartwell Campbell

APPEARANCES:

For the Applicant:

Linda Marcus Daniels, Law Firm of Walter E. Daniels, P.A., Attorneys at Law, 200 Park Offices, Suite 200, P.O. Drawer 13039, Research Triangle Park, North Carolina 27709
For: TelaMarketing Communications of Columbia, S. C./Fayetteville, N. C.

For the Intervenors:

Shirley A. Ransom, Attorney, Southern Bell Telephone and Telegraph Company, 675 West Peachtree Street, 4300 Southern Bell Center, Atlanta, Georgia 30375
For: Southern Bell Telephone and Telegraph Company

Michael W. Tye, Attorney, AT&T Communications of the Southern States, Inc., 1200 Peachtree Street, N.E., Atlanta, Georgia 30352
For: AT&T Communications of the Southern States, Inc.

For the Public Staff:

Theodore C. Brown, Jr., Staff Attorney, Public Staff - North Carolina Carolina Utilities Commission, Post Office Box 29520, Raleigh, North Carolina 27626-0520
For: The Using and Consuming Public

For the Attorney General:

Karen E. Long, Assistant Attorney General, North Carolina Department of Justice, P.O. Box 629, Raleigh, North Carolina 27510
For: The Using and Consuming Public

BY THE COMMISSION. On July 26, 1985, TelaMarketing Communications of Columbia, S. C./Fayetteville, N. C. (TMC/F, Applicant or Company) filed an application with the North Carolina Utilities Commission seeking a certificate of public convenience and necessity to provide intraLATA and interLATA long distance telecommunications services in North Carolina on an intrastate basis. The Commission, being of the opinion that the application affected the public interest, entered an Order in this docket on August 15, 1985 scheduling the matter for hearing on September 25, 1985 at 9:30 a.m.

Notice or petitions to intervene were filed by the Attorney General of North Carolina on August 9, 1985, by AT&T Communications of the Southern States, Inc., on September 11, 1985, and by Southern Bell Telephone and Telegraph Company on September 13, 1985. Orders allowing these interventions were subsequently entered in this docket by the Commission. On September 17, 1985, the Attorney General filed a motion whereby the Commission was requested to require TMC/F to post a bond in an amount equal to the maximum annual amount of customer deposits, customer prepaid accounts and customer paid hook-up fees as a condition to the granting of a certificate.

On September 17, 1985, TMC/F filed a revised tariff for resale service and a motion to amend the Company's application for a certificate of public convenience and necessity.

The matter came on for hearing as scheduled and all parties were present and represented by counsel. The Applicant presented the testimony and exhibits of Sherwood J. Smith, Controller for TMC/F, and John S. MacLeod, President of TMC/F.

On October 22, 1985, the Public Staff filed a motion whereby the Commission was requested to postpone the date for filing of proposed orders in this docket for 30 days. On that same date, the Attorney General filed a motion whereby the Commission was requested to extend the time for filing proposed orders in this docket until TMC/F indicated how it would comply with the Commission's compensation plan for incidental intraLATA traffic. On October 23, 1985, the Commission entered an Order in this docket granting the Public Staff and Attorney General an extension of time to and including Thursday, November 7, 1985, to file proposed orders. On October 25, 1985,

TMC/F filed the affidavit of John S. MacLeod in response to the motion of the Attorney General.

On October 25, 1985, the Public Staff filed a motion in this docket whereby the Commission was requested to require TMC/P to file a plan detailing a proposed methodology for determining unauthorized intraLATA conversation minutes in compliance with the terms of the compensation plan set forth in the "Order Authorizing Intrastate Long Distance Competition" entered in Docket No. P-100, Sub 72, on February 22, 1985.

On November 4, 1985, Southern Bell filed further comments regarding proposed orders.

On November 12, 1985, TMC/F filed a response in opposition to the above-referenced motion of the Public Staff.

On November 25, 1985, Southern Bell filed a response in support of the Public Staff motion to require the filing of a compensation plan.

On November 25, 1985, the Commission entered an Order in this docket whereby TMC/F was required to file a proposed plan for determining unauthorized intraLATA conversation minutes or appropriate affidavit. By Order dated December 9, 1985, TMC/F was granted an extension of time until Wednesday, December 18, 1985, to file such compensation plan or appropriate affidavit.

On December 18, 1985, TMC/F filed the affidavit of John S. MacLeod, President of TelaMarketing Communications of Columbia, S. C./Fayetteville, N. C., wherein it was stated that the Company does not terminate intraLATA calls over long distance facilities other than MTS or WATS leased from LECs.

On December 27, 1985, TMC/F filed a motion in this docket whereby the Company requested authority to amend its application and Section III.A. of its proposed tariff for resale service as set forth in said motion. The Commission concludes that good cause exists to grant this motion to amend rates.

The Commission, having carefully reviewed the entire record in this proceeding, now makes the following

FINDINGS OF FACT

1. TelaMarketing Communications of the Columbia, S. C./Fayetteville, N. C. seeks a certificate of public convenience and necessity to offer and provide, on a resale basis, both interLATA and intraLATA long distance telecommunications services as a public utility in North Carolina.

2. TMC/F is fit, capable, technically qualified, and financially able to render interLATA and intraLATA long distance telecommunications services on a resale basis as a public utility in the State of North Carolina.

3. The long distance telecommunications services proposed by TMC/F in North Carolina are required to serve the public interest effectively and adequately and will not jeopardize reasonably affordable local exchange service.

4. TMC/F agrees to abide by all applicable rules and regulations of the Commission and the findings, conclusions, terms, and conditions set forth in all applicable Commission Orders.

5. TMC/F will be required to compensate the local exchange telephone companies for all revenue losses, if any there be, resulting from the completion of unauthorized or incidental intraLATA calls made by its customers on and after the date of this Order pursuant to the compensation plan adopted by the Commission in Docket No. P-100, Sub 72.

6. TMC/F's "Call Home Service" and "Anywhere to Anywhere Service" are two different services which utilize different equipment. The Company's proposal to charge different rates for the two services is just, reasonable, and appropriate.

7. TMC/F may offer, subject to prior Commission review, promotional rates which are offered on a completely non-discriminatory basis.

8. TMC/F proposes to resell 800 Service (In-WATS). It is in the public interest that this should be allowed, provided that TMC/F pays all applicable access charges for its use of the local switched network to terminate calls originating over the resold 800 Service.

9. The proposed tariff for resale service filed by TMC/F does not include a 50% discount from applicable long distance charges for certified hearing or speech impaired customers who communicate on the telephone by use of a special telecommunications device. It is in the public interest that TMC/F should be required to include such a provision in its tariff.

10. TMC/F should file an appropriate undertaking for Commission approval regarding refund of customer deposits, prepaid accounts, processing fees, and hook-up fees.

WHEREUPON, the Commission reaches the following

CONCLUSIONS

On February 22, 1985, the North Carolina Utilities Commission entered an Order in Docket No. P-100, Sub 72, entitled "Order Authorizing Intrastate Long-Distance Competition." By this Order, the Commission found that the authorization of intrastate interLATA competition by other common carriers (OCCs) and resellers in North Carolina was then in the public interest and would not jeopardize reasonably affordable local telephone service. The Commission further found that intraLATA competition would be in the public interest, subject to the resolution of certain important issues related thereto during a transition period; that intraLATA resale competition would be authorized no later than January 1, 1986; that intraLATA facilities-based competition would be authorized after a transition period of approximately two years on or about January 1, 1987; that the public interest then required that interLATA competition through resale should be limited to resale of WATS and MTS services; that intrastate interLATA Feature Group A (FGA) and Feature Group B (FGB) access charges should be discounted by 25% from Feature Group C (FGC) or premium access on an originating basis only; and that access charges for FGA/FGB on the terminating end would be the same as for FGC.

TMC/F seeks authority in this docket to provide both interLATA and intraLATA long distance telecommunications services as a public utility in North Carolina. TMC/F contends that it is appropriate for the Company to be granted authority for both services at this time since the Commission stated in its February 22, 1985 Order in Docket No. P-100, Sub 72, that intraLATA resale competition would be authorized no later than January 1, 1986. The Commission notes that intraLATA resale competition by resellers of WATS and MTS was in fact authorized effective January 1, 1986, by Order recently entered in Docket No. P-100, Sub 72, on December 19, 1985. Thus, the Commission concludes that it is entirely appropriate in this proceeding to grant TMC/F a certificate of public convenience and necessity to provide both interLATA and intraLATA long distance telecommunications services as a reseller in North Carolina, on the condition that the Company shall pay all applicable compensation amounts for unauthorized intraLATA traffic, if any there be, which accrue on and after the date of this Order as further discussed below.

In this regard, the Commission has also established a compensation plan in Docket No. P-100, Sub 72, whereby resellers are required to compensate the local exchange companies for revenue losses resulting from the completion of unauthorized intraLATA calls. TMC/F did not file a proposed compensation plan or methodology to determine the unauthorized intraLATA conversation minutes on its facilities each month in conjunction with its application for a certificate. On November 25, 1985, and December 9, 1985, the Commission entered Orders in this docket requiring TMC/F to file such a proposed compensation plan or affidavit for consideration by the Commission not later than December 18, 1985. On December 18, 1985, TMC/F filed the affidavit of John S. MacLeod for consideration by the Commission stating that the Company does not terminate intraLATA calls over long distance facilities other than MTS or WATS leased from the LECs. The Commission will defer ruling on the appropriateness of this affidavit in order to allow all interested parties, including the Public Staff, Attorney General, and the LECs, a reasonable opportunity to study and evaluate such affidavit and to file appropriate written comments. Thus, the grant of intrastate operating authority made to TMC/F by this Order will be made on a conditional basis subject to final approval of the Company's proposed affidavit as filed or subject to such amendments to said affidavit as the Commission may ultimately require. Should the Commission not ultimately be able to approve this affidavit either as filed or as amended, TMC/F is hereby placed on notice that compensation for unauthorized intraLATA calls shall begin to accrue and the Company shall be held liable for payment of same on and after the date of this Order.

The Public Staff and Attorney General have suggested that TMC/F's "Call Home Service" and "Anywhere to Anywhere Service," two services for which different rates are proposed to be charged, represent geographical deaveraging of rates and should be disapproved.

TMC/F presented evidence that the Company proposes to offer two separate and distinct services, each using different equipment, and that the rates for each service are identical for all customers using a service, regardless of the customer's geographic location. Witness MacLeod testified that the "Call Home Service" is a call made from any location over an 800 In-WATS line to the switch and which is then terminated over the local trunk. Mr. MacLeod further explained that the "Anywhere to Anywhere Service" is a call made from any location over an 800 In-WATS line to the switch and then switched to an

outgoing WATS line for termination at any location. Clearly, these are different services and cost differentiation is attributable to the fact that they are different services. The Commission concludes that these services are just and reasonable in a competitive environment and should be approved, notwithstanding the objections lodged by the Public Staff and Attorney General.

TMC/F proposes to resell 800 Service (In-WATS). In Docket No. P-154, the Commission concluded that the resale of 800 In-WATS Service is in the public interest and falls within the spirit of the "Order Authorizing Intrastate Long Distance Competition" entered in Docket No. P-100, Sub 72, provided that access charges are properly paid for use of the local switched network to terminate calls originating over the resold 800 Service. Thus, TMC/F should be allowed to resell 800 Service on the condition that the Company pays all applicable access charges.

The Commission further concludes that, for the time being, TMC/F should be required to file an undertaking to refund, rather than a bond as requested by the Attorney General, to cover any customer deposits, prepaid accounts, processing fees, and hook-up fees. This treatment is consistent with what the Commission has required from all other competing long distance carriers who have recently been certificated.

The Commission also concludes that the following specific changes and revisions must be made in TMC/F's proposed tariff for resale service prior to approval thereof:

1. TMC/F has not provided a special provision for subscribers using telecommunications devices for the deaf (TDD) equipment. TMC/F contends that it does not get a price break from AT&T for this service and that since it provides a discount to all of its customers, the Company should not have to offer a further discount for those using TDD equipment. The Commission is of the opinion that this service is of public benefit and in the public interest and should generally be offered by carriers such as TMC/F so that consumers who must avail themselves of this service will also share in the benefits of competition. For the above stated reasons, the Commission will require TMC/F to include in its tariff a 50% discount on applicable long distance charges for all customers using TDD equipment to communicate.

2. The references to equipment on Page 3 under Section II.A. of the proposed tariff entitled "Description of Service" should be deleted. This section refers to the Company being able to provide adequate equipment for its services. Equipment is a deregulated item and these references should be removed from the tariff.

3. TMC/F should clarify its proposed tariff provisions on special services. Under the North Carolina general statutes, the Company must file all rates regarding regulated services with the Commission and the Commission may then either approve, suspend, or disapprove the rates. If TMC/F has a need to contract with a specific customer, the Company should advise the customer that the negotiated price must be filed with the Commission for review. TMC/F should clarify the special service provisions in its tariff to provide that rates and terms for regulated special services must be filed with the Commission for review at least 14 days before the date upon which the proposed rates are to become effective. Upon a showing of good cause, the Commission

will entertain motions on a case-by-case basis to shorten the minimum notice period when necessary to consider specific special service arrangement for regulated services on less than 14 days' notice.

4. During the hearing in this docket, TMC/F either proposed or agreed to amend the Company's proposed tariff as follows:

(a) By amending Section II.G. entitled "Customer Obligations" by deleting all but the first sentence from that paragraph; and
(b) By amending Section III.A. under the heading entitled "Processing Fee" to change the commercial processing fee from $150.00 to $100.00; and
(c) By amending Section III.A. on page 8 of the proposed tariff to add the words "From Anywhere in North Carolina" after the words "Call Home Service" and to add the words "from Anywhere in North Carolina to Anywhere in North Carolina" after the words "Anywhere to Anywhere Service."

The Commission concludes that these proposed tariff changes are appropriate and should be approved.

5. TMC/F should either delete or amend Section II.H.2.d. of the proposed tariff. This provision again references equipment which is deregulated and also refers to Company facilities. The Company has no facilities; therefore, a reference to Company facilities is improper, ambiguous, and may be misconstrued. TMC/F should delete the reference to equipment from this section. The Company should also either delete the section in its entirety regarding the reference to facilities or amend and clarify the section to provide that all facilities used for which TMC/F renders a bill for payment (such as access facilities provided by the LECs) are considered to be provided by the Company whether or not such facilities are owned and operated by TMC/F.

6. The Company should delete provisions 2 and 5 under Section II.I. of its proposed tariff entitled "Limitation of Company's Liability." These provisions refer to equipment which is deregulated and Company facilities of which the Applicant has none. The Commission has no jurisdiction over deregulated equipment and it is not appropriate to attempt to limit liability by tariff regarding items over which the Commission has no authority. These provisions involve contractual and civil matters and therefore should be deleted from the tariff.

7. TMC/F proposes to completely waive processing fees from time to time if necessary to compete for customers under Section II.E.1. of its tariff. This provision could allow TMC/F to discriminate between different customers for the same service in contravention of G.S. 62-140. Therefore, this tariff provision should either be deleted or amended to provide that any waiver of processing fees will only be offered on a completely nondiscriminatory basis for a specific period of time and shall be filed with the Commission for review at least 14 days prior to implementation. A tariff provision which would allow arbitrary waiving of processing fees cannot be approved.

8. TMC/F should revise its proposed tariff to clarify and list information regarding the timing of calls. The Company states that charges will be based on distance, time of day, and duration and that no charges will

be made for calls that terminate in less than 42 seconds. However, it is unclear when the timing of a call starts (e.g., when the customer accesses the Company's switch, when the called party answers, etc.) and ends. The Commission believes that because the rates of TMC/F are based upon the duration of a call, it is essential for the tariff to state when the timing of a call begins and ends. Therefore, TMC/F should include specific information on the timing of calls in the revised tariff to be filed pursuant to this Order.

9. TMC/F should amend Section II.H.1. entitled "Cancellation by Customer" by deleting the word "written" in order to allow for other means of cancellation. The Commission does not believe that a customer should be required to give written notice of cancellation of service.

IT IS, THEREFORE, ORDERED as follows:

1. That TMC/F be, and the same is hereby, granted a certificate of public convenience and necessity pursuant to G.S. 62-110 to provide interLATA and intraLATA long distance telecommunications services in North Carolina subject to the following terms and conditions:

A. TMC/F shall abide by all applicable rules and regulations of the North Carolina Utilities Commission, and the findings, conclusions, restrictions, and conditions set forth in the Orders heretofore entered in Docket No. P-100, Sub 72, and all other applicable Commission Orders entered in relevant dockets.

B. TMC/F shall compensate the local exchange companies for all revenue losses, if any there be, resulting from the completion of unauthorized intraLATA calls made by its customers on and after the date of this Order pursuant to the compensation plan adopted by the Commission in Docket No. P-100, Sub 72, subject to any subsequent changes to the plan as may be approved by the Commission. The Commission hereby defers ruling on the appropriateness of the affidavit filed in this docket by John S. MacLeod on behalf of TMC/F on December 18, 1985, pending receipt and review of any written comments regarding such affidavit which may be filed by the parties to this proceeding.

C. TMC/F shall not use or construct any facilities designed to bypass the access or local exchange facilities of the local exchange telephone companies.

D. TMC/F shall not hereafter abandon or discontinue service under its certificate in North Carolina, unless the Company has received approval from the Commission to do so upon such terms and conditions as the Commission may prescribe.

E. TMC/F shall pay all applicable access charges to the LECs for the Company's use of the local switched network to terminate calls over resold 800 Service. TMC/F shall report such minutes of use to the LECs and shall report to the Commission whether the Company can provide or implement procedures to provide minutes of use for traffic originating on Band 0 In-WATS as compared with Bands 1-5 In-WATS for determining apparent North Carolina intrastate calls such that access charges may be applied for completion of such calls terminating in North Carolina. TMC/F shall

report on a monthly basis the magnitude in minutes of use of traffic originating on its In-WATS services terminating in North Carolina and compare this with all other traffic apparently originating in North Carolina and terminating in North Carolina in order to assist the Commission in evaluating the impact of such traffic and the determination of access charges therefor.

F. TMC/F shall make the tariff revisions required above and shall also add an appropriate tariff provision for Commission approval designed to offer a 50% discount from applicable long distance charges for certified hearing or speech impaired customers who communicate on the telephone by use of a special telecommunications device. Such revised tariff shall be filed with the Commission and all parties not later than Friday, January 10, 1986. Comments regarding the revised tariff shall be filed by the parties, if any comments there be, not later than Friday, January 17, 1986.

2. That this Order shall itself constitute the certificate of public convenience and necessity granted to TMC/F by the North Carolina Utilities Commission to provide long distance telecommunications services on a resale basis in North Carolina.

3. That the revised tariff to be filed by TMC/F under the conditions set forth in this Order shall become effective upon further Order.

4. That TMC/F shall file an appropriate undertaking for Commission approval whereby the Company agrees and binds itself, if ordered to do so by the Commission, to refund any customer deposits, prepaid accounts, processing fees and hook-up fees on such terms and conditions as the Commission may prescribe to those customers who may become entitled thereto. Said undertaking to refund shall be filed in this docket not later than 20 days from the date of this Order.

5. That the motion to amend rates filed in this docket by TMC/F on December 27, 1985, be, and the same is hereby, granted.

6. That any motions not heretofore ruled upon or granted be, and the same are hereby, denied.

ISSUED BY ORDER OF THE COMMISSION.
This the 31st day of December 1985.

NORTH CAROLINA UTILITIES COMMISSION
Gail Lambert Mount, Deputy Clerk

(SEAL)

DOCKET NO. P-162

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Application of TelaMarketing Communications of Eastern North Carolina for a Certificate of Public Convenience and Necessity to Provide IntraLATA and InterLATA Telecommunications Services as a Public Utility Within the State of North Carolina on a Resale Basis and for the Establishment of Initial Rates	)	ORDER GRANTING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY SUBJECT TO COMPLIANCE WITH COMPENSATION PLAN

HEARD IN: Commission Hearing Room 217, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on Thursday, September 26, 1985, at 9:30 a.m.

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

APPEARANCES:

For the Applicant:

Linda Marcus Daniels, Law Firm of Walter E. Daniels, P.A., Attorneys at Law, 200 Park Offices, Suite 200, P.O. Drawer 13039, Research Triangle Park, North Carolina 27709
For: TelaMarketing Communications of Eastern North Carolina

For the Intervenors:

Shirley A. Ransom, Attorney, Southern Bell Telephone and Telegraph Company, 675 West Peachtree Street, 4300 Southern Bell Center, Center, Atlanta, Georgia 30375
For: Southern Bell Telephone and Telegraph Company

Michael W. Tye, Attorney, AT&T Communications of the Southern States, Inc., 1200 Peachtree Street, N.E., Atlanta, Georgia 30352
For: AT&T Communications of the Southern States, Inc.

For the Public Staff:

Theodore C. Brown, Jr., Staff Attorney, Public Staff - North Carolina Carolina Utilities Commission, Post Office Box 29520, Raleigh, North Carolina 27626-0520
For: The Using and Consuming Public

For the Attorney General:

Karen E. Long, Assistant Attorney General, North Carolina Department of Justice, P.O. Box 629, Raleigh, North Carolina 27510
For: The Using and Consuming Public

BY THE COMMISSION. On July 26, 1985, TelaMarketing Communications of Eastern North Carolina (TMC/ENC, Applicant, or Company) filed an application with the North Carolina Utilities Commission seeking a certificate of public convenience and necessity to provide intraLATA and interLATA long distance telecommunications services in North Carolina on an intrastate basis. The Commission, being of the opinion that the application affected the public interest, entered an Order in this docket on August 15, 1985 scheduling the matter for hearing on September 26, 1985 at 9:30 a.m.

Notices or petitions to intervene were filed by the Attorney General of North Carolina on August 9, 1985, by AT&T Communications of the Southern States, Inc., on September 11, 1985, and by Southern Bell Telephone and Telegraph Company on September 13, 1985. Orders allowing these interventions were subsequently entered in this docket by the Commission. On September 17, 1985, the Attorney General filed a motion whereby the Commission was requested to require TMC/ENC to post a bond in an amount equal to the maximum annual amount of customer deposits, customer prepaid accounts and customer paid hook-up fees as a condition to the granting of a certificate.

On September 20, 1985, TMC/ENC filed a revised tariff for resale service and a motion to amend the Company's application for a certificate of public convenience and necessity.

The matter came on for hearing as scheduled and all parties were present and represented by counsel. The Applicant presented the testimony and exhibits of William Neal Farfour, President of Tone Communications Management, and Robert Michael Newkirk, Operations and Sales Manager for TMC/ENC.

Subsequent to the hearing, the Applicant filed certain late-filed exhibits for the record on October 2, 1985.

On October 25, 1985, the Public Staff filed a motion in this docket whereby the Commission was requested to require TMC/ENC to file a plan detailing a proposed methodology for determining unauthorized intraLATA conversation minutes in compliance with the terms of the compensation plan set forth in the "Order Authorizing Intrastate Long Distance Competition" entered in Docket No. P-100, Sub 72, on February 22, 1985.

On November 12, 1985, TMC/ENC filed a response in opposition to the above-referenced motion of the Public Staff.

On November 25, 1985, Southern Bell filed a response in support of the Public Staff motion to require the filing of a compensation plan.

On November 25, 1985, the Commission entered an Order in this docket whereby TMC/ENC was required to file a proposed plan for determining unauthorized intraLATA conversation minutes or appropriate affidavit. By Order dated December 9, 1985, TMC/ENC was granted an extension of time until Wednesday, December 18, 1985, to file such compensation plan or appropriate affidavit.

On December 18, 1985, TMC/ENC filed the affidavit of John Allen Farfour, Territorial Manager for TelaMarketing Communications, Inc., wherein it was

stated that the Company does not terminate intraLATA calls over long distance facilities other than MTS or WATS leased from LECs.

On December 27, 1985, TMC/ENC filed a motion in this docket whereby the Company requested authority to amend its application and Sections III.B.6. and III.C.6. of its proposed tariff for resale service as set forth in said motion. The Commission concludes that good cause exists to grant this motion to amend rates.

The Commission, having carefully reviewed the entire record in this proceeding, now makes the following

FINDINGS OF FACT

1. TelaMarketing Communications of Eastern North Carolina seeks a certificate of public convenience and necessity to offer and provide, on a resale basis, both interLATA and intraLATA long distance telecommunications services as a public utility in North Carolina.

2. TMC/ENC is fit, capable, technically qualified, and financially able to render interLATA and intraLATA long distance telecommunications services on a resale basis as a public utility in the State of North Carolina.

3. The long distance telecommunications services proposed by TMC/ENC in North Carolina are required to serve the public interest effectively and adequately and will not jeopardize reasonably affordable local exchange service.

4. TMC/ENC agrees to abide by all applicable rules and regulations of the Commission and the findings, conclusions, terms, and conditions set forth in all applicable Commission Orders.

5. TMC/ENC will be required to compensate the local exchange telephone companies for all revenue losses, if any there be, resulting from the completion of unauthorized or incidental intraLATA calls made by its customers on and after the date of this Order pursuant to the compensation plan adopted by the Commission in Docket No. P-100, Sub 72.

6. TMC/ENC's "Calling Home Service" and "Anywhere to Anywhere Service" are two different services which utilize different equipment. The Company's proposal to charge different rates for the two services is just, reasonable, and appropriate.

7. TMC/ENC may offer, subject to prior Commission review, promotional rates which are offered on a completely non-discriminatory basis.

8. TMC/ENC proposes to resell 800 Service (In-WATS). It is in the public interest that this should be allowed, provided that TMC/ENC pays all applicable access charges for its use of the local switched network to terminate calls originating over the resold 800 Service.

9. The proposed tariff for resale service filed by TMC/ENC does not include a 50% discount from applicable long distance charges for certified hearing or speech impaired customers who communicate on the telephone by use of

a special telecommunications device or a provision for free directory assistance service for those customers who are unable to use the telephone directory. It is in the public interest that TMC/ENC should be required to include such provisions in its tariff.

10. TMC/ENC should file an appropriate undertaking for Commission approval regarding refund of customer deposits, prepaid accounts, processing fees, and hook-up fees.

WHEREUPON, the Commission reaches the following

CONCLUSIONS

On February 22, 1985, the North Carolina Utilities Commission entered an Order in Docket No. P-100, Sub 72, entitled "Order Authorizing Intrastate Long-Distance Competition." By this Order, the Commission found that the authorization of intrastate interLATA competition by other common carriers (OCCs) and resellers in North Carolina was then in the public interest and would not jeopardize reasonably affordable local telephone service. The Commission further found that intraLATA competition would be in the public interest, subject to the resolution of certain important issues related thereto during a transition period; that intraLATA resale competition would be authorized no later than January 1, 1986; that intraLATA facilities-based competition would be authorized after a transition period of approximately two years on or about January 1, 1987; that the public interest then required that interLATA competition through resale should be limited to resale of WATS and MTS services; that intrastate interLATA Feature Group A (FGA) and Feature Group B (FGB) access charges should be discounted by 25% from Feature Group C (FGC) or premium access on an originating basis only; and that access charges for FGA/FGB on the terminating end would be the same as for FGC.

TMC/ENC seeks authority in this docket to provide both interLATA and intraLATA long distance telecommunications services as a public utility in North Carolina. TMC/ENC contends that it is appropriate for the Company to be granted authority for both services at this time since the Commission stated in its February 22, 1985 Order in Docket No. P-100, Sub 72, that intraLATA resale competition would be authorized no later than January 1, 1986. The Commission notes that intraLATA resale competition by resellers of WATS and MTS was in fact authorized effective January 1, 1986, by Order recently entered in Docket No. P-100, Sub 72, on December 19, 1985. Thus, the Commission concludes that it is entirely appropriate in this proceeding to grant TMC/ENC a certificate of public convenience and necessity to provide both interLATA and intraLATA long distance telecommunications services as a reseller in North Carolina, on the condition that the Company shall pay all applicable compensation amounts for unauthorized intraLATA traffic, if any there be, which accrue on and after the date of this Order as further discussed below.

In this regard, the Commission has established a compensation plan in Docket No. P-100, Sub 72, whereby resellers are required to compensate the local exchange companies for revenue losses resulting from the completion of unauthorized intraLATA calls. TMC/ENC did not file a proposed compensation plan or methodology to determine the unauthorized intraLATA conversation minutes on its facilities each month in conjunction with its application for a certificate. On November 25, 1985, and December 9, 1985, the Commission

entered Orders in this docket requiring TMC/ENC to file such a proposed compensation plan or affidavit for consideration by the Commission not later than December 18, 1985. On December 18, 1985, TMC/ENC filed the affidavit of John Allen Farfour for consideration by the Commission stating that the Company does not terminate intraLATA calls over long distance facilities other than MTS or WATS leased from the LECs. The Commission will defer ruling on the appropriateness of this affidavit in order to allow all interested parties, including the Public Staff, Attorney General, and the LECs, a reasonable opportunity to study and evaluate such affidavit and to file appropriate written comments. Thus, the grant of intrastate operating authority made to TMC/ENC by this Order will be made on a conditional basis subject to final approval of the Company's proposed affidavit as filed or subject to such amendments to said affidavit as the Commission may ultimately require. Should the Commission not ultimately be able to approve this affidavit either as filed or as amended, TMC/ENC is hereby placed on notice that compensation for unauthorized intraLATA calls shall begin to accrue and the Company shall be held liable for payment of same on and after the date of this Order.

The Public Staff and Attorney General have suggested that TMC/ENC's "Calling Home Service" and "Anywhere to Anywhere Serivce," two services for which different rates are proposed to be charged, represent geographical deaveraging of rates and should be disapproved.

TMC/ENC presented evidence that the Company proposes to offer two separate and distinct services, each using different equipment, and that the rates for each service are identical for all customers using a service, regardless of the customer's geographic location. Witness Newkirk testified that the "Calling Home Service" is a call made from any location over an 800 In-WATS line to the switch and which is then terminated over the local trunk. Mr. Newkirk further explained that the "Anywhere to Anywhere Service" is a call made from any location over an 800 In-WATS line to the switch and then switched to an outgoing WATS line for termination at any location. Clearly, these are different services and cost differentiation is attributable to the fact that they are different services. The Commission concludes that these services are just and reasonable in a competitive environment and should be approved, notwithstanding the objections lodged by the Public Staff and Attorney General.

TMC/ENC proposes to resell 800 Service (In-WATS). In Docket No. P-154, the Commission concluded that the resale of 800 In-WATS Service is in the public interest and falls within the spirit of the "Order Authorizing Intrastate Long Distance Competition" entered in Docket No. P-100, Sub 72, provided that access charges are properly paid for use of the local switched network to terminate calls originating over the resold 800 Service. Thus, TMC/ENC should be allowed to resell 800 Service on the condition that the Company pays all applicable access charges.

The Commission further concludes that, for the time being, TMC/ENC should be required to file an undertaking to refund, rather than a bond as requested by the Attorney General, to cover any customer deposits, prepaid accounts, processing fees, and hook-up fees. This treatment is consistent with what the Commission has required from all other competing long distance carriers who have recently been certificated.

The Commission also concludes that the following specific changes and revisions must be made in TMC/ENC's proposed tariff for resale service prior to approval thereof:

1. TMC/ENC has not provided a special provision for subscribers using telecommunications devices for the deaf (TDD) equipment or a directory assistance provision for those customers who are unable to use the telephone directory. Although TMC/ENC does not itself offer directory assistance service, the Company does allow access to the service as provided by facilities-based carriers and proposes to charge its customers $0.50 for each such directory assistance call. TMC/ENC contends that it does not get a price break from AT&T for these services and that since it provides a discount to all of its customers, the Company should not have to offer further discounts for those using TDD equipment or those unable to use the telephone directory. The Commission is of the opinion that services such as these are of public benefit and in the public interest and should generally be offered by carriers such as TMC/ENC so that consumers who must avail themselves of these services will also share in the benefits of competition. For the above stated reasons, the Commission will require TMC/ENC to include in its tariff a 50% discount on applicable long distance charges for all customers using TDD equipment to communicate and a provision to allow free directory assistance service to customers who are unable to use the telephone directory.

2. The references to equipment on Page 3 under Section II.A. of the proposed tariff entitled "Description of Service" should be deleted. This section refers to the Company being able to provide adequate equipment for its services. Equipment is a deregulated item and these references should be removed from the tariff.

3. TMC/ENC should clarify its proposed tariff provisions on special services. Under the North Carolina general statutes, the Company must file all rates regarding regulated services with the Commission and the Commission may then either approve, suspend, or disapprove the rates. If TMC/ENC has a need to contract with a specific customer, the Company should advise the customer that the negotiated price must be filed with the Commission for review. TMC/ENC should clarify the special service provisions in its tariff to provide that rates and terms for regulated special services must be filed with the Commission for review at least 14 days before the date upon which the proposed rates are to become effective. Upon a showing of good cause, the Commission will entertain motions on a case-by-case basis to shorten the minimum notice period when necessary to consider specific special service arrangements for regulated services on less than 14 days' notice.

4. During the hearing in this docket, TMC/ENC either proposed or agreed to amend the Company's proposed tariff as follows:

(a) By substituting the term "processing fee" for the term "hook-up fee" throughout the tariff;
(b) By deleting the parenthetical clause in the second paragraph of Section II.A. of the tariff;
(c) By amending Section II.G. entitled "Customer Obligations" by deleting the second and third sentences from that paragraph; and

(d) By amending Section II.H.1. entitled "Cancellation by Customer" by deleting the word "written" in order to allow for other means of cancellation.

The Commission concludes that these proposed tariff changes are appropriate and should be approved.

5. TMC/ENC should either delete or amend Section II.H.2.d. of the proposed tariff. This provision again references equipment which is deregulated and also refers to Company facilities. The Company has no facilities; therefore, a reference to Company facilities is improper. TMC/ENC should delete the reference to equipment from this section. The Company should also either delete the section in its entirety regarding the reference to facilities or amend and clarify the section to provide that all facilities used for which TMC/ENC renders a bill for payment (such as access facilities provided by the LECs) are considered to be provided by the Company whether or not such facilities are owned and operated by TMC/ENC.

6. The Company should delete provisions 2 and 5 under Section II.I. of its proposed tariff entitled "Limitation of Company's Liability." These provisions refer to equipment which is deregulated and Company facilities of which the Applicant has none. The Commission has no jurisdiction over deregulated equipment and it is not appropriate to attempt to limit liability by tariff regarding items over which the Commission has no authority. These provisions involve contractual and civil matters and therefore should be deleted from the tariff.

7. TMC/ENC proposes to offer promotional rates from time to time to meet competitive market conditions under Section III.G. of its tariff. The Company's tariff should be amended to provide that such promotional rates will only be offered on a completely nondiscriminatory basis for a specific period of time and shall be filed with the Commission for review at least 14 days prior to implementation.

8. TMC/ENC should revise Section III.A. of its proposed tariff to clarify and list information regarding the timing of calls. The Company states that charges will be based on distance, time of day, and duration. However, it is unclear when the timing of a call starts (e.g., when the customer accesses the Company's switch, when the called party answers, etc.) and ends. The Commission believes that because the rates of TMC/ENC are based upon the duration of a call, it is essential for the tariff to state when the timing of a call begins and ends. Therefore, TMC/ENC should include specific information regarding the timing of calls in the revised tariff to be filed pursuant to this Order.

IT IS, THEREFORE, ORDERED as follows:

1. That TMC/ENC be, and the same is hereby, granted a certificate of public convenience and necessity pursuant to G.S. 62-110 to provide interLATA and intraLATA long distance telecommunications services in North Carolina subject to the following terms and conditions:

A. TMC/ENC shall abide by all applicable rules and regulations of the North Carolina Utilities Commission, and the findings, conclusions,

restrictions, and conditions set forth in the Orders heretofore entered in Docket No. P-100, Sub 72, and all other applicable Commission Orders entered in relevant dockets.

B. TMC/ENC shall compensate the local exchange companies for all revenue losses, if any there be, resulting from the completion of unauthorized intraLATA calls made by its customers on and after the date of this Order pursuant to the compensation plan adopted by the Commission in Docket No. P-100, Sub 72, subject to any subsequent changes to the plan as may be approved by the Commission. The Commission hereby defers ruling on the appropriateness of the affidavit filed in this docket by John Allen Farfour on behalf of TMC/ENC on December 18, 1985, pending receipt and review of any written comments regarding such affidavit which may be filed by the parties to this proceeding.

C. TMC/ENC shall not use or construct any facilities designed to bypass the access or local exchange facilities of the local exchange telephone companies.

D. TMC/ENC shall not hereafter abandon or discontinue service under its certificate in North Carolina, unless the Company has received approval from the Commission to do so upon such terms and conditions as the Commission may prescribe.

E. TMC/ENC shall pay all applicable access charges to the LECs for the Company's use of the local switched network to terminate calls over resold 800 Service. TMC/ENC shall report such minutes of use to the LECs and shall report to the Commission whether the Company can provide or implement procedures to provide minutes of use for traffic originating on Band 0 In-WATS as compared with Bands 1-5 In-WATS for determining apparent North Carolina intrastate calls such that access charges may be applied for completion of such calls terminating in North Carolina. TMC/ENC shall report on a monthly basis the magnitude in minutes of use of traffic originating on its In-WATS services terminating in North Carolina and compare this with all other traffic apparently originating in North Carolina and terminating in North Carolina in order to assist the Commission in evaluating the impact of such traffic and the determination of access charges therefor.

F. TMC/ENC shall make the tariff revisions required above and shall also add appropriate tariff provisions for Commission approval designed to offer (1) a 50% discount from applicable long distance charges for certified hearing or speech impaired customers who communicate on the telephone by use of a special telecommunications device and (2) free directory assistance service to those customers unable to use the telephone directory. Such revised tariff shall be filed with the Commission and all parties not later than Friday, January 10, 1986. Comments regarding the revised tariff shall be filed by the parties, if any comments there be, not later than Friday, January 17, 1986.

2. That this Order shall itself constitute the certificate of public convenience and necessity granted to TMC/ENC by the North Carolina Utilities Commission to provide long distance telecommunications services on a resale basis in North Carolina.

3. That the revised tariff to be filed by TMC/ENC under the conditions set forth in this Order shall become effective upon further Order.

4. That TMC/ENC shall file an appropriate undertaking for Commission approval whereby the Company agrees and binds itself, if ordered to do so by the Commission, to refund any customer deposits, prepaid accounts, processing fees and hook-up fees on such terms and conditions as the Commission may prescribe to those customers who may become entitled thereto. Said undertaking to refund shall be filed in this docket not later than 20 days from the date of this Order.

5. That the motion to amend rates filed in this docket by TMC/ENC on December 27, 1985, be, and the same is hereby, granted.

6. That any motions not heretofore ruled upon or granted be, and the same are hereby, denied.

ISSUED BY ORDER OF THE COMMISSION.
This the 31st day of December 1985.

NORTH CAROLINA UTILITIES COMMISSION
(SEAL) Gail Lambert Mount, Deputy Clerk

DOCKET NO. P-163

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Application of TelaMarketing Communications of the Piedmont for a Certificate of Public Convenience and Necessity to Provide IntraLATA and InterLATA Telecommunications Services as a Public Utility Within the State of North Carolina on a Resale Basis and for the Establishment of Initial Rates	)	ORDER GRANTING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY SUBJECT TO COMPLIANCE WITH COMPENSATION PLAN

HEARD IN: Commission Hearing Room 217, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on Wednesday, September 25, 1985, at 2:00 p.m.

BEFORE: Commissioner Edward B. Hipp, Presiding; and Chairman Robert O. Wells and Commissioner A. Hartwell Campbell

APPEARANCES:

For the Applicant:

Linda Marcus Daniels, Law Firm of Walter E. Daniels, P.A., Attorneys at Law, 200 Park Offices, Suite 200, P.O. Drawer 13039, Research Triangle Park, North Carolina 27709
For: TelaMarketing Communications of the Piedmont

For the Intervenors:

Shirley A. Ransom, Attorney, Southern Bell Telephone and Telegraph Company, 675 West Peachtree Street, 4300 Southern Bell Center, Atlanta, Georgia 30375
For: Southern Bell Telephone and Telegraph Company

Michael W. Tye, Attorney, AT&T Communications of the Southern States, Inc., 1200 Peachtree Street, N.E., Atlanta, Georgia 30352
For: AT&T Communications of the Southern States, Inc.

For the Public Staff:

Theodore C. Brown, Jr., Staff Attorney, Public Staff - North Carolina Carolina Utilities Commission, Post Office Box 29520, Raleigh, North Carolina 27626-0520
For: The Using and Consuming Public

For the Attorney General:

Karen E. Long, Assistant Attorney General, North Carolina Department of Justice, P.O. Box 629, Raleigh, North Carolina 27510
For: The Using and Consuming Public

BY THE COMMISSION. On July 26, 1985, TelaMarketing Communications of the Piedmont (TMC/P, Applicant or Company) filed an application with the North Carolina Utilities Commission seeking a certificate of public convenience and necessity to provide intraLATA and interLATA long distance telecommunications services in North Carolina on an intrastate basis. The Commission, being of the opinion that the application affected the public interest, entered an Order in this docket on August 15, 1985 scheduling the matter for hearing on September 25, 1985 at 2:00 p.m.

Notice or petitions to intervene were filed by the Attorney General of North Carolina on August 9, 1985, by AT&T Communications of the Southern States, Inc., on September 11, 1985, and by Southern Bell Telephone and Telegraph Company on September 13, 1985. Orders allowing these interventions were subsequently entered in this docket by the Commission. On September 17, 1985, the Attorney General filed a motion whereby the Commission was requested to require TMC/P to post a bond in an amount equal to the maximum annual amount of customer deposits, customer prepaid accounts and customer paid hook-up fees as a condition to the granting of a certificate.

On September 16, 1985, TMC/P filed a revised tariff for resale service and a motion to amend the Company's application for a certificate of public convenience and necessity.

The matter came on for hearing as scheduled and all parties were present and represented by counsel. The Applicant presented the testimony and exhibits of C. James Youngs, President of Saxton Telecommunications Corporation, and Wilford Leo Wentzel, Manager of TMC/P.

On October 25, 1985, the Public Staff filed a motion in this docket whereby the Commission was requested to require TMC/P to file a plan detailing

a proposed methodology for determining unauthorized intraLATA conversation minutes in compliance with the terms of the compensation plan set forth in the "Order Authorizing Intrastate Long Distance Competition" entered in Docket No. P-100, Sub 72, on February 22, 1985.

On November 12, 1985, TMC/P filed a response in opposition to the above-referenced motion of the Public Staff.

On November 25, 1985, Southern Bell filed a response in support of the Public Staff motion to require the filing of a compensation plan.

On November 25, 1985, the Commission entered an Order in this docket whereby TMC/P was required to file a proposed plan for determining unauthorized intraLATA conversation minutes or appropriate affidavit. By Order dated December 9, 1985, TMC/P was granted an extension of time until Wednesday, December 18, 1985, to file such compensation plan or appropriate affidavit.

On December 18, 1985, TMC/P filed a proposed compensation plan for consideration by the Commission stating how the Company proposes to account for unauthorized intraLATA conversation minutes of use on a monthly basis. This proposed compensation plan was filed in response to the Commission Order previously entered in this docket on November 25, 1985.

On December 27, 1985, TMC/P filed a motion in this docket whereby the Company requested authority to amend its application and Section III.A.3 of its proposed tariff for resale service as set forth in said motion. The Commission concludes that good cause exists to grant this motion to amend rates.

The Commission, having carefully reviewed the entire record in this proceeding, now makes the following

FINDINGS OF FACT

1. TelaMarketing Communications of the Piedmont seeks a certificate of public convenience and necessity to offer and provide, on a resale basis, both interLATA and intraLATA long distance telecommunications services as a public utility in North Carolina.

2. TMC/P is fit, capable, technically qualified, and financially able to render interLATA and intraLATA long distance telecommunications services on a resale basis as a public utility in the State of North Carolina.

3. The long distance telecommunications services proposed by TMC/P in North Carolina are required to serve the public interest effectively and adequately and will not jeopardize reasonably affordable local exchange service.

4. TMC/P agrees to abide by all applicable rules and regulations of the Commission and the findings, conclusions, terms, and conditions set forth in all applicable Commission Orders.

5. TMC/P will be required to compensate the local exchange telephone companies for all revenue losses resulting from the completion of unauthorized or incidental intraLATA calls made by its customers on and after the date of

this Order pursuant to the compensation plan adopted by the Commission in Docket No. P-100, Sub 72.

6. TMC/P's "Calling Home Service" and "Universal Travel Service" are two different services which utilize different equipment. The Company's proposal to charge different rates for the two services is just, reasonable, and appropriate.

7. TMC/P may offer, subject to prior Commission review, promotional rates which are offered on a completely non-discriminatory basis.

8. TMC/P proposes to resell 800 Service (In-WATS). It is in the public interest that this should be allowed, provided that TMC/P pays all applicable access charges for its use of the local switched network to terminate calls originating over the resold 800 Service.

9. The proposed tariff for resale service filed by TMC/P does not include a 50% discount from applicable long distance charges for certified hearing or speech impaired customers who communicate on the telephone by use of a special telecommunications device or a provision for free directory assistance service for those customers who are unable to use the telephone directory. It is in the public interest that TMC/P should be required to include such provisions in its tariff.

10. TMC/P should file an appropriate undertaking for Commission approval regarding refund of customer deposits, prepaid accounts, processing fees, and hook-up fees.

WHEREUPON, the Commission reaches the following

CONCLUSIONS

On February 22, 1985, the North Carolina Utilities Commission entered an Order in Docket No. P-100, Sub 72, entitled "Order Authorizing Intrastate Long-Distance Competition." By this Order, the Commission found that the authorization of intrastate interLATA competition by other common carriers (OCCs) and resellers in North Carolina was then in the public interest and would not jeopardize reasonably affordable local telephone service. The Commission further found that intraLATA competition would be in the public interest, subject to the resolution of certain important issues related thereto during a transition period; that intraLATA resale competition would be authorized no later than January 1, 1986; that intraLATA facilities-based competition would be authorized after a transition period of approximately two years on or about January 1, 1987; that the public interest then required that interLATA competition through resale should be limited to resale of WATS and MTS services; that intrastate interLATA Feature Group A (FGA) and Feature Group B (FGB) access charges should be discounted by 25% from Feature Group C (FGC) or premium access on an originating basis only; and that access charges for FGA/FGB on the terminating end would be the same as for FGC.

TMC/P seeks authority in this docket to provide both interLATA and intraLATA long distance telecommunications services as a public utility in North Carolina. TMC/P contends that it is appropriate for the Company to be granted authority for both services at this time since the Commission stated in

its February 22, 1985 Order in Docket No. P-100, Sub 72, that intraLATA resale competition would be authorized no later than January 1, 1986. The Commission notes that intraLATA resale competition by resellers of WATS and MTS was in fact authorized effective January 1, 1986, by Order recently entered in Docket No. P-100, Sub 72, on December 19, 1985. Thus, the Commission concludes that it is entirely appropriate in this proceeding to grant TMC/P a certificate of public convenience and necessity to provide both interLATA and intraLATA long distance telecommunications services as a reseller in North Carolina, on the condition that the Company shall pay all compensation amounts for unauthorized intraLATA traffic which accrue on and after the date of this Order as further discussed below.

In this regard, the Commission has established a compensation plan in Docket No. P-100, Sub 72, whereby resellers are required to compensate the local exchange companies for revenue losses resulting from the completion of unauthorized intraLATA calls. TMC/P did not file a proposed compensation plan or methodology to determine the unauthorized intraLATA conversation minutes on its facilities each month in conjunction with its application for a certificate. On November 25, 1985, and December 9, 1985, the Commission entered Orders in this docket requiring TMC/P to file such a proposed compensation plan or affidavit for consideration by the Commission not later than December 18, 1985. On December 18, 1985, TMC/P filed its proposed compensation plan for consideration by the Commission stating how the Company proposes to account for unauthorized intraLATA conversation minutes of use on a monthly basis. The Commission will defer ruling on the appropriateness of the proposed compensation plan filed by TMC/P in order to allow all interested parties, including the Public Staff, Attorney General, and the LECs, a reasonable opportunity to study and evaluate such plan and to file appropriate written comments regarding the Company's proposed compensation plan. Thus, the grant of intrastate operating authority made to TMC/P by this Order will be made on a conditional basis subject to the payment of appropriate compensation by the Company for all unauthorized intraLATA traffic completed by the customers of TMC/P on and after the date of this Order.

The Public Staff and Attorney General have suggested that TMC/P's "Calling Home Service" and "Universal Travel Service," two services for which different rates are proposed to be charged, represent geographical deaveraging of rates and should be disapproved.

TMC/P presented evidence that the Company proposes to offer two separate and distinct services, each using different equipment, and that the rates for each service are identical for all customers using a service, regardless of the customer's geographic location. Witness Wentzel testified that the "Calling Home Service" is a call made from any location over an 800 In-WATS line to the switch and which is then terminated over the local trunk. Mr. Wentzel further explained that the "Universal Travel Service" is a call made from any location over an 800 In-WATS line to the switch and then switched to an outgoing WATS line for termination at any location. Clearly, these are different services and cost differentiation is attributable to the fact that they are different services. The Commission concludes that these services are just and reasonable in a competitive environment and should be approved, notwithstanding the objections lodged by the Public Staff and Attorney General.

TMC/P proposes to resell 800 Service (In-WATS). In Docket No. P-154, the Commission concluded that the resale of 800 In-WATS Service is in the public interest and falls within the spirit of the "Order Authorizing Intrastate Long Distance Competition" entered in Docket No. P-100, Sub 72, provided that access charges are properly paid for use of the local switched network to terminate calls originating over the resold 800 Service. Thus, TMC/P should be allowed to resell 800 Service on the condition that the Company pays all applicable access charges.

The Commission further concludes that, for the time being, TMC/P should be required to file an undertaking to refund, rather than a bond as requested by the Attorney General, to cover any customer deposits, prepaid accounts, processing fees, and hook-up fees. This treatment is consistent with what the Commission has required from all other competing long distance carriers who have recently been certificated.

The Commission also concludes that the following specific changes and revisions must be made in TMC/P's proposed tariff for resale service prior to approval thereof:

1. TMC/P has not provided a special provision for subscribers using telecommunications devices for the deaf (TDD) equipment or a directory assistance provision for those customers who are unable to use the telephone directory. Although TMC/P does not itself offer directory assistance service, the Company does allow access to the service as provided by facilities-based carriers and proposes to charge its customers $0.75 for each such directory assistance call. TMC/P contends that it does not get a price break from AT&T for these services and that since it provides a discount to all of its customers, the Company should not have to offer further discounts for those using TDD equipment or those unable to use the telephone directory. The Commission is of the opinion that services such as these are of public benefit and in the public interest and should generally be offered by carriers such as TMC/P so that consumers who must avail themselves of these services will also share in the benefits of competition. For the above stated reasons, the Commission will require TMC/P to include in its tariff a 50% discount on applicable long distance charges for all customers using TDD equipment to communicate and a provision to allow free directory assistance service to customers who are unable to use the telephone directory.

2. The references to equipment on Page 3 under Section II.A. of the proposed tariff entitled "Description of Service" should be deleted. This section refers to the Company being able to provide adequate equipment for its services. Equipment is a deregulated item and these references should be removed from the tariff.

3. TMC/P should clarify its proposed tariff provisions on special services. Under the North Carolina general statutes, the Company must file all rates regarding regulated services with the Commission and the Commission may then either approve, suspend, or disapprove the rates. If TMC/P has a need to contract with a specific customer, the Company should advise the customer that the negotiated price must be filed with the Commission for review. TMC/P should clarify the special service provisions in its tariff to provide that rates and terms for regulated special services must be filed with the Commission for review at least 14 days before the date upon which the proposed

rates are to become effective. Upon a showing of good cause, the Commission will entertain motions on a case-by-case basis to shorten the minimum notice period when necessary to consider specific service arrangements for regulated services on less than 14 days' notice.

4. During the hearing in this docket, TMC/P either proposed or agreed to amend the Company's proposed tariff as follows:

> (a) By amending Section II.G. entitled "Customer Obligations" by deleting all but the first sentence from that paragraph; (b) By amending Section II.H.1. entitled "Cancellation by Customer" by deleting the word "written" in order to allow for other means of cancellation. TMC/P should also be required to amend Section II.E.1. entitled "Processing Fees" by deleting the words "in writing" in order to allow for other means of requesting refund of processing fees. The Commission does not believe that a customer should be required to give written notice of cancellation of service or to make a written request for refund of processing fees; (c) By amending the sixth sentence of the first paragraph of Section II.A. of the proposed tariff to read as follows: "Equal Access Service is available to the Company's customers in the following central offices: Greensboro, Eugene Street; Winston-Salem, Fifth Street CGO office; Winston-Salem, Fifth Street CGI office." The seventh and eight sentences of this section of the tariff shall be deleted; (d) By amending the first sentence of Section III.A. by deleting the words "the place of origination of the call"; and (e) By amending Section II.C. entitled "Applications for Service" to conform with Commission Rule R12-2 regarding establishment of credit.

The Commission concludes that these proposed tariff changes are appropriate and should be approved.

5. TMC/P should either delete or amend Section II.H.2.d. of the proposed tariff. This provision again references equipment which is deregulated and also refers to Company facilities. The Company has no facilities; therefore, a reference to Company facilities is improper, ambiguous, and may be misconstrued. TMC/P should delete the reference to equipment from this section. The Company should also either delete the section in its entirety regarding the reference to facilities or amend and clarify the section to provide that all facilities used for which TMC/P renders a bill for payment (such as access facilities provided by the LECs) are considered to be provided by the Company whether or not such facilities are owned and operated by TMC/P.

6. The Company should delete provisions 2 and 5 under Section II.I. of its proposed tariff entitled "Limitation of Company's Liability." These provisions refer to equipment which is deregulated and Company facilities of which the Applicant has none. The Commission has no jurisdiction over deregulated equipment and it is not appropriate to attempt to limit liability by tariff regarding items over which the Commission has no authority. These provisions involve contractual and civil matters and therefore should be deleted from the tariff.

7. TMC/P proposes to offer promotional rates, including waiver of processing fees, from time to time under Section III.C. of its tariff. The

Company's tariff should be amended to provide that such promotional rates will only be offered on a completely nondiscriminatory basis for a specific period of time and shall be filed with the Commission for review at least 14 days prior to implementation. TMC/P should also delete the specific promotions listed in this section of the Company's tariff.

8. TMC/P should revise its proposed tariff to clarify and list information regarding the timing of calls. The Company states that charges will be based on distance, time of day, and duration and that no charges will be made for calls that terminate in less than 42 seconds. However, it is unclear when the timing of a call starts (e.g., when the customer accesses the Company's switch, when the called party answers, etc.) and ends. The Commission believes that because the rates of TMC/P are based upon the duration of a call, it is essential for the tariff to state when the timing of a call begins and ends. Therefore, TMC/P should include specific information on the timing of calls in the revised tariff to be filed pursuant to this Order.

IT IS, THEREFORE, ORDERED as follows:

1. That TMC/P be, and the same is hereby, granted a certificate of public convenience and necessity pursuant to G.S. 62-110 to provide interLATA and intraLATA long distance telecommunications services in North Carolina subject to the following terms and conditions:

A. TMC/P shall abide by all applicable rules and regulations of the North Carolina Utilities Commission, and the findings, conclusions, restrictions, and conditions set forth in the Orders heretofore entered in Docket No. P-100, Sub 72, and all other applicable Commission Orders entered in relevant dockets.

B. TMC/P shall compensate the local exchange companies for all revenue losses resulting from the completion of unauthorized intraLATA calls made by its customers pursuant to the compensation plan adopted by the Commission in Docket No. P-100, Sub 72, subject to any subsequent changes to the plan as may be approved by the Commission. TMC/P shall compensate the LECs for all such intraLATA revenue losses resulting from the completion of any unauthorized calls made by its customers on and after the date of this Order. The Commission hereby defers ruling on the appropriateness of the proposed compensation plan filed in this docket by TMC/P on December 18, 1985, pending receipt and review of any written comments regarding such plan which may be filed by the parties to this proceeding.

C. TMC/P shall not use or construct any facilities designed to bypass the access or local exchange facilities of the local exchange telephone companies.

D. TMC/P shall not hereafter abandon or discontinue service under its certificate in North Carolina, unless the Company has received approval from the Commission to do so upon such terms and conditions as the Commission may prescribe.

E. TMC/P shall pay all applicable access charges to the LECs for the Company's use of the local switched network to terminate calls over resold

800 Service. TMC/P shall report such minutes of use to the LECs and shall report to the Commission whether the Company can provide or implement procedures to provide minutes of use for traffic originating on Band 0 In-WATS as compared with Bands 1-5 In-WATS for determining apparent North Carolina intrastate calls such that access charges may be applied for completion of such calls terminating in North Carolina. TMC/P shall report on a monthly basis the magnitude in minutes of use of traffic originating on its In-WATS services terminating in North Carolina and compare this with all other traffic apparently originating in North Carolina and terminating in North Carolina in order to assist the Commission in evaluating the impact of such traffic and the determination of access charges therefor.

F. TMC/P shall make the tariff revisions required above and shall also add appropriate tariff provisions for Commission approval designed to offer (1) a 50% discount from applicable long distance charges for certified hearing or speech impaired customers who communicate on the telephone by use of a special telecommunications device and (2) free directory assistance service to those customers unable to use the telephone directory. Such revised tariff shall be filed with the Commission and all parties not later than Friday, January 10, 1986. Comments regarding the revised tariff shall be filed by the parties, if any comments there be, not later than Friday, December 17, 1986.

2. That this Order shall itself constitute the certificate of public convenience and necessity granted to TMC/P by the North Carolina Utilities Commission to provide long distance telecommunications services on a resale basis in North Carolina.

3. That the revised tariff to be filed by TMC/P under the conditions set forth in this Order shall become effective upon further Order.

4. That TMC/P shall file an appropriate undertaking for Commission approval whereby the Company agrees and binds itself, if ordered to do so by the Commission, to refund any customer deposits, prepaid accounts, processing fees and hook-up fees on such terms and conditions as the Commission may prescribe to those customers who may become entitled thereto. Said undertaking to refund shall be filed in this docket not later than 20 days from the date of this Order.

5. That the motion to amend rates filed in this docket by TMC/P on December 27, 1985, be, and the same is hereby, granted.

6. That any motions not heretofore ruled upon or granted be, and the same are hereby, denied.

ISSUED BY ORDER OF THE COMMISSION.
This the 31st day of December 1985.

NORTH CAROLINA UTILITIES COMMISSION
Gail Lambert Mount, Deputy Clerk

(SEAL)

TELEPHONE - COMPLAINTS

DOCKET NO. P-55, SUB 836

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Wake County Government, Complainant	)	
vs.	)	ORDER DISMISSING COMPLAINT
Southern Bell Telephone and Telegraph Company, Respondent	)	

HEARD IN: Commission Hearing Room, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on May 10, 1984

BEFORE: Commissioner Edward B. Hipp, Presiding; and Commissioners Ruth Cook and Sarah Lindsay Tate

APPEARANCES:

For Southern Bell Telephone and Telegraph Company

J. Billie Ray, Jr., and Edward L. Rankin III, P. O. Box 30188, Charlotte, North Carolina 28230

For Wake County Government

Michael R. Ferrell, Wake County Attorney, P. O. Box 550, Raleigh, North Carolina 27602

BY THE COMMISSION: On January 20, 1984, Wake County Government (County) filed a complaint with the North Carolina Utilities Commission against Southern Bell Telephone and Telegraph Company (Southern Bell or Company) concerning problems with its ESSX telephone system. On February 21, 1984, Southern Bell filed its answer to the complaint. The answer was served on the County by Order of February 27, 1984. The County subsequently filed a response with the Commission indicating that it was not satisfied with the answer of Southern Bell. The complaint was heard by the Commission on May 10, 1984, in Raleigh, North Carolina. Southern Bell and the County were present and represented by counsel. Wake County presented the testimony of Richard Stevens, Assistant County Manager; Wayne Bare, Associate Superintendent for Finance and Operations of Wake County Schools; and Brian Hill, Finance Officer for the City of Raleigh. D. L. Holmes, Administrative Marketing Manager, testified on behalf of Southern Bell.

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. Wake County Government is Southern Bell's subscriber and participates as the lead agency for joint ESSX telephone service for Wake County Government, the Wake County Public School System, the City of Raleigh, and the Raleigh

Housing Authority. Southern Bell bills the County for the entire service under the 755-6000 series of telephone numbers and the County in turn is reimbursed by the user agencies for the portion of the bills associated with each agency's use of the service.

2. In the fall of 1981 Southern Bell and the County discussed the possibility that the County could use WATS as opposed to traditional long distance service to save the County money. The County agreed to subscribe to WATS service if Southern Bell could provide billing information to individually account for calls placed by users of the WATS system. Southern Bell informed the County that it offered a station message detail recording (SMDR) service at an extra charge that could identify by main station telephone number the originator of long-distance, WATS and directory assistance calls. The County agreed to subscribe to WATS service as well as the SMDR service. Both services were installed in March 1982.

3. From March through September 1982, the County had software compatibility problems with the message data provided by Southern Bell that made it difficult for the County to obtain the detailed billing information. Southern Bell agreed to adjust the monthly charges for the SMDR feature because the County was unable to derive the desired message detail information. The County used and received the benefit of the WATS system from March through September and compensated Southern Bell for that use.

4. In October 1982, the SMDR service malfunctioned and the billing detail information was unavailable. The Company credited the County's bill for the SMDR charges for that month. In addition, since the County had no history of detailed billing for its WATS service, a method for allocating charges to user agencies was not available, and the Company agreed to adjust the October 1982 charges for WATS service.

5. During November and December 1982, the SMDR service functioned properly. However, in January and February 1983 a malfunction in the Southern Bell central office serving the County's ESSX telephone system resulted in invalid information on the SMDR data tapes and the message detail was unavailable. The monthly charges for the SMDR service were adjusted. Although the WATS service was adequately provided, the County was again granted a credit for WATS charges because there was not sufficient historical data to permit a reasonable allocation of charges to user agencies. From March through July 1983, the County's SMDR service and WATS service functioned properly.

6. From August through November 1983, another malfunction in the Southern Bell central office made it impossible for the County to receive correct SMDR information. The Company made full adjustments for the monthly charges associated with the SMDR service. For the same period of time Wake County Government was billed $29,912.92 for WATS service. It refused to pay those charges and asked Southern Bell to waive the charges. Southern Bell refused the County's request.

Whereupon the Commission reaches the following

CONCLUSIONS

The testimony and exhibits of Assistant County Manager Richard Stevens and D. L. Holmes, Southern Bell Administrative Marketing Manager, support these findings of fact. The parties essentially stipulated to the sequence of events that led the County to request a formal hearing before the Commission. The only issue in controversy is whether Southern Bell should be ordered to waive WATS charges in the amount of $29,912.92 that were billed to the County for August through November 28, 1983.

Wake County requests this Commission to order Southern Bell to waive charges for WATS service provided for the County from August through November 28, 1983, in the amount of $29,912.92. The County admits that it and its agencies used the WATS lines leased from Southern Bell and admits that it was billed $29,912.92 for this service. The County has requested a waiver of charges not because the WATS service did not work but because a separate service designed to provide billing information for WATS calls malfunctioned. The Commission concludes that a waiver of WATS charges is not appropriate and, therefore, denies and dismisses the County's complaint.

Despite the evidence that the County desired WATS service only if a message detail service was also available to account individually for calls made on the WATS system, the County's obligation to pay for WATS service received does not cease if the SMDR service malfunctions. At the time the County agreed to the WATS system, it realized that SMDR was a separate and distinct service and would be billed at a separate monthly rate. Richard Stevens testified that when Southern Bell approached the County about converting from traditional long-distance to WATS service to save money, he was familiar with WATS service and knew it did not provide detailed billing information. The Commission does not agree with the County that because the County agreed to subscribe to WATS lines only if a message detail service was available, its obligation to pay for WATS service received should be conditioned upon the error-free operation of that billing service.

A public utility may not privately contract for its utility services in derogation of published tariffs. G.S. Section 62-140; Clinton-Dunn Telephone Company v. Carolina Telephone and Telegraph Company, 74 S.E. 636 (N.C. Sup. Ct. 1912); Southern Ry. Co. v. Lynn Lake Transportation Co., Ltd., 350 So. 2d 964 (La. Ct. App. 1977). Southern Bell's tariff is, in effect, the "contract" the Company has with its customers. This document sets forth the rates and regulations by which service may be offered by the Company. Conner v. Illinois Bell Telephone Co., 120 Ill. App. 2d 124, 256 N.E. 2d 41 (1970). The North Carolina General Subscriber Service Tariff does not obligate Southern Bell to adjust WATS charges if an SMDR feature used in conjunction with that service malfunctions.

The tariff does entitle a customer to an adjustment of charges for service that has been interrupted through no fault of the customer. Tariff A2.4.4 provides:

> When the use of service or facilities furnished by the Company is interrupted due to any cause other than the negligence or willful act of the subscriber or the failure of the facilities provided by the subscriber, a pro rata adjustment of the fixed monthly charges

> involved will be allowed, upon request of the subscriber, for the service and facilities rendered useless and inoperative by reason of the interruption during the time said interruption continues in excess of 24 hours from the time it is reported to or detected by the Company, except as otherwise specified in this tariff. For the purpose of administering this regulation, every month is considered to have 30 days. (Emphasis added).

During the August through November 28, 1983, period the SMDR service was rendered useless by a malfunction in the Southern Bell central office. Pursuant to A2.4.4 Southern Bell adjusted the monthly charges for the SMDR service. During the same period of time the County was billed $29,912.92 for WATS service. Tariff A19.4.12 applies to service problems regarding WATS and states that an allowance for interruptions applies to each WATS access line when the WATS access line is interrupted for a period of more than two hours. Since the County's WATS service was not interrupted, Southern Bell properly applied its tariff and reasonably refused to credit the County for those charges.

In addition, State utility law would not allow the County to have a private arrangement with Southern Bell outside applicable tariffs to use WATS lines free to charge if a separate service fails to operate perfectly. "A fundamental basis for the regulation of public utilities is to assure that once monopoly powers have been granted, the utility will provide all of its customers similarly situated with service on a reasonably equal basis." State ex rel. North Carolina Utilities Commission v. City of Wilson, 252 N.C. 640, 114 S.E. 2d 786, 791 (1960). To assure that North Carolina utilities do not discriminate against their ratepayers, the North Carolina Legislature enacted G.S. Subsection 62-139 and G.S. Subsection 62-140. G.S. Subsection 62-139(a) provides:

> No public utility shall directly or indirectly by any device whatsoever, charge, demand, collect, or receive from any person a greater or less compensation for any service rendered or to be rendered by such public utility than that prescribed in the schedules of such public utility applicable thereto then filed in the manner provided in this Article....

G.S. Subsection 62-140(a) states:

> No public utility shall, as to rates or services, make or grant any unreasonable preference or advantage to any person or subject any person to any unreasonable prejudice or disadvantage. No public utility shall establish or maintain any unreasonable difference as to rates for services either as between localities or as between classes of service...

Occasionally, service problems will arise which require utilities to adjust charges for that service. There can be no set formula to apply to all cases because the individual nature of service problems requires individual treatment and adjustments to fairly resolve problems. However, such adjustments must be applied evenhandedly to all subscribers. Southern Bell's testimony indicated that it had other WATS customers who subscribed to the SMDR feature for the same reasons offered by Wake County Government. Those

customers are billed for WATS and they, in turn, allocate portions of the bill to user agencies for reimbursement. There have been instances where those customers experienced problems in obtaining the desired billing information from the SMDR service. The Company and customer worked together to reasonably allocate the WATS charges using historical billing information. When historical billing information was available, customers could prorate the costs for the months when itemized bills were not available and recover those costs from the user agencies.

Based upon Southern Bell's treatment of other customers receiving like service under like conditions, the Commission concludes that Southern Bell acted properly under its tariff and the law in refusing to give preferential treatment to the County.

During the hearing on this matter, Southern Bell introduced an example of how Wake County Government could allocate WATS charges to user agencies based on actual data. The Commission concludes that Southern Bell's proposal that the County use historical billing data to allocate the WATS charges is reasonable. The Commission further concludes that a reasonable method exists for arriving at the sum each agency should reimburse the County for WATS calls made by the agency during the four-month period in question and that there is no legal or equitable reason to compel a waiver of the WATS charges in this case.

The relief sought by the County here is founded on the notion that Southern Bell's refusal to waive the WATS charges is an unjust and unreasonable practice. The Commission concludes that the Company has properly applied its tariff in refusing to waive the WATS charges in question and that there is no evidence of a violation of law or a Commission order or rule. The Company has treated the County no differently than it has other customers under substantially similar conditions.

In complaint proceedings, the burden of proof to show that the rate, regulation, or practice is unjust or unreasonable is upon the complainant. G.S. Subsection 62-75. For the reasons set out above, the Commission finds that the County has not met this burden in this case.

IT IS, THEREFORE, ORDERED that Wake County Government's request that the Commission order Southern Bell to waive WATS charges in the amount of $29,912.92 be denied and this complaint be dismissed.

ISSUED BY ORDER OF THE COMMISSION.
This the 9th day of January 1985.

NORTH CAROLINA UTILITIES COMMISSION
Sandra J. Webster, Chief Clerk

(SEAL)

DOCKET NO. P-7, SUB 668

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Investigation into the Establishment of Extended Area Service Between the Exchanges of Enfield, Whitakers, and Rocky Mount	)	ORDER REQUIRING EAS POLL

BY THE COMMISSION: This proceeding originated as a result of petitions and letters received by the Commission from subscribers in the Enfield exchange requesting extended area service (EAS) to the Rocky Mount exchange. The matter was considered by the Commission during its Regular Staff Conferences held on June 17 and June 24, 1985. Upon the recommendation of Carolina Telephone and Telegraph Company (CT&T), the Commission has concluded that the exchange of Whitakers should be included in the EAS poll to be conducted in this proceeding and that such EAS poll should be conducted on or after August 16, 1985, in view of CT&T's statements that the Company will propose a regrouping of the Rocky Mount and Whitakers exchanges by August 15, 1985.

IT IS, THEREFORE, ORDERED as follows:

1. That Carolina Telephone and Telegraph Company shall conduct an EAS poll of its affected subscribers in the Enfield exchange to determine their desire and willingness to pay an increased flat monthly rate to call and receive calls from subscribers in the Rocky Mount and Whitakers exchanges. This EAS poll shall be conducted on or after August 16, 1985.

2. That the basic monthly rate increases to be used for polling shall be as follows:

Exchange	R-1	R-2	R-4	B-1	B-2	B-4
Enfield	$4.52	$4.23	$4.09	$10.78	$10.06	$9.81

3. That Carolina Telephone and Telegraph Company shall, not later than 20 days from the date of this Order, submit for Commission consideration and approval a proposed polling letter and postcard ballot which emphasize the importance of a vote and which adequately and accurately reflect the choices and consequences of a "yes" or "no" vote on the proposed EAS. CT&T shall also advise the Commission as to the date or dates the EAS poll will be conducted.

ISSUED BY ORDER OF THE COMMISSION.
This the 3rd day of July 1985.

NORTH CAROLINA UTILITIES COMMISSION
Sandra J. Webster, Chief Clerk

(SEAL)

DOCKET NO. P-7, SUB 677

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Investigation into the Establishment of Extended Area Service Between Southern Bell's Goldsboro Exchange and Carolina Telephone Company's LaGrange Exchange) ORDER

HEARD IN: Wayne Center, Corner of George and Chestnut Streets, Goldsboro, North Carolina, on December 14, 1983. Commission Hearing Room, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on February 21, 1984, and June 29, 1984

BEFORE: Commissioner A. Hartwell Campbell, Presiding; and Commissioners Edward B. Hipp and Ruth E. Cook

APPEARANCES:

For Southern Bell Telephone and Telegraph Company:

J. Billie Ray, Jr., and Edward L. Rankin III, 1012 Southern National Center, Post Office Box 30188, Charlotte, North Carolina 28230

Lawrence E. Gill, 4300 Southern Bell Center, Atlanta, Georgia 30375

For Carolina Telephone and Telegraph Company:

Robert C. Voigt, Senior Attorney, Jack W. Derrick - General Attorney, 720 Western Boulevard, Tarboro, North Carolina 27886

For AT&T Communications:

Gene V. Coker, General Attorney, and Michael W. Tye, Attorney, 1200 Peachtree Street, N.C., Atlanta, Georgia 30357

For the Public Staff:

Thomas K. Austin and Antoinette R. Wike, Staff Attorneys, Post Office Box 991, Raleigh, North Carolina 27602

BY THE COMMISSION: This matter is before the Commission upon the receipt of petitions, resolutions and letters submitted by Dr. Kent Denton, President of the LaGrange Chamber of Commerce, in support of extended area service (EAS) between the LaGrange exchange served by Carolina Telephone and Telegraph Company (Carolina Telephone) and the Goldsboro exchange service by Southern Bell Telephone and Telegraph Company (Southern Bell). By Order issued September 6, 1983, the Commission scheduled a public hearing in the LaGrange-Goldsboro area and required Carolina Telephone and Southern Bell to give notice of the hearing to their respective customers.

On November 17, 1983, Southern Bell filed a motion asking the Commission to dismiss the proceedings or, in the alternative, to substitute AT&T Communications, Inc. (AT&T), for Southern Bell. As grounds for the motion,

Southern Bell cited the Modification of Final Judgment (MFJ) entered by the United States District Court for the District of Columbia in United States v. Western Electric Co., et al., Civil Action No. 82-0192 under which Southern Bell's facilities for providing interLATA services, such as the EAS proposed in this proceeding, would be transferred to AT&T. Southern Bell further cited the Court's Order of July 8, 1983, which determined that all traffic between Southern Bell's Raleigh LATA and the adjacent portions of Carolina Telephone service area including LaGrange should be classified as interLATA. On December 2, 1983, the Public Staff filed a Response requesting that both the dismissal and the proposed substitution be denied, citing language in the July 8, 1983, Order that "[n]othing in the Court's approval of the Bell-Independent classifications is intended in any way to restrict the regulatory bodies in the exercise of their legitimate authority" and noting that any limitation which the MFJ might impose on Southern Bell in the provision of interexchange services would not apply to Carolina Telephone.

The matter came on for hearing in Goldsboro as scheduled on December 14, 1983, for the purpose of hearing public witnesses only. Twenty-one persons testified in support of the proposed EAS.

Testimony of Public Witnesses

Dr. Kent Denton, a resident of Goldsboro and a dentist in LaGrange, stated that about a year earlier an organizational meeting was held at which some 400 people asked that a Citizens Advisory Committee be formed and that Dr. Denton chair it as President of the Chamber of Commerce. Some 4,000 signatures favoring EAS and some 150 letters of support were collected and forwarded to the Public Staff. These are now in the Chief Clerk's file. Dr. Denton stated further that about 47 percent of his dental practice is from Wayne County and that it would be both to his and to his patients' advantage to be able to call back and forth from LaGrange to Wayne County if EAS were established. Citing prior cases, Dr. Denton asked the Commission to order EAS without a poll. In the alternative, he asked that only LaGrange be polled and that Goldsboro receive no rate increase at this time.

Ed Denmark, a resident of LaGrange and Chairman of the Lenoir County Board of Commissioners, referred to a Board resolution favoring the EAS and stated that the service would be of considerable value to the residents of LaGrange and the surrounding area.

Woody Gurley, a resident of LaGrange and recently-elected Mayor, stated that a majority of the LaGrange residents work in Goldsboro. The LaGrange area is one of the larger turkey producing areas in the County and the Goldsboro Milling Company is located in Goldsboro. The LaGrange Rescue Squad answers approximately 500 calls a year and about 25 percent of them go to Goldsboro to the hospitals.

Lamm Hardy, a LaGrange resident and a merchant there, stated that it was very important to him as a businessman to have service to Goldsboro because a large percentage of his customers reside in Goldsboro. He further stated that he once had a private line to Goldsboro but discontinued it because it was too expensive to keep.

Berkey Walters, a resident of LaGrange and Director of Public Utilities for the Town, stated that LaGrange averages between 25 and 35 calls per month to businesses in Goldsboro and that some of these calls are essential. These include all of the Town's communication maintenance as well as calls to the sheriff's department and the police department. Mr. Walters also stated that he personally averages about five calls per month to businesses and other places in Goldsboro and would like to see the proposed EAS service implemented.

Charlie Lee, a resident of Wayne County living about three miles from LaGrange, stated that he works for Horace Mann Insurance Agency which serves the county's teachers. In order to communicate with his clients from his home, he had to install a business telephone which is an economic burden costing $120 per month.

Virginia Swisher, a Carolina Telephone subscriber and resident of Dobbs Court in Wayne County approximately 250 feet from the Southern Bell boundary, stated that although she is a resident of Wayne County she must place a long distance call between Carolina Telephone's LaGrange exchange and Southern Bell's Goldsboro exchange in order to communicate with the fire department, sheriff's department, emergency medical service, hospitals, and so on.

John Durrett, a resident of Wayne County and a Carolina Telephone subscriber, stated that his telephone bill the previous month was $145 whereas when he lived in the Goldsboro exchange it was $40. His children attend Southern Wayne School which is a long distance call away. Moreover, to call the doctor or to call work it is long distance.

William Rogers, a resident of Goldsboro, stated that his granddaughters live at Dobbs Court and that it would be helpful to him to be able to call them whenever he wanted to.

Irene Howell, Administrator of Howell's Child Care Centers in both LaGrange and Goldsboro, stated that the Centers have over 400 employees and it seems that those who work in LaGrange live in Goldsboro and those who work in Goldsboro live in LaGrange. She further stated that they considered installing pay stations but chose not to do so because they cost $150 apiece. Their telephone bill ranges from $1500 to $2000 per month.

Rachel Osborne, a resident of Seymour Johnson Air Force Base, stated that when her family was first stationed there they bought a house in the County but when she discovered she could not call her husband at work she decided to do something about it and became involved in the request for EAS between LaGrange and Goldsboro.

Sue Haddock, a resident of the County Subdivision in Wayne County and a Carolina Telephone subscriber, stated that members of her family do most of their business in Wayne County. She also stated that her husband works eight miles away and must pay a toll charge to call home.

Ed Harris of Goldsboro stated that he runs the Harris Insurance Agency which does business with many LaGrange residents who complain about having to make long distance telephone calls. He also stated that in emergency situations, he places the calls and therefore would like to see the situation remedied.

Henry Abbott, a forty-year resident of LaGrange, stated that he does most of his business in Goldsboro and that in order for public opinion to be known he believes a poll is needed.

Tony Stanley, a resident of Dobbs Court in Wayne County, stated that with the enlargement of the Walnut Creek Area, there are homes 500 feet from him that he is unable to call toll free. He described Dobbs Court as a "peninsula" which is surrounded by the Southern Bell exchange. He further stated that all long distance calls to Goldsboro are operator assisted which causes quite a delay at times.

Bernard Lambe, a resident of Dobbs Court, stated that his home is adjacent to Walnut Creek where, in the winter of 1981, he detected a fire and his wife had difficulty calling the fire department through the Carolina Telephone operator who had to contact Goldsboro.

Pat Sanders, a resident of LaGrange, stated that she had the same problem that residents of Dobbs Court have. She further stated that on her last telephone bill calls to Goldsboro alone amounted to $22.

Randall Herring, a resident of LaGrange, also stated his support for EAS, referring to the testimony of witnesses from two prominent subdivisions as well as the 4,000 persons who petitioned for EAS.

Carol Smith Edwards, a resident of the Best Community in Wayne County, five miles from LaGrange and eight miles from Goldsboro, stated that she lives two miles from Eastern Wayne High School and it is a long distance call if her children have to call the school and a collect call if they call home. She also described delay and confusion in making calls to the sheriff's department. As a citizen and taxpayer of Wayne County whose husband works in Wayne County, Mrs. Edwards stated she felt EAS was long overdue.

Rebecca Kneeshaw, a resident of Wayne County, stated that she works at Cherry Hospital and her children attend Eastern Wayne School both of which are long distance calls away. She expressed her objection to being a Wayne County resident and not being served by Southern Bell. She further stated that her telephone bill runs $50 to $60 per month and that these are important calls. Finally, Mrs. Kneeshaw stated that she works at Cherry Hospital and, as all nurses, is on the disaster committee. If she should be called back to work, it would be a toll call.

J. Kenneth Bartlett, a grain and livestock farmer and a resident of Wayne County about 6 1/2 miles from Goldsboro and 2 1/2 miles from LaGrange as the crow flies, stated that in his opinion if he is going to pay Wayne County taxes he should be serviced by the Goldsboro exchange.

Anna Humphries, a resident of Goldsboro, stated that she did not believe it fair for certain Wayne County residents to have to pay extra to communicate with the county seat. She further stated that, as a business person, she felt Goldsboro was losing revenue to Kinston every day.

Oral Argument

The hearing resumed in Raleigh on February 21, 1984, at which time the Commission heard oral argument on the pending motion of Southern Bell, the testimony of witnesses for Southern Bell, Carolina Telephone, and AT&T.

Southern Bell Telephone and Telegraph Company

Southern Bell offered the testimony of R. W. Fleming, District Staff Manager - Rates in Company Headquarters. Mr. Fleming stated that EAS was first conceived as a service to be provided between two nearby exchanges, over short distances where it could be done without an economic penalty and when there was a showing of a community of interest between the two points involved. EAS resulted in labor cost savings which could be used to offset the cost of equipment necessary to establish the arrangement. With the advent of automation, these labor-related savings are, in Mr. Fleming's words, "virtually extinct."

He testified that he became familiar with the proposal for EAS between Goldsboro and LaGrange in May of 1983. Cost studies, he said, had been done in March in response to Commission Order. These were furnished to the Commission in June. They showed monthly increases to Goldsboro subscribers of $.47 for residences and $1.18 for businesses, including the effect of toll revenue loss, and $.23 for residences and $.58 for businesses, excluding loss of toll revenue. Mr. Fleming further stated that the cost studies were done in a pre-divestiture mode and have not been changed since the effects of divestiture on this EAS arrangement are unclear. Nevertheless, Mr. Fleming stated that the Company believes the cost information it has provided is accurate.

With regard to whether or not EAS is in the best interest of Southern Bell's Goldsboro subscribers, Mr. Fleming stated the Company's belief that toll calling provides the most feasible alternative for these subscribers. He referred to the 1982 calling study conducted at the request of the Commission which showed that 89.4 percent of the Goldsboro subscribers made no calls to LaGrange, 5 percent made only one call and 5.6 percent made two or more calls during the study period. The revenue analysis indicated that 94.4 percent of the residence subscribers would not benefit at a rate of $47 per month and 92.5 percent would not benefit at a rate of $23 per month.

Moreover, Mr. Fleming contended that traditional community of interest factors do not appear to be present in this case since the central offices are in separate counties, most LaGrange subscribers are in Lenior County, and no Goldsboro subscribers are in Lenoir County.

Finally, Mr. Fleming stated Southern Bell's belief that a poll should be conducted to give subscribers a chance to weigh the value of service against the additional charge.

On Cross-examination, Mr. Fleming stated that toll service is currently being provided between Goldsboro and LaGrange at AT&T and that the toll contribution to which he referred is reflected in the access charges paid by AT&T to Southern Bell.

Carolina Telephone offered the testimony of David L. Tharrington, Local Revenue Planning Manager in the Local Revenue Requirements Department of the Company. Mr. Tharrington stated that Carolina Telephone's LaGrange exchange serving approximately 2,300 customers is located primarily in Lenoir County. A small area of the exchange, approximately 10 square miles, serves 220 customers located in Wayne County. LaGrange has EAS in Kinston, the Lenoir County seat, approximately 13 miles away. Southern Bell's Goldsboro exchange is also approximately 13 miles away.

Mr. Tharrington stated that Carolina Telephone became involved in this matter in August of 1982 when representatives of the Company met with some 250 interested persons in LaGrange. Following this meeting a committee was formed led by Dr. Denton. In December of 1982, Carolina Telephone provided to Dr. Denton the results of a joint calling study between LaGrange and Goldsboro along with rate increases applicable to the Company's LaGrange customers. These studies indicated that 57.9 percent of Carolina Telephone's LaGrange customers made one or more calls to Goldsboro while only 10.6 percent of Southern Bell's Goldsboro customers made one or more calls to LaGrange. The resulting 14.4 percent on a combined basis, he said, do not indicate that this would be a strong candidate for EAS. Carolina Telephone's position, however, is that the letters of support supplied by Dr. Denton demonstrate a strong basis of support for the proposal in the LaGrange exchange. The rate increases applicable to LaGrange customers for EAS to Goldsboro would be $1.65 per month for residential and $4.00 per month for business service. Mr. Tharrington stated further that Carolina Telephone believes EAS should be established only when a majority of the customers involved vote for it and that the question as to what Southern Bell and AT&T may be permitted to do after divestiture should be answered before a vote is conducted.

AT&T Communications of the Southern States, Inc.

AT&T offered the testimony of Robert A. Friedlander, District Manager with responsibility for Rates and Tariffs. Mr. Friedlander stated that AT&T does not believe flat rate EAS to be an economical or efficient plan for interexchange calling. The cost of AT&T providing service between LaGrange and Goldsboro varies with usage, he said, and unless rates also vary with usage customers will be unable to control the toll cost incurred and the level of rates paid. Mr. Friedlander further stated that two way non-optional interLATA EAS is not feasible under the access charge arrangement required by the MFJ since access charges have been designed not only to cover the local exchange companies' costs of providing access but also to provide contribution to the nontraffic sensitive costs of access lines, the primary source of contribution being the carrier common line charge assessed to AT&T on a minutes-of-use basis. Mr. Friedlander contended that, under this arrangement, flat rate EAS charges offer no net savings to customers as a whole and could have a stimulative effect that would increase network usage and access costs. Finally, Mr. Friedlander stated, AT&T has a proposed alternative if the Commission should find an arrangement other than the existing one appropriate. The plan would impose a usage sensitive charge for interexchange calls based on AT&T's transport costs plus the traffic sensitive access charges paid to the local exchange carriers. The rates, he proposed, would be $.18 for the initial minutes and $.05 for each additional minute with no time-of-day discount. Excluded from AT&T's costs would be the carrier common line charge.

On cross-examination, Mr. Friedlander stated that Southern Bell could recoup the revenue from the carrier common line charge in other ways, as it has in the past when the Commission did not include toll loss in setting rates for EAS. He stated that the plan is not a variation of ECC (Extended Community Calling) since one does not have to subscribe to it separately and there is no minimum charge. He also stated that he could not see a need to poll subscribers in Goldsboro about the plan.

AT&T's Proposal to Provide Discounted Toll Service

At the request of Southern Bell and Carolina Telephone, the hearing was reopened on June 29, 1984, for receipt of additional evidence concerning AT&T's proposal to provide discounted toll service between LaGrange and Goldsboro.

Southern Bell offered the testimony of Mr. Fleming, who stated the Company's opposition to the AT&T plan. Using a carrier common line charge plus line termination charge of $.0634 per message, Mr. Fleming calculated a value per message of $.2599 which based on annual message volumes from Goldsboro to LaGrange results in a revenue loss ranging from $79,000 in the first year to nearly $143,000 in the tenth year following implementation of the plan. The potential loss to Southern Bell ranges from $90,030 to more than $161,000 when the demand effect of the discounted plan is recognized. Mr. Fleming also stated that the reprogramming of the carrier access billing system which would be required would cost $94,595 initially and $18,720 annually thereafter.

On cross-examination, Mr. Fleming stated that the revenue loss to Southern Bell under AT&T's plan would approximately equal that under the original EAS proposal. He also stated that the revenue losses he calculated showing the demand effect of AT&T's plan were not really revenues foregone since, under the plan, Southern Bell would never receive them.

Mr. Fleming further agreed that, if the Commission follows recent precedent in this case, it would not take lost toll revenues into account and those revenues would have to be spread over all the Company's ratepayers. He said that he did not know whether or not AT&T would also bear some of the reprogramming and administrative costs associated with waiving the carrier common line charge. He estimated, however, that the costs Southern Bell would have to recover from its ratepayers under an EAS scenario would be less than the costs it would have to recover under AT&T's plan because of the Company's experience with EAS reprogramming and reconfiguration of central offices.

Carolina Telephone offered the testimony of Mr. Tharrington, who stated that the Company finds AT&T's proposal unacceptable for several reasons. First, he said, it runs contrary to pricing philosophy that recipients of an additional service should bear the cost, in that the revenue loss to CT&T would be borne by the Company's general body of ratepayers. Second, the proposal would be inconsistent with the Commission's Order in Docket No. P-100, Sub 65, requiring continued pooling of intrastate revenues since pooling is appropriate only when toll rates are uniform statewide. Third, discounted toll service would not be responsive to the needs and desires of customers who have expressed an interest in EAS between Goldsboro and LaGrange and, in fact, have had no opportunity to evaluate and comment on such a proposal.

On cross-examination, Mr. Tharrington stated that Carolina Telephone's EAS rates would compensate the Company for the costs of providing that service but conceded that the Company would lose the toll contribution which the carrier common line charge is designed in part to recover. He further stated that the possibility of implementing discounted toll service had not been raised at the public hearing and he thinks the customers involved want the same kind of service they have to other EAS points.

AT&T offered the testimony of Mr. Friedlander, who reiterated the Company's proposal. He said that AT&T wishes to retain the interLATA business but recognizes that the Commission may find a different calling arrangement to be required. If so, AT&T has a proposal which it believes is fair to all parties. This plan contemplates reduced revenues to AT&T but is a viable, compensatory alternative due to the reduction in access charges by the exclusion of the nontraffic sensitive access charge. If EAS were implemented between LaGrange and Goldsboro, he added, AT&T would lose all toll revenues associated with calling on this route and the local exchange companies would lose all access charges paid by AT&T for this traffic.

On cross-examination, Mr. Friedlander conceded that the line termination charge is levied on a minutes-of-use basis but contended that it recovers nontraffic sensitive costs. He also acknowledged that the FCC has determined the line termination charge to be a traffic sensitive charge. He also agreed that, under the present arrangement, AT&T's cost of providing a four-minute toll call between LaGrange and Goldsboro is approximately $.88 while its revenues are approximately $.64 - a loss of $.24, and that under the discount proposal the cost would be approximately $.37 and the revenue $.33 - a loss of $.04. Under AT&T's proposal, the Company is cutting its losses and these losses would be picked up by the local exchange companies.

Based upon the foregoing and the entire record in this proceeding, the Commission makes the following

FINDINGS OF FACT

1. Southern Bell Telephone and Telegraph Company is a duly franchised public utility lawfully incorporated and licensed to do business in North Carolina, is providing telephone service a the Goldsboro exchange, and is obligated by its franchise and the North Carolina Public Utilities Act to provide adequate, efficient, and reasonable service to all needing such service at just and reasonable rates.

2. Carolina Telephone and Telegraph Company is a duly franchised public utility lawfully incorporated and licensed to do business in North Carolina, is providing telephone service at the LaGrange exchange, adjacent to the Goldsboro exchange served by Southern Bell, and is obligated by its franchise and the North Carolina Public Utilities Act to provide adequate, efficient, and reasonable service to all needing such service at just and reasonable rates.

3. AT&T Communications, Inc., is a duly franchised public utility lawfully incorporated and licensed to do business in North Carolina, is providing telephone service between the Goldsboro exchange served by Southern Bell and the LaGrange exchange served by Carolina Telephone, and is obligated by its franchise and the North Carolina Public Utilities Act to provide

adequate, efficient, and reasonable service to all needing such service at just and reasonable rates.

4. Southern Bell's Goldsboro exchange is located in what is known as the Company's Raleigh LATA (Local Access and Transport Area), the area within which Southern Bell is permitted to provide telecommunications services under the Modified Final Judgment entered by the United States District Court for the District of Columbia in United States v. Western Electric Co., et al., Civil Action NO. 82-0192.

5. Carolina Telephone's LaGrange exchange is located in what is known as the Company's Rocky Mount GMA (Geographic Market Area), an area which is not associated with any Southern Bell LATA. Traffic between Southern Bell's LATAs and nonassociated areas such as Carolina's GMAs has been classified as interLATA for purposes of determining whether or not Southern Bell may carry the traffic and of dividing Bell System assets between Southern Bell and AT&T upon divestiture. Civil Action No. 82-0192, Order of July 8, 1983.

6. The evidence shows that local interest in the proposed EAS was initially manifested in August 1982, when representatives of Carolina Telephone met with some 250 persons in LaGrange. Subsequently, a committee was formed and petitions and letters of support were submitted to the Commission on March 4, 1983. On March, 15, 1983, the Commission directed Southern Bell to conduct a cost study, and by Order of September 6, 1983, the Commission set the matter for hearing. The Commission had already received a formal request for EAS between the Goldsboro and LaGrange exchanges pending in this docket at the time Southern Bell's Raleigh LATA boundary was drawn.

7. The LaGrange customers residing in Wayne County, especially those in the country and Dobbs Court Subdivision, had expressed a special need for EAS between the LaGrange and Goldsboro exchanges.

8. The "other relevant issues" have dominated the latter portion of the hearings in the form of a proposal by AT&T which is predicated on the assumption that Southern Bell is prohibited by the MFJ from further involvement in the proposed EAS. The Commission is, nevertheless, of the opinion that the needs and desires of the public for EAS cannot be disregarded.

9. The evidence of public need for the proposed EAS arrangement is sufficiently established to require Carolina Telephone to poll subscribers of the LaGrange exchange and for Southern Bell to poll subscribers of the Goldsboro exchange to establish their willingness to pay increased monthly flat rate charges as follows:

Exchange	Residence	Business
Goldsboro Exchange	$ 0.23	$ 0.58

	Residence			Business		
	1-pty	2-Pty	4-Pty	1-Pty	2-Pty	4-Pty
LaGrange Exchange	$1.65	$1.55	$1.50	$4.00	$3.70	$3.60

10. The public interest does not require that the discounted toll calling plan proposed by AT&T be offered to the affected customers as an alternative to EAS between the two exchanges.

11. The cost study results submitted by Southern Bell indicate that the Company would incur no extraordinary reconfiguration costs in providing EAS between Goldsboro and LaGrange.

WHEREUPON, the Commission reaches the following

CONCLUSIONS

1. There is pending in this docket on a motion filed by Southern Bell requesting the Commission to dismiss the proceeding or, in the alternative, to substitute AT&T for Southern Bell. Notwithstanding provisions of the MFJ and of the Court's Order of July 8, 1983, cited by Southern Bell in support of its motion, the Commission believes that Southern Bell remains a necessary party to this proceeding insofar as the legitimate and unrestricted exercise of the Commission's authority to investigate the establishment of EAS between the LaGrange and Goldsboro exchanges is concerned. Southern Bell has never requested a waiver or other ruling from the District Court with regard to the subject of this investigation; however, if the polling results reveal sufficient interest in the proposed EAS, the Commission will require Southern Bell to request a waiver. Southern Bell was a party to the ongoing investigation of the proposed EAS arrangement prior to the time that Southern Bell's Raleigh LATA was drawn. Accordingly, the Commission concludes that the motion of Southern Bell should be denied in its entirety.

2. Apart from the fact that three rather than two public utilities are not parties to this proceeding, the issue to be decided is not fundamentally different from that presented to the Commission in any other request for EAS between two exchanges: whether of not the community of interest between the exchanges is so developed that it can be determined in a public hearing whether or not a poll should be conducted to determine the support in a community for this service. The Order setting this matter for hearing and requiring public notice stated clearly that the purpose of the hearing was to determine "(1) the need for and the public interest in the proposed LaGrange to Goldsboro EAS, (2) the appropriate monthly increases in basic local service rates that would apply for Goldsboro if the EAS is established, (3) whether there should be a poll of the affected subscribers, and (4) all other relevant issues."

3. The Commission believes that AT&T would be the principal beneficiary of AT&T's proposed alternative calling plan which would reduce the margin of loss on the Goldsboro-LaGrange traffic. AT&T's hope that such traffic may become profitable one day assumes both a reduction in access charges and, it seems, the absence of competition. Therefore, the Commission concludes that Southern Bell rates should reflect the additional investment in equipment necessary for the establishment of EAS, based upon a 10-year present worth analysis of the equipment cost, and should not include the effect of any net toll revenue loss. The Commission concludes that the appropriate rates to be used by Carolina Telephone Company should be based on the approved matrix.

IT IS, THEREFORE, ORDERED as follows:

1. That the motion of Southern Bell to dismiss or, in the alternative, to substitute AT&T, is hereby denied.

2. That the basic monthly rate increases to be used for polling the subscribers in Southern Bell's Goldsboro exchange shall be $.23 for residence service and $.58 for business service.

3. That the basic monthly rate increases determined by the matrix formula to be used for polling Carolina Telephone's LaGrange exchange shall be as follows:

1-party residence service, $1.65;
2-party residence service, $1.55;
4-party residence service, $1.50;
1-party business service, $4.50;
2-party business service, $3.70;
4-party business service, $3.60.

4. That within ten (10) days from the issuance of this Order, Southern Bell and Carolina Telephone 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 the polling dates, and notify the Commission of the polling dates.

5. That within two (2) weeks from the last day on which subscribers are to return ballots, Southern Bell and Carolina Telephone shall file with the Commission the results of the polls.

6. That, upon receipt of the polling results, the Commission shall enter a further Order in accordance with the findings and conclusions set forth herein.

ISSUED BY ORDER OF THE COMMISSION.
This the 5th day of April 1985.

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

DOCKET NO. P-7, SUB 688

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Investigation into the Establishment of Extended Area Service Between Carolina Telephone and Telegraph Company's Exchanges of Raeford and Fayetteville	)	ORDER REQUIRING EAS POLL

NOTE: The remainder of this Order is not being printed here, since it is similar to the other two Orders printed above and due to a shortage of space for this publication. To see the remainder of this Order, please check this docket in the office of the Chief Clerk.

DOCKET NO. P-128, SUB 7

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Application of Continental Telephone Company of North Carolina for an Adjustment in Its Rates and Charges Applicable to Intrastate Telephone Service	)))	NOTICE OF DECISION AND ORDER

HEARD IN: Library, McDowell Senior High School, Highway 70 West, Marion, North Carolina, on Tuesday, February 18, 1985, at 7:00 p.m.

Auditorium, First Baptist Church, Main Street, Marshall, North Carolina, on Wednesday, February 19, 1985, at 11:00 a.m.

Superior Courtroom, Fifth Floor, Buncombe County Courthouse, Courthouse Plaza, Asheville, North Carolina, on Wednesday, February 19, 1985, at 7:00 p.m.

Community Service Room, Community Service Building, Scotts Creek Road, Sylva, North Carolina, on Thursday, February 20, 1985, at 11:00 a.m.

Commission Hearing Room, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on Tuesday, March 5, 6, 7, and 8, 1985, at 9:30 a.m.

BEFORE: Commissioner Edward B. Hipp, Presiding; and Commissioners A. Hartwell Campbell and Ruth E. Cook

APPEARANCES:

For the Applicant:

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

For the Using and Consuming Public:

Theodore C. Brown, Jr., and Lorinzo L. Joyner, Staff Attorneys, Public Staff - North Carolina Utilities Commission, P.O. Box 29520, Raleigh, North Carolina 27626-0520

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

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

For: Maco Wallin, Phillip Franklin, Nobena Wilson, Diora Rice - Intervenors:

William J. Whalen, Pisgah Legal Services, P.O. Box 2276, 89 Montford Avenue, Asheville, North Carolina 28802

Margot Roten, North Carolina Legal Service Resource Center, 112 S. Blount Street, P.O. Box 27343, Raleigh, North Carolina 27611

For: Group of Elderly from Bakersville and Burnsville in support of Citizen Intervenors:

Robert Lehrer, Staff Attorney, Legal Services of the Blue Ridge, P.O. Box 111, Boone, North Carolina 28607

BY THE COMMISSION: On October 1, 1984, Continental Telephone Company of North Carolina (Continental, Company, or Applicant) filed an application with the North Carolina Utilities Commission seeking authority to adjust its rates and charges for intrastate telephone service. The requested increase in rates and charges was designed to produce approximately $4,522,024 of additional revenue from intrastate operations when applied to a test period consisting of the 12 months ended June 30, 1984. The Company proposed that the rates and charges become effective for service rendered on or after November 1, 1984. In rebuttal and updated testimony presented March 7, 1985, and late filed exhibits filed March 19, 1985, the Company reduced its additional revenue requirement to $2,531,849.

By Order issued October 25, 1984, the Commission declared the matter to be a general rate case pursuant to G.S. 62-137, suspended the proposed rates and charges for 270 days from the proposed effective date, set hearings to begin on February 26, 1985, declared the test period to be the 12 months ended June 30, 1984, 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 testimony.

By Order issued on December 7, 1984, the Commission rescheduled the out-of-town hearings, location, and dates, changing the hearings to start at the McDowell Senior High School Library, Marion, North Carolina, on February 18, 1985, at 7:00 p.m.; at the Department of Social Service Conference Room, Main Street, Marshall, North Carolina, on February 19, 1985, at 11:00 a.m.; at Buncombe County Courthouse, 5th Floor Courtroom, Asheville, North Carolina at 7:00 p.m.; and at the Community Service Room, Community Service Building, Scotts Creek Road, Sylva, North Carolina, on February 20, 1985, at 11:00 a.m.. These out-of-town hearings were for the purpose of receiving testimony from the using and consuming public.

On January 8, 1985, the Attorney General of North Carolina, on behalf of the using and consuming public, filed intervention, and on January 15, 1985, Phillip Franklin, Maco Wallin, Nobena Wilson, and Diora Rice filed a petition seeking leave to intervene in this docket. On January 17, 1985, the Commission allowed the intervention.

On February 11, 1985, AT&T Communications of the Southern States, Inc., filed a petition for leave to intervene in the above referenced docket. On February 22, 1985, the Commission allowed the intervention.

On February 12, 1985, counsel for the Intervenors advised the Commission that a larger hearing room was needed for the Marshall Public Hearings, so the location was changed to the sanctuary of the First Baptist Church, Main Street, Marshall, North Carolina, Tuesday, February 19, 1985, at 11:00 a.m., by Order issued on February 12, 1985.

The following public witnesses appeared and offered testimony in Marion: Sally Butterfield, Ike McGee, Daniel Abernethy, Clinton Barlow, Allen Murray, David Parker, Vick Crawley, Nancy Gouge, D. A. Greyson, and Charlotte Hughes.

The following public witnesses appeared and offered testimony in Marshall: Maria Cox, Rosemary Tredway, Jean Taylor, Marie Flynn, Becky Eller, Phillip Franklin, Mac Norton, Shirley Fox, Mary Hensley, Faye Ramsey, Coleman Bishop, Rev. Glenn Burrell, Bruce Fox, Nancy Bresler, Rev. Frank Reese, Rev. Charles Freeman, Elmer Hall, Diora Rice, Marie Olsten, Keith Ray, Dan Beckwith, Noland Adams, David Cox, Robert Samara, Jim Huey, and Wayne English.

The following public witnesses appeared and offered testimony in Asheville: Claudine Cramer, Harlan Hensley, Mary Wilson, Howard Sams, and Valerie Keyes.

The following public witnesses appeared and offered testimony in Sylva: Henry Truitt, Harriett Dillard, Clyde Conley, Albert Rufus Morgan, Ambros Rash, Kirby Hensley, Faye Rash, Steve Bryant, Anita Wilson, William Davis, Jack Welch, Elaine Lyons, James Sanders, Ann Sellers, Mary Herr, Kirby Hensley, Jim Holloway, Ruth Littlejohn, Veronica Nicholas, Silas Anderson, and Frank Young.

The hearings resumed in Raleigh at 9:30 a.m., on March 5, 1985, for the purpose of receiving further testimony of public witnesses and the testimony and cross-examination of the Applicant, Public Staff witnesses, and the Intervenors' witnesses. Continental offered the testimony and exhibits of the following witnesses: John A. Feaster, President of Continental Telephone Company of North Carolina, who testified generally as to Company operations, service, and capital requirements; Robert F. Reinert, Jr., Analyst, Eastern Region, Contel Service Corporation, who testified as to the Company's rate design and tariffs; John J. Ivanuska, Financial Analyst, Eastern Region, Contel Service Corporation, who testified as to the Company's accounting and financial information and revenue requirements; and Robert B. Morris, III, Senior Analyst, Montgomery Securities, who testified as to the appropriate capitalization and required rate of return.

The Public Staff offered the testimony and exhibits of the following witnesses: James McLawhorn, Engineer with the Communications Division, who testified as to adequacy and quality of the Company's service; John T. Garrison, Engineer with the Communications Division, who testified as to the Company's intrastate toll revenue; William J. Willis, Jr., Engineer, with the Communications Division, who testified as to end-of-period local service and miscellaneous levels of annual revenue for the 12-month test period and his review of the Company's tariff proposals; Leslie C. Sutton, Engineer, Communications Division, who testified as to the Company's depreciation rates

and engineering procedures; William W. Winters, Supervisor Communications Section of the Public Staff Accounting Division, who testified as to excess profits of directory operations and amortization of the Company's investment tax credits; George T. Sessoms, Jr., Public Utilities Financial Analyst with the Public Staff, who testified as to the reasonable cost of capital, cost of equity, rate of return, and construction work in progress (CWIP); and Julie Jacome, Staff Accountant with the Public Staff Accounting Section, who testified concerning the appropriate levels of operating revenues, expenses, and rate base of the Company's intrastate operations.

Intervenor Legal Services presented the testimony and exhibits of Dr. Mark Cooper who testified concerning rate base, rate of return, rate design, and the impact of the proposed rate increase on the residents of the service territory.

Continental offered the rebuttal testimony and exhibits of John A. Feaster, John Ivanuska, George W. Moore, Robert B. Morris, III, and Clarence Prestwood.

Public witnesses Veronica Nicholas and Sue Cipher appeared at the hearing in Raleigh on March 7, 1985, and gave testimony.

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, Continental Telephone Company of North Carolina, is a duly organized North Carolina corporation and a wholly owned subsidiary of Continental Telephone Corporation. Continental 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 seeks rates to produce jurisdictional net operating revenues of $38,229,877 annually, based upon a test year ended June 30, 1984. The Company contends that net revenues under present rates are $35,719,296, thereby necessitating an increase in net local service revenue of $2,510,581.

3. The test period for purposes of this proceeding is the 12 months ended June 30, 1984.

4. The overall quality of the service provided by Continental is adequate; however, there are some problem areas which the Company should correct.

5. The appropriate level of accumulated depreciation is $25,955,006.

6. Excess profits of $358,000 included in Continental's intrastate net investment in telephone plant in service should be excluded from the Company's rate base.

7. Continental's reasonable original cost rate base used and useful in providing telephone service within the State of North Carolina is $66,488,485.

This rate base consists of telephone plant in service of $105,108,889, an allowance for working capital of $455,383, and an interstate toll separations process change of $53,047, reduced by accumulated depreciation of $25,955,006, accumulated deferred income taxes of $12,815,828, and excess profits of $358,000.

8. The reasonable level of toll revenues is $13,674,699.

9. Continental's total end-of-period operating revenues for the test year, under present rates and after accounting and pro forma adjustments, are $35,617,738 net of uncollectible revenues of $48,381.

10. The reasonable level of test year operating revenue deductions for Continental after end-of-period and pro forma adjustments is $27,699,006. This amount includes $8,920,632 for investment currently consumed through reasonable actual depreciation on an annual basis.

11. The depreciation rates and amortization schedules as shown in Appendix C are just and reasonable and should be approved.

12. The Company's engineering procedure for its digital central offices should limit the equipped line card growth capacity to a one-year growth requirement.

13. The capital structure appropriate for use in this proceeding is as follows:

Item	Percent
Long-term debt	53%
Preferred stock	2%
Common equity	45%
Total	100.00

14. The fair rate of return that Continental should have the opportunity to earn on its original cost rate base is 12.56%. The proper embedded costs of debt and preferred stock are 10.67% and 7.63%, respectively. The reasonable rate of return for Continental to be allowed to earn on its common equity is 15.00%. Such rate of return will allow the Company, by sound management, to maintain its facilities and service in accordance with the reasonable requirements of its customers and to compete in the market for capital on terms which are reasonable to the customers and to existing investors.

15. Based on the foregoing, Continental should increase its annual level of gross revenues under present rates by $878,649. The annual gross revenue requirement approved herein is $36,544,768. This increase is required in order for Continental to have a reasonable opportunity to earn the 12.56% rate of return on its rate base which the Commission has found just and reasonable. This increased revenue requirement is based upon the original cost of the Company's property and its reasonable test period operating revenues and expenses as previously determined and set forth in these findings of fact.

16. The rates, charges, and regulations to be filed pursuant to this Order in accordance with the guidelines contained in Appendix A, attached hereto, which will produce an increase in annual revenues of $878,649, shall become effective upon the issuance of a further Order by this Commission.

* * *

An Order setting forth the evidence and conclusions in support of the above findings of fact of this decision will be issued subsequently. The Commission will consider the time for filing notice of appeal in this proceeding to run from the issuance of such Order.

Based upon all of the evidence of record including rate design and tariff proposals, the Commission concludes that changes in rates and tariffs should be in accordance with the guidelines set forth in Appendix A.

The following schedules summarize the gross revenues and rates of return which the Company should have a reasonable opportunity to achieve based upon the findings set forth herein.

SCHEDULE I
CONTINENTAL TELEPHONE COMPANY OF NORTH CAROLINA
NORTH CAROLINA INTRASTATE OPERATIONS
STATEMENT OF OPERATING INCOME
FOR THE TEST YEAR ENDED JUNE 30, 1984

Item	Present Rates	Increase Approved	Approved Rates
Operating Revenues:			
Local service revenue	$20,867,167	$878,649	$21,745,816
Toll service revenue	13,674,699	-	13,674,699
Miscellaneous revenue	1,124,253	-	1,124,253
Uncollectible revenue	(48,381)	(1,933)	(50,314)
Total operating revenue	35,617,738	876,716	36,494,454
Operating Expenses:			
Maintenance expense	6,940,323	-	6,940,323
Depreciation expense	8,920,632	-	8,920,632
Traffic expense	1,005,825	-	1,005,825
Commercial expense	1,505,057	-	1,505,057
General office expense	1,827,542	-	1,827,542
Other operating expense	2,300,452	-	2,300,452
Total operating expenses	22,499,831	-	22,499,831
Other operating taxes	1,980,560	28,230	2,008,790
State income taxes	457,939	50,909	508,848
Federal income taxes	2,760,676	366,885	3,127,561
Total operating expenses and taxes	27,699,006	446,024	28,145,030
Net operating income for return	$ 7,918,732	$ 430,692	$ 8,349,424

SCHEDULE II
CONTINENTAL TELEPHONE COMPANY OF NORTH CAROLINA
NORTH CAROLINA INTRASTATE OPERATIONS
STATEMENT OF RATE BASE AND RATE OF RETURN
FOR THE TEST YEAR ENDED JUNE 30, 1984

Item	Amount
Telephone plant in service	$105,108,889
Depreciation reserve	(25,955,006)
Net plant in service	79,153,883
Working capital allowance	455,383
Deferred income taxes:	
Accelerated depreciation	(12,065,728)
Affiliated purchases	(1,007,258)
Pre-1971 investment tax credit	(18,509)
Other	275,667
Total deferred income taxes	(12,815,828)
Excess profits on affiliated sales	(358,000)
Interstate toll separations process change	53,047
Original cost rate base	$ 66,488,485
Rates of Return	
Present rates	11.91%
Approved rates	12.56%

SCHEDULE III
CONTINENTAL TELEPHONE COMPANY OF NORTH CAROLINA
NORTH CAROLINA INTRASTATE OPERATIONS
STATEMENT OF CAPITALIZATION AND RELATED COSTS
FOR THE TEST YEAR ENDED JUNE 30, 1984

Item	Capitalization Ratio(%)	Original Cost Rate Base	Embedded Costs(%)	Net Operating Income
	Present Rates - Original Cost Rate Base			
Long-term debt	53.00%	$35,238,897	10.67%	$3,759,990
Preferred stock	2.00%	1,329,770	7.63%	101,461
Common equity	45.00%	29,919,818	13.56%	4,057,281
Total	100.00%	$66,488,485	-	$7,918,732
	Approved Rates - Original Cost Rate Base			
Long-term debt	53.00%	$35,238,897	10.67%	$3,759,990
Preferred stock	2.00%	1,329,770	7.63%	101,461
Common equity	45.00%	29,919,818	15.00%	4,487,973
Total	100.00%	$66,488,485	-	$8,349,424

IT IS, THEREFORE, ORDERED as follows:

1. That the Applicant, Continental Telephone Company of North Carolina, be, and hereby is, allowed to increase its local service rates and charges by $878,649 above the revenue level that would have resulted from rates currently in effect based on test year units.

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 set forth in Appendix A attached hereto, within ten (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, NCUC Form P-1, are suggested).

3. That the Public Staff and the other parties may file written comments concerning the Company's tariffs within five (5) 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 filed pursuant to paragraph 2 above.

5. That the Applicant should improve the quality of service with regard to the weak spots listed in Exhibit No. 13 of Public Staff witness McLawhorn's direct testimony.

6. That the revisions to the Company's operating statistics proposed by Public Staff witness McLawhorn and set forth in Appendix B, attached hereto, are effective on the date of this Order.

7. That Continental is to engineer and equip its digital central offices so that spare line card capacity in none of its offices exceed a one-year growth requirement.

8. That Continental shall implement the capital recovery schedule presented in Appendix C, attached hereto, effective with the issuance of this Order.

9. That on or before June 1, 1985, Continental shall file in this docket and in Docket No. P-128, Sub 11, the flat rate increase which it proposes to charge Madison County subscribers who elect to subscribe to the optional two-way extended calling and the earliest date when this service will be available.

ISSUED BY ORDER OF THE COMMISSION.
This the 1st day of May 1985.

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

APPENDIX A
CONTINENTAL TELEPHONE COMPANY OF NORTH CAROLINA
Docket No. P-128, Sub 7
TARIFF AND RATE DESIGN GUIDELINES

1. The Company's proposal to restructure its custom calling tariff rates is reasonable and should be allowed.

2. Continental's proposal to institute a vacation rate charge should be allowed.

3. Continental's proposal to institute a "new service charge" is unreasonable and should not be allowed.

4. The Company's proposed charge of $5.00 for central office work activity requested on a secondary service order is reasonable. A reasonable estimate of the expected annual revenue effect of these changes is a revenue decrease of $13,923.

5. Central office access lines terminating in key telephone equipment not arranged for rotary line service should be billed at the business one-party line rate.

6. The language in Tariff Section 18.1.1 expresses the Company's concurrence in enterprise service rates as filed by Southern Bell Telephone and Telegraph Company and therefore the deletion of enterprise service in Tariff Section 13.7 is proper.

7. The Company's proposal to obsolete four-party service should be denied at this time in order to provide a means for low income customers to maintain service.

8. The Company's proposal to eliminate zone charges is appropriate and should be allowed. The expected annual revenue effect of this change is a revenue decrease of $364,666.

9. The Company's proposal for usage pricing plans is premature in that Southern Bell Telephone and Telegraph Company and Carolina Telephone Company are already conducting experimental plans which will present results to be analyzed by the Commission in the near future. Therefore, Continental's optional usage pricing plan proposal should be denied at this time.

10. The incorporation of tariffs allowing operator verification and emergency interrupt service and operator assisted local calls are approved. A reasonable estimate of the expected annual revenue increase from these services is $26,923.

11. A charge of $.25 per local paystation call is reasonable, and a fair estimate of the additional anticipated annual revenues is $56,157.

12. A charge of $.25 per directory assistance call exceeding three inquiries per month and the estimate of $56,809 of annual revenue increase is reasonable.

13. The Company's proposed rates for direct inward dialing which will produce $1,956 of additional annual revenues are reasonable.

14. The residual revenue requirement increase which remains after implementation of the above guidelines should be obtained by applying the same percentage increase to all local service exchange rates proposed to be adjusted by the Company which have not been specifically adjusted in the foregoing rate design guidelines. The rates should be rounded to the nearest nickel.

APPENDIX B
CONTINENTAL TELEPHONE COMPANY OF NORTH CAROLINA
Docket No. P-128, Sub 7
OPERATING STATISTICS OBJECTIVES

Total Customer Trouble Reports:
Present - 10.0 reports or less per 100 access lines on any six-month average
Approved - 10.0 reports or less per 100 access lines

Repeat Reports:
Present - none
Approved - 1.7 reports or less per 100 access lines

Total Trouble Reports Clearing Time:
Present - 95.0% or more of total troubles cleared within 24 hours
Approved - rescind

Out-of-Service Trouble Reports Clearing Time:
Present - none
Approved - 95.0% or more out-of-service troubles cleared within 24 hours

Regular Service Order Completion Time:
Present - 90.0% or more of regular service orders completed within five working days
Approved - no change

New Service Held Orders:
Present - Held orders over 14 days not to exceed 0.1% of total stations
Approved - Held orders over 30 days not to exceed 0.1% of total access lines

Regular New Service Installation Appointments Not Met For Company Reasons:
Present - None
Approved - 5.0% or less missed

Regrade Applications Held Over:
Present - Held orders over 14 days not to exceed 1.0% of total stations
Approved - Held orders over 30 days not to exceed 1.0% of total access lines

APPENDIX C
CONTINENTAL TELEPHONE COMPANY OF NORTH CAROLINA
Docket No. P-128, Sub 7
DEPRECIATION RATES

Account No.	Description	Reserve %	APPROVED Avg. Serv. Life Yrs.	Avg. Rem. Life Yrs.	Future Net Salvage %	Rem. Life Rate %
212.17	Building	7.1	35.0	29.0	5.0	3.00
212.18	Lease Imp.	1.5	5.6	4.8	0.0	20.50
221	Cen. Off. Eqpt.					
221.1827	SWS Eqpt.	37.3	6.3	1.6	6.0	35.40
221.22	Switchboard Eqpt.	17.2	16.9	14.8	0.0	5.60
221.23	Xbar. Elec. Eqpt.	100.0	n/a	n/a	n/a	0.00
221.24	Microwave Eqpt.	74.7	15.0	3.8	0.0	6.70
221.25	Power Eqpt.	22.4	8.3	4.1	5.0	17.70
221.26	Circuit Eqpt.	26.2	8.6	5.8	20.0	9.30
221.28	Digital Eqpt.	8.4	16.9	14.8	0.0	6.20
231.3	Stat. App. -Dereg.	n/a	n/a	n/a	n/a	n/a
231.88	Stat. App.-Other	34.0	8.6	5.8	20.0	7.90
232.2	Stat. Conn.-In. Wire	n/a	n/a	n/a	n/a	n/a
234	PBX	n/a	n/a	n/a	n/a	n/a
235	Public Phone	28.9	10.0	6.0	0.0	11.90
241	Pole Line	28.1	21.0	14.4	-32.0	7.20
242.1	Aerial Cable	17.4	26.0	21.0	-5.0	4.20
242.2	Undergr. Cable	14.2	35.0	29.0	-5.0	3.10
242.3	Buried Cable	16.4	26.0	21.0	0.0	4.00
242.4	Submarine Cable	39.8	25.0	19.9	0.0	3.00
243	Aerial Wire	57.8	13.2	5.3	-72.0	21.50
244	Undergr. Conduit	15.5	40.0	33.0	0.0	2.60
261	Fur. & Off. Eqpt.	30.4	15.0	11.9	10.0	5.00
261.9.91	Fur. & Fix-Minor	0.0	n/a	n/a	n/a	n/a
262	Off. Terminal Eqpt.	48.6	10.0	6.7	0.0	7.70
264	Vehicles	16.2	10.0	4.3	15.0	16.00
264.86	Other Work Eqpt.	60.8	12.0	7.3	0.0	5.40
264.96	Tools & Work Eqpt.	0.0	n/a	n/a	n/a	n/a

DOCKET NO. P-128, SUB 7

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Application of Continental Telephone Company of North Carolina	)	ORDER
for an Adjustment in Its Rates and Charges Applicable to	)	SETTING
Intrastate Telephone Service	)	RATES

BY THE COMMISSION: On May 1, 1985, in Docket No. P-128, Sub 7, the Commission issued its Notice of Decision and Order for Continental Telephone Company of North Carolina (Continental or Company) wherein the Company was allowed to increase its rates and charges to produce additional revenues of $878,649 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 7, 1985, pursuant to the Commission Order of May 1, 1985, Continental filed specific tariffs designed to produce approximately $878,649 in additional local service revenues on an annual basis.

On May 14, 1985, the Public Staff filed a letter which indicated that the Public Staff had reviewed the Company's proposed tariffs and determined that they complied with the rate design guidelines set forth in the Commission 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.

IT IS, THEREFORE, ORDERED as follows:

1. That the rates, charges, and regulations filed by Continental on May 7, 1985, which will produce an increase in annual gross revenues of approximately $878,649 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 for service rendered on and after the date of this Order. All other rates, charges, and regulations not herein adjusted remain in full force and effect.

3. That the Customer Notice attached hereto is hereby approved.

4. That Continental shall give notice to its customers of the Commission's action herein by including the approved Customer Notice in the customer's next regular billing statement.

ISSUED BY ORDER OF THE COMMISSION.
This the 16th day of May 1985.

NORTH CAROLINA UTILITIES COMMISSION
Gail L. Mount, Deputy Clerk

(SEAL)

DOCKET NO. P-128, SUB 7

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Application of Continental Telephone Company of North Carolina	)	NOTICE
for an Adjustment in Its Rates and Charges Applicable to	)	TO
Intrastate Telephone Service	)	CUSTOMER

On May 1, 1985, the North Carolina Utilities Commission, after months of investigation and following hearings held in Marion, Marshall, Asheville, Sylva, and Raleigh, North Carolina, issued a Notice of Decision and Order authorizing Continental Telephone Company of North Carolina (Continental or Company) a partial increase in rates. The revenue increase requested by Continental in its application filed October 1, 1984, was $4.5 million, an increase of 22% over the present local service revenue level; however, the Company later reduced its additional revenue requirement to $2.5 million. The Commission Order allows a revenue increase of $878,649.

In allowing this increase, the Commission ruled that the approved rates would provide Continental, under efficient management, an opportunity to earn a 12.56% rate of return on its property. The Commission found that the approved rate increase was 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 rate increase which became effective on December 9, 1983, and the Company's additional investment in plant and facilities for the purpose of increasing and improving their service to the public.

In the area of rates, the Commission in its Order sets forth specific rate design guidelines for the Company to follow in designing its revised rates so as to produce the overall revenue increase granted. The Commission Order eliminates zone charges which are now paid by subscribers who live outside the base rate areas. The zone charges which are being eliminated range from a monthly charge of $0.24 in zone A to $1.90 in zone D for one-party customers. With regard to the Company's proposal to obsolete four-party service, the Commission found that, in consideration of the current economic environment of the Company's operating territory, the Company should continue to offer four-party service to provide a means for low income customers to maintain service. The Commission found that the Company's proposal for usage pricing plans should be denied at this time because the Commission has already approved experimental measured service plans which have been implemented in the service areas of Southern Bell Telephone and Telegraph Company and Carolina Telephone Company. The Commission is of the opinion that the results of these other telephone companies' experiments will be sufficient to provide useful information relevant to customer acceptance of alternatives to flat rate service and that further proliferation of such experiments is not necessary at this time. The Commission approved the Public Staff's recommendation that the charge for a local coin telephone call be increased from $.20 to $.25 per local call.

The monthly increases in local exchange access line rates for Continental's four different rate groups reflect approximately a 7.6% increase over present rates as follows:

Rate Group	Monthly Increase In Local Exchange Rates Residence One Party	Residence Four Party	Business One Party	Business Four Party
1	$1.24	$ .98	$3.07	$2.65
2	1.25	.99	3.15	2.72
3	1.31	1.10	3.22	2.75
5	1.33	1.06	3.43	2.90

* The monthly increases for those customers who were in the past paying zone charges will be less than the increases reflected above.

ISSUED BY ORDER OF THE COMMISSION.
This the 16th day of May 1985.

NORTH CAROLINA UTILITIES COMMISSION
Gail L. Mount, Deputy Clerk

(SEAL)

DOCKET NO. P-128, SUB 7

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Application of Continental Telephone Company of North Carolina for an Adjustment in Its Rates and Charges Applicable to Intrastate Telephone Service	))))	FINAL ORDER GRANTING PARTIAL INCREASE IN RATES AND CHARGES

HEARD IN: Library, McDowell Senior High School, Highway 70 West, Marion, North Carolina, on Tuesday, February 18, 1985, at 7:00 p.m.

Auditorium, First Baptist Church, Main Street, Marshall, North Carolina, on Wednesday, February 19, 1985, at 11:00 a.m.

Superior Courtroom, Fifth Floor, Buncombe County Courthouse, Courthouse Plaza, Asheville, North Carolina, on Wednesday, February 19, 1985, at 7:00 p.m.

Community Service Room, Community Service Building, Scotts Creek Road, Sylva, North Carolina, on Thursday, February 20, 1985, at 11:00 a.m.

Commission Hearing Room, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on Tuesday, March 5, 6, 7, and 8, 1985, at 9:30 a.m.

BEFORE: Commissioner Edward B. Hipp, Presiding; and Commissioners A. Hartwell Campbell and Ruth E. Cook

APPEARANCES:

For the Applicant:

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

For the Using and Consuming Public:

Theodore C. Brown, Jr. and Lorinzo L. Joyner, Staff Attorneys, Public Staff - North Carolina Utilities Commission, P.O. Box 29520, Raleigh, North Carolina 27626-0520

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

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

For: Maco Wallin, Phillip Franklin, Nobena Wilson, Diora Rice - Intervenors:

William J. Whalen, Pisgah Legal Services, P.O. Box 2276, 89 Montford Avenue, Asheville, North Carolina 28802

Margot Roten, North Carolina Legal Service Resource Center, 112 S. Blount Street, P.O. Box 27343, Raleigh, North Carolina 27611

For: Group of Elderly from Bakersville and Burnsville and in support of Citizen Intervenors:

Robert Lehrer, Staff Attorney, Legal Services of the Blue Ridge, P.O. Box 111, Boone, North Carolina 28607

BY THE COMMISSION: On October 1, 1984, Continental Telephone Company of North Carolina (Continental, Company, or Applicant) filed an application with the North Carolina Utilities Commission seeking authority to adjust its rates and charges for intrastate telephone service. The requested increase in rates and charges was designed to produce approximately $4,522,024 of additional revenue from intrastate operations when applied to a test period consisting of the 12 months ended June 30, 1984. The Company proposed that the rates and charges become effective for service rendered on or after November 1, 1984. In rebuttal and updated testimony presented March 7, 1985, and late filed exhibits filed March 19, 1985, the Company reduced its additional revenue requirement to $2,531,849.

By Order issued October 25, 1984, the Commission declared the matter to be a general rate case pursuant to G.S. 62-137, suspended the proposed rates and charges for 270 days from the proposed effective date, set hearings to begin on February 26, 1985, declared the test period to be the 12 months ended June 30, 1984, 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 testimony.

By Order issued on December 7, 1984, the Commission rescheduled the out-of-town hearings, location, and dates, changing the hearings to start at the McDowell Senior High School Library, Marion, North Carolina, on February 18, 1985, at 7:00 p.m.; at the Department of Social Service Conference Room, Main Street, Marshall, North Carolina, on February 19, 1985, at 11:00 a.m.; at Buncombe County Courthouse, 5th Floor Courtroom, Asheville, North Carolina at 7:00 p.m.; and at the Community Service Room, Community Service Building, Scotts Creek Road, Sylva, North Carolina, on February 20, 1985, at 11:00 a.m.. These out-of-town hearings were for the purpose of receiving testimony from the using and consuming public.

On January 8, 1985, the Attorney General of North Carolina, on behalf of the using and consuming public, filed intervention, and on January 15, 1985, Phillip Franklin, Maco Wallin, Nobena Wilson, and Diora Rice filed a petition seeking leave to intervene in this docket. On January 17, 1985, the Commission allowed the intervention.

On February 11, 1985, AT&T Communications of the Southern States, Inc., filed a petition for leave to intervene in the above referenced docket. On February 22, 1985, the Commission allowed the intervention.

On February 12, 1985, counsel for the Intervenors advised the Commission that a larger hearing room was needed for the Marshall Public Hearings, so the location was changed to the sanctuary of the First Baptist Church, Main Street, Marshall, North Carolina, Tuesday, February 19, 1985, at 11:00 a.m., by Order issued on February 12, 1985.

The following public witnesses appeared and offered testimony in Marion: Sally Butterfield, Ike McGee, Daniel Abernethy, Clinton Barlow, Allen Murray, David Parker, Vick Crawley, Nancy Gouge, D. A. Greyson, and Charlotte Hughes.

The following public witnesses appeared and offered testimony in Marshall: Maria Cox, Rosemary Tredway, Jean Taylor, Marie Flynn, Becky Eller, Phillip Franklin, Mac Norton, Shirley Fox, Mary Hensley, Faye Ramsey, Coleman Bishop, Rev. Glenn Burrell, Bruce Fox, Nancy Bresler, Rev. Frank Reese, Rev. Charles Freeman, Elmer Hall, Diora Rice, Marie Olsten, Keith Ray, Dan Beckwith, Noland Adams, David Cox, Robert Samara, Jim Huey, and Wayne English.

The following public witnesses appeared and offered testimony in Asheville: Claudine Cramer, Harlan Hensley, Mary Wilson, Howard Sams, and Valerie Keyes.

The following public witnesses appeared and offered testimony in Sylva: Henry Truitt, Harriett Dillard, Clyde Conley, Albert Rufus Morgan, Ambros Rash, Kirby Hensley, Faye Rash, Steve Bryant, Anita Wilson, William Davis, Jack Welch, Elaine Lyons, James Sanders, Ann Sellers, Mary Herr, Kirby Hensley, Jim Holloway, Ruth Littlejohn, Veronica Nicholas, Silas Anderson, and Frank Young.

The hearings resumed in Raleigh at 9:30 a.m., on March 5, 1985, for the purpose of receiving further testimony of public witnesses and the testimony and cross-examination of the Applicant, Public Staff witnesses, and the

Intervenors' witnesses. Continental offered the testimony and exhibits of the following witnesses: John A. Feaster, President of Continental Telephone Company of North Carolina, who testified generally as to Company operations, service, and capital requirements; Robert F. Reinert, Jr., Analyst, Eastern Region, Contel Service Corporation, who testified as to the Company's rate design and tariffs; John J. Ivanuska, Financial Analyst, Eastern Region, Contel Service Corporation, who testified as to the Company's accounting and financial information and revenue requirements; and Robert B. Morris, III, Senior Analyst, Montgomery Securities, who testified as to the appropriate capitalization and required rate of return.

The Public Staff offered the testimony and exhibits of the following witnesses: James McLawhorn, Engineer with the Communications Division, who testified as to adequacy and quality of the Company's service; John T. Garrison, Engineer with the Communications Division, who testified as to the Company's intrastate toll revenue; William J. Willis, Jr., Engineer, with the Communications Division, who testified as to end-of-period local service and miscellaneous levels of annual revenue for the 12-month test period and his review of the Company's tariff proposals; Leslie C. Sutton, Engineer, Communications Division, who testified as to the Company's depreciation rates and engineering procedures; William W. Winters, Supervisor Communications Section of the Public Staff Accounting Division, who testified as to excess profits of directory operations and amortization of the Company's investment tax credits; George T. Sessoms, Jr., Public Utilities Financial Analyst with the Public Staff, who testified as to the reasonable cost of capital, cost of equity, rate of return, and construction work in progress (CWIP); and Julie Jacome, Staff Accountant with the Public Staff Accounting Section, who testified concerning the appropriate levels of operating revenues, expenses, and rate base of the Company's intrastate operations.

Intervenor Legal Services presented the testimony and exhibits of Dr. Mark Cooper who testified concerning rate base, rate of return, rate design, and the impact of the proposed rate increase on the residents of the service territory.

Continental offered the rebuttal testimony and exhibits of John A. Feaster, John Ivanuska, George W. Moore, Robert B. Morris, III, and Clarence Prestwood.

Public witnesses Veronica Nicholas and Sue Cipher appeared at the hearing in Raleigh on March 7, 1985, and gave testimony.

On May 1, 1985, the Commission issued a Notice of Decision and Order in this docket which stated that Continental should be allowed an opportunity to earn a rate of return of 12.56% 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, Continental was authorized to adjust its telephone service rates and charges to produce an increase in gross revenues of $878,649 on an annual basis. Continental 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 May 7, 1985, Continental filed its proposed rates, charges, and regulations as required by the Commission. On May 16, 1985, the Commission

issued an Order approving rates, charges, and regulations for Continental Telephone Company of North Carolina.

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, Continental Telephone Company of North Carolina, is a duly organized North Carolina corporation and a wholly owned subsidiary of Continental Telephone Corporation. Continental 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 seeks rates to produce jurisdictional net operating revenues of $38,229,877 annually, based upon a test year ended June 30, 1984. The Company contends that net revenues under present rates are $35,719,296, thereby necessitating an increase in net local service revenue of $2,510,581.

3. The test period for purposes of this proceeding is the 12 months ended June 30, 1984.

4. The overall quality of the service provided by Continental is adequate; however, there are some problem areas which the Company should correct.

5. The appropriate level of accumulated depreciation is $25,955,006.

6. Excess profits of $358,000 included in Continental's intrastate net investment in telephone plant in service should be excluded from the Company's rate base.

7. Continental's reasonable original cost rate base used and useful in providing telephone service within the State of North Carolina is $66,488,485. This rate base consists of telephone plant in service of $105,108,889, an allowance for working capital of $455,383, and an interstate toll separations process change of $53,047, reduced by accumulated depreciation of $25,955,006, accumulated deferred income taxes of $12,815,828, and excess profits of $358,000.

8. The reasonable level of toll revenues is $13,674,699.

9. Continental's total end-of-period operating revenues for the test year, under present rates and after accounting and pro forma adjustments, are $35,617,738 net of uncollectible revenues of $48,381.

10. The reasonable level of test year operating revenue deductions for Continental after end-of-period and pro forma adjustments is $27,699,006. This amount includes $8,920,632 for investment currently consumed through reasonable actual depreciation on an annual basis.

11. The depreciation rates and amortization schedules as shown in Appendix C are just and reasonable and should be approved.

12. The Company's engineering procedure for its digital central offices should limit the equipped line card growth capacity to a one-year growth requirement.

13. The capital structure appropriate for use in this proceeding is as follows:

Item	Percent
Long-term debt	53%
Preferred stock	2%
Common equity	45%
Total	100.00%

14. The fair rate of return that Continental should have the opportunity to earn on its original cost rate base is 12.56%. The proper costs of debt and preferred stock are 10.67% and 7.63%, respectively. The reasonable rate of return for Continental to be allowed to earn on its common equity is 15.00%. Such rate of return will allow the Company, by sound management, to maintain it facilities and service in accordance with the reasonable requirements of its customers and to compete in the market for capital on terms which are reasonable to the customers and to existing investors.

15. Based on the foregoing, Continental should increase its annual level of gross revenues under present rates by $878,649. The annual gross revenue requirement approved herein is $36,544,768. This increase is required in order for Continental to have a reasonable opportunity to earn the 12.56% rate of return on its rate base which the Commission has found just and reasonable. This increased revenue requirement is based upon the original cost of the Company's property and its reasonable test period operating revenues and expenses as previously determined and set forth in these findings of fact.

16. The rates, charges and regulations filed pursuant to the Commission's May 1, 1985, Notice of Decision and Order and in accordance with the guidelines contained herein, which will produce an increase in annual revenues of $878,649, 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, in the Commission Order Setting Hearing, and in the testimonies and exhibits of Company witnesses Feaster and Ivanuska. These findings are essentially informational, procedural, and jurisdictional in nature and are uncontested.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 4

The evidence concerning the quality of service was presented by Company witness Feaster, Public Staff witness McLawhorn, and approximately 65 public witnesses.

The major complaints of the public witnesses were about service, the requested rate increase, the Company's plan to offer optional local measured service, and the lack of extended area service in some areas. The public witnesses' service complaints included service outages, double connections, line noise, delayed dial tone, wrong numbers reached, and billing errors. Subsequent to the Raleigh hearing, the Company filed with the Commission the results of its investigation into the service complaints of those public witnesses who testified at the Marion, Marshall, Asheville, and Sylva hearings.

Company witness Feaster testified that the Company began an exchange rehabilitation program in 1982 to improve the quality of service and to provide custom-calling features and other enhanced services. According to witness Feaster, under the Company's exchange rehabilitation program, the telephone plant design consists of centering the Company's smaller exchanges on large digital offices using remote line units and fiber optic cable as the transmission medium. Witness Feaster testified that this same technology is being used within the Company's larger exchanges to eliminate the placement of large copper feeder routes and to replace analog subscriber carrier systems. Since 1980, the Company has put into service seven class five digital central offices and cut over the eighth office in September 1984. Witness Feaster testified that by December 1984, 67% of the Company's customers would be served from stored-program offices and that by 1988 all of the Company's customers would be served from stored-program offices. At the time the Company filed its application for a rate increase, the Company had completed five exchanges (Andrews, Cherokee, Cullowhee, Franklin, and Marion) under this plan. In this regard, witness Feaster stated that the trouble indices for these five exchanges are well within both the Company and Commission objectives and expects these results to be attained in the Company's remaining exchanges as the program progresses. Further, witness Feaster testified that the results in these five exchanges indicate that the reduction in trouble indices has averaged about 45%.

Even though the Company's exchange rehabilitation program is well underway, there were many customer complaints because the existing facilities had been outgrown and the construction program itself has created service problems during construction. For example, the largest group of public witnesses to appear at the public hearings was in Marshall, North Carolina. The new digital switch serving that area was cut into service on March 2, 1985, just 10 days after the public hearings. Subsequent to the hearings, the Company has filed, at the Commission's direction, follow-up reports on each of the public witnesses who appeared at the Marshall hearing. These reports indicate a substantial improvement in service since the cutover of the new switch.

Witness Feaster also testified regarding other programs that the Company is utilizing to improve the quality of service its customers are receiving. In this regard, he stated that the Company is holding public meetings in areas where the service is weaker than in other areas in order to have closer contact with the customers and their service problems. Further, witness Feaster testified that the Company is using a computer-based Service Analysis Program for management review of trouble reports and service order completion performance as well as a computer-based Remote Testing System which allows all individual customer lines to be tested from one location. Witness Feaster also stated that the Company's Network Design Department has limited its use of

subscriber carrier systems and is now utilizing fiber optic cable where feasible in an effort to reduce weather-related troubles.

Under cross-examination, witness Feaster stated that the Company is now meeting Commission objectives for speed of answer for both the repair center and the business office, and with regard to the other weak spots listed in Exhibit No. 13 of the direct testimony of Public Staff witness McLawhorn, he testified that the Company is aware of these problems and is taking the necessary action to correct them.

Witness Feaster stated that the revisions to the quality of service objectives proposed by witness McLawhorn regarding operating statistics maintained by the Company are totally appropriate and will afford the Commission a more accurate view of the service being provided by Continental as well as bringing Continental up to date with the direction in which the industry is moving. Witness Feaster testified that all telephone companies under the Commission's jurisdiction should be evaluated by the same types of information.

Public Staff witness McLawhorn testified that the results of his investigation showed that the Company had met the Commission's objectives for call completion, transmission, noise, directory assistance answertime, operator answertime, and pay station tests in almost every instance; however, improved performance is required with respect to total trouble reports, repeated reports, out-of-service reports not cleared within 24 hours, and service order due dates not met for Company reasons in the service areas indicated in his Exhibit No. 13. Also, he stated that improvement in trouble report levels should be seen with continued replacement of CM-8 subscriber line carrier. 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 adequate. He further stated that his recommended revisions to the Company's operating statistics objectives are both appropriate and necessary for the Commission to accurately evaluate the Company's performance.

Under cross-examination, witness McLawhorn testified that he was able to conclude that the Company's service was adequate as a result of the Public Staff's tests in the Company's central offices, as well as the exchange rehabilitation program currently being implemented and the improved results in the exchanges where the program is presently in place. He also stated that the CM-8 subscriber line carrier is a major cause of the Company's high trouble report indices in some exchanges in a given month. He further testified that trouble reports have been reduced significantly in those exchanges where it has been replaced or its use greatly limited.

According to the proposed order filed by the Attorney General, the Company's service should be found to be inadequate and the Company's granted rate of return should be adjusted accordingly. Also, the brief filed by the North Carolina Legal Services' found that the Company has failed to provide adequate service and concluded that a penalty should be imposed.

Based on the foregoing evidence, the Commission concludes that the overall quality of service provided by Continental is adequate. The Commission finds that it would be unfair to penalize the Company as recommended by the Attorney General and the North Carolina Legal Services as the Company's quality of

service has improved from what it has been in the past and service should continue to improve with the Company's ongoing exchange rehabilitation program. However, the Commission also recognizes the need to improve the performance of each area listed in Public Staff witness McLawhorn's Exhibit No. 13 of his direct testimony. In addition, the Commission concludes that the revisions to the Company's operating statistics objectives proposed by witness McLawhorn as set forth in Appendix B are both proper and necessary for Commission analysis of the Company's performance.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 5

Evidence concerning the appropriate level of accumulated depreciation is found in the testimony and exhibits of Company witness Ivanuska and Public Staff witnesses Jacome and Sutton. According to the proposed orders of the parties, the Company's level of accumulated depreciation is $25,927,824 and the Public Staff's level of accumulated depreciation is $25,955,006 which results in a difference between the parties of $27,182.

Witness Jacome testified in her prefiled testimony that three adjustments to accumulated depreciation were proposed by the Public Staff. The adjustment reflecting the depreciation rates recommended by witness Sutton was accepted by the Company in rebuttal testimony presented during the hearing, as was the Public Staff's methodology for determining the effect of customer premises equipment (CPE) phase-out on the depreciation reserve. The Company, however, took exception to the Public Staff limiting the effects of this CPE phase-out adjustment to the June 30, 1984 level, and recommended a recomputation of the adjustment utilizing January 31, 1985 data. As witness Jacome agreed to the recomputation of the CPE phase-out adjustment using this data, the only significant difference remaining between the Company and the Public Staff is the depreciation effect of the estimated loss in terminal equipment of $27,062. The Commission concluded, however, in the Evidence and Conclusions for Finding of Fact No. 9 that the Company's adjustment to reduce revenues associated with the estimated loss in terminal equipment was not appropriate. Therefore, it would not be proper or reasonable for the Commission to allow the related depreciation adjustment to be included in the depreciation reserve. The remaining difference of $120 results entirely from the parties' rounding of the CPE phase-out factor of 25/60 to differing decimal places. The Commission finds that this rounding difference is immaterial and concludes that the Public Staff's resulting calculation is more precise than the Company's. Therefore, the Commission concludes that the Public Staff's CPE phase-out adjustment is proper for use herein.

Based on the above, the Commission concludes that accumulated depreciation of $25,955,006, as proposed by the Public Staff, is the appropriate level for use in this proceeding.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 6

Evidence concerning the exclusion of excess profits from rate base is contained in the testimony and exhibits of Public Staff witness Jacome.

Witness Jacome reduced rate base by $358,000 to exclude excess profits surviving in the net plant accounts as of June 30, 1984, the end of the test period. She testified that this adjustment updated the "excess profit"

adjustment made in prior Continental rate cases in which the Commission concluded that the supply affiliate had earned excess profits on sales to Continental between the years 1967-1982. As witness Jacome Exhibit I, Schedule 2-5 illustrates, the excess cost of plant was eliminated from plant purchased from the supply affiliate during those years. No adjustment was proposed by the Public Staff to eliminate excess profits on plant purchased during 1983 or the first half of 1984 since the profits in these years did not exceed a 15% return on equity.

The Company presented no testimony refuting witness Jacome's excess profits adjustment but did question her during cross-examination as to her methodology. Witness Jacome accepted, subject to check, that the supply affiliate earned a 14.52% return on equity during 1983 and a 8.36% return for the first six months of 1984. Distinguishing this information, the Company then questioned witness Jacome as to the methodology of an adjustment that reduces rate base for years where profits exceed a 15% return on equity but does not increase rate base in those years where the profits produce less than a 15% return. Furthermore, it was the Company's position that no excess profits adjustment should be made in the absence of a showing that Continental paid more to purchase from its affiliate than it would have paid to purchase the same goods or services elsewhere.

Witness Jacome responded by stating that she had not proposed increasing the rate base for 1983 and 1984, for years in which the supply company earned less than a 15% return, because the Commission does not guarantee a specific return but gives each company the opportunity to earn this return.

Continental cited increased sales forces, increased provision for bad debts, and inventory obsolescence as several main factors contributing to the earnings decline. However, witness Jacome stated that none of these factors were related to, or should have affected, the supply company's earnings on sales to the regulated affiliated companies. She further indicated that in her opinion the purchase of Texacom, Inc., formerly Contel Supply and Service Corporation, in the latter part of 1982, and the supply company's entry into the nonaffiliated market were perhaps other explanations for the recent decline in earnings.

Based upon the foregoing and prior Commission decisions regarding the existence of excess profits in plant purchased from the Company's supply affiliate during 1967-1982, the Commission concludes that the cost included in Continental's utility plant in service for purchases from its supply affiliate from 1967-1982 should be adjusted to eliminate $358,000 of excess profits surviving in the plant accounts at the end of the test period.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 7

Company witnesses Ivanuska, Prestwood, Moore, and Morris; Public Staff witnesses Jacome, Garrison, Sutton, and Sessoms; and North Carolina Legal Services witness Cooper presented testimony regarding Continental'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.

	Company	Public Staff	Difference
Telephone plant in service	$99,310,107	$99,310,046	$ (61)
Construction work in progress	7,390,405	-	(7,390,405)
Allowance for working capital	486,097	457,243	(28,854)
Depreciation reserve	(25,927,824)	(25,955,006)	(27,182)
Deferred income taxes	(12,882,454)	(12,456,823)	425,631
Pre-1971 investment tax credit	(18,509)	(18,509)	-
Loss in terminal equipment	(132,209)	-	132,209
Excess profits from affiliate	-	(358,000)	(358,000)
Interstate toll separations process change	-	53,047	53,047
Total original cost rate base	$68,225,613	$61,031,998	$(7,193,615)

The Company and the Public Staff agree that the amount of pre-1971 investment tax credits to be deducted from rate base is $18,509. The Commission therefore concludes that this amount is reasonable for use in determining original cost rate base.

The Company and the Public Staff also agree on the level of telephone plant in service, though this agreement did not occur until the hearing. The prefiled testimony of witness Ivanuska and witness Jacome revealed different amounts for plant in service. Both witnesses had made an adjustment to recognize the effect of CPE phase-out on plant, yet each had employed different methodologies for determining the effect. This resulted in different proposed levels of plant in the witnesses' prefiled testimony. This issue was ultimately resolved, however, when witness Ivanuska accepted the Public Staff's methodology in his rebuttal testimony and witness Jacome agreed during direct testimony to revise her CPE phase-out adjustment to incorporate the more current January 1985 data. However, there exists a rounding difference of $61 between the two proposed levels of plant in service which is due to the parties rounding the CPE phase-out factor of 25/60 differently. The Commission finds that the Public Staff's CPE phase-out adjustment is more precise and is the appropriate amount to use in this proceeding. Though, the Commission agrees with the Public Staff's CPE phase-out adjustment, it does not conclude that the proper level of telephone plant in service is $99,310,046, rather it finds that the proper level is $105,108,889, as discussed in the following paragraphs.

The next item on which the parties disagree is the inclusion in rate base of the $7,390,405 of construction work in progress (CWIP) shown on the Company's books at the end of the test year. This issue represents one of the largest in the case on the basis of its associated revenue requirements and is perhaps one of the most controversial in the case. The Company in its initial filings reflected this investment as CWIP increasing rate base by $7,390,405, which is permitted by N.C.G.S. 62-133(b)(1) provided that such expenditures are reasonable and prudent and that the inclusion of CWIP in rate base is in the public interest and necessary to the financial stability of the Company. During the course of this proceeding, the Company altered its position somewhat to recognize that the investment in CWIP was completed and in service prior to the close of the hearing in this case. The Company thus asserts that its investment in plant is currently providing service to the Company's customers

and as such should be included in rate base either as additional plant in service or CWIP. The Company made additional associated adjustments to operating revenues, labor expenses, maintenance expenses, and deferred taxes to reflect the fact that the plant is now in service.

The Public Staff excluded the entire amount of requested CWIP from rate base on the basis that the investment was CWIP at the end of the test year and the inclusion of such CWIP in rate base was not necessary to the financial stability of the Company. Public Staff witness Sessoms testified that Continental was, in his opinion, financially stable and no CWIP should therefore be allowed in rate base. The Public Staff further opposed the Company's amended position to include the investment in telephone plant in service. The Public Staff maintains that, while the Company has made an attempt to recognize the corollary adjustments for this update of plant in service, the Company has failed to make all of the adjustments to revenues and expenses necessary to reflect the ongoing level of the Company's financial operations inclusive of the new plant additions. The Public Staff further asserts through the testimony of witness Sutton that excess line card capacity exists in these new plant additions.

The Attorney General maintains that inclusion of CWIP in rate base is neither necessary for the financial stability of the Company nor in the best interest of the Company's ratepayers. The Attorney General further asserts that the Applicant's construction program is predicated on national goals and its cost is excessive, given the nature of its service obligation in North Carolina.

North Carolina Legal Services' position on this issue is that Continental's decision to construct a systemwide digital switching system was made to implement private goals of its parent corporation and was not a prudent decision for its telephone service in North Carolina. North Carolina Legal Services also maintains that there is excess capacity in the new plant additions.

The Commission has carefully considered the position of the parties on this issue. The Commission believes, and so concludes, that Continental's decision to make the investment in new plant additions was reasonable and prudent. Further, Continental's decision to utilize state of the art equipment was in the Commission's opinion reasonable, prudent, and in the long run in the best interest of the Company's customers. The Commission believes that the new plant investment will allow the Company to provide a better quality of service to its customers. Continental's quality of service has certainly been an area of concern to the Commission in the recent past. Further, the Commission is very cognizant of the changing environment in the telecommunications industry and believes that the steps taken by Continental in this regard mirror those taken by other telephone operating companies in this state and may be necessary to the long-run viability of the Company. Although it may be true that the decisions made by the Company in this regard were predicated somewhat on national goals of the Company, it does not necessarily follow that such goals are not in the best interest of Continental's North Carolina customers particularly in view of the fact that the new plant additions will enable Continental to provide a better quality of service to its customers.

It was undisputed that at least 98% of the CWIP balance at June 30, 1984, was plant in service by the close of the hearing and is now providing service to Continental's customers. Thus the issue to be resolved is no longer a CWIP issue of whether CWIP should be included in rate base so as to allow the Company the capital requirements currently through rates versus the capitalization of interest during construction. The Company may not capitalize interest during construction at this time on the plant since it is no longer under construction. Thus the issue to be resolved is how best to reflect the impact of the new plant additions on Continental's financial operations and its cost of providing service to its customers. The Commission believes that such a major addition to plant in service must be considered in establishing the Company's cost of providing service in order to reflect the Company's financial operations on an ongoing basis. However, as asserted by the Public Staff, the Company has failed to make all of the corollary adjustments to test period operating results to reflect the impact of the new plant additions on the Company's end-of-period financial operating results. Specifically, the Company has failed to make the necessary adjustments to retire the old plant in service and to eliminate the associated depreciation expense. It is unclear whether such plant in service is fully depreciated. The Company has further failed to reflect depreciation expense on the new plant additions and the corollary adjustment to accumulated depreciation. Finally, the Commission is somewhat dubious of the Company's adjustments to operating revenues and expenses to reflect additional revenues and cost savings associated with the new plant additions. The Commission believes that the adjustments proposed by the Company in this regard may be inadequate and incomplete.

The Company through the prefiled testimony of witness Ivanuska estimated additional annual revenues related to the plant additions to be $107,336. It was later revealed that the estimate was a monthly amount and that the annual estimate was $1,288,032. Witness Ivanuska thereafter indicated that his revenue estimate was totally incorrect. In rebuttal testimony Company witness Prestwood stated that the annual increase in revenues associated with the new plant additions was $40,124 which is a combined annual revenue increase of $35,727 from custom-calling features and $4,397 resulting from service regrades.

For purposes of this case, the Commission has accepted the $40,124 adjustment proposed by witness Prestwood, but the Commission is somewhat concerned that a proper accounting of additional revenues has not been made by the Company in light of the uncertainty expressed in this regard by Company witness Ivanuska. Ordinarily it cannot be assumed that the addition of plant in service, particularly replacement plant, will provide additional revenues to the Company. However it would seem reasonable to assume that the installation of digital central office equipment will allow the Company to provide enhanced services to its customers from which additional revenue may be derived.

The Company also proposed an adjustment of $128,234 to reflect a reduction in maintenance expense related to the elimination of seven central office switch persons due to the efficiency gained from the upgrade to digital equipment. In conjunction with this reduction in manpower adjustment, witness Prestwood proposed a decrease in payroll taxes of $9,733 and a decrease in employee relief and pension expense of $20,732. The Company also proposed to increase maintenance expense by $36,436 to reflect the cost to be incurred by the Company for line card repair in the newly installed digital switches; this

cost is not present in analog central offices. The Commission has accepted these adjustments for purposes of this case. However, the Commission is again doubtful that all of the economies and cost savings have been reflected by the Company in its adjustments. Specifically, it seems reasonable to assume that the new plant will require less maintenance costs in addition to reduced labor costs such as a reduction in materials and supply costs and other related costs. No such cost savings have been reflected by the Company.

Further, witness Prestwood proposed an adjustment of $425,620 for deferred income taxes related to these plant additions. Having accepted the Company's other adjustments related to the plants additions, the Commission accepts the deferred income tax adjustment but remains uncertain as to the adequacy of the adjustment considering the failure of the Company to propose any adjustments to the depreciation reserve or depreciation expense.

Finally Company witness Moore, Public Staff witness Sutton, and North Carolina Legal Services witness Cooper assert that there is excess capacity in the plant additions. As discussed in the Evidence and Conclusions for Finding of Fact No. 12, the Commission finds that there is excess capacity existing in these plant additions and concludes that it is reasonable to exclude $105,668 from plant in service to reflect its position on this matter.

As previously stated, the Commission is concerned that the Company's corollary adjustments to deferred taxes, revenues, and expenses for plant additions are inadequate and incomplete. Further, the Commission has not been provided with adequate information from which to determine the appropriate adjustments to the test period operating results. For these reasons the Commission will allow only 80% of the additional plant in service less excess capacity and 80% of the associated deferred income taxes to be included in rate base in this case. Thus the Commission finds that the Public Staff's level of plant in service of $99,310,046 should be increased by $5,827,790 (($7,390,405-$105,668)x .80) to reflect the Commission's position on the inclusion of the plant additions in rate base. The Commission finds that rate base should be further adjusted by increasing the amount of deferred income taxes by $340,496 ($425,620 x .80), resulting from the inclusion of the plant additions in rate base. With regard to the revenue and expense adjustments related to plant additions as proposed by the Company with the exception that the Company's adjustment for employee relief and pension expense should be $20,576 rather than $20,732, the Commission finds that 100% of these adjustments should be included in the determination of the Company's net operating income.

The Commission recognizes that this methodology might be construed by some to be somewhat arbitrary. However, the Commission concludes that its decision is the best estimate of the impact of the new plant additions on the Company's financial operations and related cost of providing service that can be determined given the information provided to the Commission.

In determining the amount of telephone plant in service to be included in rate base, the Commission has included the aforementioned adjustment of $5,827,790 for the plant additions, and as discussed in the Evidence and Conclusions for Finding of Fact No. 12 the Commission finds that plant in service should be reduced by $28,947 to remove the excess line card capacity relating to the digital switch in the Andrews exchange. Based upon these

decisions, the Commission concludes that the proper level of telephone plant in service to be included in rate base in this proceeding is $105,108,889 ($99,310,046 + $5,827,790 - $28,947).

The working capital allowance is the third item of rate base on which the witnesses disagree. The $28,854 difference relates to 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. 10 that the appropriate level of operating expenses excluding depreciation is $13,579,199, the Commission therefore concludes that the proper level of cash working capital is $1,131,560 and the proper level of working capital allowance is $455,383.

The next area of difference concerns the proper level of accumulated depreciation. The Commission has heretofore determined, in Finding of Fact No. 5, that the appropriate level to be included in original cost rate base is $25,955,006.

Deferred income taxes comprise the next component of rate base on which the Company and the Public Staff disagree. This $425,631 difference consists of a $425,620 adjustment by the Company to include deferred income taxes related to plant additions after the end of the test year and an $11 rounding difference related to the CPE phase-out factor of 25/60. The Commission concludes that the Public Staff's calculation of the CPE phase-out adjustment is more precise and, as previously discussed, the Commission concludes that deferred income taxes should be increased by $340,496 to reflect the Commission's decisions regarding the treatment of plant additions beyond the end of the test year. Therefore, the Commission finds that the appropriate level of deferred income taxes to be included in rate base is $12,815,828 which includes $18,509 of pre-1971 investment tax credits.

The next area of contention between the Company and the Public Staff concerns the Company's adjustment to decrease rate base for the loss in terminal equipment. The Commission has disallowed this adjustment because it found the Company's related revenue adjustment due to the loss in terminal equipment to be improper in Finding of Fact No. 9.

The $358,000 difference between the parties as to the treatment of excess profits included in plant was discussed in the Evidence and Conclusions for Finding of Fact No. 6. Therein, the Commission concludes that the Public Staff's $358,000 adjustment to remove from rate base excess profits that the supply affiliate had earned on sales to Continental between the years 1967-1982 is appropriate.

The final area of difference between the Company and the Public Staff is the separations process adjustment of $53,047 made by the Public Staff. This adjustment reflects the interstate portion of the digital remote central office equipment which is now allocated to the local jurisdiction. In its proposed order the Company agreed that this Public Staff adjustment was correct. As discussed in the Evidence and Conclusions for Finding of Fact No. 8, the Commission concludes that it is appropriate to make this adjustment because the factors used to separate the various jurisdictions do not reflect the new methods of allocating the digital remote central office equipment.

Based on the foregoing, the Commission concludes that the appropriate original cost rate base for use in setting rates in this proceeding is $66,488,485.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 8

The evidence for this finding of fact is contained in the testimony and exhibits of Company witness Ivanuska and Public Staff witness Garrison and the Evidence and Conclusions for Findings of Fact Nos. 7 and 10. Company witness Ivanuska stated that he accepted the methodology used by witness Garrison in calculating the appropriate end-of-test-period intrastate toll and access revenues. Both parties used a settlement pool return of 14.623% which is the annualized monthly return from January 1984 through December 1984. Therefore, the difference between the intrastate toll and access revenues determined by the Company of $14,129,398 and the intrastate toll and access revenues determined by the Public Staff of $13,882,023 is due to differences in the actual rate base and expense amounts used to calculate the toll and access revenues. The Commission finds that it is reasonable to use a settlement ratio of 14.623% in the determination of toll revenues in this proceeding.

The methodology employed by Public Staff witness Garrison and accepted by the Company relies upon a determination of the appropriate end-of-test-period expense and end-of-test-period investment to determine the intrastate toll and access revenues to be expected from the intrastate settlement pool. The evidence in this case indicates that the difference between the intrastate toll and access revenues of the Company and the Public Staff lies in the determination of the appropriate end-of-test-period expenses and investment to be included in the calculation of the end-of-test-period intrastate toll and access revenues from the intrastate settlement pool with the exception of one item. The intrastate settlement pool revenue calculation of the Public Staff does not include an amount for uncollectible revenues as does the calculation of the Company. Nor does the Public Staff's total intrastate revenue requirement include an amount for intrastate toll uncollectible revenues. This method is consistent with the Public Staff's methodology used in the past and is consistent with prior Commission decisions in which no recognition is given to the uncollectible revenues attributable to intrastate toll revenues. Based upon the foregoing, the Commission concludes that it is appropriate to reflect toll revenues net of uncollectibles.

Both the Company and the Public Staff agreed that the level of billing and collection access revenues received by Continental from AT&T Communications of the Southern States, Inc. (ATTCOM) for the provision of billing services is $563,757 and the level of nonaccess (or lease) revenues from ATTCOM for the provision of interLATA toll facilities is $469,932. These two toll revenue figures are the annualized monthly revenues that Continental has received from ATTCOM for the months of April 1984 to December 1984.

Two other toll revenue matters on which the parties concurred are the adjustments to reflect the effect of the changes in the toll separations procedures as specified in FCC Order No. 80-286 and the adjustment to reflect the effect of access revenue changes resulting from the Commission Order issued in Docket No. P-100, Sub 65. As a result of FCC Order No. 80-286, nonengineering traffic expense will now be allocated to toll based on central office investment instead of composite traffic units, the previous allocation

basis. Also, FCC Order No. 80-286 specifies a modified treatment of toll allocations for digital host/remote central office investment. The new allocation for this central office investment is based on subscriber line usage (SLU) instead of the traditional subscriber plant factor (SPF) and conversation minute miles (CMM). These changes became effective beginning July 1, 1984, and have been reflected by the parties through the following adjustments: (1) intrastate toll revenue has been reduced by $43,348, (2) rate base has been increased by $53,047, and (3) other operating expense has been increased by $108,460. With regard to the Commission Order issued on November 2, 1984, in Docket No. P-100, Sub 65, reducing the access charges paid by ATTCOM to the local exchange companies, the Public Staff and the Company have agreed that intrastate toll revenues should be reduced by $309,084 to reflect this change which became effective on November 7, 1984. There being no evidence to the contrary, the Commission finds that these adjustments are proper for use in this proceeding.

The only remaining difference between the parties is in their respective positions as to how many months of the CPE phase-out should be reflected in the toll revenue calculation. The Company used 25 months (January 1, 1983 through January 31, 1985) and the Public Staff used 24 months (January 1, 1983 through December 31, 1984). According to witness Garrison, the effect of the CPE phase-out adjustment on toll will cause the settlement pool return to be increased. The Public Staff's use of 24 months matches the settlement pool return computed through December 1984. In accordance with the Commission's approval of the use of a 14.623% settlement ratio, which is the annualized return through December 1984, the Commission finds that the Public Staff's proposed use of 24 months of CPE phase-out properly matches the settlement return and therefore the CPE phase-out adjustment should be computed using 24 months rather than 25 months.

Based upon the Commission's decisions in Evidence and Conclusions for Findings of Fact Nos. 7 and 10 and in this immediate finding, the Commission concludes that the appropriate level for Continental's end-of-test-period intrastate toll and access revenues is $13,674,699.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 9

The evidence concerning test year operating revenues is found in the testimony and exhibits of Company witnesses Ivanuska and Prestwood and Public Staff witnesses Willis, Garrison, and Jacome. The following chart summarizes the amounts which the Company and the Public Staff contend are proper for use in this proceeding.

Item	Company	Public Staff	Difference
Local service revenue	$20,670,142	$20,827,043	$ 156,901
Toll service revenue	14,129,398	13,882,023	(247,375)
Miscellaneous revenue	1,124,253	1,124,253	-
Uncollectibles	(204,497)	(48,293)	156,204
Total operating revenues	$35,719,296	$35,785,026	$ 65,730

The parties agree to the adjusted end-of-period level of miscellaneous revenues as proposed by the Company. There being no evidence to the contrary, the Commission concludes that the proper level of miscellaneous revenues is $1,124,253.

The first item of difference is in regard to the proper level of local service revenues. The adjustments composing this $156,901 revenue difference relates to the following issues:

Public Staff Adjustment	Amount
CWIP/plant additions	$(40,124)
Loss of terminal equipment	197,305
Gross receipts taxes	(280)
Total	$156,901

In witness Ivanuska's prefiled testimony, he proposed a positive revenue adjustment of $107,336 to reflect revenue growth related to the Company's after-period construction expenditures and a negative after-period adjustment of $434,154 which was his estimate of after-period losses of key telephone equipment, private branch exchange equipment, telephone instruments, and other supplemental equipment. These adjustments were updated in the Company's rebuttal testimony which revised the revenue increase associated with the inclusion of CWIP to $40,124 and the revenue loss associated with the loss of terminal equipment was revised to $197,305.

Public Staff witness Willis disagreed with the incorporation of these after-period adjustments and stated his misgivings concerning the accuracy and completeness of the after-period adjustments. In particular, he suggested that when one party of record introduces a specific or selected adjustment there is reason to consider whether all of the Company's after-period operating results should be reviewed. He stated that irrespective of the number of pro forma after-period adjustments, errors and distortion in the test period concept may be introduced. According to witness Willis, an additional risk of inaccuracy may arise from the misinterpretation and application of various adjustment procedures.

Company witnesses Ivanuska and Prestwood filed rebuttal testimony to update witness Ivanuska's originally filed after-period adjustments. Witness Ivanuska, in his rebuttal testimony, agreed that all of his prefiled adjustments to local service revenues were incorrect. In an attempt to correct his negative terminal equipment adjustment, he substituted actual units in service at the end of February 1985 to replace his originally estimated units. He admitted, in his rebuttal testimony, that his positive revenue adjustment of $107,336 relating to CWIP was totally incorrect.

During cross-examination, witness Ivanuska agreed that the terminal equipment units which he had used to establish an end-of-period revenue level were smaller in number than the units associated with the test year booked level. To this extent his end-of-period revenue level associated with terminal equipment had already been adjusted downward from the booked level. It was his contention that terminal equipment revenues had different characteristics from other services because the decline in revenue level would not be restored in

the future. He agreed, however, that after-period revenues from other services may be increasing just as terminal equipment revenues are decreasing and unless the revenue from other sources were tested for a trend a risk of distorting the Company's financial status would exist.

In connection with testing other local service revenues, witness Ivanuska accepted the best-fitting regression equation shown on Ivanuska Rebuttal Cross-Examination Exhibit No. 1 which was derived from the Company's local service revenues exclusive of terminal equipment and installation revenues. He acknowledged that the equation indicated that the average growth in the local service revenues exclusive of terminal equipment and installation revenues was $7,381 per month from January 1984 through December 1984 and that mathematics would project an annual increase of $708,576 through February 1985 even though he did not agree that this was a proper interpretation.

Company witness Prestwood presented rebuttal testimony to correct that portion of witness Ivanuska's after-period revenue adjustment associated with after-period plant additions of $7,390,405. Witness Prestwood stated that the after-period plant additions would cause local service revenue to increase $40,124.

As discussed in the Evidence and Conclusions for Finding of Fact No. 7, the Commission finds that it is proper to include 80% of the $7,390,405 of plant additions in rate base and to include the associated $40,124 of local service revenues in this proceeding. Further, the Commission has heretofore expressed its concern over the adequacy of the Company's proposed adjustments in this regard. With this in mind, the Commission finds that in this proceeding it would be improper to allow the Company's adjustment for the loss in terminal equipment revenues. The Commission concludes that a local service revenue level of $20,867,167 is a fair and representative level of what can be expected on an ongoing basis. This revenue level incorporates the Public Staff's $280 adjustment to properly update the end-of-period level of local service revenues to reflect the change in the gross receipts tax rate which became effective on January 1, 1985.

The second item of difference relates to toll service revenue. The Commission has previously found the proper level of toll revenue to be $13,674,699 in Finding of Fact No. 8.

The final item of difference between the Company and the Public Staff is the appropriate level of uncollectibles to be deducted from rate base.

Witness Ivanuska proposed uncollectibles of $204,497. This amount is representative of uncollectibles associated with local, miscellaneous, and toll revenues, as proposed by the Company. Witness Jacome adjusted this amount to $48,293 to be reflective solely of the uncollectibles related to local service and miscellaneous revenues. She testified that the .22 uncollectible rate, based on actual test year uncollectible experience, was only applied to local service and miscellaneous revenues, as the toll revenues recommended by the Public Staff are net of any uncollectibles. Therefore, it would be inappropriate to include additional toll revenue uncollectibles.

The Public Staff's treatment for uncollectibles is consistent with treatment in previous proceedings which have been before this Commission. The

Commission therefore concludes that the method utilized by witness Jacome to determine the amount of uncollectible revenue is reasonable and proper in this proceeding. Based on the Commission's findings as to the proper levels of local service and miscellaneous revenues, the Commission concludes that the proper level of uncollectible revenues is $48,381. In summary, the Commission concludes that the appropriate level of net operating revenues to be used in this proceeding is $35,617,738.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 10

The evidence concerning test year operating revenue deductions is found in the testimony and exhibits of Company witnesses Ivanuska and Prestwood and Public Staff witnesses Jacome, Winters, and Garrison. The following chart sets forth the amounts proposed by the Company and the Public Staff.

Item	Company	Public Staff	Difference
Maintenance expense	$7,146,558	$7,032,121	$(114,437)
Depreciation expense	8,943,742	8,920,632	(23,110)
Traffic expense	1,033,900	1,005,825	(28,075)
Commercial expense	1,546,394	1,414,527	(131,867)
General office expense	1,882,689	1,827,542	(55,147)
Other operating expense	2,337,748	2,321,028	(16,720)
Other operating taxes	1,972,635	1,993,715	21,080
State income taxes	444,792	490,844	46,052
Federal income taxes	2,665,611	2,997,814	332,203
Total	$27,974,069	$28,004,048	$ 29,979

The $114,437 difference in maintenance expense between the Company and the Public Staff consists of two adjustments. The first adjustment of $91,798 reduces maintenance expense to reflect the cost savings related to the plant additions the Company proposes be included in rate base. This adjustment is the net of a $128,234 reduction in manpower costs and a $36,436 increase in line card repair costs for digital switches. As the Commission has previously concluded in Evidence and Conclusions for Finding of Fact No. 7 that it is appropriate to include the post-test period plant additions as a component of rate base, the Commission finds that the related $91,798 maintenance expense adjustment is reasonable and proper.

The second adjustment contributing to the $114,437 difference in maintenance expense relates to the Company's proposed growth adjustment and the treatment it received from the Public Staff. Witness Ivanuska made several growth adjustments intended to increase operating expenses to a level commensurate with the expense level at the anticipated final order date, by the application of two separate growth factors. The first growth factor of 5.168%, representing the percentage increase in the GNP deflator from the midpoint of the test year to the "projected" GNP deflator at April 1985, was applied to operating expenses not specifically adjusted by pro forma or end-of-period adjustments. The second growth factor of 3.199%, representing the percentage increase in the GNP deflator from the end of the test year to the "projected" GNP deflator at April 1985, was applied to expense items which had been adjusted to an end-of-period level. Application of both factors increased

operating expenses by $866,092 and was proposed by the Company to compensate for the decline in earnings associated with projected increases in expenses and taxes not otherwise adjusted beyond the end of the test period. Witness Ivanuska subsequently revised his growth adjustments in rebuttal testimony by reducing the 5.168% factor to 4.5073% and the 3.199% factor to 2.5512%. These two revisions decreased the Company's total growth adjustment to operating expenses from $866,092 to $728,463.

Witness Jacome disagreed with the Company's attempt to increase operating expenses to a level beyond the end of the test period. She testified that she was not opposed to adjustments which would bring operating expenses, not otherwise adjusted, to an end-of-period level. However, she stated that the growth adjustments, as proposed by the Company, attempted to increase operating expenses to a level beyond the end of the test year and, in fact, beyond the hearing date. Witness Jacome therefore eliminated the portion of the Company's adjustment which applied the 2.5512% factor to expenses which had already been adjusted to an end-of-period level and adjusted the 4.5073% factor to be reflective of the overall percent increase in the GNP deflator from the average test year GNP deflator to the end of the test year GNP deflator. The resultant factor of 1.2396% was then applied to operating expenses not specifically adjusted by pro forma or end-of-period adjustments. Utilization of this factor, according to witness Jacome, reasonably adjusted expenses, not otherwise annualized, to the appropriate end of period level.

In reaching a decision on this adjustment, the Commission must resolve two issues. The first issue concerns the appropriateness of increasing operating expenses to a level beyond the end-of-the-test-period level. The Commission can appreciate the Company's contention that expenses will grow, on average, by the level of inflation that is present in this economy. Therefore, the Company's and Public Staff's use of the GNP deflator to approximate growth in expenses is reasonable. However, as the Commission sets rates based on historic test year data, adjusted for actual known and measurable changes, it is not reasonable to calculate a growth adjustment based on what might be expected to happen during a period subsequent to the test period. Furthermore, the adjustment as proposed by the Company only recognized a portion of the changes which might occur during this future period. It failed to consider any possible cost savings or increases in revenues which would offset growth in expenses. Therefore, the Commission finds the growth adjustment as calculated by the Company to be improper.

The second issue which must be resolved by the Commission concerns the consistency of both parties' growth adjustments. Witness Ivanuska testified in his prefiled testimony that his method of calculating growth was consistent with the method proposed by the Company and accepted by the Commission in the Company's last rate case. Witness Jacome, in her direct testimony, similarly testified that her method of calculating growth was consistent with that proposed by the Public Staff and accepted by this Commission in the Company's last rate case. Witness Ivanuska, during cross-examination by the Public Staff, was asked to read into the record the testimony sponsored by Public Staff Accountant Jessie Kent, as to how the Public Staff treated the Company's growth adjustment in Continental's last case. Witness Ivanuska admitted that the sworn testimony of Mr. Kent stated that the Public Staff opposed increasing expenses beyond the end-of-test-period level and proposed limiting the increase to an end-of-period level. However, he further testified that Mr. Kent's

testimony was misleading in that he used the words "end of period" to mean something other than end of test period. Witness Jacome, on the other hand, testified during cross-examination by the Company, that Mr. Kent's prefiled testimony and summary to his testimony clearly stated his intent to adjust expenses to an end-of-test-period level. She further testified that she had checked into what Mr. Kent had done in the case and determined that he adjusted expenses to an end-of-period level by the application of a 5% factor. Based on the sworn testimony of Mr. Kent, it is obvious to the Commission that Mr. Kent intended to adjust those expenses, not otherwise adjusted, to an end-of-period level, and to oppose a growth adjustment which increased expenses beyond this point. Therefore, the Commission agrees with witness Jacome and finds her method of calculating growth consistent with that proposed by the Public Staff and accepted by this Commission in the Company's last rate case.

In summary, the Commission concludes that the growth adjustments as proposed by the Company are improper and the growth adjustments as calculated by the Public Staff are the appropriate ones for inclusion in this proceeding. Therefore, the Commission accepts that the following Public Staff positions on revising the Company's growth adjustments are appropriate:

Public Staff Position	Amount
Decreased maintenance expense	$(206,224)
Decreased traffic expense	(28,075)
Decreased commercial expense	(41,337)
Decreased general office expense	(55,147)
Decreased other operating expense	(65,140)
Decreased other operating taxes	(25,995)
Total	$(421,918)

Based on the foregoing the Commission concludes that the appropriate level of maintenance expense is $6,940,323.

The next item of difference in the level of operating revenue deductions between the Company and the Public Staff concerns the proper level of depreciation expense. The $23,110 discrepancy results from the Public Staff's adjustment of $50,168 to eliminate depreciation related to the excess cost of plant purchased from the supply affiliate and the Company's adjustment of $27,062 to exclude the depreciation effect of the estimated loss in terminal equipment. In the Evidence and Conclusions for Finding of Fact No. 6, the Commission addressed the appropriateness of excluding excess profits in plant purchased from the Company's supply affiliate from rate base and concluded that excess profits of $358,000 should be removed. Therefore, it would also be proper to eliminate the depreciation expense related to this adjustment. The Company's adjustment to exclude the depreciation effect of the estimated loss in terminal equipment should likewise be eliminated because the Commission concludes in the Evidence and Conclusions for Finding of Fact No. 9 that the Company's related adjustment to reduce revenues associated with this estimated loss in terminal equipment was not appropriate. The Commission finds that the appropriate level of depreciation expense is $8,920,632.

Traffic expense is the next area in which different amounts are proposed by the parties. The difference of $28,075 arises solely from the Company's

growth adjustment and the treatment it received from the Public Staff. As previously discussed, the Commission concurs with the Public Staff's calculation of the growth adjustment. Therefore, traffic expense of $1,005,825, as proposed by the Public Staff, is the proper amount to be included in operating revenue deductions.

The Commission likewise agrees with the Public Staff's proposed level of general office expense of $1,827,542 due to its conclusion regarding the Company's growth adjustment. In this regard, the Company and the Public Staff had differed by $55,147, a difference attributed solely to the Public Staff's treatment of the Company's growth adjustment.

The level of commercial expense as proposed by the Company and Public Staff differed by $131,867. The Public Staff's adjustment to exclude $90,530 of excess profits earned by the affiliated directory company accounts for a portion of the difference, and the Public Staff's adjustment to reduce the Company's growth adjustment by $41,337 accounts for the remainder. As previously discussed, the Commission concludes that the Public Staff's adjustment of the Company's growth adjustment is proper.

Public Staff witness Winters testified that, in his opinion, commercial expense included $90,530 of commissions related to excess profits earned by the affiliated directory company, Mast Advertising and Publishing Company, on its transactions with Continental. He testified that the directory company, over the last five years, has consistently earned very large rates of return on its equity related to affiliated operations. He further testified that beginning in 1979 the directory company earned 24.3%; in 1980, 64.4%; in 1981, 57.7%; in 1982, 64.9%; and in 1983, 59.6%; and that these profits, in his opinion, are excessive for transactions with affiliated subsidiaries. Consequently, witness Winters reduced commercial expense by $90,530 and provided the following rationale for this adjustment:

> "The providing of directories is an essential part of providing telephone service and, in my opinion, the Commission should not allow excess returns on such investments simply because the Company chooses to provide these goods and services through an unregulated affiliate."

Witness Winters testified that his adjustment limited the directory company's return on equity related to its North Carolina operations to 15%.

In rebutting witness Winter's statement that "the providing of directories is an essential part of providing telephone service," Company witness Prestwood made the following statements:

> "A telephone company is obligated to provide a white paper directory listing for its subscribers, but the telephone company is not required to sell and print yellow pages advertising, which is not a part of providing telephone service.
>
> Yellow page advertising is a competitive advertising media, the same as newspapers, radio or TV advertising. Every advertiser has a fixed advertising budget, which requires decisions as to which media advertising expenditures are made. To the extent that yellow page

advertising sales are maximized, the local service revenue requirement is minimized by the amount of advertising commissions received from such yellow pages advertising."

Company witness Prestwood also took the position that the Public Staff's proposal in this regard would reduce the publishing company's incentive for maximizing directory advertising sales and limit the income potential of the sales organization. Witness Prestwood also questioned the propriety of using return on equity as an appropriate criterion for measuring profitability and testified as follows:

"The Public Staff's directory adjustment is calculated on the basis of a rate of return on common equity. This is an inappropriate method of financial analysis, because the Directory Company is not a capital-intensive operation. The Public Staff's application of a return on equity measure of profitability to a company with a capital turnover of 5.1 times in 1983 is invalid."

Witness Prestwood testified that in his opinion net income as a percentage of sales was the appropriate measure of profitability. Witness Prestwood compared the Mast Advertising and Publishing Company earnings' performance in 1983 with that of other advertising media; in terms of earnings as a percentage of sales, as reported by Value Line, the percentages are as follows:

Item	Percentage
Mast Advertising and Publishing Company	8.1%
Other directory publishers	8.4%
Donnelley	7.4%
Dun and Bradstreet	9.4%
Printing and publishing (including magazines)	7.1%
Broadcasting	8.7%
Newspapers	7.9%

After looking at these comparative profit data, witness Prestwood concluded that the Mast Advertising and Publishing Company's profits in 1983 were neither unreasonably high nor excessive, when properly measured and as compared to profits earned by other advertising media.

Both witness Prestwood and witness Winters agreed that Continental retains approximately 50% of each month's directory advertising billing and remits the balance to the Directory Company. According to witness Prestwood,

"The Directory Company pays the expenses of selling advertising, compiling directory material received from the telephone company, printing, and shipping directories to local exchanges. The directory company also prepares advertising copy, supplies cuts and advertisements, rewrites and revises all advertising copy whenever necessary, compiles classified listings, sends all such material and necessary instructions to the printer, along with the subscriber listings for the classified and alphabetical sections of the directories, which are supplied by the telephone company."

With respect to the Company's position that yellow page advertising is not a part of providing telephone service, the Commission notes that the Commission and the courts have consistently held that such revenues are includable in the cost of service for setting rates and concludes that revenues from yellow page advertising should be included in the cost of service in this proceeding. The Commission is of the opinion that to the extent the directory company is successful in competing for advertising sales, so too is Continental. Further, the Commission finds that the approximate 50% retention factor on directory advertising revenues by Continental is fair and reasonable to be utilized in determining the representative level of directory contribution; therefore, no excess profits adjustment should be made in this docket. Based on these decisions, the Commission concludes the proper level of commercial expense is $1,505,057.

The next item of difference between the parties is in regard to the appropriate level of other operating expenses. This $16,720 difference involves four issues. The first issue deals with the Public Staff's adjustment to exclude $80,774 of national advertising expense. Witness Jacome testified that she had analyzed a representative sample of national advertising and determined that approximately 66% fell within the category of image advertising. She stated that since image advertising does nothing to enhance the service provided to the ratepayers or provide any useful information, it is not reasonable to burden the ratepayers with this cost. She subsequently revised the 66% estimate to 75% due to Company provided information and applied this 75% to the total advertising expense portion of the general service and license contract expense account. Based on this evidence and prior treatment by this Commission, the Commission concludes that this $80,774 adjustment to remove from the cost of service expenses related to image advertising is appropriate.

The second issue contributing to the difference in other operating expenses relates to the Public Staff's adjustment to increase other operating expense by $108,460 to reflect a change in the separations process. This change increased the local allocation of certain traffic expenses as well as digital remote central office equipment. An adjustment to reflect the increased investment associated with the digital remote central office equipment has been addressed in the Evidence and Conclusions for Finding of Fact No. 8. To the extent that the investment of this digital remote central office equipment is allocated differently, then the expenses associated with this investment is also allocated differently. Therefore, the Commission concludes that this adjustment to reflect increased expenses associated with the change in the separations process of certain traffic expenses as well as the digital remote central office equipment is appropriate.

The final two issues supporting the $16,720 difference in other operating expenses are the Company's adjustment to decrease relief and pension expense by $20,732 and the Public Staff's adjustment to decrease the Company's proposed growth adjustment by $65,140. The Company's relief and pension adjustment relates to the decline in manpower resulting from the Company's inclusion of plant additions. As the Commission found in Finding of Fact No. 7 that 80% of the plant additions should be included in rate base, the related decline in manpower and associated relief and pension cost savings should also be included in this proceeding in the amount of $20,576 ($30,637 x .6716). With regard to the Public Staff's treatment of the Company's growth adjustment, the Commission

concludes as discussed previously in this finding, that the Public Staff's growth adjustment is proper. In summary, the Commission finds that the appropriate level of other operating expense to be used in this proceeding is $2,300,452.

The difference in other operating taxes as proposed by the Company and the Public Staff resulted from the Public Staff's treatment of the Company's growth adjustment, the Company's proposed decrease in payroll taxes to reflect the reduction in manpower related to the Company's inclusion of CWIP, the differing level of gross receipts taxes, and a $208 mathematical error. The Commission finds as previously discussed that the Public Staff's treatment of the Company's growth adjustment is appropriate. In Finding of Fact No. 7 the Commission found that it was appropriate to include 80% of the plant additions in rate base; therefore, the Commission finds that it would be reasonable and proper to include the related payroll tax adjustment of $9,733 ($14,493 x .6716).

The remaining item contributing to the $21,080 difference in other operating taxes is gross receipts taxes. The Company and the Public Staff agreed that access revenues should not be subject to gross receipts tax. The Commission agrees that access revenues should not be subject to gross receipts tax and finds that the proper level of gross receipts tax is $1,010,352 (($35,617,738 - $4,240,361)x .0322). Therefore, the Commission concludes that the proper level of other operating taxes to be used in this proceeding is $1,980,560.

The final expense differences relate to the calculation of state and federal income tax expenses. These amounts are direct calculations determined by the level of operating revenues and expenses. In supplemental testimony witness Ivanuska accepted witness Winters' adjustment to the Company's level of investment tax credit (ITC) amortized during the test year; therefore, the Commission finds the proper level of test year ITC amortization to be $539,536. The Commission does not agree with either parties' level of rate base, revenues, or expenses. Therefore, the Commission has made its own determination of the level of state and federal income taxes. The Commission finds that the proper level of state income taxes is $457,939 and the proper level of federal income taxes is $2,760,676. In summary, the Commission concludes that the proper level of operating revenue deductions to be included in this proceeding is $27,699,006.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 11

Evidence relating to depreciation rates is presented in the testimonies and exhibits of Company witness Ivanuska and Public Staff witness Sutton.

In his prefiled direct testimony, witness Ivanuska calculated Continental's test year depreciation expenses based upon capital recovery rates presented in the 1983 Depreciation Rate Study that the Company filed with the Public Staff. In prefiled direct testimony, witness Sutton indicated that he reviewed that study and, based upon that review, he agreed with some of the proposed rate revisions and disagreed with others. Specifically, witness Sutton disagreed with and proposed alternative recovery schedules for Account 221.22 COE Switchboard Equipment, Account 221.26 COE Power Equipment, Account 221.25 COE Circuit Equipment, Account 221.28 COE Digital Equipment, Account

231.XX Station Apparatus, Account 242.1 Aerial Cable, Account 242.3 Buried Cable, Account 242.4 Submarine Cable, and Account 231.3 Station Apparatus-Deregulated.

During the hearings conducted in Raleigh, witness Ivanuska filed rebuttal testimony addressing several of the adjustments proposed by the Public Staff. Regarding capital recovery, witness Ivanuska stated in his rebuttal testimony that Continental accepted the depreciation rates proposed by witness Sutton. Accordingly, witness Ivanuska's rebuttal testimony indicates that it would be necessary to reduce test year operating expenses from that proposed in his original testimony.

Based upon the foregoing discussion, the Commission concludes that the capital recovery rates as shown in Appendix C are just and reasonable and should be approved.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 12

Evidence relating to the line card growth capacity in a digital central office is presented in the testimonies and exhibits of North Carolina Legal Services witness Dr. Cooper and Public Staff witness Sutton and in the rebuttal testimony and exhibits of Company witness Moore.

North Carolina Legal Services witness Dr. Cooper testified that the Company had substantial excess capacity for digital switches placed into service prior to June 30, 1984. He determined the amount of the excess to be $2,822,545 based upon a total digital switch investment of $15,141,410. Dr. Cooper's figures included all of the inside plant at each exchange instead of just the digital switches. In arriving at the percentage of excess, Dr. Cooper used gross wired capacity rather than the modular increments of central office equipment actually used in equipping these offices.

Public Staff witness Sutton stated that his investigation indicated that the Company was equipping its digital central offices with two years of growth capacity plus five percent of administrative spare line card capacity. As a result of the engineering procedure used by the Company, witness Sutton stated that excess line card capacity now exists in some of Continental's digital central offices. Witness Sutton testified that there was excess line card capacity in the Weaverville, Sylva, Bakersville, Bryson City, and Mars Hill offices but proposed no rate base adjustment since the investment associated with these offices is in the CWIP amount which the Public Staff recommended be excluded from the determination of the Company's revenue requirement. According to witness Sutton's Late Filed Exhibit No. 1, the investment in the Andrews exchange which was included in plant in service at the end of the test year has excess line card capacity of $41,460, and the investment in the Bakersville, Bryson City, Mars Hill, Sylva, and Weaverville exchanges which were included in the Company's end of test period CWIP amount has excess line card capacity of $151,344.

Company witness Moore stated that Continental's general engineering procedure for digital central offices was to equip the office with the line card capacity required at cutover plus the additional line card capacity required to accommodate a two-year growth requirement. With regard to the five digital switches placed into service in 1984 (Bakersville, Bryson City, Mars

Hill, Sylva, and Weaverville), witness Moore testified that there was excess capacity in the wired lines and the equipped lines combined of $165,973, representing 1.9% of the total investment in these five digital switches. Witness Moore testified that he did not view this excess investment as a problem of crisis dimension and proposed no adjustment. Furthermore, witness Moore testified that he did not know if the Company had used a cost study to determine whether the two years was precisely right nor had he compared one year or three years to the two-year interval.

The Attorney General's proposed order found that the Company's rate base should be reduced to eliminate the excess capacity in the plant investment which was proposed to be included in rate base by the Company. The Attorney General recommended that the rate base cost of switching, line card capacity, and wired capacity should be reduced by 15% in rate base to reflect an allocation of the risk of having excess capacity in a construction program between the ratepayers and the shareholders.

The Commission is aware that Continental's basic telephone service rates are well above the state average. While a number of conditions beyond the Company's control may have contributed to this situation, Continental should exercise prudent management for conditions over which it has control to ensure delivery of basic telephone service in its franchised area at the lowest rates reasonably possible. Since the Company and the Public Staff agree that excess line card capacity exists in the Company's digital central offices, the Commission concludes that excess line card capacity does, in fact, exist. Furthermore, the Company's proposed order states that the Company believes that "an engineering interval of line card capacity of one year for digital switches is appropriate...for future use by the Company." Accordingly, the Commission concludes that line card growth capacity in a digital switch should be limited to a maximum of one year's growth requirement.

In accordance with the evidence in this finding and the Commission's decisions in Evidence and Conclusions for Finding of Fact No. 7 regarding the inclusion of 80% of the plant additions after the end of the test year in rate base, the Commission concludes that 80% of the intrastate investment in excess line card capacity in the Bakersville, Bryson City, Mars Hill, Sylva, and Weaverville exchanges should be excluded from rate base. Further, the Commission finds that 100% of the excess capacity investment in the Andrews exchange which was included in plant in service at the end of the test year should also be excluded from rate base.
The Commission accepts witness Sutton's adjustment of $151,344 and $41,460 as the total Company amounts for investment in excess capacity for the five exchanges associated with plant additions beyond the end of the test year and the Andrews exchange, respectively. The intrastate portions of these two adjustments are $105,668 and $28,947, respectively. In this regard, the Commission finds that an $84,534 adjustment to remove from rate base 80% of the investment in excess capacity for the five exchanges relating to the plant additions beyond the end of the test year and a $28,947 adjustment to eliminate from rate base the investment in excess capacity in the Andrews exchange are appropriate adjustments in this proceeding.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 13 AND 14

Three witnesses testified on the fair rate of return issue. The Company presented the testimony and exhibits of witness Morris. North Carolina Legal Services presented the testimony and exhibits of Dr. Cooper. The Public Staff presented the testimony and exhibits of witness Sessoms.

Witness Morris testified that Continental Telephone Company of North Carolina is a wholly owned subsidiary of Continental Telecom, Inc., and has no publicly traded stock. Therefore, he constructed a group of telephone utilities serving market segments similar to those served by the Company which have stock that is publicly traded. His group included companies such as Cincinnati Bell, Inc., Rochester Telephone Corp., and Southern New England Telephone Company. He then compared fundamental factors including interest coverage, operating performance, financial leverage, and growth exhibited by the Company in comparison to those of his proxy group to establish relative risk. The results of this comparison led to his conclusion that the Company's risk was greater than that of his composite. Thus, the required rate of return for the Company would be at least equal to that of the composite's rate of return. Witness Morris then attempted to determine the cost of common equity capital for the proxy group using a discounted cash flow (DCF) analysis and a risk premium analysis. In his DCF analysis witness Morris obtained a composite dividend yield of 8.43% which, when added to his expected growth rate estimate of 7.50% to 8.00%, equaled a cost of equity of 15.93% to 16.43%. His second method of estimating the expected return on equity consisted of a risk premium model. Witness Morris first estimated a risk premium for the composite's common equity return by taking the 7.70% arithmetic average risk premium of stocks over bonds found in the Ibbotson and Siquefield study and multiplying this premium by his composite's average beta value of .60. Adding the resulting risk premium of 4.62% to the yield of AA bonds of 14.42% resulted in a required return of 19.04%. Based upon the results of the DCF and his risk premium model, witness Morris recommended that the cost of common equity to his composite and to the Company was 16.50%.

Witness Cooper took exception with Company witness Morris' assessment of the risk of bypass to Continental Telephone Company of North Carolina in relation to the bypass risk to members of his proxy group. Witness Cooper pointed out that the proxy group members served major urban metropolitan areas as contrasted to the mostly urban market of the Company. Witness Cooper recommended a 14.0% return on common equity based on a Value Line estimated growth rate of 6.0% added to a composite dividend yield of 8.3% or a parent company dividend yield of 7.7%. However, according to the brief filed by the North Carolina Legal Services, their position was that the Company had provided substantially inadequate service and should therefore be penalized 1% on its equity rate of return.

Witness Sessoms determined the cost of common equity by employing the DCF method to Continental Telecom, Inc., and to a group of telephone companies similar in risk. Witness Sessoms pointed out that the sole common equity owner of the Company is Continental Telecom, Inc., and that Continental Telecom, Inc., is involved in business endeavors other than the provision of local telephone service. However, according to witness Sessoms, since these other endeavors presented more risk to equity holders than the provision of local telephone service, use of the consolidated system would only tend to

overestimate the cost of equity for the Company. Witness Sessoms' DCF results for Continental ranged from 13.3% to 14.9% for Continental and 13.6% to 15.7% for the group. As a check on his DCF results, witness Sessoms next determined the expected return on the market and employed the results in the capital asset pricing model (CAPM). Based on a DCF approach and a risk premium approach, the expected return on the market equaled 15.0%. Inserting the expected return on the market of 15.0%, a beta value of .60, and an 11.5% risk-free rate into the CAPM equation resulted in a 14.1% cost of common equity. Based upon these results, witness Sessoms estimated that the cost of common equity to the Company ranged from 14.00% to 14.50% and consequently recommended a 14.25% allowed return on common equity.

With respect to the appropriate capital structure to employ in setting revenue requirements, in his prefiled testimony witness Morris recommended that the Commission employ the per books capital structure of Continental Telephone Company of North Carolina at June 30, 1984, which consisted of 49.04% long-term debt at a cost rate of 10.47%, 1.82% preferred stock at a cost rate of 7.67%, and 49.14% common equity at a recommended cost of 16.50%. Thus, witness Morris recommended a weighted average cost of capital for the Company of 13.38%.

Witness Sessoms concluded it would be inappropriate to use the per books capital structure of the local subsidiary. Based on a detailed study he made on the financings of the consolidated Continental system, witness Sessoms concluded that if each commission under which a Continental regulated subsidiary operated were to grant an equity return on the per books capital structure, the consolidated system common equity investors would earn more than the required return due solely to double leverage. To prevent ratepayers from paying rates which would produce a higher than required return on equity to the consolidated system, witness Sessoms recommended that the consolidated capital structure of Continental Telecom, Inc., at September 30, 1984, be employed. He testified that this capital structure allows the equity investor to earn the required return while flowing through the benefits of leverage to the ratepayers because it includes all the debt, preferred stock, and common equity in the system from the competitive capital markets. This capital structure consisted of 41.77% common equity, 3.48% preferred stock at an embedded cost rate of 8.54%, and 54.75% long-term debt at an embedded cost rate of 9.98%. Combining this capital structure and its embedded cost rates with the 14.25% recommended return on common equity, witness Sessoms concluded that the weighted average or overall cost of capital to the Company equaled 11.71%.

In rebuttal to witness Sessoms' testimony, witness Morris testified that the use of the consolidated company data to determine the cost of equity capital resulted in an understated conclusion and the use of the consolidated capital structure was incorrect for Continental Telephone Company of North Carolina. Witness Morris stated that use of the historical growth rates for the consolidated system during a period when nonregulated revenue growth was slower than in current years would lead to a lower than expected growth rate in the future. He also pointed out that in 1983 Continental Telephone Company of North Carolina derived almost 100% of its revenues from local exchange telephone services versus 69% for Continental Telecom, Inc. (Contel), and that Contel's revenues from unregulated sources, as a percent of total revenues, advanced 35% from 23% in 1979 to 31% in 1983. It is the view of witness Morris that Contel is moving into unregulated businesses at a rapid pace as opposed to Continental.

Witness Morris also cited several published articles concerning the CAPM that he testified "had led researchers to conclude that the theoretical CAPM tends to underestimate the required rate of return for low beta companies such as Continental." Further, witness Morris recommended that the capital structure of Continental Telephone Company of North Carolina at December 31, 1984, be employed as an alternative to the capital structure he had recommended in his initial prefiled testimony. This revised capital structure consisted of 47.69% common equity at a recommended cost of 16.50%, 1.68% preferred stock at a cost rate of 7.63%, and 50.63% long-term debt at a cost rate of 10.67%. Thus, his weighted average cost of capital recommendation equaled 13.40%.

The Company also pointed out in its evidence that the use of the local Company capital structure was recommended by the Public Staff as well as the Company in the last general rate case, and the Commission in fact used that capital structure (Docket No. P-128, Sub 3). The Company also noted that the equity ratio in the last case was 48.04% equity while the equity ratio recommended for use in this proceeding had declined to 47.69%.

The Attorney General agreed with the Public Staff that the proper capital structure to use is a consolidated one and also agreed that a fair and reasonable equity return for the Company would be 14.25% if service were adequate. However, the Attorney General was of the opinion that the Company's service was inadequate and recommended a return on equity of 13.25%.

After considering all of the evidence presented by the parties to this proceeding on the cost of capital issue, it is evident to the Commission that one of the central determinations to be made is what recognition should be given to the parent/subsidiary relationship between Continental Telecom, Inc., and its wholly owned subsidiary, Continental Telephone Company of North Carolina. The recommendation of the Company is the per books capital structure of the local Company which ignores the parent/subsidiary relationship, but recognizes the fact that the capital structure of Contel supports unregulated activities to the extent that only 69% of Contel's revenues in 1983 were from local exchange telephone services. The recommendation of the Public Staff is to employ the consolidated capital structure of Continental Telecom, Inc., which accounts for some of the double leverage of the system and gives recognition to the affiliation.

The Commission has said in a number of prior Orders that its conclusion as to the appropriate capital structure is not based simply on whether the structure is stand-alone or consolidated. In the final analysis the Commission must determine a capital structure that is reasonable and representative for a telephone company without regard to the label one chooses for it. In determining what is reasonable, the Commission recognizes as it has done in other cases, that the telephone industry is in the midst of a new competitive era. Based upon all of the foregoing, the Commission believes that the following capital structure is fair and reasonable for use in this proceeding:

Item	Percent
Long-term debt	53%
Preferred stock	2%
Common equity	45%
Total	100%

Further, the Commission finds that a cost of debt of 10.67% and a cost of preferred stock 7.63% are appropriate rates for use with the approved capital structure. These rates were the weighted cost rates for Continental at December 31, 1984.

The determination of the fair rate of return for the Company is of great importance. The return allowed will have an immediate impact on the Company, its stockholders, and its customers. The determination of a fair rate of return must be made by this Commission, using its own impartial judgment and guided by the expert witnesses and other evidence of record. The allowed return must balance the interest of both ratepayers and investors while meeting the test set forth in G.S. 62-133(b)(4):

> "...to enable the public utility by sound management to produce a fair 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 nature of the evidence in a case such as this makes it extremely difficult to balance all of the opposing interests, since much, if not all, of the evidence is based on individual witnesses' perceptions and interpretations of trends and data from the capital markets. The Commission has considered carefully all of the relevant evidence presented in the case, with the constant reminder that whatever return is allowed will have an immediate impact on the Company, its stockholders, and its customers. The Commission must use its impartial judgment to ensure that all the parties involved are treated fairly and equitably. In coming to a final decision on this matter, the Commission is mindful of and, indeed, has given full consideration to the changes now occurring in the telecommunications industry. The Commission, therefore, concludes that the appropriate rate of return on equity in this proceeding is 15.00%. Accordingly, Continental should be permitted to earn an overall return of 12.56% on the original cost of its rate base.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 15

This Commission has previously discussed its findings and conclusions concerning the fair rate of return which Continental should be given the opportunity to earn.

The following schedules summarize the gross revenues and the rates of return which the Company should have a reasonable opportunity to achieve based on the increase approved herein. The schedules illustrating the Company's gross revenue requirements, incorporate the findings and the conclusions heretofore and herein made by the Commission.

SCHEDULE I
CONTINENTAL TELEPHONE COMPANY OF NORTH CAROLINA
NORTH CAROLINA INTRASTATE OPERATIONS
STATEMENT OF OPERATING INCOME
FOR THE TEST YEAR ENDED JUNE 30, 1984

Item	Present Rates	Increase Approved	Approved Rates
Operating Revenues:			
Local service revenue	$20,867,167	$878,649	$21,745,816
Toll service revenue	13,674,699	-	13,674,699
Miscellaneous revenue	1,124,253	-	1,124,253
Uncollectible revenue	(48,381)	(1,933)	(50,314)
Total operating revenue	35,617,738	876,716	36,494,454
Operating Expenses:			
Maintenance expense	6,940,323	-	6,940,323
Depreciation expense	8,920,632	-	8,920,632
Traffic expense	1,005,825	-	1,005,825
Commercial expense	1,505,057	-	1,505,057
General office expense	1,827,542	-	1,827,542
Other operating expense	2,300,452	-	2,300,452
Total operating expenses	22,499,831	-	22,499,831
Other operating taxes	1,980,560	28,230	2,008,790
State income taxes	457,939	50,909	508,848
Federal income taxes	2,760,676	366,885	3,127,561
Total operating expenses and taxes	27,699,006	446,024	28,145,030
Net operating income for return	$ 7,918,732	$ 430,692	$ 8,349,424

SCHEDULE II
CONTINENTAL TELEPHONE COMPANY OF NORTH CAROLINA
NORTH CAROLINA INTRASTATE OPERATIONS
STATEMENT OF RATE BASE AND RATE OF RETURN
FOR THE TEST YEAR ENDED JUNE 30, 1984

Item	Amount
Telephone plant in service	$105,108,889
Depreciation reserve	(25,955,006)
Net plant in service	79,153,883
Working capital allowance	455,383
Deferred income taxes:	
Accelerated depreciation	(12,065,728)
Affiliated purchases	(1,007,258)
Pre-1971 investment tax credit	(18,509)
Other	275,667
Total deferred income taxes	(12,815,828)
Excess profits on affiliated sales	(358,000)
Interstate toll separations process change	53,047
Original cost rate base	$ 66,488,485
Rates of Return	
Present rates	11.91%
Approved rates	12.56%

SCHEDULE III
CONTINENTAL TELEPHONE COMPANY OF NORTH CAROLINA
NORTH CAROLINA INTRASTATE OPERATIONS
STATEMENT OF CAPITALIZATION AND RELATED COSTS
FOR THE TEST YEAR ENDED JUNE 30, 1984

Item	Capitalization Ratio(%)	Original Cost Rate Base	Embedded Costs(%)	Net Operating Income
	Present Rates - Original Cost Rate Base			
Long-term debt	53.00%	$35,238,897	10.67%	$3,759,990
Preferred stock	2.00%	1,329,770	7.63%	101,461
Common equity	45.00%	29,919,818	13.56%	4,057,281
Total	100.00%	$66,488,485	-	$7,918,732
	Approved Rates - Original Cost Rate Base			
Long-term debt	53.00%	$35,238,897	10.67%	$3,759,990
Preferred stock	2.00%	1,329,770	7.63%	101,461
Common equity	45.00%	29,919,818	15.00%	4,487,973
Total	100.00%	$66,488,485	-	$8,349,424

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 16

Company witnesses Reinert and Feaster and Public Staff witness Willis presented testimony concerning Continental's proposed rate structure.

Witness Reinert presented rate testimony to produce the Company's original request for $4,522,024 of additional revenue. He proposed tariff changes for direct inward dialing, custom calling features, enterprise service, the secondary service order charge and a vacation rate charge. Additionally, his rate design proposals included the reclassification of nonrotary key lines, the elimination of zone charges, the restructure of nonrecurring service charges, the obsolescence of four-party line service to new customers, and the offering of optional usage pricing plans.

Witness Willis of the Public Staff proposed that the Company be permitted to offer and charge for operator verification, busy interrupt service, and operator assisted local calls. Additionally, he recommended that the coin telephone rate be increased from $.20 to $.25 per local call and that the present allowance of five directory assistance calls be reduced to three with each call exceeding the allowance to be charged at $.25 per call.

Witness Willis and the Company agreed on each of the above tariff proposals with the exception of the Company's optional usage pricing plans, the "new service charge" definition, the elimination of zone charges, the vacation rate charge, and the obsolescence of four-party line service to new customers.

With respect to usage pricing, Company witness Feaster expressed his philosophy on the Company's proposed plans. He stated that usage pricing plans would provide a way for more people to have access to the system. In response to questions posed by Ms. Long of the Attorney General's Office, he agreed that there could be a revenue shortfall following the implementation of usage pricing plans which would cause the flat rates to increase.

Witness Willis noted that there had been no evidence shown which indicated that measured service was being demanded by the Company's subscribers. He suggested that more definitive methods should be established to determine how to target a selected group of customers and how to find the required subsidies before any additional usage pricing experiments are instituted within the state. Witness Willis stated that he did not believe that Continental's proposed usage pricing tariffs were structured to accomplish these objectives and therefore should be disapproved.

The Commission takes judicial notice of the fact that on March 14, 1984, in Docket No. P-55, Sub 806, the Commission allowed Southern Bell Telephone and Telegraph Company to offer its proposed local measured plan as an alternative option to flat rate service in Forest City, Shelby, Asheville, Raleigh, Cary, and Apex. Additionally, it was ordered to offer a message rate plan in Wilmington, Charlotte, Gastonia, Forest City, and Shelby.

Moreover, in Docket No. P-7, Sub 679, Carolina Telephone and Telegraph Company was allowed to offer a local measured service plan in its Rocky Mount and Siler City exchanges.

In these two dockets, each Company was ordered to obtain a completed questionnaire from each subscriber who elects to participate in an experimental plan. The Commission expressed its opinion in its Order of March 14, 1984, in Docket No. P-55, Sub 806, 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. As a precaution to assure the collection of representative information, the Commission chose specific geographic areas for the experiments to be conducted. The Commission is of the opinion that the results of the Southern Bell and Carolina Telephone Company experiments will be sufficient to provide useful information relevant to customer acceptance of alternatives to flat rates and that further proliferation of such experiments is not necessary. Therefore, Continental's request to implement optional usage pricing should be denied.

The Company proposed to combine its primary service charge and central office work charge into one charge and to name it the "new service charge." As a consequence of this proposal, the Company proposed that central office work performed on a secondary service order be charged at $5.00 per application. According to Public Staff witness Willis, the Company's proposal would create a problem in those situations where more than one central office line is to be connected on a "new service charge." Each additional line installed would be billed at $5.00 for the central office work rather than the tariff rate of $22.00, thus causing a shortfall in revenue. To correct this shortcoming, witness Willis recommended that the Company continue to use its tariff rates for new installations and in those instances where it is appropriate to use a secondary service order that the Company be permitted to charge its proposed rate of $5.00 per application for central office work activity.

The Commission is of the opinion that the Company's proposal to combine its primary service charge and central office charge into one charge and name it the "new service charge" should be denied. The Company should continue its existing tariff rates for new installations and where it is appropriate to use a secondary service order Continental is allowed to charge its proposed rate of $5.00 per application for central office work activity.

The Company proposed to redefine its reconnection charge for suspended service. Currently the Company's tariff requires nonrecurring charges of $24.00 for business and $15.00 for residence customers at the time of reconnection. The Company proposed to alter this provision and assess the charge prior to disconnection and rename it a "vacation rate charge." Public Staff witness Willis stated that this proposal would treat the Company's paying customers more adversely than its slow or nonpaying customers who pay at the time of reconnection rather than at the time of disconnection. He recommended that reconnection charges be applied identically for both groups of customers.

The Commission is of the opinion that Continental's proposal to implement a "vacation rate charge" prior to disconnection is just and reasonable and should be allowed.

The Company recommended the complete elimination of zone charges. Witness Willis of the Public Staff estimated that it would require approximately $.42 per month for residential customers residing within the base rate area to effect the total elimination of zone charges. Witness Willis concurred with the Company's proposal to eliminate zone charges provided the Commission

accepted the Public Staff's recommendation to reduce Continental's current rates. When questioned about the Public Staff's previous recommendations to eliminate zone charges in other companies, witness Willis indicated that the level of the local exchange rates had played an important part in its previous considerations. He noted that there had been occasions in past rate proceedings where the Public Staff recommended little or no reduction in zone charges.

The Commission and the Public Staff have traditionally discouraged the continuation of zone charges. Indeed, most regulated telephone companies in North Carolina have already eliminated zone charges. It is the opinion of this Commission that it is in the best interest of the Continental subscribers to allow Continental to eliminate zone charges.

The Company proposed to obsolete four-party service outside of the base rate area to new subscribers. Under this tariff modification, new customers requesting four-party service outside the base rate area would be granted this service only until such time as facilities for one-party service becomes available. Company witness Feaster stated that four-party-line service was sometimes more costly than one-party-line service and that it allowed some four-party-line subscribers to have a higher grade of service at lower rates as a result of the Company's difficulty in obtaining good line-fills. He also felt that the Commission had in the past encouraged the Company to upgrade its telephone service.

Witness Willis remarked that witness Feaster's testimony was accurate to a large degree. He stated that is was necessary to utilize bridge lifters in some cases under the Company's older plan configurations where there were long loops which experienced balance and impedance problems in order to isolate them from one another. He hastened to point out, however, that under the Company's new plant concept, where fiber optic feeders and carrier equipment are incorporated, the loops will be shorter and may seldom require bridge lifters. Witness Willis stated that he believes that the Company's four-party-line service is still viable and should continue to be offered. In response to questions from the panel, witness Willis reiterated his recommendation to continue offering four-party-line service to new customers because of the potentially negative effect its elimination could have on customer penetration. He referenced a study performed by NERA for Continental which emphasized the more adverse effect on penetration that the elimination of a lower priced flat rate service would have on customer penetration as compared to the effect of raising one-party-line flat rate services. It was his opinion that obsoleting the four-party-line service to new customers would remove an escape valve which some low income customers would otherwise utilize. It was his recommendation to the Commission to disapprove the Company's proposal to obsolete four-party-line service to new customers.

The Commission acknowledges that telephone companies have been encouraged to upgrade their systems in order to improve service in North Carolina. However, in this instance the Commission must also acknowledge that a substantial number of subscribers in the Continental territorial area have incomes that are below the poverty level and may benefit by the availability of the lower priced four-party service. On this basis, the Commission concludes that Continental should not be allowed to obsolete four-party service at this time.

The Commission has considered the requests made by witnesses at the Marshall, North Carolina, hearing for Madison County EAS. On March 20, 1985, the Commission issued an Order in Docket No. P-128, Sub 11, to Investigate the Implementation of Countywide Extended Area Service (EAS) in Madison County. The Order required Continental to file a cost analysis by June 1, 1985. Company witness Feaster indicated in his rebuttal testimony that with the digital network which Continental is completing in Madison County, the Company has the technical ability to provide an optional two-way extended calling plan for all customers. He also stated that this service would be provided at a flat cost which is somewhat higher than the basic rate that now exists. The Commission concludes that by June 1, 1985, Continental should file the flat rate that Continental proposes to charge for optional EAS and the earliest date when the optional Madison Countywide service could be provided.

Based upon all of the evidence of record regarding rate design and tariff proposals, the Commission concludes that changes in rates and tariffs should be in accordance with the guidelines set forth in Appendix A.

IT IS, THEREFORE, ORDERED as follows:

1. That the Applicant, Continental Telephone Company of North Carolina, be, and hereby is, allowed to increase its local service rates and charges by $878,649 above the revenue level that would have resulted from rates currently in effect based on test year units.

2. That the Notice of Decision and Order of May 1, 1985, and the Order Setting Rates of May 16, 1985, are affirmed.

3. That the Applicant should improve the quality of service with regard to the weak spots listed in Exhibit No. 13 of Public Staff witness McLawhorn's direct testimony.

4. That the revisions to the Company's operating statistics objectives proposed by Public Staff witness McLawhorn and set forth in Appendix B, attached hereto, are effective beginning May 1, 1985.

5. That Continental is to engineer and equip its digital central offices so that spare line card capacity in none of its offices exceed a one-year growth requirement.

6. That Continental shall implement the capital recovery schedule presented in Appendix C effective beginning May 1, 1985.

7. That on or before June 1, 1985, Continental shall file in this docket and in Docket No. P-128, Sub 11, the flat rate increase which it proposes to charge Madison County subscribers who elect to subscribe to the optional two-way extended calling and the earliest date when this service will be available.

ISSUED BY ORDER OF THE COMMISSION.
This the 24th day of May 1985.

NORTH CAROLINA UTILITIES COMMISSION
Sandra J. Webster, Chief Clerk

(SEAL)

APPENDIX A
CONTINENTAL TELEPHONE COMPANY OF NORTH CAROLINA
Docket No. P-128, Sub 7

TARIFF AND RATE DESIGN GUIDELINES

1. The Company's proposal to restructure its custom calling tariff rates is reasonable and should be allowed.

2. Continental's proposal to institute a vacation rate charge should be allowed.

3. Continental's proposal to institute a "new service charge" is unreasonable and should not be allowed.

4. The Company's proposed charge of $5.00 for central office work activity requested on a secondary service order is reasonable. A reasonable estimate of the expected annual revenue effect of these changes is a revenue decrease of $13,923.

5. Central office access lines terminating in key telephone equipment not arranged for rotary line service should be billed at the business one-party line rate.

6. The language in Tariff Section 18.1.1 expresses the Company's concurrence in enterprise service rates as filed by Southern Bell Telephone and Telegraph Company and therefore the deletion of enterprise service in Tariff Section 13.7 is proper.

7. The Company's proposal to obsolete four-party service should be denied at this time in order to provide a means for low income customers to maintain service.

8. The Company's proposal to eliminate zone charges is appropriate and should be allowed. The expected annual revenue effect of this change is a revenue decrease of $364,666.

9. The Company's proposal for usage pricing plans is premature in that Southern Bell Telephone and Telegraph Company and Carolina Telephone Company are already conducting experimental plans which will present results to be analyzed by the Commission in the near future. Therefore, Continental's optional usage pricing plan proposal should be denied at this time.

10. The incorporation of tariffs allowing operator verification and emergency interrupt service and operator assisted local calls are approved. A reasonable estimate of the expected annual revenue increase from these services is $26,923.

11. A charge of $.25 per local pay station call is reasonable, and a fair estimate of the additional anticipated annual revenues is $56,157.

12. A charge of $.25 per directory assistance call exceeding three inquiries per month and the estimate of $56,809 of annual revenue increase is reasonable.

13. The Company's proposed rates for direct inward dialing which will produce $1,956 of additional annual revenues are reasonable.

14. The residual revenue requirement increase which remains after implementation of the above guidelines should be obtained by applying the same percentage increase to all local service exchange rates proposed to be adjusted by the Company which have not been specifically adjusted in the foregoing rate design guidelines. The rates should be rounded to the nearest nickel.

APPENDIX B
CONTINENTAL TELEPHONE COMPANY OF NORTH CAROLINA
Docket No. P-128, Sub 7

OPERATING STATISTICS OBJECTIVES

Total Customer Trouble Reports:
Present - 10.0 reports or less per 100 access lines on any six-month average
Approved - 10.0 reports or less per 100 access lines

Repeat Reports:
Present - none
Approved - 1.7 reports or less per 100 access lines

Total Trouble Reports Clearing Time:
Present - 95.0% or more of total troubles cleared within 24 hours
Approved - rescind

Out-of-Service Trouble Reports Clearing Time:
Present - none
Approved - 95.0% or more out-of-service troubles cleared within 24 hours

Regular Service Order Completion Time:
Present - 90.0% or more of regular service orders completed within five working days
Approved - no change

New Service Held Orders:
Present - Held orders over 14 days not to exceed 0.1% of total stations
Approved - Held orders over 30 days not to exceed 0.1% of total access lines

Regular New Service Installation Appointments Not Met For Company Reasons:
Present - None
Approved - 5.0% or less missed

Regrade Applications Held Over:
Present - Held orders over 14 days not to exceed 1.0% of total stations
Approved - Held orders over 30 days not to exceed 1.0% of total access lines

APPENDIX C
CONTINENTAL TELEPHONE COMPANY OF NORTH CAROLINA
Docket No. P-128, Sub 7

DEPRECIATION RATES

Account No.	Description	Reserve %	APPROVED Avg. Serv. Life Yrs.	Avg. Rem. Life Yrs.	Future Net Salvage %	Rem. Life Rate %
212.17	Building	7.1	35.0	29.0	5.0	3.00
212.18	Lease Imp.	1.5	5.6	4.8	0.0	20.50
221	Cen. Off. Eqpt.					
221.1827	SWS Eqpt.	37.3	6.3	1.6	6.0	35.40
221.22	Switchboard Eqpt.	17.2	16.9	14.8	0.0	5.60
221.23	Xbar. Elec. Eqpt.	100.0	n/a	n/a	n/a	0.00
221.24	Microwave Eqpt.	74.7	15.0	3.8	0.0	6.70
221.25	Power Eqpt.	22.4	8.3	4.1	5.0	17.70
221.26	Circuit Eqpt.	26.2	8.6	5.8	20.0	9.30
221.28	Digital Eqpt.	8.4	16.9	14.8	0.0	6.20
231.3	Stat. App. -Dereg.	n/a	n/a	n/a	n/a	n/a
231.88	Stat. App.-Other	34.0	8.6	5.8	20.0	7.90
232.2	Stat. Conn.-In. Wiren	n/a	n/a	n/a	n/a	n/a
234	PBX	n/a	n/a	n/a	n/a	n/a
235	Public Phone	28.9	10.0	6.0	0.0	11.90
241	Pole Line	28.1	21.0	14.4	-32.0	7.20
242.1	Aerial Cable	17.4	26.0	21.0	-5.0	4.20
242.2	Undergr. Cable	14.2	35.0	29.0	-5.0	3.10
242.3	Buried Cable	16.4	26.0	21.0	0.0	4.00
242.4	Submarine Cable	39.8	25.0	19.9	0.0	3.00
243	Aerial Wire	57.8	13.2	5.3	-72.0	21.50
244	Undergr. Conduit	15.5	40.0	33.0	0.0	2.60
261	Fur. & Off. Eqpt.	30.4	15.0	11.9	10.0	5.00
261.9.91	Fur. & Fix-Minor	0.0	n/a	n/a	n/a	n/a
262	Off. Terminal Eqpt.	48.6	10.0	6.7	0.0	7.70
264	Vehicles	16.2	10.0	4.3	15.0	16.00
264.86	Other Work Eqpt.	60.8	12.0	7.3	0.0	5.40
264.96	Tools & Work Eqpt.	0.0	n/a	n/a	n/a	n/a

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	ORDER AFFIRMING HEARING EXAMINER'S ORDER AND ADJUSTING RATES

HEARD IN: Commission Hearing Room, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on February 11, 1985

BEFORE: Chairman Robert K. Koger, and Commissioners Sarah Lindsey Tate, A. Hartwell Campbell, Hugh A. Crigler, Jr., and Charles E. Branford

APPEARANCES:

For the Applicant:

Edward S. Finely, Hunton and Williams, Attorneys at Law, Post Office Box 109, Raleigh, North Carolina 27602

For the Public Staff:

G. Clark Crampton, 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 December 12, 1984, Recommended Order approving Rates and Requiring Service Improvements was issued in this docket. On January 15, 1985, the Public Staff filed Exceptions To Recommended Order And Request For Oral Argument Before The Full Commission. The Public Staff requested oral argument on generally two issues. First, the Public Staff excepted to the Hearing Examiner recommending that the Company make improvements to its accounting procedures and work order system, instead of ordering the Company to make said improvements. Additionally, the Public Staff excepted to rate base treatment afforded certain costs related to executives' time and travel, legal fees, finders fees, and other consulting fees.

The Company filed Motion for Reconsideration on January 15, 1985, wherein the Commission was requested to reconsider certain limited portions of the Recommended Order dated December 12, 1984. The Company contended that the rates approved in the December 12, 1984, Order did not produce the approved level of revenues. Additionally, the Company requested that it be allowed in its next general rate case to recover the difference between the budgeted rate case expenses and the actual rate case expenses incurred during this proceeding.

Oral Argument was held, as scheduled by Commission Order of January 18, 1985.

The Commission has carefully reviewed the entire evidence concerning this matter. Based on this review, the Commission concludes that the Hearing Examiner's Recommended Order should be affirmed as to the issues raised by the Public Staff. In this regard, the Commission notes that the Company was encouraged by the Hearing Examiner to evaluate its current work order system and to modify and improve such system in a manner which the Company deems most appropriate. The Commission has concluded that this is an appropriate and sufficient action, particularly in view of the overall performance level of the Company's general management which is demonstrated not only in this proceeding but in numerous other proceedings conducted by the Commission concerning this Company.

The Commission is unpersuaded that the accounting adjustments raised by the Public Staff at the Oral Argument should be made. The Commission therefore concludes that the original cost rate base determined by the Hearing Examiner to be ($3,295,921) is fair and reasonable. The Commission notes that the calculation of the original cost rate base includes a plant acquisition adjustment of ($2,484,815) which serves to reduce rate base, thereby reducing the revenue requirements that the customers must support through adequate rates. The Commission further notes that the quality of service for this Company is adequate and that the record shows that the Company's management has taken, or is taking, appropriate steps in order to correct any service problems, in order to ensure proper utilization of the utility plant.

As to the concerns raised by the Company at the Oral Argument, the Commission concludes that the rates should be adjusted to achieve the level of gross revenues approved in the Recommended Order of December 12, 1984. The rate schedule attached hereto as Appendix A is appropriate and should produce the level of revenues found to be proper in the Recommended Order of December 12, 1984.

As to the Company's request to recover the difference between the budgeted rate case expenses and the actual rate case expenses incurred during this proceeding, the Commission concludes that this issue is best left to be addressed in the Company's next general rate case. The Commission is concerned with this level of rate case expense and encourages all parties to make every fair and appropriate effort to use sound judgment in attempting to keep rate case costs at a reasonal level in the future.

IT IS, THEREFORE, ORDERED as follows:

1. That the Hearing Examiner's Recommended Order of December 12, 1984, be, and hereby is, affirmed, except as to Ordering Paragraphs 2, 3, and 4 below.

2. That the rate schedule attached hereto as Appendix A be, and hereby is, approved. Such rate schedule is deemed filed with the Commission pursuant to G. S. 62-138.

3. That the Company be, and hereby is, ordered to give appropriate notice of the change in rates approved herein to the customers in the next regular billing cycle following the date of this Order.

4. That the Company be, and hereby is, ordered to file within 90 days a report stating what changes and improvements are planned in the Company's work order and accounting system as a result of the Hearing Examiner's Recommended Order. Such report should state the costs associated with the planned changes and improvements.

ISSUED BY ORDER OF THE COMMISSION.
This the 18th day of February 1985.

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

DOCKET NO. W-774, SUB 1

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Environmental Pollution Control, Inc. - Investigation into Rate Structure and Assessments	)	RECOMMENDED ORDER CHANGING RATES AND REQUIRING REPORTS, REFUNDS, AND ESCROW ACCOUNT

HEARD IN: Meeting Room, Municipal Building. U.S. 158 By Pass, Kill Devil Hills, North Carolina, on Thursday, November 29, and Friday, November 30, 1984, and in the Commission Hearing Room 217, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on Wednesday, December 19, 1984

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

APPEARANCES:

For the Respondent

E. Gregory Stott, Attorney at Law, P. O. Box 131, Raleigh, North Carolina 27602

For the Intervenors:

Antoinette R. Wike, Public Staff Attorney, North Carolina Utilities Commission, P. O. Box 29520, Raleigh, North Carolina 27626-0520
For: The Using and Consuming Public

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

Dan C. Oakley, Special Deputy Attorney General, P. O. Box 629, Raleigh, North Carolina 27602
For: The Division of Environmental Management, North Carolina Department of Natural and Economic Resources

PARTIN, HEARING EXAMINER: This matter arose upon the filing in Docket No. W-774 of a Motion by the Public Staff seeking the issuance of an order requiring the Respondent, Environmental Pollution Control, Inc., ("EPC") to

comply with decretal paragraphs 7 and 8 of the Commission's Order of April 4, 1984, by submitting (1) monthly progress reports with regard to the upgrading of the Ocean Acres sewage treatment and disposal plant in Kill Devil Hills, North Carolina, (2) the accounting for the collection and expenditure of assessment monies held in escrow, and (3) appropriate documentation of the transfer of the Ocean Acres sewer facility to EPC from Stephen S. Sawin. By its Motion, the Public Staff also asked the Commission to order an audit of the books and records of EPC and an investigation into the reasonableness of the Company's present rates and use of assessment monies, based on 12 months' historical data, to be performed by the Commission staff.

In a letter dated August 7, 1984, and filed with the Commission on August 10, 1984, EPC, through its president, Stephen S. Sawin, responded to the Public Staff's Motion with a "Report of Expenditures of Assessment Monies" and a copy of an unrecorded deed transferring the Ocean Acres sewer system from Mr. Sawin to EPC. Mr. Sawin's letter suggested that the present rate of $4.75/1,000 gallons corresponds to a $19.00 monthly flat rate, which is within the normal range for a sewer utility, and that the problem was with the assessment. The letter also opposed the request for an audit, citing the Public Staff's audit of December 1983.

On August 8, 1984, there was filed with the Commission a Petition signed by residents and property owners of Ocean Acres requesting a public hearing with regard to the rates and assessments charged by EPC.

In Comments and Recommendations filed on August 22, 1984, the Public Staff, in response to Mr. Sawin's August 7, 1984, letter, stated its belief that EPC's expenditures should be reported to the Commission in greater detail, indicating to whom checks were written and for what purpose, and that a copy of the recorded deed should be on file with the Commission. The Public Staff further recommended, in response to the property owners' August 8, 1984, Petition, that, as an alternative rate structure which would produce the same level of annual revenues and assessments ($52,046 and $39,035, respectively) approved in the April 4, 1984, Order, the Commission consider a $19.00 per month flat rate for residential customers combined with the presently-approved metered rate for commercial customers and a 75 percent assessment, and that the matter be set for public hearing. The Public Staff also renewed its request for an audit to be conducted by the Commission Staff.

On August 13, 1984, the Public Staff filed a Motion, also in Docket No. W-774, requesting the Commission to require EPC to refund or credit to each of its customers the difference between the $9.50 minimum charge approved in the April 4, 1985, Order and the $16.00 minimum charge imposed prior to that time as a flat rate and also billed for April 1984 usage, an amount computed by the Public Staff to be $11.38 per customer, including the assessment.

By Order issued August 30, 1984, the Commission scheduled the Public Staff's motions and other pleadings for oral argument on September 24, 1984. Upon hearing oral argument by the parties, the Commission issued an Order on October 29, 1984, creating the instant docket and incorporating all motions, responses, and other documents in Docket No. W-774 herein by reference. The Commission also scheduled a hearing to hear and determine the following matters: whether EPC should continue to charge its residential customers the metered rate approved in the Order of April 4, 1984, or the flat rate

recommended by the Public Staff in its Comments filed August 22, 1984, or any other rate which would generate the level of revenues approved for EPC in the April 4, 1984, Order; the Public Staff's Motion for Refund; the request of EPC dated July 10, 1984, for a variance from Commission Rule R12-4 relating to customer deposits; and the report of an audit and investigation into the collection and disbursement of assessment monies by EPC which the Commission ordered to be conducted by the Commission's engineering staff with the requested assistance of the accounting division of the Public Staff.

The matter came on for hearing as scheduled in Kill Devil Hills on November 29 and 30, 1984. Testifying there were the following public witnesses: Charles E. Broughton, Sr.; John L. Amrhein; I.R. Vaughan; Ivan H. Fowler; Jeffrey O. Joostema; Aylene Goddard; Wilbur Smith; Roy Forney; F. L. Boyden; Marilyn Seal; Harriet Klein; Dana Lawrentz; Francis X. McArdle; Frank Bindulski; William C. Schmidt; Lloyd Ballance; Claudette Forney; Joseph Gebauer; Garland Alexander; Michael Lowery; The Rev. David Daniels; and Jo Jordan. The Public Staff also introduced the prefiled direct testimony of Candace A. Paton, an Accountant with the Public Staff, and Rudy C. Shaw, Utilities Engineer with the Commission Staff.

The hearing resumed in Raleigh on December 19, 1984, where the following witnesses testified: Ms. Paton; Mr. Shaw; Mr. Broughton; Jerry Tweed, Director of the Water and Sewer Division of the Public Staff; Alton R. Hodge, an Environmental Engineer with the North Carolina Department of Natural Resources and Community Development; Craig B. Morgan, a Sanitary Engineer and Consulting Engineer with Craig B. Morgan and Associates; and Stephen S. Sawin, President of Environmental Pollution Control, Inc.

Based upon the foregoing, the evidence adduced at the hearings in Kill Devil Hills and Raleigh, the Recommended Order of Hearing Examiner Bennink in Docket No. W-774, dated January 25, 1984, and the Commission's Order therein dated April 4, 1984, and the entire record in this proceeding, the Hearing Examiner makes the following:

FINDINGS OF FACT

1. Environmental Pollution Control, Inc. ("EPC" or "the Company") has been the holder of a franchise to provide sewer utility service in Ocean Acres Subdivision, Kill Devil Hills, North Carolina, since April 4, 1984, prior to which time Stephen S. Sawin, President and sole stockholder of EPC, was the emergency trustee and operator of the utility system.

2. Mr. Sawin purchased the sewer facility serving Ocean Acres from the trustee in bankruptcy for approximately $1,000 and paid an additional $14,000 to $16,000 for land and rights of way associated with the system.

3. Stephen S. Sawin is also the sole proprietor of ENLAB (Environmental Laboratories), a service company which works for EPC partly by contract and partly on an hourly basis.

4. Mr. Sawin receives no compensation directly from EPC but is paid at the rate of $10.00 an hour as owner of ENLAB for services performed for EPC.

5. The Commission's Order of April 4, 1984, in Docket Nos. W-774, and W-392, Sub 5, approved the following metered rates to become effective on April 4 and to be coordinated with the next water meter readings made by the Town of Kill Devil Hills:

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 Customer served by one Meter (Duplex 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

6. The April 4, 1984, Order also approved a monthly assessment for both Residential and Commercial Service of 75 percent of the monthly sewer bill.

7. The approved metered rates were designed to produce an average bill of $19.00 per month, based on average monthly water consumption of 4,000 gallons, and total operating revenues of $52,046 per year.

8. The approved assessment was designed to produce assessment revenues of $39,035 per year.

9. Prior to April 4, 1984, EPC was authorized to charge a flat rate of $16.00 per month.

10. As a result of changing from a flat rate to a metered rate effective for service rendered on and after April 4, 1984, EPC overbilled its customers in excess of its approved rates by amounts totaling approximately $4,431.

11. The presently approved residential metered rate is causing a substantial hardship on many residential customers and is producing and will continue to produce revenues for EPC in excess of those intended by the Commission based upon an average monthly consumption per residence of 4,000 gallons.

12. The presently approved monthly assessments are also causing a substantial hardship on the residential customers and have produced in excess of $46,000 through November 1984 as a result of having been tied to the metered rate.

13. The April 4, 1984, Order provides 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." (decretal paragraph 5)

14. EPC has not established and maintained a separate escrow account for the assessment monies it has collected.

15. The April 4, 1984, Order provides that EPC "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." (decretal paragraph 7)

16. EPC has not made timely progress reports to this Commission or to the Environmental Management Commission and, further, the format of EPC's records and reports provides insufficient detail to permit a determination as to the prudence and propriety of the expenditure of assessment monies.

17. EPC has entered into a Special Order by Consent (SOC) with the North Carolina Environmental Management Commission which requires EPC to perform certain tasks designed to bring the utility system up to its design capability of 60,000 GPD and into compliance with its NPDES permit effluent limits. The SOC will expire June 30, 1985.

18. EPC should be allowed to refund monies on sewer bills in exactly the same manner as the Town of Kill Devil Hills, as requested in the Company's letter to the Commission dated July 27, 1984. The Company's request that it be allowd a variance from Rule R12-4 relating to security deposits should be denied.

CONCLUSIONS

I.

The customers of EPC were overbilled for the month of April 1984. The Company should make refunds to its customers in the amounts calculated by Mr. Rudy Shaw and shown on Exhibit 1 of his testimony.

II.

The rate structure of EPC for its residential sewer customers should change to a flat rate of $19.00 per month, and the assessment for the residential sewer customers should change to a flat rate of $14.25 per month.

III.

EPC should make an updated accounting report of all assessment monies collected since the assessment was instituted by Commission Order; the accounting should be reported to the Commission, the Public Staff, and the Environmental Management Commission in the format prepared by Candace Paton of the Public Staff and attached to this Order as Appendix C. The Company should also be required to make monthly reports of assessment monies expended in the manner recommended by the Public Staff.

IV.

EPC should be required to place into a separate escrow account all assessment monies collected by it after the effective date of this Order. Such

assessment monies shall not be expended by EPC except upon prior approval of the Commission.

V.

The assessment should not terminate as of June 30, 1985, as recommended by the Public Staff and the Attorney General. A hearing should be held on October 24, 1985 to determine whether the assessment should terminate as of December 31, 1985. An issue at this hearing will be the willingness of EPC and its President, Mr. Sawin, to invest their own funds in the sewer system. If EPC and Mr. Sawin are unwilling to invest their own funds for the capital improvement of EPC mandated by the SOC, Mr. Sawin should immediately begin negotiations with the Town of Kill Devil Hills for the purchase by the Town of the sewer sytem.

VI.

EPC should be allowed a variance from Commission rules so that it may refund monies on sewer bills in exactly the same manner as the Town of Kill Devil Hills. The Company's request for a variance from Rule R12-4 for security deposits equal to one billing period (three months) rather than two-twelfths of one year, should be denied.

DISCUSSION OF EVIDENCE AND CONCLUSIONS

I.

The customers of EPC were overbilled for the month of April 1984. The Company should make the refunds to its customers in the amounts calculated by Mr. Shaw and shown on Exhibit 1 to his testimony. This refund may be made by crediting the account of each customer, as hereinafter set forth in this Order.

Commission staff member Rudy C. Shaw addressed the refund issue. Mr. Shaw conducted his investigation and audit of the Company's records and concluded therefrom that EPC had overbilled its customers in the amount of $4,431.23 for the month of April 1984. Although Mr. Shaw acknowledged that he could understand why the overbilling occurred, he nonetheless recommended that the Company be required to refund or credit to the account of its customers the overcharge as calculated on his Exhibit 1.

Mr. Shaw testified that on July 8, 1984, EPC sent out bills which indicated that the period covered by the meter readings of the Town of Kill Devil Hills (which provides water service in Ocean Acres) was March 25 - July 8, 1984. Mr. Shaw's investigation disclosed that the meter readings actually covered the period from February 29 - June 6, 1984. Mr. Shaw determined that, based on the time period covered by the meter readings of its customers, EPC should have charged the sewer rates which went into effect on June 30, 1983, for the 35-day period from February 29 - April 4. EPC should have charged the rates that went into effect on April 4, 1984, for the period April 5 - June 6, 1984. Mr. Shaw stated: "However, EPC actually charged rates which combined the two rate structures."

Mr. Sawin, the President of EPC, testified that Mr. Shaw's conclusion was correct that there was an overlap between two billing periods. It was his position, however, that the July 8 billing was in full and complete compliance

with the Commission's Orders. He stated that he advised the Commission of the possibility of a billing overlap and that he was following the advice of a Commission staff member with respect to the billing.

Upon consideration of the testimony and exhibits in this proceeding, the Examiner concludes that the customers were overbilled for April 1984 in the amount of $4,431.23 and that the Company should refund to its customers the amount of overcharges set forth in Appendix A (Shaw Exhibit 1). The refund shall be made by crediting each customer's account in increments of $10.00 per month until the amount of refund owing each customer has been fully written off to the customer's account. When a customer's refund balance is less than $10.00, this actual balance is to be credited to the customer's account rather than the usual $10.00 credit.

II.

The rate structure of EPC for its residential customers should change to a flat rate of $19.00 per month, and the assessment should change to a flat rate of $14.25 per month.

The Commission's Order of April 4, 1984, in Docket Nos. W-774 and W-392, Sub 5, approved for EPC the following metered rates for single unit residential sewer service based upon water meter readings made by the Town of Kill Devil Hills:

Up to the first 2,000 gallons	-	$9.50 minimum
All over 2,000 gallons	-	$4.75 per 1,000 gallons

There were separate metered rates for multi-unit residential customers served by one meter and for commercial customers. See Finding No. 5, above.

The Commission also approved a monthly assessment of 75 percent of each customer's metered sewer bill. Both Mr. Tweed and Mr. Shaw testified that the Commission's Order of April 4, 1984, approved the residential metered rates based upon total average consumption of 48,000 gallons per residential customer per year, or 4,000 gallons per month. The Commission's April 4, 1984, Order contemplated that EPC would receive $4.75 for each thousand gallons sold during a year, or $19.00 per month per residential customer, for the normal operation and maintenance of the system. It was Mr. Tweed's opinion that EPC is actually receiving more than the intended $19.00 per month under the rate structure approved April 4, 1984.

Customers who testified at the public hearing in Kill Devil Hills in November 1984 complained about the high sewer bills that they received from EPC for the three months ended September 1984. Some bills were as high as $400. See, for example, the testimony of William C. Schmidt, Jeffrey W. Joostema, Charles E. Broughton, Jr., Aylene M. Goddard, Roy Forney, F. L. Boyden, and Dana Lawrentz. The customers expressed concern about the effect of the excessively high bills on the resale value of their homes. Many of these customers supported the return to a flat rate schedule for the Company.

The testimony of Mr. Tweed and Mr. Shaw recognized the problem of the extremely high sewer bills in the summer months. Mr. Tweed stated that EPC's presently approved rate design has created these high bills. He recommended

that the only way to eliminate these high bills is to change the EPC metered residential rate to a $19.00 flat rate with a $14.25 assessment. This flat rate would also eliminate any possibility that EPC would collect more revenue than the Commission intended in its April 4, 1984, Order.

EPC contended that it should be allowed to continue to charge, for its residential customers, the rate approved on April 4, 1984. The Company noted that both a Hearing Examiner and the full Commission approved metered rates. The Public Staff took no appeal from the Commission's Orders, even though the Public Staff had supported a flat rate from the beginning.

The Examiner concludes, however, that the residential sewer rate structure of EPC should be changed to a flat rate of $19.00 per month and that the assessment should be changed to a flat rate of $14.25 per month. This change should apply to both the single unit and multi-unit residential customers. In so deciding, the Examiner shares the concerns of the customers and the Public Staff that the present residential metered rates are resulting in excessively high bills during the summer months. The flat rate schedule will eliminate this problem and thereby alleviate the seasonal financial hardships suffered by the residential customers of EPC. The Examiner further concludes that the $19.00 monthly flat rate and the $14.25 monthly assessment will not produce revenues lower than the levels intended by the Commission in the Order of April 4, 1984.

It is the intention of this Order that the changed rates approved herein shall go into effect for service rendered on and after June 1, 1985, in order to prevent a recurrence of the extremely high residential sewer bills that were incurred in the summer of 1984.

III.

EPC should make an updated accounting report of all assessment monies collected since the assessment was instituted by Commission Order; the accounting should be reported to the Commission, the Public Staff, and the Environmental Management Commission in the format prepared by Candace Paton of the Public Staff and attached to this Order as Appendix C. The Company should also be required to make monthly reports of assessment monies expended in the manner recommended by the Public Staff.

The Commission in its April 4, 1984, Order stated as follows:

> 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 original 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 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 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. (Page 5)

The Commission also stated that the "reasonable level of estimated operating revenue deductions for EPC, Inc., is $46,076 exclusive of expense incurred for deferred maintenance and capital improvements" but including $3,000 as the annual level of management fees to be paid to Stephen S. Sawin for management service rendered."

Ms. Paton, the witness for the Public Staff, testified that those parts of the Commission's Order to the effect that "assessment monies shall not be used to pay ordinary expenses" and that EPC shall "account for assessment monies collected and spent in an itemized fashion", were, in her opinion, "the two most important aspects of this issue." (Tr. Vol. 1, p. 86) She continued, as follows:

> Unless the assessment monies are accounted for in an itemized fashion, there is no way to determine whether these monies are being used to pay ordinary expenses or assessment expenses.
>
> In my opinion, the Company's records, as they currently stand, are totally inadequate to enable anyone to determine which expenses are ordinary and which expenses are to meet the request of the SOC. (Tr. Vol. 1, p. 86)

She noted that many of the invoices that EPC has paid out of assessment monies were from an affiliated company, Environmental Laboratories (ENLAB). For example, invoices from ENLAB referred to "repair lift station #3", "generator repair", "lift #1 motor repair." It was Ms. Paton's opinion that these descriptions did not give sufficient detail for a determination whether the work was for ordinary maintenance or for assessment-related items. Also, invoices from nonaffiliated companies often did not give sufficient detail. She recommended that EPC provide a detailed description of the work done in its records. The invoices from ENLAB should provide enough information for a determination between ordinary and assessment expenses to be made. Finally, Ms. Paton recommended that any expenditure for which the Company cannot provide sufficient documentation to substantiate its appropriateness as an assessment should be disallowed as such and considered as an ordinary operating expenditure.

Mr. Tweed testified that he believed that the assessment monies were not being used exclusively for their intended purpose. ". . . Some are being used for routine maintenance and general management." (Tr. Vol. 3, p. 63)

The reports submitted by Mr. Sawin are insufficient and inconclusive to determine whether the assessment monies are or are not being used for purposes originally contemplated by the Commission's Order of April 4, 1984. Part of the problem derives from the differences of opinion as to what is an SOC-related expenditure and what is routine maintenance and administrative expenditures. Mr. Hodge, who participated in the structuring of the SOC, testified that an item should be repaired only once with assessment monies, further repairs being routine maintenance, and that the SOC did not intend for assessment monies to be used for administrative expenses.

Mr. Sawin distinguished between SOC items and maintenance items as follows:

> If this repair looks like it will recur any time within a year to a year and one-half, I call that maintenance and I take it out of my operating budget. If this repair looks like it is a defect that has been existing for three or four years prior to my operation I call that deferred maintenance or SOC required and I charge it to assessment. (TR. Vol. 3, p. 143)

Under Mr. Sawin's criteria, virtually any part of the system which has worn out could be repaired or replaced with assessment money and incorrectly classified as deferred maintenance. Moreover, with regard to administrative expenses, the Examiner is of the opinion that these are ordinary operating expenses which should be covered by the $3,000 in management fees paid to Mr. Sawin and not by assessment monies. Ms. Paton recommended that EPC be required to file a copy of the maintenance contract between EPC and its affiliate ENLAB to assist the Commission in determining ordinary and assessment expenses. She stated: "Unless the Commission knows what ordinary maintenance ENLAB is contracted to do on a regular basis, it will be doubly hard to make a determination between ordinary and assessment expenses." The Hearing Examiner is in agreement; the relationship between EPC and ENLAB needs clarification.

This Order will require EPC to make an updated accounting report of all the assessment monies collected since the assessment was instituted. The accounting shall be reported in the format prepared by witness Paton and attached to this Order as Appendix C. This report should enable the parties to resolve the uncertainty and confusion surrounding the expenditure of assessment monies. This Order will also require EPC to file monthly reports of assessment monies expended in the format required by the Public Staff.

IV.

EPC should be required to place into a separate escrow account all assessment monies collected by it after the effective date of this Order. Such assessment monies shall not be expended by EPC except upon prior approval of the Commission.

The Commission's Order of April 4, 1984, provided as follows:

> 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 payment necessary to upgrade the system to comply with the original improvements set out in the Special Order by Consent issued by the North Carolina Environmental Management Commission.

Witness Paton testified that based upon her investigation, she determined that EPC has not established an escrow account as required by the Order of April 4, 1984. Witness Paton recommended that EPC be ordered to establish immediately an escrow account for assessment monies. She noted that the Company's failure to establish an escrow account, as required by the Commission's Order, has made it very difficult to audit the Company's assessment records. She discovered $1,752.58 of expenses that had been

accounted for twice in EPC's monthly progress reports of assessment expenditures. She stated that if the Company had established an escrow account, this type of error could not have occurred during the month of April 1984 or any succeeding months.

Witnesses Tweed and Hodge, as well as the Attorney General, also supported the recommendation that the Company be required to place into an escrow account the assessment monies, subject to release only upon written approval of a member of the Commission staff or the Division of Environmental Management.

Mr. Sawin objected to the need for an escrow account and for approval by a member of the Commission staff to authorize expenditure of assessment monies. With respect to the escrow account, Mr. Sawin stated that it will be one additional expense that he would have to undergo. With respect to the approval from the Commission staff for the authorization of assessment expenditures, he stated that it would restrict the repair of the system in terms of how quickly and inexpensively he could get things done.

The Examiner is of the opinion that EPC should be required to place assessment monies in escrow subject to release only upon approval by the Commission through a member of its staff. In so deciding, the Examiner calls attention to the fact that the customers of the Company have had to bear a very large burden in paying assessment monies since the assessment was authorized by Commission Order of January 1984. Mr. Sawin and EPC have been unwilling to put any of their funds into the capital improvements of the sewer system required by the SOC. The customers, as well as the Commission, the Public Staff, and the Division of Environmental Management, are entitled to a determination that the assessment monies are being properly collected and expended for purposes related to the capital improvements of the system pursuant to the SOC. Ms. Paton pointed out that the Company's failure to establish an escrow account made it difficult for her to audit the Company's assessment records. Although the establishment of an escrow account will impose some burden on the Company, such burden is outweighed by the need to have as accurate an accounting of the assessment monies as possible. The collection and expenditure of the assessment monies is a matter of trust on behalf of the customers of EPC. The uncertainty and confusion surrounding the collection and expenditure of the assessment monies by EPC over a two-year period, as revealed by Ms. Paton's investigation, is a disgrace. If this uncertainty is not removed by good faith compliance with the reporting requirements of this Order, the Examiner recommends to the Commission that the assessment be terminated.

This Order will require that EPC place into a separate escrow account all assessment monies collected by the Company after the effective date of this Order and that such assessment monies shall not be expended by EPC except upon prior approval by the Commission through Mr. Shaw, a member of its staff. The Public Staff and the Division of Environmental Management are requested to assist Mr. Shaw in approving the expenditures of assessment monies.

V.

The future of the assessment authorized for EPC was a major issue in this proceeding. It is helpful to review the events surrounding the assessment.

On June 20, 1983, EPC applied for the transfer of the sewer franchise from O/A Utility Inc. and requested an emergency rate increase and a special assessment on the customers of the system. In that application, EPC requested that an assessment of $47,991 be levied against the ratepayers and collected over a period of 24 months. In support of this request, EPC filed a set of bids for the improvements to the sewer system that would be necessary at that time.

On June 30, 1983, the Commission issued an Order approving Mr. Sawin as the emergency operator of the sewer system and approving emergency interim rates and assessments. Following the hearing, the Hearing Examiner issued a Recommended Order on January 25, 1984, which approved an assessment for EPC. The Examiner's Order stated that the monthly assessment should only be used by EPC to improve and upgrade the sewer system in question as required by the North Carolina Division of Environmental Management and that said assessment monies should not be used to pay ordinary operating expenses. The Commission's final Order of April 4, 1984, which modified the Recommended Order, approved the collection of assessment monies by EPC. As noted elsewhere in this Order, the Commission required that the assessment monies collected each month be held in escrow and subject to release only for payments necessary to improve and upgrade the sewer system.

The Public Staff in this proceeding recommended that the assessments terminate on June 30, 1985. Mr. Tweed pointed out that the assessments were originally expected to last a maximum of two years, to terminate on June 30, 1985, and that the amount collected from the customers has been considerably greater than the $47,000 applied for by Mr. Sawin in his application.

The customers at the hearing in Kill Devil Hills on November 30, 1984, also voiced objection to the continued imposition of the assessment, pointing out that the assessment had caused them financial hardship through excessively high sewer bills.

The Attorney General in its brief also recommended that the assessment terminate June 30, 1985. The brief pointed out that the customers of EPC had carried an undue burden by being forced to contribute nearly $47,000 to the capital improvements of the sewer system, yet they have gotten neither the service nor the upgraded system that they have paid for. The Attorney General also pointed out the unwillingness of EPC to assume responsibility for capital improvements, and operate without the benefits of assessments, until such time as the system begins to show a profit.

On the other hand, the Division of Environmental Management in its position statement filed February 15, 1985, specifically stated that it did not support the Public Staff's recommendation that the monthly assessments be terminated in July 1985 "unless and until alternatives for plant upgrades are specifically in place." Mr. Hodge testified that EPC would require at least as much assessment monies as has been collected up to this time, if not more, in order to comply with the SOC.

The assessment of customers of a water or sewer utility is an extraordinary remedy to an emergency situation and is one which is generally applicable only when the system is being operated under a trusteeship. In the instant case, the Commission approved assessments for EPC on the understanding

that approximately $47,000 would be needed over a period of 24 months. On July 1, 1985, the assessment will have been in effect for 24 months, and the amount collected thereunder will have been considerably greater than $47,000. There is an abundance of testimony to the effect that the assessment is causing a financial hardship on the customers of the Company and that the assessment, together with the metered rates in effect since April 1984, have resulted in excessively high sewer bills particularly during the summer months. The customers, the Public Staff, and the Attorney General have recommended to the Commission that the assessment terminate effective June 30, 1985. There is some merit to the contention of the customers and these parties that the assessment be terminated, especially in view of the unwillingness of EPC and Mr. Sawin to invest their own funds in the improvement of the sewer system. As pointed out by the Public Staff in its Proposed Order, it is unfair to ask the customers of EPC to bear all of the risks associated with bringing the sewer system to the point where EPC can reap the benefits thereof. Furthermore, EPC's accounting for the expenditure of the assessment money has been unsatisfactory; the Public Staff in its audit of the Company was unable to determine whether the assessment monies expended were for ordinary maintenance or for SOC-required improvements.

On the other hand, the Department of Natural Resources and Community Development has strongly recommended that the monthly assessments not be terminated in July 1985 unless and until alternatives for plant upgrades are specifically in place. This recommendation of the Department is entitled to great weight by this Commission. As pointed out by the Department, the record is devoid of any specific alternatives to accomplish the necessary upgrade of the sewer system in compliance with the rules and regulations of the Department. Mr. Hodge testified that it will clearly take more than the originally estimated $47,000 to bring the system into compliance with the standards of the Division of Environmental Management.

The Examiner is of the opinion that paramount consideration should be given to the continued upgrading of the sewer system. The only source of funds available at this time to accomplish this upgrading is the monthly assessment approved by the Commission. Mr. Sawin, in rather forceful language, stated that he is unwilling to invest any money in the system until "it can show such a persistent pattern of operating surpluses that I can borrow money from a good solid lender." (Tr. vol. 3, pg. 177) The Examiner is of the opinion that, after two years of assessments, it is time for Mr. Sawin and EPC to undertake some financial responsibility for the improvement of the sewer system. It is the Examiner's further opinion that, unless Mr. Sawin and EPC are willing to assume financial responsibility for the capital requirements of the utility, they should find a purchaser who will be willing to make the necessary capital improvements out of its own funds. The most desirable purchaser of the system would be the Town of Kill Devil Hills.

The Examiner will deny the Public Staff and Attorney General's request that the assessment terminate June 30, 1985, in order to allow EPC and its President, Mr. Sawin, some time to consider their willingness to provide sources of capital other than the assessment monies from the customers. This Order will recommend a hearing in October 1985 in order to consider the termination of the assessment as of December 31, 1985. If Mr. Sawin and EPC are unwilling to invest their own funds in the sewer system, the Examiner concludes that Mr. Sawin should immediately initiate serious negotiations

between EPC and the Town of Kill Devil Hills for the sale and purchase by the Town of the sewer system serving Ocean Acres Subdivision. The willingness of Mr. Sawin and EPC to commit their own funds to the sewer system, as well as the status of negotiations with the Town of Kill Devil Hills if they are unwilling, will be major issues at the October hearing. Another issue will be EPC's good faith compliance with the reporting requirements of this Order.

VI.

EPC should be allowed a variance from Commission rules so that it may refund monies on sewer bills in exactly the same manner as the Town of Kill Devil Hills. The Company's request for a variance from Rule R12-4 for security deposits equal to one billing period (three months) rather than two-twelfths of one year, should be denied.

The Examiner agrees with EPC that it should be allowed to refund monies on sewer bills in the same manner as the Town of Kill Devil Hills. By adopting such a practice, EPC will be able to alleviate one of the customers' complaints which was voiced at the hearing in November 1984.

With respect to the request for variance from Rule R12-4 relating to customer deposits, the Examiner is of the opinion that the changed rates for residential customers approved by this Order will alleviate, if not render moot, the problem faced by EPC with respect to delinquent accounts. The flat rates approved herein are to be billed monthly for service in advance.

IT IS, THEREFORE, ORDERED, as follows:

1. That beginning in the first billing month following the effective date of this Order, Environmental Pollution Control, Inc., shall begin to refund to its customers the amounts calculated and shown on Appenddix A; that said refund shall be made by crediting each customer's account in increments of $10.00 per month until the amount of refund owing that customer has been fully written off to the customer's account. When a customer's refund balance is less than $10.00, this actual balance is to be credited to the customer's account rather than the usual $10.00 credit. EPC shall have the option of submitting to the Commission its own refund plan in lieu of the plan ordered herein. Such plan should be submitted within 20 days after the date of this Order and shall be subject to approval by the Commission.

2. That the rate structure for residential customers of EPC shall change to a flat rate of $19.00 per month for service rendered on and after the first day of the first full month following the effective date of this Order and the assessment shall change to a flat rate of $14.25 per month. Appendix B attached to this Order shall constitute the revised tariff of EPC incorporating these changes. It is the intention of this Order that the changed rates approved herein shall go into effect for service rendered on and after June 1, 1985, in order to prevent a recurrence of the extrememly high residential sewer bills that were incurred in the summer of 1984.

3. That the recommendation of the Public Staff and the Attorney General that the assessment terminate on June 30, 1985, be denied. A hearing is scheduled on October 24, 1985, at 10:00 a.m. in the Commission Hearing Room, Dobbs Building, Raleigh, North Carolina, for the purpose of determining whether

the assessment should terminate on December 31, 1985. At this hearing the Commission will consider the willingness of Mr. Sawin and EPC to commit their own funds to bring the sewer system in Ocean Acres Subdivision into full compliance with the SOC of the Environmental Management Commission and the rules and regulations of the Division of Environmental Management. If Mr. Sawin and EPC are unwilling to so commit their own funds, they shall immediately initiate negotiations between EPC and the Town of Kill Devil Hills for the sale and purchase by the Town of the sewer system and shall report on the status of those negotiations at the hearing.

4. That EPC shall make to the Commission, the Public Staff, and the Division of Environmental Management an updated accounting report of all of the assessment monies collected since the assessments were instituted, such accounting to be made within 30 days of the effective date of this Order. The accounting shall be reported in the format shown on Appendix C attached to this Order. Monthly reports shall be submitted thereafter, also using the format shown on Appendix C. Any questions by EPC concerning the format of the reports should be addressed to the Public Staff.

5. That Environmental Pollution Control, Inc., shall make available to the Public Staff the invoices which back up the updated accounting report required in Ordering Paragraph No. 4 for further audit and recommendations by the Public Staff after the report is filed. EPC shall also furnish the Public Staff a copy of any contracts between EPC and its affiliate ENLAB, including any contract relating to maintenance of the sewer system.

6. That EPC shall maintain all assessment monies in a separate escrow account in a manner that can be readily audited by the Public Staff. EPC shall not expend any assessment monies on and after the effective date of this Order except upon the approval of the Commission. Such approval may be granted by contacting Rudy C. Shaw, a member of the Commission staff, who is authorized to make such approval on behalf of the Commission. The Public Staff and the Division of Environmental Management are requested to assist Mr. Shaw in determining whether or not the expenditures of the assessment monies by EPC should be approved. Mr. Shaw shall keep a record of all requests by EPC for the expenditure of assessment monies and the disposition by him of such requests. From time to time Mr. Shaw shall furnish a copy of such record to EPC, the Public Staff, and the Division of Environmental Management.

7. That a copy of this Order be sent to the Town of Kill Devil Hills, Attention: Lloyd Ballance, Town Manager, Post Office Box 719, Kill Devil Hills, North Carolina 27948.

8. That within 10 days after the effective date of this Order, EPC shall mail or hand-deliver to all of its customers the Notice to Customers attached hereto as Appendix D. EPC shall attach to the Notice to Customers the customer refund list set forth in Appendix A.

9. That EPC shall be allowed to refund money on sewer bills in the same manner as the Town of Kill Devil Hills, as requested in the Company's letter to the Commission dated July 27, 1984.

10. That this docket shall remain open to receive reports and further motions and recommendations with regard to assessment monies or to any other issue brought out in this docket.

ISSUED BY ORDER OF THE COMMISSION
This the 2nd day of May 1985.

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

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

APPENDIX B
SCHEDULE OF RATES
OF
ENVIRONMENTAL POLLUTION CONTROL, INC.

For Providing Sewer Utility Service In

OCEAN ACRES SUBDIVISION
Dare County, North Carolina

Sewer Service Charges:

A. Single Unit Residential Customers (flat rate) - $19.00 per month
B. Multi-unit Residential Customer served by one meter (flat rate) - $19.00 x number of units per month
C. Commercial Customers (metered rate) -
Up to first 4000 gallons per month (12,000 per quarter) - $19.00 per month-minimum charge ($57.00 per quarter-minimum charge)

All over 4000 gallons per month (12,000 per quarter) - $ 4.75 per 1000 gallons

Special Charge - Assessment:

A. Single Unit Residential Customers (flat rate) - $14.25 per month
B. Multi-unit Residential Customer served by one meter (flat rate) - $14.25 x number of units per month
C. Commercial Customers (metered rate) - 75% of metered sewer charge

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 of the service for the ensuing 12 months (Commission Rule R12-4)

Bills Due: On billing date

Billing Frequency: Flat Rate Customers - Monthly in advance
Metered Rate Customers - Quarterly in arrears

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 No. W-774, Sub 1, on this the 2nd day of May 1985.

DOCKET NO. W-774, SUB 1

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Environmental Pollution Control, Inc. - Investigation into Rate Structure and Assessments	))))	ORDER AFFIRMING RECOMMENDED ORDER IN PART AND ADJUSTING RATES

HEARD IN: Commission Hearing Room, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on Monday, June 3, 1985, at 2:15 p.m.

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

APPEARANCES:

For the Respondent:

E. Gregory Stott, Attorney at Law, P. O. Box 131, Raleigh, North Carolina 27602

E. Lawrence Davis, III, Attorney at Law, Womble, Carlyle, Sandridge, and Rice, P. O. Drawer 831, Raleigh, North Carolina 27602

For the Intervenors:

Antoinette R. Wike, Public Staff Attorney, North Carolina Utilities Commission, P. O. Box 29520, Raleigh, North Carolina 27626-0520
For: The Using and Consuming Public

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

Dan C. Oakley, Special Deputy Attorney General, P. O. Box 629, Raleigh, North Carolina 27602
For: The Division of Environmental Management, North Carolina Department of Natural Resources and Community Development (DNRCD)

BY THE COMMISSION: On May 2, 1985, Hearing Examiner Wilson B. Partin entered a Recommended Order Changing Rates and Requiring Reports, Refunds, and Escrow Account. On May 22, 1985, DNRCD filed its response to the Hearing Examiner's Recommended Order. DNRCD requested that the Hearing Examiner follow

the recommendations of the Public Staff and the Attorney General to terminate the monthly assessment on June 30, 1985. On May 24, 1985, the Respondent, Environmental Pollution Control, Inc. (EPC), filed exceptions to the Recommended Order of May 2, 1985.

On May 29, 1985, the Attorney General filed a Motion To Dismiss in which it requested the Commission to dismiss the Exceptions filed by EPC on May 24, 1985, on the grounds that the Recommended Order of May 2, 1985, notified all parties that exceptions were due on or before May 20, 1985. On May 31, 1985, the Public Staff filed its Response to Late-Filed Exceptions which stated that the Public Staff did not oppose the Commission's recognition of the Respondent's late-filed exceptions and requested that an oral argument on the Respondent's late-filed exceptions be scheduled.

By Order dated May 31, 1985, the Commission scheduled an oral argument for Monday, June 3, 1985, to consider the exceptions filed herein by the Respondent. The matter subsequently came on for oral argument as scheduled.

Based upon a careful consideration of the Recommended Order issued May 2, 1985, the exceptions thereto filed by EPC, the oral argument offered by the parties to this proceeding, and the entire record in the case, the Commission is of the opinion, finds, and concludes, that with a few exceptions, the findings of fact, conclusions, and ordering paragraphs set forth in the Recommended Order of May 2, 1985, are fully supported by the record and should be adopted and affirmed by the Commission.

The Commission concludes that EPC's Exceptions Nos. 5 and 10, regarding the rate structure, have merit in part. However, the Commission is of the opinion that the present rate structure is a hardship to the residential customers. Rule 10-18 of the North Carolina Public Utilities Law requires that "sewer service provided within the State of North Carolina shall be based on the amount of water metered . . . ." Jerry Tweed, Director of the Public Staff's Water and Sewer Division, indicated in his prefiled testimony on December 12, 1984, that "If a metered rate is deemed preferable to a flat rate, I would recommend the following metered rate structure for residential customers:

Minimum monthly charge for zero consumption	$14.00
Charge for each 1,000 gallons	$ 1.00

In any event, I strongly recommend that the monthly residential assessment be a $14.25 flat charge . . . ."

The Commission finds and concludes that a metered rate structure is proper in this proceeding and that the rate structure for residential customers should be as follows:

Base Charge (no usage)	$14.00 (minimum bill)
Usage Charge	$ 1.25/1,000 gallons
Assessment (flat rate)	$14.25/connection

The Commission concludes that Ordering Paragraph No. 2 of the Recommended Order of May 2, 1985, should be revised to read as follows:

2. That the metered rate structure for residential customers of EPC shall be revised to reflect a $14.00 base charge plus a $1.25 usage charge and the assessment shall change to a flat rate of $14.25 per month. The Schedule of Rates, attached hereto as Appendix A, shall constitute the revised tariff of EPC incorporating these changes. It is the intention of this Order that these changed rates approved herein shall be used in calculating the bills that will be rendered for the billing cycle which shall end on or about September 1, 1985.

The Commission is of the opinion that both the Hearing Examiner's Ordering Paragraph No. 3 and EPC's Exception No. 11 have merit in part. Ordering Paragraph No. 3 in the Recommended Order scheduled a hearing for October 24, 1985, for the purpose of determining whether or not the assessment should be terminated and to consider the willingness of EPC and Mr. Sawin to commit their own funds to bring the sewer system into full compliance with the SOC of the Environmental Management Commission. Said Ordering Paragraph also required that "If Mr. Sawin and EPC are unwilling to so commit their own funds, they shall immediately initiate negotiations between EPC and the Town of Kill Devil Hills for the sale and purchase by the Town of the sewer system . . . ." The Respondent objected to said Ordering Paragraph since it attempts to require that EPC divest itself of its private property.

The Commission concludes that Ordering Paragraph No. 3 of the May 2, 1985, Recommended Order, should be revised to read as follows:

3. That the recommendation of the Public Staff and the Attorney General that the assessment terminate on June 30, 1985, be denied. A hearing is scheduled on October 24, 1985, at 10:00 a.m., in the Commission Hearing Room, Dobbs Building, Raleigh, North Carolina, for the purpose of determining whether the assessment should terminate on December 31, 1985. At this hearing, the Commission will consider the willingness of Mr. Sawin and EPC to commit their own funds to bring the sewer system in Ocean Acres Subdivision into full compliance with the SOC of the Environmental Management Commission and the rules and regulations of the Division of Environmental Management. EPC shall also be required to show its financial stability and satisfy the Commission that the assessment revenues for SOC improvements have been spent as required by the Commission. The assessment revenues shall be spent only for SOC required capital improvements. These 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.

EPC also filed exceptions to Ordering Paragraphs Nos. 4 (accounting reports on assessment monies) and 5 (audit) of the Recommended Order. The Commission is of the opinion that the form of the accounting report of the assessment collection and related expenditure filed on June 11, 1985, can be sufficient for the Commission's needs if the description of work done is more detailed. The Commission is further of the opinion that EPC should make available to the Public Staff the invoices which back up the updated accounting report required in Ordering Paragraph No. 4 at the time another audit is required of the book of EPC.

Therefore, the Commission concludes that Ordering Paragraphs Nos. 4 and 5 of the Recommended Order of May 2, 1985, should be revised to read as follows:

4. That EPC shall make available to the Commission, the Public Staff, and the Division of Environmental Management an updated accounting report of all of the assessment monies collected since the assessments were instituted, such accounting shall be filed within 30 days of the effective date of this Order. The report shall be in the same format as the report filed on June 11, 1985, except that EPC shall give a more detailed explanation of each item of work done. Monthly reports shall be submitted thereafter.

5. That EPC shall make available to the Public Staff the invoices which back up the updated accounting report required in Ordering Paragraph No. 4 at the time another audit is required. EPC shall also furnish the Public Staff a copy of any contracts between EPC and its affiliate, ENLAB, including any contract relating to maintenance of the sewer system.

Accordingly, with the revisions made herein to Ordering Paragraphs Nos. 2, 3, 4, and 5 set forth above, the Commission concludes that the Recommended Order heretofore entered in this docket on May 2, 1985, should be affirmed and adopted as the Final Order of the Commission and that except for the changes made with regard to the issues raised in the Respondent's Exceptions Nos. 5, 6, 8, 10, 11, 12, and 13, all of EPC's other exceptions thereto should be overruled and denied.

IT IS, THEREFORE, ORDERED as follows:

1. That Ordering Paragraphs Nos. 2, 3, 4, and 5 on pages 14 and 15 of the Recommended Order entered in this docket on May 2, 1985, be, and the same are hereby, revised as follows:

2. That the metered rate structure for residential customers of EPC shall be revised to reflect a $14.00 base charge plus a $1.25 usage charge and the assessment shall change to a flat rate of $14.25 per month. The Schedule of Rates, attached hereto as Appendix A, shall constitute the revised tariff of EPC incorporating these changes. It is the intention of this Order that these changed rates approved herein shall be used in calculating the bills that will be rendered for the billing cycle which shall end on or about September 1, 1985.

3. That the recommendation of the Public Staff and the Attorney General that the assessment terminate on June 30, 1985, be denied. A hearing is scheduled on October 24, 1985, at 10:00 a.m., in the Commission Hearing Room, Dobbs Building, Raleigh, North Carolina, for the purpose of determining whether the assessment should terminate on December 31, 1985. At this hearing, the Commission will consider the willingness of Mr. Sawin and EPC to commit their own funds to bring the sewer system in Ocean Acres Subdivision into full compliance with the SOC of the Environmental Management Commission and the rules and regulations of the Division of Environmental Management. EPC shall also be required to show its financial stability and satisfy the Commission that the assessment revenues for SOC improvements have

been spent as required by the Commission. The assessment revenues shall be spent only for SOC required capital improvements. These funds are not to be used to pay for routine operating expenses, or for expansion of the system to serve future customers, or to build up spare parts for the inventor.

4. That EPC shall make available to the Commission, the Public Staff, and the Division of Environmental Management an updated accounting report of all of the assessment monies collected since the assessments were instituted, such accounting shall be filed within 30 days of the effective date of this Order. The report shall be in the same format as the report filed on June 11, 1985, except that EPC shall give a more detailed explanation of each item of work done. Monthly reports shall be submitted thereafter.

5. That EPC shall make available to the Public Staff the invoices which back up the updated accounting report required in Ordering Paragraph No. 4 at the time another audit is required. EPC shall also furnish the Public Staff a copy of any contracts between EPC and its affiliate, ENLAB, including any contract relating to maintenance of the sewer system.

2. That Appendix B, attached hereto, shall be substituted for Appendix D in the Recommended Order issued May 3, 1985, in this docket.

3. That, except for the changes made herein with regard to the issues raised in the Respondent's Exception Nos. 5, 6, 8, 10, 11, 12, and 13, each of the other exceptions filed in this docket by EPC on May 24, 1985, be, and the same are hereby, overruled and denied.

4. That, except as amended pursuant to Ordering Paragraph No. 1 above, the Recommended Order entered in this docket on May 2, 1985, be, and the same is hereby, affirmed as the Final Order of the Commission.

ISSUED BY ORDER OF THE COMMISSION.
This the 14th day of June 1985.

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

APPENDIX A
SCHEDULE OF RATES
OF
ENVIRONMENTAL POLLUTION CONTROL, INC.

For Providing Sewer Utility Service in

OCEAN ACRES SUBDIVISION
Dare County, North Carolina

Sewer Service Charges:

A. Single Unit Residential Customers

Base Charge per month	$ 14.00(minimum bill)
Usage Charge	$ 1.25/1,000 gallons

B. Multi-Unit Residential Customers

Base Charge per month	$14.00 x no. of units (minimum bill)
Usage Charge	$ 1.25/1,000 gallons

C. Commercial Customers

Up to first 4,000 gallons per month (12,000 per quarter) -
$19.00 per month (minimum charge)
$57.00 per quarter (minimum charge)

All over 4,000 gallons per month (12,000 per quarter) -
$4.75 per 1,000 gallons

Special Charge - Assessment:

A. Single Unit Residential Customers (flat rate) - $14.25 per month

B. Multi-Unit Residential Customer served by one meter (flat rate)
$14.25 x no. of units per month

C. Commercial Customers (metered rates) - 75% of metered sewer charge

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 of the service for the ensuing 12 months (Commission Rule R12-4)

Bills Due: On billing date
Billing Frequency: Quarterly in arrears
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 No. W-774, Sub 1, on this the 14th day of June 1985.

APPENDIX B
DOCKET NO. W-774, SUB 1

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Environmental Pollution Control, Inc. - Investigation into Rate Structure and Assessments	)	NOTICE TO CUSTOMERS

NOTICE IS HEREBY GIVEN that the North Carolina Utilities Commission has issued an Order in the above-captioned docket. This Order makes a number of provisions affecting the rates and operations of Environmental Pollution Control, Inc. (hereinafter EPC or Company), which provides sewer utility service in Ocean Acres Subdivision, Kill Devil Hills. The Commission Order was the result of hearings held in Kill Devil Hills on November 29 and 30, 1984, in which a number of customers testified, and in Raleigh on December 19, 1984, and May 3, 1985.

The Order provides that the rate schedule of EPC for its residential sewer customers shall change to a metered rate of $14.00 per month (minimum charge) and a usage charge of $1.25/1,000 gallons and that the assessment for the residential sewer customers shall change to a flat rate of $14.25 per month.

The Order also found that the customers of EPC were overbilled in the amount of $4,432 in the month of April 1984. EPC was ordered to make refunds to its customers by crediting each customer's account in increments of $10.00 per month until the amount of refund owing that customer has been fully written off to the customer's account. When a customer's refund balance is less than $10.00, this actual balance is to be credited to the customer's account rather than the usual $10.00 credit. The amount of refunds owing to each customer, listed by customer identification code, is attached to this Notice.

EPC was ordered to provide the Commission and the Public Staff an updated accounting of all assessment monies collected from its customers since the assessment was instituted.

The Company was ordered to place all assessment monies into an escrow account. Such monies are to be expended only upon prior approval of the Commission. The Company was also required to make monthly reports of its expenditures of assessment monies.

The Order did not terminate the assessment as of June 30, 1985, as requested by the Public Staff and the Attorney General. The Commission did schedule, however, a hearing on October 24, 1985, at 10:00 a.m., in Raleigh for the purpose of determining whether the assessment should terminate as of December 31, 1985. An issue in the October hearing will be the willingness of EPC and its President, Mr. Sawin, to invest their own funds into the capital improvements of the sewer system.

ISSUED BY ORDER OF THE COMMISSION.
This the 14th day of June 1985.

NORTH CAROLINA UTILITIES COMMISSION
Sandra J. Webster, Chief Clerk

(SEAL)

DOCKET NO. W-691, SUBS 25, 26, and 27

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Application by Glendale Water, Inc., Route 3, Box 329-L, Raleigh, North Carolina, for Authority to Increase Its Rates for Water Utility Service in All Its Service Areas in North Carolina	)	ORDER GRANTING PARTIAL RATE INCREASE,
and	)	REQUIRING
Application by Glendale Water, Inc., Route 3, Box 329-L Raleigh, North Carolina, for a Certificate of Public Convenience and Necessity To Furnish Water Utility Service in Woodbrook Subdivision, Wake County, North Carolina, and for Approval of Rates	)	SERVICE IMPROVEMENTS, GRANTING FRANCHISE, AND APPROVING
and	)	STOCK TRANSFER
Application by Glendale Water, Inc., Route 3, Box 329-L, Raleigh, North Carolina, for Approval of Transfer of Stock	)	

HEARD IN: The Hearing Rooms of the Commission, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on December 4 and 5, 1984, and January 14, 15, and 16, 1985

BEFORE: Commissioner Edward B. Hipp, Presiding; and Commissioners Sarah Lindsay Tate and Charles E. Branford

APPEARANCES:

For the Applicant:

Blen Gee, Jr., Johnson, Gamble, Hearn and Vinegar, Attorneys at Law, P.O. Box 1776, Raleigh, North Carolina 27602

For the Public Staff:

Lorinzo L. Joyner and Paul L. Lassiter, Staff Attorneys, Public Staff - North Carolina Utilities Commission, P.O. Box 29520, Raleigh, North Carolina 27626-0520

For the Attorney General:

Steve Bryant, Karen Long, and Angeline M. Maletto, Assistant Attorneys General, North Carolina Department of Justice, P.O. Box 629, Raleigh, North Carolina 27602

BY THE COMMISSION: On August 6, 1984, Glendale Water, Inc. (Glendale, Company, or Applicant), filed an application with this Commission seeking authority to increase its rates for providing water utility service in all its service areas in North Carolina. Filed with the application was a Motion for Emergency Relief requesting that the proposed rates be put into effect immediately as interim rates subject to refund if not finally approved by the Commission after investigation and hearing.

Blen Gee, Attorney for the Applicant, appeared at the Commission Staff Conference on September 4, 1984, to speak in support of the request for interim rates. Mr. Gee indicated that, although the Applicant was still requesting the Company's proposed rates be allowed as interim rates, the Applicant's accountant suggested that Glendale could remain solvent at a lower interim rate until a final decision was rendered by the Commission.

In its arguments against the proposed interim rates, the Public Staff indicated that the Applicant's record of customer complaints was excessive and the Applicant should be more concerned with satisfying these complaints than in applying for new service areas and questioned the reasonableness and accuracy of the unaudited financial data submitted with the application.

On September 10, 1984, the Commission issued an Order finding that the Applicant had shown that it was experiencing a degree of financial difficulty sufficient to justify interim rate relief. The Commission further found that the application in Docket No. W-691, Sub 25, constituted a general rate case, that the proposed new rates should be suspended pending investigation, that the matter should be scheduled for public hearing, that the interim rates suggested by the Applicant at the Commission Staff Conference should be approved subject to the rendering of an undertaking, and that the Applicant should be restricted from applying for any new certificates of public convenience and necessity until further notice by the Commission.

On August 16, 1984, in Docket No. W-691, Sub 26, Glendale Water, Inc., filed an application for a Certificate of Public Convenience and Necessity to furnish water utility service in Woodbrook Subdivision in Wake County, North Carolina, and for approval of rates. By Commission Order issued on September 25, 1984, the matter was consolidated with the Applicant's pending rate case in Docket No. W-691, Sub 25, and scheduled for public hearing on December 5, 1984.

On October 8, 1984, the Applicant filed a Motion for Severance of its rate case in Docket No. W-691, Sub 25, from its franchise proceeding in Docket No. W-691, Sub 26. The Applicant moved that any hearing in its franchise proceeding be set as soon as possible and that the Applicant be granted Temporary Operating Authority to provide water utility service in Woodbrook until such time as the hearing was held. On October 10, 1984, the Public Staff filed a response to the Applicant's Motion for Severance urging the Commission to reject the Applicant's Motion for Severance.

On October 15, 1984, the Commission held oral arguments on the Applicant's Motion for Severance. At this argument, the Company stated that one house was presently connected to the water system and that at least three more would require water service before the scheduled hearing on December 5, 1984. The Public Staff in response stated that it was opposed to granting the Applicant temporary authority due to the Applicant's abysmal service. Upon consideration of the motion and argument, the Commission by Order issued on October 18, 1984, denied the Applicant's Motion for Severance, but granted the Applicant Temporary Operating Authority.

On October 17, 1984, the Public Staff filed a motion requesting that the Commission hold a night hearing in the above-captioned cases to give customers who work during the day a chance to come to the hearing and voice their

complaints. By Order dated October 19, 1984, the Commission granted the Public Staff's motion and scheduled a night hearing for Tuesday, December 4, 1984, at 7:00 p.m.

On October 22, 1984, Glendale Water, Inc., filed a motion requesting the Commission to modify its Order of September 10, 1984, so as to allow the Company to apply for new franchises or to apply for the transfer of existing franchises. On October 26, 1984, the Public Staff filed a motion opposing the Company's motion. In its response, the Public Staff cited a long list of gross deficiencies and inadequacies with Glendale's service to its present customers. The Commission on November 6, 1984, issued an Order denying Glendale's motion to modify its Order of September 10, 1984.

On November 8, 1984, the Commission received a petition from customers in Glendale, Belmont Estates, Burnside, Chari Heights, Rollingwood Estates, Orchard Knolls, and Lynnhaven subdivisions requesting that (1) a trustee be appointed for the Glendale Water, Inc., and (2) that the hearing scheduled for December 4, 1984, be heard by a panel. This petition stated as follows:

> "We, the undersigned, hereby petition the North Carolina Utilities Commission to immediately consider the appointment of a trustee for Glendale Water System. Although Glendale Water has generally failed to maintain a quality water system, we feel that Mr. Blankenship's willful and repeated neglect of his system, disregard for the public's health, allegedly sending in fraudulent water samples, and failing to supply water fit for human consumption constitutes an emergency situation and abandonment pursuant to N.C.G.S. 62-118B. We also request that the hearing set for December 4, 1984, be heard by a panel."

The petition was signed by 176 customers.

On November 26, 1984, the Applicant filed an application in Docket No. W-691, Sub 27, for permission to sell and transfer 52% of the stock owned by John and Esterlee Blankenship in Glendale Water, Inc. The Applicant proposed that this stock be transferred to Mr. and Mrs. Blankenship's son-in-law, E. Ray Vernon. On December 3, 1984, the Company filed a motion requesting the Commission to issue an early decision on the proposed transfer. On December 19, 1984, the Public Staff filed a motion requesting the Commission to consolidate the proposed stock transfer with the rate case in Docket No. W-691, Sub 25. By Order issued on January 3, 1985, the Commission consolidated the proposed stock transfer in Docket No. W-691, Sub 27, with Docket No. W-691, Subs 25 and 26.

On November 26, 1984, the Applicant filed a motion requesting a continuance until January 1985 of the hearing scheduled for December 5, 1984. In its Motion, the Applicant's attorney stated that he was too busy with other litigation to adequately prepare for the hearing. On November 27, 1984, the Public Staff filed a Response to the Applicant's Motion and requested the Commission to deny the Motion for Continuance. By Order issued on November 28, 1984, the Commission granted the Applicant's Motion for Continuance and directed that, while the hearings to receive public testimony would be held as scheduled in December, the hearings on the case in chief would be delayed until January.

On November 29, 1984, the Attorney General filed Notice of Intervention in Docket No. W-691, Sub 25.

This matter came on for hearing at the times and places indicated hereinabove. All parties were present and represented by counsel.

During the course of the hearings held in this matter some 43 water utility customers of the Applicant presented testimony as public witnesses. Their testimony dealt with water quality and service problems and opposition to the proposed rate increase. Customers from eight of the subdivisions in which the applicant provides service offered testimony. Those subdivisions and the customers therein who testified were as follows:

Glendale Subdivision: George Dawkins, Sandra Allen, Kaye Clemmer, Leatha Ritchie, Winifred Leiser, Robert Ritchie, Brad Bratch, Herb Loznicka, Brenda Loznicka, Barbara Messer, Elaine Haney, Vickie Miller, and Richard Franks;

Lynnhaven: George Reed, Jay Bradley, Cheryl Johnson, Mike Whitacre, Kenneth Johnson, Paulette Brit, Edward Davis, and Sally Brooks;

Belmont Estates: Michael Ritch, Jerry Diehl, Mike Newnam, and Charlie Everette;

Woodscreek: DeWitt Perry;

A Country Place: Tim Moulthrop, Barbara Moulthrop, Paul Grooms, Richard Booth, Sandy Narron, Jerry Kennedy, Terri Washburn, and Victor Rinker;

Surry Point: Allegra Pruitt, Karen Grandage, and Carol Davis;

Orchard Knolls: Kenneth Mathias, Glen Hicks, and Brenda Jones;

Rollingwood Estates: Anna Childers; and

Woodbrook: Peggy Courier and Floyd Bunn.

The Applicant presented the direct testimony of the following witnesses: James A. Lucas, Jr., of the Raleigh, North Carolina, Certified Public Accounting firm of James A. Lucas and Company; E. Ray Vernon, President of Glendale Water Inc.; John Blankenship, former President of Glendale, Inc.; and David Moser, Vice President of Pipeline Utilities, Inc.

The Public Staff presented direct testimony of the following witnesses: Michael C. Maness, Staff Accountant with the Public Staff; Don Williams, Environmental Protection Technician with the North Carolina Division of Health Services; and Andy R. Lee, Utilities Engineer with the Public Staff's Water Division. The Public Staff also presented the affidavit of David T. Bowerman, Public Staff Financial Analyst.

Having carefully considered and weighed all of the evidence offered at the hearings and having reviewed the entire record in this proceeding, the Commission makes the following

FINDINGS OF FACT

1. The Applicant is a North Carolina corporation which has been duly franchised by this Commission to operate as a public utility to provide water utility service to customers residing in its North Carolina service areas and is subject to the jurisdiction of this Commission.

2. The Applicant is franchised to provide water utility service in 20 subdivisions in Wake County and has also been granted Temporary Operating Authority to provide water utility service in Woodbrook Subdivision in Wake County.

3. The test period used in this proceeding as established by Commission Order consists of the 12-month period ended December 31, 1983.

4. The Applicant's present, interim, and proposed rates for metered water utility service are as follows:

	Present	Interim	Company Proposed
First 2,000 gallons (minimum charge)	$8.20	-	-
Base facility charge	-	$8.20	$8.20
Commodity charge (per 1,000 gallons)	$2.25	$2.40	$2.88

5. The original cost rate base of the Applicant at the end of the test period is $74,590.

6. Under present rates, the Applicant's annualized level of operating revenue is $111,348. Under the Applicant's proposed rates, the annualized level of operating revenue would be $163,859. Under the Commission's approved rates, the annualized level of operating revenue is $146,231.

7. The Applicant has included in its test year expenses operating revenue deductions relating to its attempted construction of a water system to serve Oak Ridge Subdivision. The Applicant's attempt to acquire this system failed, and consequently, it is not proper for the Applicant to include in operating revenue deductions any of the losses or expenses relating to the attempted construction of a water system to serve Oak Ridge Subdivision.

8. The reasonable level of test year operating revenue deductions for the Company after accounting, pro forma, and end-of-period adjustments is $123,192.

9. The operating ratio methodology is appropriate for fixing rates in this proceeding as the Company's level of original cost rate base is lower than its level of operating revenue deductions under present rates.

10. Under present rates, after accounting, pro forma, and end-of-period adjustments, the Applicant will experience a negative 9.97% rate of return on operating expenses requiring a return.

11. Under the approved rates, after accounting, pro forma, and end-of-period adjustments, the Applicant will experience a 14.56% rate of return on operating expenses requiring a return. The interim rates which became effective on September 10, 1984, are appropriate and hereby approved.

12. The Applicant's number of customers increased from 449 at the beginning of 1983 to 584 customers at the end of the test year, reflecting a growth of 30.1%.

13. At the end of 1984, the Applicant provided water utility service in 21 subdivisions serving 712 customers. Part of the water systems are interconnected. These systems are the Lynnhaven, Crowsdale, Englewood, Orchard Knolls, and Surry Point interconnected system and the Glendale, Chari Heights, Rollingwood, Belmont, and Burnside interconnected system. Subdivisions with individual systems are Country Ridge, Willow Winds, Woodscreek, Berkshire Downs, Squire Estates, Swiftridge, A Country Place, Timberburg, Surry Ridge, Wesley Woods, and Woodbrook.

14. The Applicant has been required to issue "Boil Notices" for some of its systems due to bacteria contamination.

15. The Applicant has not provided adequate water utility service to its customers as it has failed to maintain continuous disinfection (chlorination) of drinking water on its community water systems to safeguard public health as required by G.S. 130A-311.

16. The Applicant has been assessed three administrative penalties within the past 15 months by the North Carolina Department of Human Resources' Division of Health Services for violation of rules and regulations concerning the operation of its community water systems.

17. The Applicant has not provided adequate water utility service to customers residing in A Country Place. These customers have experienced continual problems of discolored water, sediments in the water, low water pressure, staining of plumbing fixtures and appliances, water outages, improper chlorination of the water, unsafe exposed electrical wiring at the well house, and billing irregularities.

18. The Applicant has not provided adequate water utility service to customers residing in Glendale, Burnside, Chari Heights, Belmont, and Rollingwood subdivisions. These customers have experienced continual problems of discolored water, sediment in the water, low water pressure, staining of plumbing fixtures and appliances, improper chlorination of the water, bacteria contamination of the water, and billing irregularities.

19. The Applicant has failed to provide adequate water utility service in Woodscreek Subdivision. Woodscreek residents have experienced prolonged outages, low pressure problems, residue and staining problems, and contaminated water.

20. The Applicant has failed to provide adequate water utility service to the customers residing in Lynnhaven, Crowsdale, Englewood, Orchard Knolls, and Surry Point subdivisions. These customers have experienced continual problems of discolored water, low pressure, air in lines, staining of plumbing fixtures, and billing irregularities.

21. The Applicant has failed to accurately read its customers' meters and render correct bills on a consistent basis.

22. The Applicant has failed to maintain good customer relations with its customers.

23. There is a need for the Applicant to make substantial improvements in its accounting procedures, including the setting up of an on-site set of accounting records.

24. The Applicant has applied in Docket No. W-691, Sub 27, for permission to sell and transfer 52% of the stock owned by John and Esterlee Blankenship in Glendale Water, Inc., to Mr. and Mrs. Blankenship's son-in-law, E. Ray Vernon. The Commission is of the opinion that this transfer should be approved.

25. The Applicant is required to file bimonthly reports to the Commission as to the progress it is making toward completing the improvements required by this Order. The reports should describe the improvements made, the location of the improvements, the amount of expenditure for each improvement, the name of the vendor making the improvement (who was paid), and the improvements remaining to be made before the system is in compliance with the regulations of the Division of Health Services.

26. The Commission granted Glendale Water, Inc., Temporary Operating Authority to serve Woodbrook Subdivision in Wake County by Order issued on October 18, 1984. The Applicant should be granted a Certificate of Public Convenience and Necessity to serve Woodbrook Subdivision in Wake County.

27. The Applicant should be prohibited from adding any additional water systems or from installing any new or extending water mains outside its presently platted service areas until upgrading of the existing systems is completed.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 1, 2, 3, AND 4

The evidence supporting these findings of fact is contained in the Company's application and proposed order and in prior Commission Orders issued in this proceeding. These findings of fact are essentially informational, procedural, and jurisdictional in nature and are uncontradicted in the record.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 5

The evidence supporting this finding of fact is included in the testimony and exhibits of Public Staff witnesses Maness and Lee, and Company witnesses Lucas, Vernon, and Blankenship. The following table summarizes the amounts which the Public Staff and the Company contend make up the Company's original cost rate base and the difference between their respective positions.

Item	Company	Public Staff	Difference
Water plant in service	$140,639	$134,761	$(5,878)
Acquisition adjustment	(43,000)	(43,000)	-
Contributions in aid of construction	(7,836)	(7,836)	-
Accumulated depreciation	(24,071)	(23,078)	993
Net water plant in service	65,732	60,847	(4,885)
Cash working capital	15,119	11,621	(3,498)
Average tax accruals	(1,259)	(1,376)	(117)
Original cost rate base	$ 79,592	$ 71,092	$(8,500)

The first item of difference between the Company and the Public Staff is the level of water plant in service. The difference of $5,878 consists of the following adjustments made by the Public Staff:

Item	Amount
Items removed from expense and capitalized:	
(1) Hydropressor	$ 628
(2) Chemical feed pumps	2,080
(3) Meters and meter boxes	1,017
(4) Computer desk	104
(5) Typewriter	93
(6) Calculator	87
Subtotal	4,009
Additional accounts payable - meters	861
Removal of Ford truck	(10,748)
Total	$ (5,878)

In regard to the Public Staff adjustment of $4,009, Public Staff witness Maness testified that each of the six items composing this adjustment is an item of utility plant with an expected service life in excess of one year, and thus, they all should be capitalized and depreciated, rather than treated as if they were annually recurring expenses.

Company witness Lucas testified that the capitalization of small-dollar-value items such as these is impractical from a bookkeeping standpoint and that no business of the Company's size should capitalize them. Further, witness Lucas stated that he has treated these items as annual expenses rather than capitalizing and depreciating them and has handled these expenditures in the same manner as he would for any other business. Under cross-examination, witness Lucas stated that a very small portion of his clients are public utilities.

Public Staff witness Maness testified that less emphasis should be placed on practicability when accounting for regulated utilities than when accounting for nonregulated businesses since the price of a utility's services depends on its cost, while the price of a nonregulated business' services depends on many

external factors, such as the market. Witness Maness also stated that, while these items may be small in unit value, in the aggregate the treatment given to them has a large effect upon the rates. Witness Maness pointed out that certain items, specifically the calculator and computer desk, are relatively unique, and the accounting for such items would not be very difficult. In regard to meters, which were discussed by witness Lucas as an example of a large group of items for which the accounting would be difficult, witness Maness testified that a unit-by-unit method of accounting would not be necessary. He stated that other methods, such as an average unit cost method, would retain a reasonable degree of accuracy.

Company witness Lucas testified that because meters had not been capitalized in previous years, capitalizing them in this rate case would produce an artificially low depreciation expense for meters. Public Staff witness Maness agreed that the depreciation expense for meters would be less than the level would have been if meters had been capitalized in prior years; however, he pointed out that, by capitalizing meters in this case, the Company would at least be allowed to recover depreciation on some of its meters. The rates set in the Company's most recent rate case reflect nonrecovery of depreciation expense for meters. Therefore, witness Maness testified that the rates would actually be increased to reflect recovery of depreciation expense if the Public Staff's recommendation was accepted. Witness Maness also stated that the Company, if it so desired, could investigate its prior years' purchases of meters, include them in its rate base, and bring that information before the Commission.

Witness Maness testified that the depreciation of plant investments over their estimated useful lives is an averaging process which spreads the cost of these investments over several years. Witness Maness pointed out that if the Company's recommendation of expensing these items is followed, it may result in the setting of rates which allows an annual recovery of an amount greater or lesser than the average consumption of the investment. In other words, the rates set using the Company's procedure could lead to the overrecovery or underrecovery of its proper depreciation expense because the purchases of the investment items during the test year could be greater or lesser than the average purchases needed.

Based upon the evidence presented, the Commission concludes that the expenditures for the hydropressor, chemical feed pumps, meters, meter boxes, and computer desk should be capitalized and depreciated over their service lives, as proposed by the Public Staff, rather than expensed in the year of purchase. In accordance with the Uniform System of Accounts and generally accepted accounting principles, the Commission has generally treated office equipment, pumping equipment, and meters as items of plant investment. The Commission concludes that in the future the Company should continue to capitalize items of plant investment such as these, so as to maintain an accurate level of investment on a prospective basis.

The Commission especially recognizes the importance of accurate accounting for regulated utilities since cost is the basic determinant of the price a regulated utility is allowed to charge. Capitalization and depreciation, rather than expensing, provides the most consistent and reliable method of allocating the cost of plant investment over its service life, especially when

expenses for only one particular year are examined in the course of setting rates in a rate case.

According to the testimony of witness Maness, in regard to the capitalization of water meters, he testified that in previous rate cases the Public Staff had audited the Company's books and records for the test years ended December 31, 1980, and December 31, 1981, and that in each of these audits the Company had not capitalized any meters and the Public Staff had not found any meters to capitalize. The record is unclear as to whether Glendale has had to purchase water meters during the period of 1978 to 1983, thus a presumption is made that the meters have been contributed to Glendale by the developers of the systems. If, in the past, the Company's accounting records have failed to properly identify all capital expenditures, and thus cause an understatement of plant investment and depreciation expense, such a situation does not justify the continued committing of those errors. The Company should attempt to rebuild its plant investment accounts by looking at prior year additions and retirements if it feels that this procedure would be worthwhile.

With regard to the Public Staff adjustment to capitalize the Company's purchase of a typewriter and a calculator, the Commission concludes that these items should be expensed as recommended by the Company. The Commission agrees with the Company that these two items are of such small-dollar amounts, each less than $100, that it would be impractical to require the Company to depreciate them. Furthermore, being that these two items are of such low cost and therefore possibly low quality also, it is not unreasonable to presume that these items will be expenditures of a recurring nature, especially if they are the only typewriter and calculator that the Company uses in its operations.

In summary, the Commission finds that, of the total Public Staff adjustment in the amount of $4,009 for items removed from expense and capitalized, the hydropressor, chemical feed pumps, meters, meter boxes, and computer desk, totaling $3,829, should be capitalized and the remaining $180 for the calculator and typewriter should be included in the Company's annual operating expenses.

The second Public Staff adjustment with which the Company disagrees is the addition of $861 of investment in meters made at the end of the test year. Though the Company disagrees with the Public Staff's proposal to capitalize this expenditure for the same reasons it disputes the capitalization of other small-dollar value items, the Company has made no attempt to include this item in its expenses. Based upon the evidence and conclusions set forth hereinabove with regard to meters, the Commission concludes that the capitalization of additional accounts payable of $861 associated with meters is reasonable and proper.

The final Public Staff adjustment to water plant in service with which the Company disagrees is the removal of a 3/4-ton Ford truck from rate base. Public Staff witness Lee testified that in his opinion two vehicles were adequate for the level of service rendered by the Company during the test period. Therefore, he recommended the removal of a third vehicle, the Ford truck, from rate base. Witness Lee stated that it has been the Company's practice to contract with Pipeline Utilities, Inc., an associated company, to perform major repairs, while Glendale performed routine maintenance and

repairs. For this reason, it is his opinion that the two lighter trucks owned by Glendale during the test period are adequate.

Company witness Vernon testified that the Company needed three trucks during the test period for the three field employees who worked for the Company at that time, since each of them had different duties. However, he indicated that only two trucks are in use currently and that two trucks are adequate.

Company witness Blankenship testified that in his opinion the ownership of the large Ford truck, with its large truck bed, was advantageous to the Company. He also stated that in his opinion it was advantageous to purchase a truck of this size even though Pipeline Utilities, Inc., owned large trucks which potentially could have been rented by Glendale. Witness Blankenship testified that the Ford truck was purchased with its size and weight in mind to be used to transport a Ditchwitch, pipe, pump motors, and other materials necessary in the operation and maintenance of Glendale's water systems.

Based upon the evidence presented in this proceeding, the Commission concludes that the 3/4-ton Ford truck may be useful in the Company's performance of construction and major repair projects, but the inclusion of the entire investment of $10,748 cannot be justified. The Commission finds that it is reasonable to allow one-third of the Ford truck investment in rate base. Such treatment recognizes that there are times when it is cost justified for the Company to have the truck available, while at the same time it would be inappropriate to allow the entire amount in rate base based upon the testimony of Company witness Vernon. Therefore, the Commission finds that water plant in service should reflect inclusion of the Ford truck investment of $3,583, representing one-third of the cost of the truck.

The Commission concludes that the reasonable and appropriate level of water plant in service for use in this proceeding is $138,164.

The next area of difference between the parties is the level of the depreciation reserve. The $993 difference consists of the following items:

Item	Amount
Items removed from expense and capitalized:	
(1) Hydropressor	$ 157
(2) Chemical feed pumps	520
(3) Meters and meter boxes	41
(4) Computer desk	10
(5) Typewriter	19
(6) Calculator	17
Subtotal	764
Additional accounts payable -meters	34
Removal of Ford truck	(1,791)
Total	$ (993)

The Commission, as previously discussed, finds that it is appropriate to capitalize the hydropressor, chemical feed pumps, meters, meter boxes, computer desk, and one-third of the Ford truck, and therefore, it is appropriate to recognize depreciation on these items. Based upon the evidence and conclusions

for Findings of Fact Nos. 5 and 8, the Commission concludes that the appropriate level of accumulated depreciation at the end of the test period is $24,236.

The Public Staff has calculated cash working capital and average tax accruals using the formula methodology traditionally employed by the Commission for small water companies. The difference between the Company and the Public Staff positions reflects only the difference between the operating revenue deductions presented by each party. Based upon the Evidence and Conclusions for Finding of Fact No. 8, the Commission concludes that the appropriate levels of cash working capital and average tax accruals are $12,757 and $1,259, respectively.

The Commission therefore concludes that the original cost rate base of the Company as of December 31, 1983, is $74,590.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 6

The evidence supporting this finding of fact is included in the application of the Company, the testimony and exhibits of Company witness Lucas, the Company's proposed order, and the testimony and exhibits of Public Staff witness Lee.

The application filed by the Company stated that the level of revenue under present rates for the test period is $115,787. In his testimony, Public Staff witness Lee presented the results of his analysis of customer billing and water usage data, which indicated an annualized level of operating revenue under present rates of $111,348 for the test period. The Company later agreed with witness Lee's amount.

According to the Company's proposed order, the annual level of gross revenues under the Company's proposed rates would generate total revenues of $163,859, reflecting an increase in annual revenues of $52,511, representing a 15.42% return on the Company's level of operating revenue deductions requiring a return.

The Commission concludes that the annualized test year level of operating revenues under present rates is $111,348 and under approved rates it is $146,231.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 7

The evidence supporting this finding of fact is included in the testimony and exhibits of Company witnesses Vernon, Moser, and Blankenship, and Public Staff witness Maness.

The Company included as expense in its application $8,730 of expenditures related to Oak Ridge Subdivision. Public Staff witness Maness testified that these costs were incurred by the Company in its failed attempt to construct a water system to serve the subdivision. Witness Maness indicated that he removed these costs from expenses because this attempt at expansion was not related to the provision of adequate service to the Company's existing customers. In the opinion of witness Maness, the beneficiaries of this expansion, had it been successful, would have been the new customers within the

Oak Ridge Subdivision, not Glendale's existing ratepayers. Therefore, he concluded, the existing ratepayers should not be made responsible for the costs of this failed expansion.

Company witness Blankenship testified that the project in Oak Ridge Subdivision appeared to be a reasonable investment but that the project failed because of the inexperience of the developer.

Company witness Vernon testified that the addition of new customers acts to the benefit of existing customers because the additional revenues tend to decrease the Company's need to request higher rates. Public Staff witness Maness agreed that the addition of new customers is beneficial when examined in regard to the operation of water systems. However, witness Maness indicated, the situation is different when considering the construction of systems. Historically, he pointed out, no profits from the construction of the Company's systems have ever been flowed back to the benefit of the Company's ratepayers. The construction of water systems has in effect been a totally nonregulated activity. He indicated that had the construction of the Oak Ridge system been successful, the construction costs would not have affected water rates at all. Therefore, in his opinion, the ratepayers should not be required to bear any construction losses.

Company witnesss Moser testified that, in most cases, the Company has an agreement with the developer of a subdivision to construct a water system. The Company then subcontracts with Pipeline Utilities, Inc., for the actual construction. Pipeline Utilities, Inc., is usually paid directly by the developer. Witness Moser indicated that Pipeline Utilities, Inc., presumably has made profits on systems installed for Glendale Water, Inc. Company witness Vernon testified that the developer pays for the construction of the system and that the Company makes no profit from construction. Company witness Blankenship testified that it has never been the intent of the Company to make a profit on the installation of systems, because it has never installed one.

Based upon the evidence presented, the Commission concludes that the costs of $8,730 related to the construction of the Oak Ridge system should be excluded from the Company's operating revenue deductions. In the past, the cost of the construction of the water systems operated by the Company has been paid by the developer of each subdivision. The systems have been contributed to the Company; therefore, the cost of the systems has not affected water rates. Overall, the construction of the systems has remained a nonregulated activity. Any profit earned, or loss incurred, has accrued to the developer or some other nonregulated entity.

The construction of the water system in Oak Ridge Subdivision is similar in all respects to the construction of the Company's other water systems, except that it failed. Had it succeeded, the system would have been contributed to the Company. The Commission concludes that the failure of this project does not provide adequate justification for placing the burden of these construction losses upon the ratepayers.

The Commission also notes that if Pipeline Utilities, Inc., had completed construction of the Oak Ridge system and had incurred a loss upon that construction, the loss would have been borne by Pipeline Utilities, Inc., not by Glendale Water, Inc. The fact that the project was not completed and that a

loss was realized does not justify passing the loss on to Glendale and to Glendale's ratepayers.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 8

The evidence supporting this finding of fact is included in the testimony and exhibits of Company witnesses Lucas, Vernon, and Blankenship, and Public Staff witnesses Maness and Lee. The schedule below summarizes the levels of operating revenue deductions under present rates, as proposed by the Company and the Public Staff, and the difference between them.

Item	Company	Public Staff	Difference
Operation and maintenance expenses:			
Salaries-other than owner	$ 29,263	$ 23,010	$ (6,253)
Salaries-owner	12,000	12,000	-
Administrative and office expenses	24,830	16,340	(8,490)
Maintenance and repair expenses	28,244	15,761	(12,483)
Transportation	6,133	5,892	(241)
Power for pumping	11,946	11,865	(81)
Allocation to related companies	(650)	(650)	-
Amortization of nonrecurring expenses	1,720	1,720	-
Annualization adjustment	2,560	2,560	-
Total O & M expenses	116,046	88,498	(27,548)
Depreciation	12,125	10,445	(1,680)
Payroll taxes	3,874	3,433	(441)
Property tax	1,033	1,033	-
Gross receipts tax	4,454	4,454	-
State income tax	216	209	(7)
Federal income tax	509	491	(18)
Total operating revenue deductions	$138,257	$108,563	$(29,694)

The first item about which the Public Staff and the Company disagree is salaries-other than owner. Public Staff witness Maness testified that he recommended a salary for the Company's office worker of $12,480, which was the annualized level of salary expense for the Company's secretary at the time of his audit. Witness Maness stated that in his opinion that amount is adequate for the secretarial, clerical, and bookkeeping tasks required for the operations of the Company. Witness Maness also stated that Public Staff witness Lee recommended a salary of $10,530 for the Company's field maintenance employee. The sum of these two salaries is the total salaries-other than owner recommended by the Public Staff of $23,010.

Company witness Lucas testified that the amount proposed by the Company ($29,263) represented the actual amount paid during 1983, the test period.

Company witness Vernon testified that the Company employed four individuals during 1983: John Blankenship, Ray Vernon, and Erlene Davis - in the field and Annette Abdella (bookkeeper, receptionist) - in the office. Witness Vernon stated that the Company currently employs three individuals (including himself as manager); two employees are in the field, and one is in the office. Witness Vernon testified that one less employee was needed now because his current employees were more skilled and qualified than those employed during 1983.

Both the Company and the Public Staff allowed a salary to the owner of $12,000.

A comparison of the 1983 and 1985 salary figures for Glendale and the adjusted salary figures of the Public Staff are listed below:

1983 - Company's Actual Expenditures

Salaries other than owner - bookkeeper/receptionist and meter reader/maintenance	$18,733
Subcontract - Ray Vernon	10,530
Owner salary	12,000
Total	$41,263

1983 - Public Staff's Salary Recommendation

Salaries other than owner - bookkeeper/receptionist and meter reader/maintenance	$23,010
Owner salary	12,000
Total	$35,010

1985 - Company's Estimated Expenditures

Salaries other than owner:	
Maintenance person	$11,044
Bookkeeper/receptionist/computer operator	14,000
Estimated overtime	1,500
Estimated subcontract ($5,000 to $7,000)	5,000
Owner salary	12,000
Total	$43,544

As the figures above indicate, Glendale will have similar salary expenses for 1985 to those actually incurred in 1983, even though Glendale will have fewer full-time employees. Especially important to note is the overtime expense estimated for 1985. By having an additional employee in 1983, Glendale avoided paying time and one-half for overtime. Glendale made a management decision concerning the number of employees it would have and how much they would be paid in 1983 which was different from the management decision Glendale made in 1985. However, there is nothing in the record to suggest that either management decision is unreasonable.

Based upon the evidence presented and in view of the extensive improvements that Glendale is herein ordered to make and the substantial amount

of routine maintenance which will be necessary to keep the Glendale water systems operating properly, the Commission concludes that the Company's 1985 estimated salary expenditures of $43,544 is the appropriate level of salary expense to be included in this proceeding. The Commission finds that this salary level of $43,544 will enable the Company to adequately pay its personnel to properly maintain the system and correct the problems discussed herein. Furthermore, the Commission acknowledges that the salary level of the owner (Ray Vernon), which is $12,000, has been agreed to by the parties, but the Commission considers it to be too low considering the size of the Glendale operations, the extensive maintenance required by the system and the testimony of witness Vernon that he works days, nights, and weekends and that in the most current week he had worked 105 hours for Glendale. Witness Vernon further testified that he works solely for Glendale Water, Inc., as "there are not enough hours in the day" to do any other independent contract work on the side. The Commission concludes that $43,544 is the appropriate salary level and should be distributed as follows:

Item	Amount
Salaries other than owner:	
Bookkeeper/receptionist/computer operator	$14,000
Maintenance person	11,044
Owner salary	15,000
Overtime and subcontract	3,500
Total salary	$43,544

The second item about which the Public Staff and the Company disagree is administrative and office expenses. The difference of $8,490 consists of the following adjustments made by the Public Staff:

Item	Amount
Cost of blank water bills	$ (471)
Legal cost - Oak Ridge	(560)
Legal cost - penalty assessment hearing	(1,938)
Legal cost - personnel matter	(728)
Accounting fees	(510)
Bookkeeping service	(513)
Computer charges	(553)
Insurance	(386)
Rent	(530)
Rate case expense	(2,301)
Total	$(8,490)

The first adjustment made by the Public Staff is to the cost of blank water bills. Public Staff witness Maness testified that he allowed as an expense the cost of the bills needed to serve the level of customers at December 31, 1983, for an entire year, based on the unit cost of bills purchased in 1984. The Public Staff's recommendation allows as expense the cost of 7,008 bills, the number of bills required annually to be mailed to the

584 customers served at the end of the test period plus 350 bills for potential defects and printing errors, resulting in an expense of $338 based upon the Public Staff's determination of the cost per bill.

During the hearing witness Lucas made a correction in his amount included for the costs of blank water bills; he changed his expense level from $809 to $1,129, reflecting an increase of $320. However, due to an oversight, the Company used the $809 figure in its proposed order as the level of expense for blank water bills. Therefore the actual difference between the Company and the Public Staff position as to the proper level of blank water bill expense is $791 ($471 + $320 or $1,129 - $338) rather than $471.

Company witness Lucas testified that the Company included in expenses the actual cost of bills ($1,129) purchased during the test year. Testimony of Glendale's witness was that these blank water bills were purchased around February 1983 and that at the end of the 1983 test year Glendale had a very small inventory of water bills.

The Commission concludes that the adjustment of the Public Staff is inappropriate. Based upon the testimony that the inventory of blank water bills was very small at the end of the test year and the evidence that there is a need for extra bills to cover potential defects and printing errors, the Commission accepts the Company's expense amount of $1,129 as being a reasonable expense level for the cost of blank water bills.

The second adjustment made by the Public Staff is the exclusion of legal cost ($560) related to the Oak Ridge Subdivision. As set forth in the Evidence and Conclusions for Finding of Fact No. 7, the Commission concludes that this adjustment by the Public Staff is reasonable and proper.

The third adjustment made by the Public Staff is the exclusion of legal cost ($1,938) related to a penalty assessment hearing involving the Company. It was stipulated by the parties that Glendale was assessed a $13,000 penalty by the Division of Health Services, that Glendale was in violation of the regulations of the Division of Health Services, but that the amount of the penalty remained in dispute. Company witness Lucas included the legal cost of the Company in challenging the amount of penalty as an annual operating expense of the Company. Public Staff witness Maness testified that this penalty assessment was currently in litigation. Witness Maness stated that in his opinion if the Company was ultimately found to be in the wrong, the legal costs would not be properly includable as an expense to be recovered from the ratepayers; therefore, it would also be improper to require the ratepayers to pay for any of the cost prior to the determination of liability.

The Commission concludes that the legal expense incurred by the Company in the good faith defense of the penalty assessment by the Division of Health Services is a reasonable and necessary expenditure of Glendale. Every person is entitled to due process of law and to representation by counsel. If the Company feels that the penalty assessed was too high, it has a right to be heard, to present evidence, and to try to prove the unfairness of the penalty. There was no suggestion that the Company's challenge to the administrative penalty was being made by the Company in bad faith. The Commission concludes that the legal expense should be included; but because such expense is unusual and nonrecurring, the Commission is of the opinion that the expense should be

amortized over a period of three years. Therefore, the Commission concludes that $646 ($1,938/3) should be included in expenses to reflect the amortization of the legal costs related to the penalty assessment by the Division of Health Services.

The fourth adjustment made by the Public Staff is the amortization of the legal cost ($728) related to a personnel matter which occurred in 1983. Company witness Vernon testified that the matter concerned an employee whom the Company believed was considering litigation against the Company for a large sum of money. Witness Vernon stated that the Company sought a legal opinion just as it regularly does when confronted with a legal problem. Under cross-examination, witness Vernon testified that this is the only time during his seven- to eight-year association with the Company that this type of personnel matter has occurred.

Public Staff witness Maness testified that in his opinion this is a very unusual personnel matter that would not be expected to recur on an annual basis. Therefore, he recommended that the legal cost be amortized over three years rather than be included in its entirety in annual expenses recoverable from the ratepayers.

The Commission concludes that the legal cost related to this personnel matter is a nonrecurring type of expenditure and is properly amortizable over a three-year period. While the Commission recognizes that different types of legal matters may arise each year and be properly includable in annual expenses, the unusual nature and large magnitude of this cost require it to be amortized, rather than expensed in one year.

The fifth adjustment made by the Public Staff is the adjustment to accounting fees ($510). Company witness Lucas testified that it was his opinion that witness Maness included only $90 of the Company's $600 of accounting fees in expenses. Public Staff witness Maness stated that he in fact included the entire $600 which the Company maintains should be expensed.

The Commission concludes that the Public Staff has included in expenses the entire $600 of accounting fees in question. The Commission finds that the Public Staff position on this matter is proper and if the Company's additional adjustment of $510 to expenses is allowed this would result in an overstatement of expenses as these accounting fees would then be included twice.

The sixth Public Staff adjustment is the exclusion of $513 of charges made during 1983 for bookkeeping services performed by an outside party for the Company. Company witness Lucas included the amount actually spent by the Company during 1983 in expenses. Public Staff witness Maness testified that he removed these bookkeeping charges from expenses on the basis that the level of salaries recommended by the Public Staff is adequate to provide for the in-house performance of the bookkeeping duties necessary to the operation of the Company on an ongoing basis.

The Commission concludes that, on the basis of the evidence presented hereinabove and in the Evidence and Conclusions for Finding of Fact No. 23 wherein the Commission discusses the need for the Company to improve its accounting procedures, the Company currently needs outside bookkeeping services to help the Company improve its past accounting practices. Therefore, the

Commission finds that the Company's level of administrative and office expenses should include $513 for bookkeeping services.

The seventh adjustment made by the Public Staff is the amortization of computer charges ($553) related to the Company's unsuccessful attempt to implement a computer system during the test period. Company witness Lucas included in test year expenses the actual amount spent on computer rental and software related to the unsuccessful attempt to implement a computer system. Witness Lucas stated that rental is normally treated as a current expense and he treated it as such in this case.

Public Staff witness Maness testified that the computer in question was ultimately returned to the vendor by the Company and another system was acquired. According to witness Maness, the Company has included in its rate base the cost of this new system and a full year's depreciation on that new system is included in annual expenses. Witness Maness stated that although the charges related to the unsuccessful system were not imprudently incurred, it would be improper to include them as an annually recurring expense since the depreciation on the new system is being allowed and the rental and software charges would not be expected to recur. Therefore, he has recommended that the costs related to the unsuccessful system be amortized over three years. Company witness Lucas testified under cross-examination that if an expenditure was nonrecurring, it would be more fair to the ratepayers to have it amortized over a number of years.

The Commission concludes that since the charges related to the unsuccessful system are nonrecurring and since a full year's depreciation on the new computer is included in annual expenses, it is reasonable and proper for the charges related to the unsuccessful system to be amortized over a three-year period.

The eighth Public Staff adjustment is an adjustment to reduce insurance expense by $386. Company witness Lucas included in expenses the actual amount of insurance premiums paid during 1983, including the premium related to the 3/4-ton Ford truck owned by the Company at that time. Public Staff witness Maness testified that he adjusted insurance expense to reflect the current annual insurance premiums for auto, general liability, and workers' compensation insurance, excluding the 3/4-ton Ford truck which the Public Staff has recommended be excluded from rate base.

Since the Commission has included one-third of the Ford truck in rate base, as set forth in the Evidence and Conclusions for Finding of Fact No. 5, the Commission concludes also that one-third of the insurance premiums related to the Ford truck should be included in expenses.

The ninth adjustment made by the Public Staff is the adjustment to exclude the rental of one radio from Pipeline Utilities, Inc. Company witness Lucas has included in expenses the total annual rent paid for radios during 1983. Public Staff witness Maness has excluded the rental for one of the three radios used, based on the Public Staff's recommendation that the 3/4-ton Ford truck used during 1983 be excluded from rate base.

The Commission concludes that, consistent with its inclusion of one-third of the Ford truck in rate base, the rental charge for one-third of the radio in the Ford truck should be included in expenses.

The final adjustment made by the Public Staff to administrative and office expenses is the adjustment decreasing rate case expense by $2,301. The Company originally included in its application a total rate case expense of $6,304. Public Staff witness Maness testified that he amortized this expense over a three-year period, since the Company would not be expected to apply for a rate increase, and thus incur those types of costs, on an annual basis. Company witness Lucas, in his rebuttal testimony, included an additional $2,500 of rate case expense, and recommended that the total cost of $8,804 be amortized over two years, rather than three. Public Staff witness Maness testified that in his opinion a three-year amortization period was more reasonable than two years. He stated that three years was the customary period chosen for water rate case expense amortization and that it has been almost exactly 2 ½ years since the Company's previous case.

The Commission concludes that the Public Staff adjustment to rate case expense of $2,301 is inappropriate. The three-year amortization period used by the Public Staff is inappropriate in this proceeding in view of the Company's current operating conditions and change in management. The Commission concludes that a two-year amortization period for rate case expense is proper in this docket. The Commission also concludes that the additional rate case costs of $2,500 presented in witness Lucas' rebuttal testimony should be included as rate case expense in this proceeding.

In addition to the above adjustments to the level of administrative and office expenses, the Commission finds that two other items of expense: (1) typewriter-$93 and (2) calculator-$87, should also be included. As discussed in the Evidence and Conclusions for Finding of Fact No. 5, the Commission concludes that the purchase of the typewriter and the calculator should be included in operating expenses.

Based upon the evidence presented hereinabove, the Commission therefore concludes that the reasonable and proper level of administrative and office expenses is $21,077.

The third item about which the Public Staff and the Company disagree is maintenance and repair expenses. The difference between the parties consists of the following adjustments made by the Public Staff:

Item	Amount
Capitalization of items expensed by Company:	
Meters and meter boxes	$1,017
Hydropressor	628
Chemical feed pumps	2,080
Costs related to Oak Ridge Subdivision	8,089
Repairs to leased items:	
Radio	118
Heating system	350
Water testing costs	201
Total	$12,483

The adjustments made by the Public Staff related to the capitalization of items expensed by the Company and the costs related to Oak Ridge Subdivision have already been found appropriate by the Commission, based on the Evidence and Conclusions for Findings of Fact Nos. 5 and 7.

The next Public Staff adjustment is the exclusion of repair costs related to items leased from Pipeline Utilities, Inc. Company witness Lucas testified that it is common for lessees to be responsible for maintenance of leased items. However, there was no evidence presented to show that the Company has a contractual obligation to provide such maintenance. Public Staff witness Maness testified that because of the close relationship between Glendale and Pipeline Utilities, Inc., the management of Glendale had substantial control over the assignability of those repair expenses. Due to the substantial level of rent paid by Glendale to Pipeline Utilities, Inc., witness Maness testified that it would be unreasonable for Glendale's customers to be expected to also bear the costs of repairs.

The Commission concludes that the costs of repairs to the radio and the heating system, which are items leased by the Company from Pipeline Utilities, Inc., should be excluded from the expenses of the Company. When two companies are as closely related as Glendale and Pipeline Utilities, Inc., transactions between the two must be examined closely in order to determine their reasonableness. The Commission concludes that the substantial rent paid by Glendale to Pipeline Utilities, Inc., is sufficient to provide for the maintenance and repair of these leased facilities and equipment.

The final adjustment made by the Public Staff is the exclusion of $201 of water testing costs. Company witness Lucas included in expenses the actual amount of water testing costs paid during 1983. Public Staff witness Maness testified that the $201 was in excess of the total annualized level of water testing costs, as calculated by Public Staff witness Lee.

The record is unclear as to how witness Lee calculated his annual level of water testing costs, however, the Public Staff's adjustment associated with those costs is not materially different from the amount included by the Company. Therefore, the Commission concludes that the Company's inclusion of $201 of additional water testing costs in expenses reflects the level of water testing costs which can be expected on an ongoing basis and is appropriate in this proceeding.

Based upon the evidence presented hereinabove, the Commission concludes that the reasonable and proper level of maintenance and repairs expenses is $15,962.

The next two items about which the Public Staff and the Company disagree are transportation expense and power for pumping. The differences consist of $241 of transportation costs related to the 3/4-ton Ford truck excluded from rate base by the Public Staff and $81 of electricity costs related to the Oak Ridge Subdivision. Based upon the Evidence and Conclusions for Findings of Fact Nos. 5 and 7, the Commission concludes that one-third of the $241 of transportation expenses related to the 3/4-ton Ford truck should be included in operating expenses and the power for pumping related to Oak Ridge Subdivision should be disallowed. The Commission finds that the proper levels of

transportation expense and power for pumping are $5,972 and $11,865, respectively.

The Company and the Public Staff are in agreement as to allocation of expenses to related companies, the amortization of nonrecurring expenses, and the expense annualization adjustment. The Commission agrees with the parties as to the level of amortization of nonrecurring expenses, but disagrees slightly with the other two items. The Commission has found levels of expenses which are different from those of either party and, in doing so, the Commission has also made adjustments to the allocation of expenses to related companies and to the annualization adjustment which adjusts expenses to reflect the number of customers served at the end of the test year. Accordingly, the Commission finds that a negative $669 is the appropriate level of expenses to be allocated to related companies and $2,596 is the proper level of expense to reflect the annualization of office expense, computer charges, postage, telephone, repairs, supplies, gas and oil, other transportation and power for pumping based on the number of customers at the end of the test year.

The next item about which the Public Staff and the Company disagree is depreciation expense. The difference consists of the following Public Staff adjustments:

Item	Amount
Depreciation on items capitalized by Public Staff but expensed by Company:	
Typewriter	$ 19
Calculator	17
Meters and meter boxes	75
Depreciation on Ford truck	(1,791)
Total	$(1,680)

Company witnesses entered testimony into the record indicating that the service lives for meters and pumping equipment recommended by the Public Staff were excessively long; however, the Company proposed no adjustment to depreciation expense to reflect service lives different from those recommended by the Public Staff. Public Staff witness Maness testified that he based his determination of service lives upon the lives approved by the Commission in prior cases, upon NARUC recommended service lives, and upon discussion with Public Staff witness Lee. The Public Staff recommended that the meters should be depreciated over 25 years and the typewriter and calculator should be depreciated over five years.

Based on the Evidence and Conclusions for Finding of Fact No. 5, the Commission concludes that the typewriter and the calculator should be directly expensed rather than capitalized and depreciated, the meters and meter boxes should be capitalized and depreciated using a 25-year service life, and one-third of the cost of the Ford truck should be capitalized and depreciated using a three-year service life which is the rate used by the Company for its other trucks. The Commission finds that the proper level of depreciation expense for use in this proceeding is $11,603.

The next item about which the Public Staff and the Company disagree is payroll taxes. Since the Commission has concluded that the appropriate level of salary expense is $43,544, the Commission finds that the proper level of payroll taxes is $4,035.

The final items about which the parties disagree are state and federal income taxes. Based on the foregoing conclusions, the Commission finds that the proper level of operating revenue deductions under present rates is $123,192 and has agreed with the parties that the level of revenues under present rates is $111,348; therefore, the Commission finds that under present rates, the Company has a loss of $11,844 and therefore would not owe any income taxes.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 9, 10, AND 11

The evidence supporting this finding of fact is included in the affidavit of Public Staff witness Bowerman and the testimony of Company witness Vernon. Witness Bowerman states that because the Company's rate base is small in relation to its operating expenses, the operating ratio method provides a more reasonable level of revenue.

In the absence of any evidence to the contrary and based upon the Commission's determination of original cost rate base and operating revenue deductions, as hereinafter shown, the Commission concludes that the operating ratio method is the proper procedure to be used for the determination of the revenue requirement in the proceeding.

Witness Bowerman recommended that Glendale should be granted a 15.42% margin on expenses which relates to an operating ratio of 91.70% (including taxes and interest) or 86.64% (excluding taxes and interest). However, the Public Staff recommends that the Company not be given any revenue increase at this time due to inadequacy of service and deficiency in accounting procedures. The Company agreed that the 15.42% margin on operating revenue deductions recommended by the Public Staff would generate an adequate rate of return.

The Commission concludes that a 15.42% rate of return on operating expenses requiring a return would be fair and reasonable to both the Company and its customers. Based upon a 15.42% rate of return, the Commission finds that an annual revenue increase of $36,208 over present rates is appropriate. However, the Company's interim rates currently in effect will yield an annual revenue increase of $34,883 over present rates and according to witness Vernon the Company will survive if it is granted the interim rates now in effect. Therefore in consideration of the Company's inadequate service, the Commission concludes that the interim rates, which became effective on September 10, 1984, are appropriate for use in this proceeding. These rates produce a 14.56% rate of return on operating expenses requiring a return.

The following schedules summarize the gross revenues and the rate 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
GLENDALE WATER, INC.
DOCKET NO. W-691, SUBS 25, 26, AND 27
STATEMENT OF OPERATING INCOME AND RATE OF RETURN
TWELVE MONTHS ENDED DECEMBER 31, 1983

Item	Present Rates	Approved Increase	Approved Rates
Operating revenues	$111,348	$34,883	$146,231
Operating revenue deductions:			
Salaries expense	43,544	-	43,544
Administrative and office expense	21,077	-	21,077
Maintenance and repair expense	15,962	-	15,962
Transportation expense	5,972	-	5,972
Power for pumping	11,865	-	11,865
Allocation to related companies	(669)	-	(669)
Amortization of non-recurring expenses	1,720	-	1,720
Annualization adjustment	2,596	-	2,596
Depreciation expense	11,603	-	11,603
Payroll tax	4,035	-	4,035
Property tax	1,033	-	1,033
Gross receipts tax	4,454	1,395	5,849
State income tax	-	1,299	1,299
Federal income tax	-	3,052	3,052
Total	123,192	5,746	128,938
Net operating income/loss	$(11,844)	$29,137	$ 17,293
Rate of return on operating expenses	(9.97%)	-	14.56%

SCHEDULE II
GLENDALE WATER, INC.
DOCKET NO. W-691, SUBS 25, 26, AND 27
STATEMENT OF RATE BASE
TWELVE MONTHS ENDED DECEMBER 31, 1983

Item	Amount
Investment in water plant	
Water plant in service	$138,164
Acquisition adjustment	(43,000)
Contributions in aid of construction	(7,836)
Accumulated depreciation	(24,236)
Net investment in water plant	63,092
Allowance for working capital	
Cash working capital	12,757
Average tax accruals	(1,259)
Total allowance	11,498
Original cost rate base	$ 74,590

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 12

The evidence for this finding of fact comes from the testimonies of Public Staff witness Lee and Company witness Vernon. Witness Lee testified that the Company experienced significant growth during the test year period; the number of customers increased from 449 at the beginning of 1983 to 584 customers at the end of the test year, reflecting a growth of 30.1%. Witness Vernon testified that the number of customers at the end of 1984 was 712, reflecting a growth of 21.9%. The Commission, therefore, concludes that the Company has experienced significant customer growth which has and will increase the Company's revenue over the test year level.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 13

The evidence for this finding comes from the testimony of Public Staff witness Lee and Company witness Vernon.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 14

The evidence for this finding of fact comes from the testimonies of Public Staff witnesses Lee and Williams. Witness Williams testified that a "boil notice" was issued to the residents of Glendale, Burnside, Chari Heights, Belmont, and Rollingwood subdivisions in October 1984 due to bacteria contamination of this interconnected water system, and prior to the boil notice, the water system was not being continuously disinfected as required. Witness Williams also testified that a "boil notice" was issued to the residents of Woodscreek Subdivision due to bacteria contamination and that there was no continuous disinfection being done at the time of that notice.

Witness Williams testified that these bacteria contamination problems could have most likely been avoided if the Company had been chlorinating the water. The Commission concludes that the lack of chlorination and the resulting bacteria contamination demonstrates inadequate service and disregard for the rules and regulations of the Division of Health Services by the Applicant.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 15

The evidence for this finding of fact comes from the testimonies of Public Staff witnesses Lee and Williams. Witness Lee testified that inspections of the Applicant's system during the fall of 1984 revealed no chlorination equipment, inoperative chlorination equipment, or no chlorine in 15 of the Applicant's subdivisions. Witness Lee also testified that review of the Applicant's chemical purchase records revealed that not enough chlorine was purchased during the 1983 test year to have adequately chlorinated all of the water sold by the Applicant in 1983.

Company witness Vernon testified that since October 1984, Glendale has installed 12 to 14 chlorinators on the system it serves and that, except for one that was being repaired, all were in operation.

Witness Williams testified that most of Glendale's systems have not been properly chlorinated in the past. Witness Williams also testified that the purpose of continuous chlorination is to prevent bacteriological contamination and that in October 1984, no chlorination was being done by the Applicant when the Glendale systems became contaminated.

The Commission concludes that the Applicant should take measures to provide continuous chlorination in all of its systems.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 16

The evidence for this finding of fact is found in the testimony of Public Staff witness Lee. Witness Lee testified that in November 1983 the Applicant was assessed a penalty of $13,000 for failure to notify the Division of Health Services of maximum microbiological contaminant violations. Counsel for the Applicant objected to admission of the above testimony as the penalty had been appealed by the Applicant and was in litigation. Witness Lee testified that the Appliant was recently assessed two additional administrative penalties. On September 5, 1984, the Applicant was assessed an administrative penalty for failure to provide chlorination equipment, continuous disinfection of the water, and other violations at the Berkshire Downs Subdivision water system. On October 3, 1984, Glendale was assessed an administrative penalty for failure to provide chlorination equipment and continuous disinfection of the water systems at Country Ridge and Willow Winds subdivisions. The Applicant did not contest the testimony concerning the latter two penalties.

The Commission concludes that the Applicant has been issued three administrative penalties by the Division of Health Services during the past 15-month period although one of the penalties has been appealed by the Applicant. The Commission further concludes that issuance of the above penalties demonstrates that the Applicant has not been operating its water

utility systems in accordance with the Division of Health Services' requirements.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 17

The evidence for this finding of fact is based on the testimony of customers residing in A Country Place Subdivision. Customers who testified were Tim Moulthrop, Barbara Moulthrop, Paul Grooms, Richard Booth, Sandy Narron, Jeffrey Kennedy, Terri Washburn, and Victor Rinker. Witness Moulthrop testified that he has lived in A Country Place for 16 months and has experienced continual problems of low water pressure, sediment in the water, staining of fixtures, odor from the water, and billing irregularities. Witness Moulthrop also presented as an exhibit a jar of discolored water which he had drawn at his residence the day of the hearing. Witness Grooms testified that service has been very poor including being out of water this past Christmas Eve and Christmas Day as well as the Saturday before the hearing. Witness Grooms also testified that Glendale has shown complete disregard for the safety of children in the neighborhood by allowing electrical wiring to be exposed at the well house. Witness Grooms presented four photographs, Grooms Exhibits 1, 2, 3, and 4, showing the unsafe electrical wiring. Witness Richard Booth testified concerning problems of discolored water, staining, air in the water, water smelling like chlorox at times, inconsistent billing, and rude treatment by the Company's answering service. Witness Washburn testified concerning staining problems, water outages, irregular bills, and not receiving notice from Glendale about coliform bacteria contamination until seven months after the contamination occurred. Witness Rinker testified that on occasions he had observed the chlorination pump at the well continuing to pump even though the water system was down and not operating. Public witness Narron, Moulthrop, and Kennedy also testified concerning similar problems noted by the other customers. The Company did not contest the testimony presented by these customers from A Country Place Subdivision. Based upon the problems experienced by these customers, the Commission concludes that the Company has not provided adequate water utility service in A Country Place Subdivision.

Company witness Vernon testified that Glendale was adding a polyphosphate chemical, Mogul 139, to the water to sequester and control the excess iron and manganese. Witness Vernon also testified that he had recently purchased a field test kit which would enable him to determine on site the effectiveness of the polyphosphate. Witness Vernon also testified that the distribution system layout in A Country Place did present problems when flushing the water mains and he was undertaking better monitoring procedures in order to correct problems noted by the customers. The Commission concludes that the Company should be able to correct the noted water quality problems in A Country Place Subdivision by improving its monitoring and operation procedures.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 18

The evidence for this finding of fact comes from the testimony of public witnesses George Dawkins, Sandra Allen, Michael Ritch, Kaye Clemmer, Jerry Diehl, Leatha Ritchie, Mike Newnam, Winiferd Leiser, Robert Ritchie, Brad Batch, Sandy Narron, Herb Loznicka, Brenda Loznicka, Barbara Messer, Elaine Haney, Charlie Everette, Vickie Miller, Anna Childers, and Richard Franks (all of whom are customers on the Glendale, Burnside, Chari Heights, Belmont, and Rollingwood interconnected water system), and the testimony of the Public Staff

witnesses Lee and Williams. Witness Dawkins testified that his water is discolored, that he received a notice from the Company in March 1984, about bacteria contamination which occurred in February 1983, and that the water smelled like chlorox for a five-week period after the boil notice which was issued October 1984. Witness Dawkins also testified that Glendale poorly maintains the well lot and the water tank, the well lot was only mowed once a year and the water tank was poorly painted as shown in photographs submitted as Dawkins Exhibits 1, 2, 3, and 4. Witness Batch testified that he has lived in Glendale Subdivision since January 1981 and has experienced continuous problems of discolored water, staining, and irregular billing. Witness Robert Ritchie testified that he has experienced similar problems and emphasized that his main concern was the health of his family. He further testified that a year had elapsed before customers were notified by the Company of the previous bacteria contamination which occurred in February 1983. Witness Leatha Ritchie testified that she was concerned over the health aspects of the water and that her daughter had been suffering from mouth sores, stomach cramps, diarrhea, and bumps which sometimes developed into impetigo. She emphasized that these problems cleared up once her daughter quit drinking Glendale's water. The remaining customers listed above testified concerning similar problems of discolored water, boil notices, stained fixtures, low pressure, billing irregularities, and poor customer relations. The Applicant did not contest or deny that these problems have existed. The Commission concludes that water utility service in the Glendale, Burnside, Chari Heights, Belmont and Rollingwood subdivisions has been inadequate.

Company witness Vernon testified that the Glendale interconnected system was the Company's worst system at this time and that treating the water with Mogul 139 was proving inadequate for controlling the excessive manganese and iron problem that exists at two of the three wells which serve the system. Witness Vernon further testified that he was planning to add a filter system at each well to solve this problem at an estimated cost of $29,000. The Commission concludes that the Company should proceed with designing and obtaining plan approval for the proposed filter system. In the meantime, the Company should make every effort to improve service on this system by continuing to treat the water with polyphosphate as well as properly chlorinating the water. The Company should also improve its monitoring, testing, and flushing of this system until filters can be designed, approved by the Division of Health Services, and installed.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 19

The evidence for this finding of fact comes from the testimony of Dewitt Perry, a customer of Glendale and a resident of Woodscreek Subdivision, a petition from Woodscreek Subdivision customers presented as Perry Exhibit 1 and read into the record by witness Perry, the judicial notice of Docket No. W-691, Sub 15 and the testimonies of Public Staff witness Lee and Company witness Vernon. The Commission takes judicial notice of Docket No. W-691, Sub 15, in which the customers of Woodscreek Subdivision voluntarily agreed to a $12 per month assessment for a one-year period which began March 1983, and ended in February 1984. The purpose of the assessment was to help the Applicant finance needed capital improvements in Woodscreek Subdivision. The improvements called for installing a 3,000-gallon ground storage tank, two booster pumps, and accessories needed to provide adequate water during peak demand periods. A substantial portion of the work was completed in March 1983 when the Applicant

was allowed to begin assessments. Witness Perry testified that the customers of Woodscreek opposed any rate increase for the following reasons stated in their petition:

"THE UNDERSIGNED users of water 'service' from Glendale Water, Inc., residing in Woodscreek Subdivision oppose any rate increase to Glendale, for the following reasons:

Glendale has failed to render adequate and dependable water service and, under the teachings of the Lee Telephone and the General Telephone Company of the Southeast case, is not entitled to any rate increase until its service has shown marked improvement for some substantial period of time.

1. On July 18, 1983, no water was available from the system. Additionally, no warning system was working as was suggested in decretal paragraph 3 of the Recommended Order Requiring Improvements and Authorizing Assessment, issued in Docket No. W-691, Sub 15 on January 6, 1983.

2. On July 29, 1983, Woodscreek users were warned by the Wake County Health Department that they should boil all drinking water received from the Glendale system due to excessive coliform bacteria being present in the water. The high bacteria count resulted from Glendale's failure to inspect and maintain the chlorination system serving Woodscreek. This health department warning remained in effect from July 29 through August 8, 1983.

3. On September 5, 1983, no water was available from the system.

4. On December 25, 1983, no water was available from 6 a.m. through 2 p.m. and again from 8 p.m. through 3 p.m. on December 26. No water was available from approximately 6 p.m. on December 26 through 3 p.m. on December 27. Because of the holiday season, these outages caused severe inconvenience to Woodscreek residents.

5. On April 9, 1984, no water was available from the system.

6. On May 17, 1984, no water was available for approximately 2 and 1/2 hours in the evening around 7 p.m.

7. In September 1984 the alarm at the Woodscreek tank sounded for several hours without any attention from Glendale. Woodscreek users were unable to locate any person from Glendale to remedy what caused the alarm condition. Neither could Glendale's answering service or the Wake County Sheriff's Department locate any Glendale person to remedy the condition.

8. On November 13, 1984, the Woodscreek tank over-flowed for several hours without any attention from Glendale.

Additionally, users at Woodscreek voluntarily subjected themselves to a 12-month surcharge beginning in March of 1983 to help Glendale overcome a cash flow problem so that it could install necessary system improvements. The undersigned users feel that they have done more than their share to ensure that Glendale is able to furnish adequate and dependable water service but that officers and employees of Glendale have failed to carry out their responsibilities. One example is the failure of Glendale to repair a broken meter at 3104 Beane Drive although Glendale had been on notice about the broken meter for two months."

Witness Perry emphasized that the water outage suffered during the Christmas Holidays of 1983 was uncalled for and could have been prevented if the Applicant had completed the improvements called for in the agreement reached in Docket No. W-691, Sub 15. The Applicant had not constructed a pump house to prevent the booster pumps and above ground plumbing from freezing at the time the problem occurred during the Christmas Holidays of 1983. Witness Perry further tesified that the residents of Woodscreek have paid Glendale around $10,000 in assessments from March 1983 through February 1984, and that Glendale has not lived up to its agreement either through negligence, carelessness, or lack of professional ability. Witness Perry concluded his testimony by asking the Commission not only to deny the rate increase but to seriously consider the facts that have been presented and rule that this Company is not capable of running a utility.

Public Staff witness Lee testified that a recent inspection of the Woodscreek system revealed that chlorination equipment was in place but pumping dry because the chlorine solution tank was empty.

The Company did not contest the testimonies of witnesses Perry and Lee regarding the problems which have occurred with the Woodscreek Subdivision water system.

Based on the problems experienced by the customers in Woodscreek Subdivision the Commission concludes that adequate water utility service has not been provided in Woodscreek Subdivision during the past two years.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 20

The evidence for these findings of fact comes from the testimony of customers George Reed, Jay Bradley, Cheryl Johnson, Mike Whitacre, Kenneth Johnson, Paulette Britt, Edward Davis, Sally Brooks, Allegra Pruitt, Karen Grandage, and Carol Jones who are served by the Lynnhaven, Crowsdale, Englewood, Orchard Knolls, and Surry Point interconnected water system.

Witness Reed presented testimony and exhibits showing that Glendale's rates have increased 356% (including the interim rates) since 1980 while Carolina Power and Light Company's electrical rates have increased 52% over the same period of time. Witness Bradley testified that he has experienced low water pressure and billing irregularities. Witness Johnson testified that she has experienced problems of low water pressure, billing irregularities, air in the line, and the lack of chlorine in the water. Other Lynnhaven residents, Mike Whitacre, Kenneth Johnson, Paulette Britt, Edward Davis, and Sally Brooks testified concerning similar problems. Witness Johnson also testified that her

child was suffering from diarrhea caused by giardia, a water born parasite, and that water samples were being tested to determine if the problem was caused by water from the Lynnhaven system.

Witness Pruitt of Surry Point Subdivision testified that there is sediment in the water and staining of appliances and plumbing fixtures. Witness Grandage testified concerning the poor public relations the Company has with its customers. She testified that Mr. Blankenship "chewed her out" when she called to discuss a problem with the Company.

Witness Mathias of the Orchard Knolls Subdivision testified concerning continual low water pressure, staining problems caused by excessive iron and manganese, and irregular levels of chlorine in the water. He objected to Ray Vernon taking over operation of the system. Witnesses Hicks and Jones testified to similar problems to those experienced by witness Mathias. Witness Jones also testified concerning billing irregularities.

The Company did not contest the testimony presented by the above customers. Based upon the problems experienced by the customers, the Commission concludes that the water utility service which has been provided in the Lynnhaven, Englewood, Crowsdale, Orchard Knolls, and Surry Point interconnected water system has been inadequate.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NO. 21

The evidence for this finding of fact is found in the testimony of customers as noted in the evidence for Findings of Fact Nos. 17, 18, 19, and 20 and in the testimony of Public Staff witness Lee. Considerable testimony was given by customers complaining that water bills appeared to be inaccurate, inconsistent, and apparently estimated.

Public Staff witness Lee testified that his review of the Company's billing records revealed errors caused by the misreading of meters and/or by the Company's failure to enter readings into the billing computer. In addition, he observed that once billing errors were detected, there were problems in getting the error corrected. He noted that Company personnel sometimes took several months to correct billing errors.

Witness Lee also testified that the Company was not billing for water used by all contractors constructing houses on Glendale's systems. Witness Lee noted that this issue was raised by the Public Staff in a previous Glendale rate case, Docket No. W-691, Sub 9, and that this continuing practice violated the Commission's Final Order in that docket, as well as giving away free water at the ratepayer's expense. He also testified that the Company has been furnishing water to one customer, R. T. Rowland, for irrigation purposes without billing that customer. The Commission notes that the Company has now back billed and received payment from Mr. Rowland as demonstrated in the Applicant's exhibit filed January 28, 1985.

Witness Lee further testified that the Company overcharged customers of Orchard Knolls and Swift Ridge subdivisions for water usage in April 1983. He recommended that the Company refund the affected customers for the overcharge.

On February 20, 1985, the Applicant filed a letter with the Commission indicating that the customers of Orchard Knolls Subdivision had been refunded any overcharges due them, and that Glendale was still in the process of investigating the overcharges in Swift Ridge Subdivision.

Based on customer testimony and the testimony of Public Staff witness Lee, the Commission concludes that the Company should evaluate its billing procedures and establish procedures to correct the noted billing problems.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 22

The evidence for this finding of fact is based upon the testimony of customers as noted in the evidence for Findings of Fact Nos. 17, 18, 19, and 20. The Commission concludes that the Applicant has maintained poor customer relations and finds that the new management of the Company must take positive steps to improve customer relations.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 23

The evidence supporting this finding of fact is included in the testimony and exhibits of Company witness Lucas and Public Staff witness Maness.

Public Staff witness Maness testified that he found several deficiencies in the Company's accounting procedures during his investigation. According to witness Maness, the Company did not maintain an adequate general ledger or journal during 1983, did not possess adequate documentation of its 1983 expenditures, and failed to adequately manage its cash inflows and outflows. Witness Maness indicated that Mr. Blankenship's lack of adequate management resulted in the opportunity for an employee to embezzle in excess of $10,000 from the Company over a ten-month period during 1983 and 1984. Company witness Lucas testified that in 1984 the Company was repaid in full the amount of the embezzlement.

Witness Maness recommended that the Company be required to establish an on-site set of accounting records, a system by which every cash expenditure is supported by some form of documentation, and a formalized written procedure for management overview of cash receipts, disbursements, and balances. Witness Maness testified that his recommendations are not designed to place an overwhelming burden upon the Company; rather, they are designed to help management more adequately control its cash inflows and outflows and to facilitate management's access to important financial information.

Company witness Lucas testified that, in his opinion, records as detailed as those recommended by witness Maness are unnecessary and not necessarily cost-effective for a business the size of the Company and that some businesses of the same size do not maintain such detailed records. Witness Lucas stated that adequate control of cash flow can be maintained by the use of an outside accountant, by maintaining a record of deposits and checks, and that the cost of this method would be approximately one-fifth of the cost of the method recommended by witness Maness. Witness Lucas also stated that, in his opinion, an accountant or bookkeeper qualified to keep an accurate set of books would cost between $13,000 and $16,000 annually.

Witness Lucas also testified that the embezzlement in question could only have been prevented by a complex system of internal control impractical for a business the size of the Company to implement. Witness Lucas stated that, in his opinion, the Company utilized adequate control procedures during the test period.

Witness Maness testified that a Company, with annual revenues in excess of $100,000, is not a small business in relation to other water utilities, and that the types of accounting records he has recommended are not too detailed for a business of that size. Witness Maness stated that these records are fairly simple and, with some training by a Certified Public Accountant, a competent office worker could manage them. Witness Maness indicated that, in his opinion, the incremental cost of training the Company's secretary and manager to maintain these records would not be greater than the cost of hiring an outside accountant to create the records, as the Company did for 1983.

Witness Maness also testified that while it may be possible for a company to adequately control its cash flow with only a record of deposits and checks, in his opinion Glendale failed to do so during the test year.

In the opinion of witness Maness, the contention of Company witness Lucas that the embezzlement could only have been prevented by a complex system of internal control is incorrect. Witness Maness stated that the theft was extremely crude and could have been prevented or detected at an early date by simple oversight procedures, namely by not signing blank checks, by examining invoices before signing checks, and by reviewing cancelled checks returned with bank statements.

Witness Maness stated that he agreed with witness Lucas as to the impracticability of the Company implementing a complex system of internal controls. However, witness Maness testified that this very impracticability makes it all the more important for management to maintain a "firm grasp" on the Company's operations and financial situation.

The Commission concludes that the Company should be required to substantially improve its accounting records, procedures, and controls, so as to adequately control its cash inflows and outflows. The Commission therefore concludes that a system of procedures should be implemented whereby all disbursements are adequately documented and substantial disbursements are reviewed by management.

As to the need for an on-site set of accounting records, the Commission concludes that such records are reasonable, proper, and necessary for a utility the size of the Company, and that the Company should set up such records immediately. The Commission takes note of its Order relating to this Company in Docket No. W-691, Sub 9, dated May 1, 1981, which reads in part as follows:

> "That the Company shall henceforth set up and maintain its records in accordance with Commission Regulations R7-3 and R7-35." (Page 8, Ordering paragraph No. 2)

Commission Regulation R7-35 adopts the Uniform System of Accounts for Water Utilities as revised in 1973 by the National Association of Regulatory Utility Commissioners as the accounting rules for all water utilities under the

jurisdiction of the Commission having annual gross revenues of $10,000 or more. The Uniform System of Accounts states in part:

> "Each utility shall keep its books of account, and all other books, records, and memoranda which support the entries in such books of account so as to be able to furnish readily full information as to any item included in any account." (General Instructions, Item 2(a), Uniform System of Accounts for Class C Water Utilities, 1976)

The Commission concludes that the records kept by the Company during 1983 do not fulfill the intent of the Commission as expressed in Regulations R7-3 and R7-35. The Company should immediately take steps to implement a set of accounting records in compliance with these rules.

Notwithstanding the regulations of the Commission, it is obvious that the continuous maintenance of an accurate and complete set of books is beneficial to both the Company and its customers. Such records provide important and necessary information which aids in budgeting, control, and analysis of expenditures. Without those records, it is virtually impossible to maintain firm control over the disbursements made by the Company, or to ensure the efficient use of resources purchased by the Company.

As to the cost of setting up such a system of accounting books and records, the Commission agrees with the Public Staff that such a system is not cost-prohibitive. The Company should strive for a system which is detailed enough to allow the Company to determine the amount and purpose of each disbursement, but simple enough to allow its maintenance by a competent office worker without a formal education in bookkeeping or accounting. The Company should utilize its outside accountant to provide the necessary training for its office worker and management; such a course of action will surely cost less than the year-by-year utilization of an outside accountant to create a set of books.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 24

The evidence supporting this finding is included in the testimony of the customers, Company witness Vernon, and Company witness Blankenship.

Several of the Company's customers expressed their concern while testifying that the proposed transfer of a controlling interest in the Company to Mr. Ray Vernon would not be satisfactory. The Customers testified that they were concerned that Mr. Blankenship, who in their opinion has failed to provide adequate service, would still exert an important influence upon the operations of the Company, due to his close personal and financial relationship with Mr. Vernon.

Company witness Vernon testified that as of late November 1984, he was elected President and General Manager of Glendale. Witness Vernon's testimony established that he is a licensed C and B class well operator and a licensed electrician with a number of years' experience in operating water systems and related business. Witness Vernon testified that Mr. Blankenship is currently not involved in any management decisions, and that he, Mr. Vernon, would not allow his personal relationship (Blankenship's son-in-law) with Mr. Blankenship to interfere with the management of the Company.

Company witness Blankenship testified that he has had no part in the Company's management since late November 1984, and that he has no intention of being involved in the management of the Company in the future.

Based upon the evidence presented at the hearing, the Commission concludes that Mr. Vernon's management of the Company from late November through the date of the hearing demonstrates his ability to effectively manage the Company, improve service, maintain better customer relations, and his testimony indicates a willingness to invest his own time, energy, and money in the Company. Furthermore, witness Vernon's testimony indicated that he had a complete knowledge of the business and a detailed understanding of the present needs of the Company to improve service to its customers. The Commission concludes that the transfer of a controlling interest (52%) in the Company's stock to Mr. Vernon, as proposed in Docket No. W-691, Sub 27, should be approved and is in the best interest of the customers.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 25

This Order has elsewhere found and concluded that there is a serious need for substantial improvements to be made to the water system operated by the Applicant. The Commission is of the opinion that, in connection with making these improvement, the Applicant should also file bimonthly reports to the Commission as to the progress it is making toward completing the needed improvements.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 26

The evidence for this finding is found in the testimonies of Company witness Vernon and Public Staff witness Lee, in the proposed Order of the Public Staff, and in the Applicant's brief.

Glendale presently holds a Temporary Operating Authority (TOA) to provide water utility service in Woodbrook Subdivision. The Public Staff has recommended that the TOA should remain in effect for a six-month period and then a decision be made as to whether or not Glendale should be allowed to continue operating as a public utility or if the Commission should seek a trustee to operate all of Glendale's water systems.

The Company argued that all the customers of Glendale, including those in Woodbrook, would benefit if the Company were allowed to expand. The Company also argued that, because of the closeness of Glendale's existing service areas to the Woodbrook Subdivision, Glendale should be granted a full franchise in Woodbrook. The Company also reported that it may be difficult to find another company to run the Woodbrook system.

The Commission, in Finding of Fact No. 27, has found that Glendale is prohibited from expanding or acquiring any new service areas. The Commission is of the opinion that allowing the TOA in Woodbrook Subdivision to remain in effect for a six-month period would serve no purpose and would not benefit the customers nor the Company. Therefore, the Commission concludes that Glendale should be granted a Certificate of Public Convenience and Necessity to provide water utility service in Woodbrook Subdivision.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 27

The evidence relating to this finding is found in the testimony of Public Staff witness Lee and in the Commission's Order issued on September 10, 1984, setting this matter for hearing.

Witness Lee testified that it is not in the best interest of the Applicant's existing customers to allow the Applicant to acquire new service areas while the existing service areas need improving. The Public Staff argued that adding new service areas would worsen the Applicant's financial position and that while theoretically some economies of scale may occur from adding new service areas, this has historically not been the case with the Applicant.

Ordering Paragraph No. 6 of the September 10, 1984, Order restricted the Applicant from adding on any new service areas until further Order by the Commission. After reviewing the Applicant's Motion to Modify Order filed on October 26, 1984, the Public Staff's Response filed October 26, 1984, and the Applicant's Reply to Response of the Public Staff, the Commission issued its Order Denying Motion to Modify Order of September 10, 1984. In the Order the Commission reaffirmed Ordering Paragraph No. 6 of the September 10, 1984, Order.

In view of the need for capital improvements to be made to the Applicants' existing service area and the large number of customer complaints relating to service and water quality problems, the Commission finds and concludes that the Applicant should not be allowed to add new systems nor extend its mains outside its platted service areas without further Order of the Commission and should instead concentrate on making the needed capital improvements on its existing water systems.

IT IS, THEREFORE, ORDERED as follows:

1. That the Applicant's interim rates which became effective on September 10, 1984, and which produce an increase in gross annual revenues of $34,883, based upon the number of customers at the end of the test year, be and are hereby, approved.

2. That the Schedule of Rates, attached hereto as Appendix A, be, and is hereby, approved and that said Schedule of Rates is hereby deemed to be filed with the Commission pursuant to G. S. 62-138.

3. That the transfer of 52% of the outstanding shares of Glendale Water, Inc., to Ray Vernon as proposed in Docket No. W-691, Sub 27, be, and is hereby, approved.

4. That the Applicant shall set up and maintain an on-site set of accounting records, adequately document all cash receipts and disbursements, and take all other steps necessary to adequately control its cash inflows and outflows.

5. That the Applicant shall not acquire nor add on any additional water systems nor extend its mains outside the boundaries of its platted subdivision 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 Division of Health Services, and then only after further Order by the Commission.

6. That the Applicant, within 60 days after the effective date of this Order, shall file a report with this Commission as to the progress it is making toward completing the improvements needed to bring each of its water systems into complete compliance with all the Division of Health Services Rules and Regulations. Said report shall describe the improvements made since the effective date of this Order, the location of each improvement, the amount of expenditure for each improvement, the vendor to whom each expenditure was made, and the improvement remaining to be made before each system is brought into complete compliance with the Division of Health Services Rules and Regulations. Once said report is filed, the Applicant shall begin filing a similar report on a bimonthly basis.

7. That Glendale be, and is hereby, granted a Certificate of Public Convenience and Necessity to provide water utility service in Woodbrook Subdivision, Wake County, North Carolina.

8. That Appendix B, attached hereto, shall constitute the franchise granted herein.

9. That the Notice to Customer attached hereto as Appendix C shall be mailed or hand delivered to each of Glendale's customers during the next billing cycle following the effective date of this Order.

ISSUED BY ORDER OF THE COMMISSION.
This the 12th day of April 1985.

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

APPENDIX A
SCHEDULE OF RATES
for
GLENDALE WATER, INC.

for providing water utility service in all its service areas in North Carolina

Metered Rates:
Base facility charge (no usage included) - $8.20 minimum charge
Usage charge - $2.40/1,000 gallons

Connection Charge: None

Reconnection Charge:
If water service cut off by utility for good cause:
First time per customer - $ 4.00
Second time per customer - $10.00
Third time per customer - $14.00
If water service discontinued at customer's request: $4.00

Bills Due: On billing date

Bills Past Due: 15 days after billing date
Billing Frequency: Shall be monthly for service in arrears
Finance Charge 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-691, Subs 25, 26, and 27, on this the 12th day of April 1985.

APPENDIX B
DOCKET NO. W-691, SUB 26
BEFORE THE NORTH CAROLINA UTILITIES COMMISSION
Know All Men By these Presents, That

GLENDALE, WATER, INC.

is hereby granted this

CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

to provide water utility service in
WOODBROOK SUBDIVISION
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 the 12th day of April 1985.

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

APPENDIX C
DOCKET NO. W-691, SUBS 25, 26, and 27

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Application by Glendale Water, Inc., Route 3, Box 329-L, Raleigh, North Carolina, for Authority to Increase Its Rates for Water Utility Service in All Its Service Areas in North Carolina
and
Application by Glendale Water, Inc., Route 3, Box 329-L, Raleigh, North Carolina, for a Certificate of Public Convenience and Necessity to Furnish Water Utility Service in Woodbrook Subdivision in Wake County, North Carolina, and for Approval of Rates
and
Application by Glendale Water, Inc., Route 3, Box 329-L, Raleigh, North Carolina, for Approval of Transfer of Stock

NOTICE TO CUSTOMER

On April 12, 1985, the Commission issued an Order approving the interim rates which became effective on September 10, 1984, as the new rates for the Company. These approved rates are as follows:

METERED RATES (Monthly)

Base Facility Charge - (No usage included)	- $8.20 (minimum charge)
Usage Charge	- $2.40 (per 1,000 gallons)

Based upon an average monthly consumption of 5,500 gallons, these new rates will increase the average monthly metered bill for water utility service from $16.08 to $21.40 per month.

The Commission denied Glendale's request for an increase of $69,274 in current rates which would have been an increase of 62.21% over current rates. The Commission's approved rates yield an annual revenue increase of $34,883 which is an increase in current rates of 31.33%.

In conjunction with the approval of the rate increase, the Commission has required Glendale to make certain improvements to the water systems serving its customers. Glendale has been required to file bimonthly reports to the Commission indicating the progress it is making in upgrading its water systems. The Commission will review these reports and decide whether further action is needed.

The Commission also approved Glendale's request for a Certificate of Public Convenience and Necessity to furnish water utility service in Woodbrook Subdivision in Wake County and the transfer of 52% of the outstanding shares of Glendale Water, Inc., to Ray Vernon.

DOCKET NO. W-89, SUB 24

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Application of Hensley Enterprises for an	)	FINAL ORDER OVERRULING
Adjustment in Its Rates and Charges Applicable	)	EXCEPTIONS AND AFFIRMING
to Water Service in North Carolina	)	RECOMMENDED ORDER

HEARD IN: Commission Hearing Room, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on Monday, December 17, 1984, at 11:00 a.m.

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

APPEARANCES:

For the Applicant:

Charles F. Powers, III, Parker, Sink, Powers, Sink & Potter, Attorneys at Law, P.O. Box 1471, Raleigh, North Carolina 27602

For the Attorney General:

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

BY THE COMMISSION: On November 2, 1984, Hearing Examiner Partin entered a Recommended Order denying a rate increase but approving and continuing a 15% assessment. On November 19, 1984, the Attorney General filed exceptions to the Recommended Order.

Oral Arguments on the exception were subsequently heard by the Commission on December 17, 1984, with both the Applicant and Attorney General represented by counsel.

Based upon a careful consideration of the Recommended Order of November 2, 1984, the oral argument of the parties before the full Commission on December 17, 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 dated November 2, 1984, should be affirmed and adopted as the Final Order of the Commission; and each of the exceptions thereto should be overruled and denied.

However, the Commission is of the opinion that the Applicant should periodically meet with members of the Commission Staff, the Public Staff, the Division of Health Services, and the Gaston County Health Department to review the progress it is making in upgrading its water system. These meetings shall also be to review the quarterly reports required in the November 2, 1984, Order and to prepare a priority list of required improvements. These meeting shall occur on a six-month basis, the first meeting occurring not later than June 1, 1985.

IT IS, THEREFORE, ORDERED as follows:

1. That each and every exception of the Attorney General to the Recommended Order of November 2, 1984, be, and the same are hereby, overruled.

2. That the Recommended Order of November 2, 1984, be, and the same is hereby, affirmed and adopted as the Final Order of the Commission.

3. That the Applicant shall meet with a member of the Commission Staff, along with the requested assistance of the Public Staff, the Division of Health Services, and the Gaston County Health Department to review the progress it is making in upgrading its water System. Said meeting shall occur not later than June 1, 1985, and every six months thereafter until all improvements are made or until further notice by the Commission.

ISSUED BY ORDER OF THE COMMISSION.
This the 10th day of January 1985.

NORTH CAROLINA UTILITIES COMMISSION
Sandra J. Webster, Chief Clerk

(SEAL)

DOCKET NO. W-176, SUB 17

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of	
Application by Scientific Water and Sewerage Corporation, 656 Wilmington Highway, Jacksonville, North Carolina, for Authority to Increase Rates for Water and Sewer Utility Service in all of Its Service Areas in Onslow County, North Carolina	FINAL ORDER GRANTING PARTIAL INCREASE IN SEWER RATES AND DENYING INCREASE IN WATER RATES ON RECONSIDERATION

HEARD IN: The Commission Hearing Room, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on October 28, 1985, at 11:00 a.m.

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

APPEARANCES:

For the Applicant:

William E. Anderson, DeBank, Heidgerd, Holbrook, & Anderson, Attorneys at Law, P. O. Box 6503, Raleigh, North Carolina 27628
For: Scientific Water and Sewerage Corporation

For the Public Staff:

Vickie L. Moir, Staff Attorney, Public Staff - North Carolina Utilities Commission, P. O. Box 29520, Raleigh, North Carolina 27626-0520
For: The Using and Consuming Public

BY THE COMMISSION: On July 9, 1985, Hearing Examiner Sammy R. Kirby issued a Recommended Order to Scientific Water and Sewerage Corporation (Scientific, Applicant, or Company) entitled "Recommended Order Granting Partial Increase in Sewer Rates and Requiring Partial Decrease in Water Rates."

On July 22, 1985, the Company's attorney, William Anderson, filed a letter he had written to Sammy Kirby, correcting an unintentional misstatement of the facts concerning the Company's new blower room addition which were set forth in his Brief filed May 16, 1985. On July 24, 1985, the Hearing Examiner responded to the Company's attorney letting him know that he saw no need to change the Recommended Order issued July 9, 1985, with regard to the additional information contained in the letter.

On July 23, 1985, the Public Staff filed a motion for an extension of time to file exceptions to the Hearing Examiner's Recommended Order. An Order was issued on July 24, 1983, granting only to the Public Staff the requested extension. On July 29, 1985, the Commission issued an Order granting the extension of time to all parties in the proceeding. On July 31, 1985, the Company filed a motion for a further extension of time.

The Public Staff filed a Motion for Reconsideration on August 1, 1985. On August 22, 1985, the Hearing Examiner issued an Order on Reconsideration which modified in part his discussion of the Evidence and Conclusions for Findings of Fact Nos. 8, 13, and 14 of his Recommended Order.

On August 27, 1985, the Company filed its Notice of Appeal and Exceptions and its Brief in Support of Exceptions to the Recommended Order. Based upon the Applicant's filing of Notice of Appeal and Exceptions, the Commission on September 6, 1985, scheduled the matter for oral argument. On September 23, 1985, the Applicant requested that the date set for oral argument be extended. The Commission rescheduled the oral argument in an Order issued on September 24, 1985. But the Applicant on October 1, 1985, requested once again that the oral argument be extended. On October 3, 1985, the Commission issued an Order rescheduling the oral argument.

The oral argument on exceptions was subsequently heard by the Commission on October 28, 1985, with both the Applicant and the Public Staff present and represented by counsel. At the oral argument held on October 28, 1985, the Applicant requested the Commission to do two things in this case:

> "(1) to allow the Applicant to keep in effect the existing monthly minimum rate for water service existing prior to the hearing without reducing them in any fashion as proposed by the Public Staff and as adopted by the Hearing Examiner (plus the pass-through increase already allowed in August based on the price of purchased water), and (2) to allow the Applicant an additional 1.06% on its return margin on sewer service for an overall return margin of 15.16% rather than 14.10%."

The Commission has carefully reviewed the entire record in this docket concerning the issues presented in the Company's Notice of Appeal and Exceptions and Brief in Support of Exceptions and at the oral argument of October 28, 1985, and concludes that Findings of Fact Nos. 13 and 14 of the Recommended Order of July 9, 1985, relating to the 14.10% margin above expenses under the operating ratio methodology for setting the water rates and the 14.10% overall return on rate base methodology for setting the sewer rates, are inappropriate in this case and should be reconsidered pursuant to G.S. § 62-80. 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 Scientific and to the Public Staff.

At the oral argument, the Company requested that its monthly minimum water rate for its customers in Cedar Creek, Raintree, Deerfield, and Summersill Subdivisions be left at the pre-hearing or existing level, plus the pass-through allowance granted in Docket No. W-176, Sub 18, wherein the Commission recognized that Scientific's purchases of water from Onslow County for resale have increased by 15 cents per 1,000 gallons effective August 1, 1985, and allowed the Company to collect the pass-through increase from its customers in Cedar Creek, Raintree, Deerfield, and Summersill Subdivisions. The Company's existing water rates in the four subdivisions at issue in this proceeding are presently:

First 2,000 gallons (minimum charge)	-$7.00/month
All over 2,000 gallons	-$1.55/1,000 gallons/month

In its Brief filed August 27, 1985, the Company stated that the result of its request with regard to the water rates is that there "... would be no increase for water, except for a $.30 pass-through allowed during the pendency of this case." In support of its requested water rates, the Company presented the following: (1) its return recommendation of 15.16%; (2) its position that it be allowed to keep its existing rates before the August 1, 1985, pass-through on the rationale that the resulting "operating cushion" (revenues in excess of allowed return margin) be used to defray the costs of a meter replacement program, or the installation of chlorine scales, or the double system chlorinator device (discussed in the Recommended Order of July 9, 1985); (3) its belief that the reallocation of general expenses between the water and sewer operations resulted in ball park "guestimates" that should not be considered as a sufficient basis for a reduction of water rates simply to make the water revenues precisely fit the approved rate of return (however, the Applicant stated that it did not contest the validity of the allocations); and (4) its opinion that its customers are comfortable with the existing water rates and that the rates can be left where they are without creating a problem for anyone.

With regard to the sewer rates, the Company stated that its request for an overall rate of return of 15.16%, as compared with the return established by the Hearing Examiner of 14.10% would amount to an increase of approximately $.31 per customer per month.

In the hearing which took place on April 2, 1985 (Resulted in Recommended Order of July 9, 1985), Public Staff witness George Sessoms and Company witness Carmen Aragona testified as to the issues of appropriate operating ratios and returns on the water and sewer operations, respectively.

Public Staff witness Sessoms recommended that the operating ratio method was appropriate for setting water rates and the return on rate base method was appropriate for setting sewer rates in this proceeding. The Company and the Public Staff were in agreement as to these methodologies but disagreed on the issue of return. Witness Sessoms testified that he derived the margin above expenses for the operating ratio and the overall rate of return on rate base by combining the 11.1% risk-free rate on five-year U.S. Treasury Bonds (T-bill) with a three-percentage-point factor to adjust for risk, resulting in a 14.1% overall rate of return. Witness Sessoms recommended that for the water operation the Applicant be granted an operating ratio of 87.64% excluding taxes and interest or 90.82% including taxes and interest and for the sewer operation, a 14.1% return on rate base.

At the April 2, 1985, hearing, the Applicant challenged witness Sessoms' testimony through cross-examination and the testimony of Company witness Carmen Aragona. The Applicant questioned witness Sessoms regarding the use of a longer time period for establishing the T-bill rate. Witness Sessoms had averaged T-bill rates over a 13-week period to arrive at the 11.1% risk-free rate he used. Witness Sessoms pointed out that, if one were to go back a year, investor's expectations would be different and that the further back one goes, the more irrelevant it becomes. He stated that "the key point to remember is the more recent data is the more relevant data." Witness Sessoms was also

questioned concerning the Company's interest coverage ratio. He stated that he had calculated a 2.1 times pre-tax interest coverage for the total Company. He testified that, in his opinion, this level of coverage was adequate. He also noted that the owner had chosen not to invest equity into the system and that the pro forma capital structure used by the Public Staff of 50% debt and 50% equity would cause a higher-than-actual income tax expense to be imputed to the Company, which would enable the Company to move toward that capital structure.

Company witness Aragona stated that, based on his knowledge as a businessman in the Jacksonville area, he did not think the 14.1% return recommended by the Public Staff was adequate compensation for engaging in this kind of business. At the April 2, 1985 hearing, it was the opinion of the Company that the Commission should consider the risk-free rate of return to be in the range of from 11.10% to 12.90% and should conclude that the return for this particular corporation should be in the upper end of that range, at, for example, 12.50%. Further, the Company also believed the Commission should allow a 3.5% to 4% risk factor for the Company. Witness Aragona testified that, in his opinion, an appropriate overall rate of return would be at least 16% or 16.5%.

At the oral argument held October 28, 1985, the Applicant further argued that it was improper to assess the appropriate risk-free rate by looking at something as volatile as weekly five-year government bonds for a period as short as 13 weeks. The Company argued that the particular 13-week period utilized by the Public Staff economist was lower than the other relevant data for the weeks before it and after it and was thus an unrepresentative and defective basis upon which to establish a risk-free rate. Furthermore, the Company pointed out that Public Staff witness Sessoms had testified that it was not "policy per se to take the 13-week average." The Company believes that there is no real justification for using a 13-week period in this case and pointed out that witness Sessoms' testimony does not indicate that his 13-week period was based on any natural grouping of the data. In this regard, the Company stated that witness Sessoms at the April 2, 1985, hearing admitted that his 13-week period "...may be the lowest point..." in the entire trend of the last year or so.

To illustrate what an impact a short period of weeks being utilized for this purpose can have, the Company compared the results in this case to those in Montclair Water Company's 1984 rate case that was being tried in November 1984, at about the same time Scientific's case was being filed. The weekly T-bill rates in effect during the period approximately consistent with the hearing in the Montclair Water Company case, late October through mid-November, 1984, were weekly rates as follows: 11.81%, 11.78%, 11.42%, 11.55%, and 11.36%. In comparison, the yields for a comparable length period prior to Scientific's rate case, mid-February through mid-March, 1985, were 11.10%, 11.43%, 11.68%, 11.52%, and 11.75%. If these two comparable periods are averaged, in one case the risk-free rate appears to be 11.58%, and in one case the risk-free rate appears to be 11.49%. These results are similar, yet in the Montclair Water Company case, the risk-free rate was set at 12.90%, for an overall return margin of 15.90%, in the Scientific case, the risk-free rate was 11.10%, for an overall return margin of 14.10%. The Company concludes that the use of the 13-week period is excessively short, has no legal or factual basis, and compared to the results in the Montclair Water Company case, its gross

annual revenues will be much lower due to the differences in return granted to the two companies because of the use of the 13-week period.

As an alternative to the 13-week period utilized by the Public Staff and in the absence of any apparent natural grouping of the data, the Company recommends that the Commission use a period of one year. The Company believes that this period is appropriate in that it better evens out the fluctuations and leads to a better valuation of the utility's prospective earnings. If a one-year data base were utilized in this case, based on Sessoms' Late Filed Exhibit No. 1, the risk-free rate would be 12.16%, and if a 3% risk factor were used, the overall return margin would be 15.16%.

In further support of the 15.16% return, the Company also argued that its pre-tax interest coverage ratio should be higher than the 2.1 times found fair by the Hearing Examiner. The Company considers a pre-tax interest coverage of 2.5 times to be more acceptable and adequate.

Further, the Applicant stated that, if the Commission should decide not to agree with the 15.16% return, then the Commission should exercise its discretion in connection with the risk factor and approve a risk factor in excess of 3% in order to increase the interest times coverage. In a word, the Applicant contends that there is ample justification for increasing the risk-free rate and there is ample justification for increasing the risk factor. In either event, by whichever method, the Applicant contends that it needs and deserves an overall return margin more in the range of 15% to 15.5% than a return of 14.10% as recommended by the Public Staff and approved by the Hearing Examiner.

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 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 finds and concludes that the overall fair rate of return that Scientific should have the opportunity to earn on the original cost of its rate base with regard to its sewer operations is 15.16%. The Commission further concludes with regard to the water operations that an operating ratio of 86.89% excluding taxes and interest or 89.79% including taxes and interest is appropriate and will allow the Applicant a fair and reasonable return.

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 are just and reasonable to the Applicant and to its customers.

The sewer rate as set forth in Appendix A is the appropriate rate and will produce a 15.16% return on rate base. The water rates as set forth in Appendix A are the appropriate rates and will produce an operating ratio of 86.89% excluding taxes and interest or 89.79% including taxes and interest. The water rates approved herein for the customers in Cedar Creek, Raintree, Deerfield, and Summersill Subdivisions properly reflect the August 1, 1985, pass-through of the increase by 15 cents per 1,000 gallons of the cost of water purchased by Scientific from Onslow County for resale in the aforementioned subdivisions.

IT IS, THEREFORE, ORDERED as follows:

1. That the Schedule of Rates attached hereto as Appendix A be, and is hereby, approved for water and sewer service rendered by Scientific Water and Sewerage Corporation.

2. That the rates approved in Ordering Paragraph No. 1 shall become effective for service rendered on and after the effective date of this Order.

3. That said Schedule of Rates be, and is hereby, deemed to be filed with the Commission pursuant to G.S. § 62-138.

4. That a copy of the Notice to Customers attached hereto as Appendix B shall be mailed or hand delivered to all of the Applicant's customers in conjunction with the next regularly scheduled billing.

5. That, except as modified herein, the Recommended Order entered in this docket on July 9, 1985, and the Order on Reconsideration issued August 22, 1985 modifying the Recommended Order in part, be, and is hereby, otherwise affirmed.

6. That, except as granted herein, the Notice of Appeal and Exceptions filed in this docket on August 27, 1985, by the Applicant be, and is hereby, otherwise denied.

ISSUED BY ORDER OF THE COMMISSION.
This the 21st day of November 1985.

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

APPENDIX A
SCHEDULE OF RATES
SCIENTIFIC WATER AND SEWERAGE CORPORATION
for providing water and sewer utility service
in all its service areas in North Carolina

WATER SERVICE

-LAURADALE SERVICE AREA-

Metered Rates

First 3,000 gallons per month	-	$6.00 (minimum charge)
All over 3,000 gallons per month	-	$1.10/1,000 gallons

Flat Rate

One-bedroom apartments	-	$7.00/unit/month
Two-bedroom apartments	-	$8.20/unit/month

WATER AND SEWER - RATES

-CEDAR CREEK, RAINTREE, DEERFIELD, AND SUMMERSILL SERVICE AREAS-

Metered Rates
First 2,000 gallons per month - $7.00 (minimum charge)
All over 2,000 gallons per month - $1.55/1,000 gallons

SEWER SERVICE (All Service Areas) All customers - $17.51 flat rate per month

Note: Apartment rates are payable by owner-landlord on a monthly basis for each apartment or unit whether or not unit is occupied.

Connection Charge

	Water	Sewer
Cedar Creek	$150	$150
Raintree	$150	$250
All other service areas	$250	$450

Reconnection Charge
If water service cut off by utlity for good cause - $20.00

Deposits
2/12 of a yearly bill. This charge shall be individually computed, based on the most recent 12-month period, each time water is cut off for good cause.

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.

Bills Due: On billing date
Bills Past Due: Twenty-five (25) days after billing 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-176, Sub 17, on this the 21st day of November 1985.

APPENDIX B
DOCKET NO. W-176, SUB 17

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Application by Scientific Water and Sewerage Corporation, 656 Wilmington Highway, Jacksonville, North Carolina, for Authority to Increase Rates for Water and Sewer Utility Service in all of Its Service Areas in Onslow County, North Carolina	)	NOTICE TO CUSTOMERS OF NEW RATES

NOTICE IS HEREBY GIVEN that the North Carolina Utilities Commission has approved the rates stated hereinafter for Scientific Water and Sewerage Corporation in its service areas in Onslow County, North Carolina.

SCHEDULE OF RATES
for
SCIENTIFIC WATER AND SEWERAGE CORPORATION
for providing water and sewer utility service
in all its service areas in North Carolina

WATER SERVICE

-LAURADALE SERVICE AREA-

Metered Rates
First 3,000 gallons per month - $6.00 (minimum charge)
All over 3,000 gallons per month - $1.10/1,000 gallons

Flat Rate
One-bedroom apartments - $7.00/unit/month
Two-bedroom apartments - $8.20/unit/month

-CEDAR CREEK, RAINTREE, DEERFIELD AND SUMMERSILL SERVICE AREAS-

Metered Rates
First 2,000 gallons per month - $7.00 (minimum charge)
All over 2,000 gallons per month - $1.55/1,000 gallons

SEWER SERVICE (All Service Areas) All customers - $17.51 flat rate per month

Note: Apartment rates are payable by owner-landlord on a monthly basis for each apartment or unit whether or not unit is occupied.

Connection Charge

	Water	Sewer
Cedar Creek	$150	$150
Raintree	$150	$250
All other service areas	$250	$450

Reconnection Charge
If water service cut off by utility for good cause - $20.00

Deposits
2/12 of a yearly bill. This charge shall be individually computed, based on the most recent 12-month period, each time water is cut off for good cause.

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.

Bills Due: On billing date
Bills Past Due: Twenty-five (25) days after billing 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-176, Sub 17, on this the 21st day of November 1985.

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 and Transfer of Mt. Mitchell Lands West Subdivision from Sweet Water Mountain Lands Company and Approval of Rates	)	ORDER ON RECONSIDERATION (INCLUDING CORRECTED SCHEDULE OF RATES)

PARTIN, HEARING EXAMINER: (The Order on Reconsideration issued February 15, 1985, is hereby reissued in order to include the missing page 2 and the corrected schedule of rates.)

On December 14, 1984, the Hearing Examiner issued a Recommended Order in this proceeding approving the transfer of franchise and approving rates. The Recommended Order provided that exceptions were due on or before December 31, 1984, and the the Order would become effective and final on January 5, 1985.

No exceptions were filed to the Recommended Order.

On January 3, 1985, the Public Staff filed Motion to Reconsider in this proceeding. In its motion, the Public Staff took no issue with the decision in the Order, but it did request the Commission to reconsider certain language in the Recommended Order as particularly set forth in the motion.

On January 4, 1985, the Commission issued an Order extending the effective and final date of the Recommended Order in this docket to and including January 25, 1985, in order to give the Hearing Examiner an opportunity to consider the Motion to Reconsider of the Public Staff and to allow the utility the opportunity to file a Response to the Motion to Reconsider. The Public Staff and the Company stipulated that the rates approved in this proceeding could become effective for service rendered on and after January 1, 1985.

On January 14, 1985, the Applicant Carolina Water Service, Inc. of North Carolina, filed its Motion for Reconsideration and Response to Motion to Reconsider. In this pleading, the Company requested that the Public Staff's Motion be summarily denied and that the Commission's Recommended Order be modified to accord with the Company's proposed Recommended Order that was filed in this proceeding. The Company further requested that it be given an opportunity for oral argument if the Commission did not deny the Public Staff's Motion and grant the Company's Motion.

The Examiner has carefully considered the Motions filed by the Public Staff and by the Company and issues this Order.

IT IS, THEREFORE, ORDERED as follows:

1. That that part of the Recommended Order of December 14, 1984, entitled "Conclusions and Discussion of Evidence," beginning on page 3 and concluding on page 4, be modified to read in full as follows:

CONCLUSIONS AND DISCUSSION OF EVIDENCE

1. The Examiner concludes that the proposed transfer to Carolina Water Service of the water utility franchises of Mitchell Lands, Inc. and Sweet Water Mountain Lands Company, Inc., is justified by the public convenience and necessity. This issue was not contested by the parties.

2. The Examiner concludes that the proposed rates to be charged by Carolina Water Service are just and reasonable and should be approved.

3. With respect to the transfers under consideration in this docket, the Examiner concludes that no acquisition adjustment should be made to eliminate the respective purchase prices from the rate base of Carolina Water Service. 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 the Company's investment in the two water systems. Such investment base is the proper base to be used both currently and prospectively for ratemaking purposes.

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 (Mt. Mitchell Lands), the record reflects that the transferee paid $5,000 for the utility systems. In the Sub 29 Docket (Sweet Water Mountain Lands), 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 relied 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.

Mr. O'Brien, the witness for Carolina Water Service, Inc., contended that gross profit margin is an improper method of determining whether costs of constructing a water system have been recovered. Too many factors affect the gross profit margin for it to be used to show recovery of water system construction costs. The cost of the land when originally purchased and the price set by the developer are the primary factors that affect gross profit. Neither of these factors is related directly to the cost of constructing a water system. Gross profit is also a poor measure of recovery of

cost because it does not show the actual return to the developer. Net profit better indicates whether the developer's costs have been recovered, because it takes into account all the expenses related to the development of the land.

The Company also contended, and offered evidence in support thereof, that low or nonexistent usage fees charged by the developer in the early stages of development do not indicate that costs of constructing the water system have been recovered.

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 was 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.

Upon consideration of the evidence in this proceeding, the Examiner concludes that no acquisition adjustment should be made to eliminate the purchase prices from the rate base of Carolina Water Service. The purchaser of a utility is allowed to include at least the purchase price of the utility in its rate base where the purchase price is less than the net original cost at the time of purchase. See State ex rel. Utilities Commission v. Heater Utilities, Inc, 288 N.C. 457, 219 S.E. 2d 56 (1975). The Mt. Mitchell water system had a net cost of $191,050 and was sold to Carolina Water Service for $5,000. The Sweet Water Mountain Lands System had a net cost of $104,650 and was sold to Carolina Water Service for $10,000.

Further, once a utility presents evidence of the value of its rate base, a party to the proceeding must present affirmative evidence challenging the reasonableness of that value in order to require the applicant to produce evidence of the reasonableness. State ex rel. Utilities Commission vs. Intervenor Residents, 305 N.C. 62, 286 S.E. 2d 770 (1982). A mere showing that the developer enjoyed high profit margins on land sales is not of sufficient probative value to impose an additional burden of proof on the applicant.

Notwithstanding its position with respect to rate base, the Public Staff did not oppose the transfers in this proceeding. Consequently, the water systems have been acquired by a professional, experienced utility financially capable of improving, operating, and maintaining the systems. The position of the Public Staff with respect to rate base in this case, if adopted by the Commission, would discourage the takeover, under similar factual circumstances, of small, developer-owned water systems by experienced and

financially capable utilities. The decision in this case, however, should not act as a bar to any effort of the Public Staff to evaluate the purchase price of a utility in future proceedings. As pointed out by the Company in its Motion for Reconsideration, if the Public Staff can show with probative evidence that the costs have been recovered previously by the developer, rate base will be denied.

4. 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.

2. That Ordering Paragraph 3 of the Recommended Order of December 14, 1984, is hereby rescinded. The Schedule of Rates attached to this Order as Appendix A is hereby approved as the just and reasonable rates for Mount Mitchell Lands and Mount Mitchell Lands West Subdivisions.

3. That except as modified herein above the Recommended Order of December 14, 1984, is reaffirmed.

4. That the Recommended Order of December 14, 1985, shall become effective and final on February 15, 1985.

ISSUED BY ORDER OF THE COMMISSION.
This the 19th day of February 1985.

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 Carolina Water Service for Authority to Transfer the Franchise to Provide Water and Sewer Utility Service in Bear Paw Subdivision in Cherokee County, North Carolina, and for Approval of Rates	))))	ORDER ON RECONSIDERATION

PARTIN, HEARING EXAMINER: On December 14, 1984, the Hearing Examiner issued a Recommended Order in this proceeding approving the transfer of franchise and approving rates. The Recommended Order provided that exceptions were due on or before December 31, 1984, and that the Order would become effective and final on January 5, 1985.

No exceptions were filed to the Recommended Order.

On January 3, 1985, the Public Staff filed Motion to Reconsider in this proceeding. In its motion, the Public Staff took no issue with the decision in

the Order, but it did request the Commission to reconsider certain language in the Recommended Order as particularly set forth in the motion.

On January 4, 1985, the Commission issued an Order extending the effective and final date of the Recommended Order in this docket to and including January 25, 1985, in order to give the Hearing Examiner an opportunity to consider the Motion to Reconsider of the Public Staff and to allow the utility the opportunity to file a Response to the Motion to Reconsider. The Public Staff and the Company stipulated that the rates approved in this proceeding could become effective for service rendered on and after January 1, 1985.

On January 14, 1985, the Applicant Carolina Water Service, Inc. of North Carolina filed its Motion for Reconsideration and Response to Motion to Reconsider. In this pleading, the Company requested that the Public Staff's Motion be summarily denied and that the Commission's Recommended Order be modified to accord with the Company's proposed Recommended Order that was filed in this proceeding. The Company further requested that it be given an opportunity for oral argument if the Commission did not deny the Public Staff's Motion and grant the Company's Motion.

The Examiner has carefully considered the Motions filed by the Public Staff and by the Company and issues this Order.

IT IS, THEREFORE, ORDERED as follows:

1. That the part of the Conclusions of the Recommended Order in this docket entitled "The Acquisition Adjustment", beginning on page 4 and concluding on page 6 immediately before the Ordering Paragraphs, be modified to read in full as follows:

The Acquisition Adjustment

The Examiner concludes 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.

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 recommended 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 recommended adjustment would 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 in this docket (Sub 33) 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 contended that the Public Staff approach is contrary to the established policy of this Commission and the case law of the State of North Carolina. The Company argued that the approach of the Public Staff shifted the burden of proof to the utility to show that the cost has 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.

The Examiner concludes 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. The purchaser of a utility is allowed to include at least the purchase price of the utility in its rate base where the purchase price is less than the net original cost at the time of purchase. See State ex rel. Utilities Comm. v. Heater Utilities, Inc., 288 N.C. 457, 219 S.E.2d 56 (1975). Once a utility establishes the value of its rate base, a party to the proceeding must present affirmative evidence challenging the reasonableness of that value in order to require the applicant to produce evidence of the reasonableness. State ex rel. Utilities Comm. v. Intervenor Residents, 305 N.C. 62, 286 S.E.2d 770 (1982).

The Public Staff failed to present sufficient affirmative evidence in this proceeding challenging the reasonableness of the rate base amount. For instance, one of the factors cited by the Public Staff witness to indicate that the costs were recovered is whether or not the developer makes a statement to the lot purchaser that a portion of the purchase price of the lot is for constructing the water system. Public Staff witness Kent admitted that no such statement was made in this case. (Tr. p. 86). Another factor cited by the Public Staff is the existence of a high gross profit margin

earned by the developer on the sale of lots. Mr. Kent admitted, however, that the 18% gross profit margin earned by the developer in this case was not excessive and that he would not assume that the developer has recovered the cost of a water system based on that gross profit margin. (Tr. p. 99).

The Public Staff witness also acknowledged that gross profit margin may not be a proper measure of whether construction costs have been recovered by the developer. Public Staff witness Kent admitted that several variables unrelated to the recovery of construction costs of a water system affected gross profit. (Tr. pp. 92-93). The cost of the land when originally purchased and the price set by the developer are the two primary factors that affect gross profit, and neither are related to the cost of constructing the water system. As Mr. Kent stated, "there is always a fallacy . . . when you start figuring the sales price over the cost of something, especially in the cost of land you've got to consider how much has the value of that land increased since it was purchased initially . . ." (Tr. p. 92). The Public Staff made no attempt to investigate the circumstances surrounding the purchase and sale of the lots in the Bear Paw Subdivision. (Tr. pp. 93-94).

Witness Kent also stated that the costs of constructing the water and sewage systems have been recovered by the developer through benefits accrued to the developer's interests in increased value and sales ability of the improved lots. Witness Kent maintained that profits from the sale 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; the Public Staff contended that the customers have therefore paid for the utility. (Tr. p. 124). As mentioned earlier, Mr. Kent admitted that the gross profit margin realized by the Company was on the sale of land and was not an unreasonable profit. (Tr. pp. 99-100). Mr. Kent was unable to say that the developer had actually recovered the cost of the utility systems through the sale of lots.

The Examiner must conclude that the evidence presented by the Public Staff in this case did not support the Public Staff position that the costs of the utility systems have been recovered by the developer.

The customers of Bear Paw have experienced substandard water service over the years. (See Docket No. W-500, Sub 4). The system required $60,000 of improvements merely to bring it into compliance with the Division of Health Services standards. (Tr. pp. 10-11). As the system grows, it will need additional expenditures to expand and maintain adequate service. This will require a well-financed, experienced professional utility. The position of the Public Staff in this case, if adopted by the Commission, would discourage the takeover, under similar factual circumstances, of small, troubled, developer-owned water systems by experienced utility companies financially capable of improving, operating, and maintaining such systems. The decision in this case, however, should not act as a bar to any effort of the Public Staff to evaluate the purchase price of a

utility in future proceedings. As pointed out by the Company in its Motion for Reconsideration, if the Public Staff can show with probative evidence that the costs have been recovered previously by the developer, rate base will be denied.

2. That except as modified in Ordering Paragraph 1 above, the Recommended Order of December 14, 1984, in this docket is reaffirmed.

3. That the Recommended Order of December 14, 1984, shall become effective and final on February 15, 1985.

ISSUED BY ORDER OF THE COMMISSION.
This the 15th day of February 1985.

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

DOCKET NO. W-816

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Gladys Haynes and G. W. Smith and Wife, Mary J. Smith, Smith-Haynes Development, Hazelwood Township, Buncombe County, North Carolina - Show Cause Proceeding to Determine Public Utility Status	)	RECOMMENDED ORDER DECLARING PUBLIC UTILITY STATUS

HEARD IN: Commissioner's Board Room, Buncombe County Courthouse, Asheville, North Carolina, on Thursday, February 7, 1985, at 7:00 p.m.

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

APPEARANCES:

For the Respondent, Gladys Haynes:

Robert F. Orr, Shuford, Best, Rowe, Brondyke & Orr, 233 Haywood Building, P. O. Box 1371, Asheville, North Carolina 28802

For the Intervenors/Complainants:

Joseph C. Reynolds, Attorney at Law, 1 Oak Plaza, Asheville, North Carolina 28802
For: Richard Snyder, Ronnie Reeves, Bill Shuford, Paul Robinson, and Dillard Searcy

For the Using and Consuming Public:

Antoinette Wike, Chief Counsel, Public Staff - North Carolina Utilities Commission, P. O. Box 29510, Raleigh, North Carolina 27626-0520

PARTIN, HEARING EXAMINER: On January 4, 1985, Richard Snyder, Ronnie Reeves, and other property owners in the Smith-Haynes Development located off Cedar Hill in Hazelwood Township, Buncombe County, North Carolina, filed a formal complaint with respect to water service being provided to them by Gladys Haynes and G. W. Smith and wife. The complaint alleged that the water supply is grossly inadequate and has reached a critical stage and that there now exists a state of emergency. Complainants asked that there be an immediate hearing of the complaint and that an order issue so that the developers be required to remedy the said inadequate water supply.

On January 14, 1985, the Commission issued an Order Instituting a Show Cause Proceeding on the complaint and scheduled a hearing on February 7, 1985, in Asheville. The Order required that Gladys Haynes and G. W. Smith and wife appear before the Commission at that time and place and show cause why they should not be declared a public utility subject to the jurisdiction of the Commission. The Order provided that the Clerk shall cause the Order to be served upon the Respondents by the Sheriff of Buncombe County.

The complaint and show cause proceeding came on for hearing as scheduled on Thursday, February 7, 1985, in Asheville. The Respondent Gladys Haynes was present and represented by counsel. The Complainants and Intervenors were also present and represented by counsel, as well as the Public Staff. The following customers of the water system appeared and offered testimony about the problems they were experiencing with the water service in the Smith-Haynes Development: Dillard Searcy, Paul Robinson, William Shuford, Ronnie Reeves, Richard Snyder, Barbara Thomas, and William Thomas. The Complainants called as an adverse witness Gladys Haynes.

The Respondent Gladys Haynes did not offer testimony in her behalf. G. W. Smith and wife, Mary J. Smith, were not present, the Sheriff's return as to them having stated that the Smiths were residing in the State of Florida.

Upon consideration of the testimony and exhibits presented at the hearing and the entire record in this docket, the Examiner makes the following

FINDINGS OF FACT

1. The Smith-Haynes Development (or Subdivision) is located in Hazelwood Township, Buncombe County, outside of the city limits of Asheville. The Development was begun in the 1970s by the husband of Gladys Haynes and Mr. G. W. Smith. Mr. Haynes died in 1983. Mr. Smith and his wife live in Florida and are unable to operate the water system.

2. There are at least 15 homes and trailers in the Subdivision on lots that were purchased from the Haynes and the Smiths.

3. The developers, Smith and Haynes, told the purchasers of lots in the Subdivision that water would be available to them. The developers installed a distribution line to serve the Subdivision. Water is purchased from the city of Asheville. The water is delivered to the Subdivision from the city's lines through a master meter on Bailey Road in the Subdivision and from there the water is distributed to the residences throughout the Subdivision.

4. At present approximately 15 homes and trailers are connected to the distribution line and are served with water. Mrs. Haynes is billed by the city for the water that flows through the master meter, and she in turn divides the bill among the number of homes in the Subdivision receiving water and bills each homeowner an equal amount. The bills have been ranging in amounts from $5.00 to $16.00 a month.

5 The lot owners in the Subdivision have experienced, and are experiencing, severe shortages of water. Customers in the higher elevations of the Subdivision have been unable to get water during the day. At times water does not become available until the later evening or very early morning. Water pressure has been the lowest during the summer months. One resident has had no water to his trailer home since the week before Thanksgiving; this resident has a family of two children, ages nine and 10. Residents in many cases have to bring in water from outside sources in order to have water for cooking, washing, and flushing commodes. Some of the lot owners have tried to rent their trailers, but the tenants have left after a week or so because there is no water to the trailer.

6. The developers of the property began to receive complaints about the water system in the mid 1970s. At one time, there were plans for the city of Asheville to build a reservoir in the Subdivision and provide water therein, but this plan did not materialize. Mrs. Haynes has attempted to get the city to take over the water system and supply water to the residences therein but so far her attempts have been unsuccessful. Mrs. Haynes has consulted with an engineer and a plumber to attempt to solve the water problems complained of by the residents.

7. Many of the lot owners are continuing to pay Ms. Haynes for the purchase price of the lots on a monthly basis, in addition to the monthly water bills. Some residents have stopped paying their water bills because of the inadequate or nonexistent supply of water.

CONCLUSIONS

1. The water system operated by Gladys Haynes in the Smith-Haynes Development, Hazelwood Township, Buncombe County, North Carolina, is a public utility and is subject to regulation by this Commission pursuant to N.C.G.S. Chapter 62. Mrs. Haynes should be declared a public utility.

G.S. 62-3(23)a2 defines a public utility as a person owning or operating equipment or facilities for

> "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, 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; ..."

The evidence presented at the Asheville hearing clearly established that Gladys Haynes operates a water system in the Smith-Haynes Development and provides water for compensation to more than 10 residential customers living there. Mrs. Haynes herself testified that she was serving water to 15 persons in the Subdivision for compensation. She further testified that she is billed by the City of Asheville for the water that enters the master meter on Bailey Road and that she in turn takes the bill from the City of Asheville and divides it by the number of homes using the water system and mails the homeowners their share of the monthly water bill. Mrs. Haynes further testified that her husband and Mr. G. W. Smith began the development of the Subdivision in the early 1970s. Her husband passed away in November 1983, and Mr. Smith now lives in Florida and is unable to operate or look after the water system.

2 Gladys Haynes should take all necessary steps to improve the water system in the Smith-Haynes Development, in accordance with the rules and regulations of the North Carolina Division of Health Services, so that the customers of the water system in the Development receive an adequate supply of

water, which includes sufficient water pressure at each residence of at least 30 pounds per square inch of pressure.

There was a great deal of testimony about the severe shortages of water in the Subdivision and the hardships such shortages have imposed upon the residents. Ronnie Reeves testified that he has had no water to his trailer since the week before Thanksgiving and that he has two small children. Richard Snyder testified that he does not get water until midnight. "So far, the past several months I've been going down to our service store about a quarter mile down the road and carrying my jugs of water up from the laundromat there." Some of the homeowners have been unable to rent their trailers because of the water problems.

Mrs. Haynes testified about her attempts to get the City of Asheville to take over the system, but these attempts have been unsuccessful. She has recently consulted with an engineer and a plumber about the water system.

Because of hardships that the lack of adequate water imposes upon the residents in the Development, Mrs. Haynes should be required to take immediate steps to correct the problems complained of.

IT IS, THEREFORE, ORDERED as follows:

1 That Gladys Haynes be, and hereby is, declared a public utility providing water utility service to the Smith-Haynes Development, Hazelwood Township, Buncombe County, subject to the jurisdiction of the Commission.

2. That within 10 days after the effective date of this Order, Gladys Haynes shall complete and file with the Commission the application for a certificate of public convenience and necessity for the water system in the Smith-Haynes Development and for approval of rates. A copy of the application is attached to the Order. Mrs. Haynes shall submit the original and five copies to the Commission and a $25 filing fee.

3. That Mrs. Haynes shall immediately take all necessary steps to improve the water system in the Smith-Haynes Development, in accordance with the rules and regulations of the North Carolina Division of Health Services, so that the customers of the water system in the Subdivision receive an adequate supply of water, which includes sufficient water pressure at each residence in the Subdivision of at least 30 pounds per square inch of pressure.

At the time Mrs. Haynes files the application required in Ordering Paragraph 2 above, she shall also file a report setting forth what steps she is undertaking to comply with this Order with respect to improvements.

4. That the Public Staff is requested to monitor the service being provided by Mrs. Haynes in the Smith-Haynes Subdivision to determine compliance with this Order.

ISSUED BY ORDER OF THE COMMISSION.
This the 21st day of February 1985.

NORTH CAROLINA UTILITIES COMMISSION
Sandra J. Webster, Chief Clerk

(SEAL)

DOCKET NO. W-816

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Gladys Haynes and G. W. Smith and Wife, Mary J. Smith, Smith-Haynes Development, Hazelwood Township, Buncombe County, North Carolina - Show Cause Proceeding to Determine Public Utility Status	))))	FINAL ORDER OVERRULING EXCEPTION, DENYING MOTION, AFFIRMING RECOMMENDED ORDER, AND REQUIRING PROGRESS REPORTS

HEARD IN: The Commission Hearing Room, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on July 1, 1985, at 4:00 p.m.

BEFORE: Chairman Robert K. Koger, Presiding; and Commissioners Edward B. Hipp, Sarah Lindsey Tate, A. Hartwell Campbell, Julius A. Wright, and Robert O. Wells

APPEARANCES:

For the Respondent, Gladys Haynes:

Robert F. Orr, Shuford, Best, Rowe, Brondyke & Orr, 233 Haywood Building, P. O. Box 1371, Asheville, North Carolina 28802

For the Using and Consuming Public:

Antoinette Wike, Chief Counsel, Public Staff - North Carolina Utilities Commission, P. O. Box 29510, Raleigh, North Carolina 27626-0520

BY THE COMMISSION: On March 10, 1985, the Respondent through her attorney filed an exception to the Recommended Order of Hearing Examiner Partin which was issued February 21, 1985. The exception was to Conclusion of Law No. 1 which found Gladys Haynes to be a public utility and subject to regulation by the North Carolina Utilities Commission.

On April 26, 1985, Ronald E. Reeves, a customer of the Respondent, filed a complaint and motion in this matter, requesting that the Commission (1) transfer this matter to the Buncombe County Superior Court, (2) order Gladys Haynes to show cause why she should not be held in contempt of the Commission Order of February 21, 1985, and (3) order Gladys Haynes to take immediate steps to correct the water problems in Smith-Haynes Development.

On April 26, 1985, the Commission issued an Order scheduling the exception for oral argument before the full Commission on July 1, 1985, and on May 9, 1985, the Commission issued an Order setting the complaint and motion for oral argument at the same time and place as the oral argument on the exception.

The matter came on for oral argument as scheduled on July 1, 1985. The Respondent and the Public Staff were present, represented by counsel, and made oral argument.

Based upon a careful consideration of the Recommended Order of February 21, 1985, the oral argument of the parties before the full Commission on July 1, 1985, 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 February 21, 1985, should be affirmed and adopted as the Final Order of the Commission; that the exception filed on March 10, 1985, should be overruled and denied; that parts (1) and (2) of the motion filed on April 26, 1985, should be overruled and denied (part (3) is the same as Ordering Paragraph No. 3 of the Recommended Order of February 21, 1985, which is allowed); and that the Respondent should begin filing monthly reports to the Commission as to the progress she is making in bringing the water system in Smith-Haynes Development into compliance with the minimum standards of the North Carolina Division of Health Services.

IT IS, THEREFORE, ORDERED as follows:

1. That the exception of the Respondent to the Recommended Order of February 21, 1985, be, and the same is hereby, overruled.

2. That parts (1) and (2) of the the motion of Ronald E. Reeves, filed on April 26, 1985, be, and the same is hereby, denied.

3. That the Respondent shall begin filing monthly reports to the Commission as to the progress she is making in bringing the water system in Smith-Haynes Development into compliance with the minimum standards of the North Carolina Division of Health Services. The first report shall be filed on or about August 1, 1985.

4. That, with the inclusion of Ordering Paragraph No. 3 above, the Recommended Order of February 21, 1985, be, and the same is hereby, affirmed and adopted as the Final Order of the Commission.

ISSUED BY ORDER OF THE COMMISSION.
This the 24th day of July 1985.

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

TABLE OF CONTENTS
OF
UTILITIES COMMISSION ORDERS AND DECISIONS PRINTED

ORDERS AND DECISIONS PRINTED

ORDERS AND DECISIONS PRINTED

ORDERS AND DECISIONS PRINTED

ORDERS AND DECISIONS PRINTED

ORDERS AND DECISIONS PRINTED

SALES AND TRANSFERS

MISCELLANEOUS

DETAILED INDEX OF 1985 ANNUAL REPORT OF ORDERS
Not Printed

GENERAL ORDERS

GENERAL

M-100, Sub 18; G-3, Sub 91; G-5, Sub 149; and G-9, Sub 190 - Pennsylvania and Southern Gas Company, North Carolina Gas Service Division; Piedmont Natural Gas Company, Inc.; and Public Service Company of North Carolina, Inc. - Order Allowing Removal of Restrictions for Sales of Natural Gas to Duke Power Company (8-20-85)

M-100, Sub 103 - Order Approving Tariff Filing (1-25-85)

M-100, Sub 107 - Order Granting Certificate of Authority to Common Carriers of Passengers by Motor Vehicle Pursuant to the Bus Regulatory Reform Act of 1985 OR Order Vacating Show Cause Proceeding and Granting Certificate of Authority (and Docket Numbers below)

Company	Docket Number	Date
American Charters, Ltd.	B-366, Sub 5	11-15-85
American Coach Lines, Inc.	B-325, Sub 1	11-15-85
Archie's Bus & Transit Service	B-382, Sub 2	11-15-85
Asheville Outings, Inc.	B-439, Sub 1	11-15-85
Blue Ridge Lines, Ltd.	B-352, Sub 2	11-15-85
Carolina American Tours, McGill, Inc., d/b/a	B-3, Sub 11	11-15-85
Carolina Coach Company	B-15, Sub 192	11-15-85
Carolina Transit Lines of Charlotte, Inc.	B-295, Sub 7	11-15-85
Dills & Carpenter Transit, Gerald D. Carpenter and Jerry D. Dills, d/b/a	B-415, Sub 1	11-22-85
Emma Bus Lines, Inc.	B-8, Sub 13	11-15-85
Greyhound Lines, Inc.	B-7, Sub 105	11-15-85
Houston Transport Company, Inc.	B-323, Sub 3	12-18-85
Kannapolis Transit Company, Inc.	B-189, Sub 9	12-4-85
King's Bus Service, Calvin R. King, d/b/a	B-416, Sub 2	11-15-85
Lake Gaston Bus Service, Theodore T. Williams d/b/a	B-339, Sub 3	11-15-85
McBroom Coach, Inc.	B-392, Sub 1	11-15-85
New Hope Charters, Larry Gaddis Evangelistic Association, d/b/a	B-406, Sub 1	11-15-85
Nooney Bus Lines, Inc.	B-41, Sub 6	11-15-85
Piedmont Coach Lines, Inc.	B-110, Sub 23	11-15-85
Piedmont Transit, Inc.	B-403, Sub 2	11-15-85
Pirate Explorers Transportation, Incorporated	B-443, Sub 1	11-15-85
Rockingham Hamlet Bus Lines, Frank House and Earl B. Ratliff, d/b/a	B-73, Sub 11	12-4-85
Safety Transit Tours of Eden, Inc.	B-377, Sub 2	11-15-85
Scenic Tours, Inc.	B-428, Sub 1	11-15-85
Seashore Transportation Company	B-79, Sub 28	11-15-85
Southern Coach Company	B-30, Sub 56	11-15-85
Trailways Southeastern Lines, Inc.	B-69, Sub 143	11-15-85

Trans-Service, Inc.	B-411, Sub 1	11-15-85
Trial Lines, Inc.	B-359, Sub 2	11-22-85
Virginia Dare Transportation Company, Inc.	B-97, Sub 10	11-22-85
Wilson Bus Company, Inc.	B-296, Sub 7	11-15-85

M-100, Sub 107 - Recommended Order Cancelling Operating Authority (and Docket Numbers below)

Company	Docket Number	Date
Joshlis Charter, Floyd D. Dockery d/b/a	B-405, Sub 1	12-13-85
Outer Banks Transit Company, Inc.	B-432, Sub 1	12-13-85
Silver Fox Lines	B-82, Sub 18	12-13-85
Suburban Bus Lines Company	B-88, Sub 13	12-13-85
T & D Tours, Dunn Management Services, Inc. d/b/a	B-398, Sub 4	12-13-85
Travelines of Carolina, James A. Duncan, d/b/a	B-281, Sub 4	12-13-85
Young's Transportation, TRY, Inc., d/b/a	B-5, Sub 10	12-13-85

ELECTRICITY

E-100, Sub 41 - Order on Processing of Reports Pursuant to G.S. 62-110.1(g) (10-16-85)

MOTOR TRUCKS

T-100, Sub 3 - Order Affirming Previous Commission Order Cancelling Certificate (and Docket Numbers below - including Motor Bus Companies)

Company	Docket-Number	Date
Folger, Robert C.	B-354, Sub 3	1-15-85
Smoky Mountain Tours	B-85, Sub 3	1-15-85
Strickland, Thad	T-1728, Sub 1	1-15-85
M.T.L. Company	T-2180, Sub 2	1-15-85
TLC Express, Inc.	T-2238, Sub 1	1-15-85

T-100, Sub 5 - Order Vacating Orders Cancelling Certificate for Failure to File Annual Reports as Required by Statute (and Docket Numbers below - including Motor Bus Companies)

Company	Docket Number	Date
DeHaven's Transfer & Storage, Inc.	T-1276, Sub 5	10-2-85
Dunn, N. A., Incorporated	T-1835, Sub 2	12-31-85
Hill, I. H., Transfer & Storage, Inc.	T-876, Sub 7	10-2-85
J. D. Transport, Inc.		9-5-85
Jones Transfer, Inc.	T-146, Sub 5	11-4-85
Proctor Brothers Moving & Storage, Inc.	T-2225, Sub 1	2-19-85

TELEPHONE

P-100, Sub 64, and P-7, Sub 693 - Order Approving Petition to Accelerate the Amortization of Embedded Station Connection Investment (Inside Wiring) and Withdraw Undertaking (Carolina Telephone and Telegraph Company) (7-16-85)

P-100, Sub 73 - Order Allowing Motion of AT&T Communications for Immediate Interim Relief (Sharing and Resale of Local Exchange Service) (2-5-85)

P-100, Sub 78 - Order Establishing Method for Transfer of Embedded Mobile Radio Customer Premises Equipment (1-29-85)

ELECTRICITY

CERTIFICATES

Brushy Mountain Power Company, Neisler, Inc., d/b/a - Order Issuing Certificate to Construct a Hydroelectric Generating Facility on the Lower Little River Below State Route 16 near Millersville in Alexander County
SP-33 (9-12-85)

Bynum Hydro Company - Order Issuing Certificate to Construct an Electricity Generating Facility Located on the Northeastern Bank of the Haw River in Bynum
SP-49 (11-15-85)

C&H Waste Energy, Inc. - Order Issuing Certificate for Construction of a Cogeneration Facility to Be Located on Guilford Mills, Inc., Property on Wendover Road in Greensboro
SP-39, Sub 3 (7-23-85)

Cascade Power Company - Order Granting Interim Certificate and Requiring Notice for Declaratory Certificate of Exemption from Certification Requirements of G. S. 62-110 and G. S. 62-110.1
SP-32 (1-30-85)

Cascade Power Company - Order Granting Certificate to Construct Improvements to a Small Power Production Facility Located at Cascade Dam on the Little River near Brevard in Transylvania County
SP-32 (3-27-85)

Christiansted Port Terminal Corporation, The - Order Issuing Certificate to Construct an Electric Generating Facility to Be Located on the East Fork of Crabtree Creek, Mitchell County
SP-38 (5-6-85)

Cogentrix of North Carolina, Inc., and Cogentrix Carolina Leasing Corporation - Order Issuing Certificate to Construct a Cogeneration Facility to Be Located at the Plant of Pfizer, Inc., Louthport, Brunswick County
SP-16, Sub 6 (12-10-85)

Cogentrix of North Carolina, Inc., and Cogentrix Carolina Leasing Corporation - Order Issuing Certificate to Construct a Cogeneration Facility to Be Located at the Plant of Collins & Aikman Corporation, Roxboro, Person County
SP-16, Sub 7 (12-10-85)

Henry River Power Company, Inc. - Order Issuing Certificate to Construct Hydroelectric Facility to Be Located on the Henry Fork River near the Intersection of Henry Fork River and State Road 1002, Burke County
SP-36 (1-16-85)

Lake Junaluska Assembly, Inc. - Order Issuing Certificate to Construct Hydroelectric Facility to Be Located on Richland Creek in Lake Junaluska Township in Haywood County
SP-35 (1-16-85)

Miller & Miller - Order Issuing Certificate to Construct Hydroelectric Facility to Be Located on the Deep River in Worthville in Randolph County
SP-34 (1-23-85)

Multitrade Group, Inc. - Order Issuing Certificate for Construction of an Electricity Generating Facility to Be Located near the Existing Burlington Industries Pioneer Plant on Queen Street, Burlington
SP-37 (2-5-85)

Wren, William - Order Issuing Certificate to Construct an Electricity Generating Facility on Rocky River, Siler City
SP-50 (11-15-85)

COMPLAINTS

Carolina Power & Light Company - Recommended Order Denying Complaint of Ralph and Irene Jones, et al.
E-2, Sub 495 (6-7-85); Final Order on Exceptions (11-14-85)

Carolina Power & Light Company - Order Dismissing Complaint of Dr. Earl Sunderhaus and Closing Docket
E-2, Sub 496 (3-26-85)

Carolina Power & Light Company - Order Dismissing Complaint of Ms. Rebecca Smith and Closing Docket
E-2, Sub 497 (6-14-85)

Carolina Power & Light Company - Order Closing Docket in Complaint of Howard W. Beddingfield and Wife, Elaine S. Beddingfield
E-2, Sub 506 (8-8-85)

Carolina Power & Light Company - Order Closing Docket in Complaint of Nyal Flowers, Nelwyn C. Flowers, Nelwyn L. Flowers, and Deborah F. Flowers
E-2, Sub 507 (10-15-85)

Carolina Power & Light Company - Order Closing Docket in Complaint of H. Brantley Powell
E-2, Sub 508 (8-21-85)

Carolina Power & Light Company - Order Closing Docket in Complaint of Geoffrey J. Bartlett
E-2, Sub 512 (11-27-85)

Carolina Power & Light Company - Order Closing Docket in Complaint of A. A. Graham, Jr.
E-2, Sub 513 (12-10-85)

Cogentrix of North Carolina, Inc., and Cogentrix Leasing Corporation - Order Dismissing Complaint of Randolph N. Horner and Closing Docket
SP-16, SP-16, Sub 2, and SP-16, Sub 4 (1-7-85)

Duke Power Company - Recommended Order Denying Complaint of Leslie B. Cohen
E-7, Sub 382 (1-7-85)

Duke Power Company - Order Dismissing Complaint of Alice Buford
E-7, Sub 401 (8-22-85)

Nantahala Power and Light Company - Recommended Order Denying Complaint of Richard D. Cornwall
E-13, Sub 61 (3-26-85); Extending Effective Date of Recommended Order to April 30, 1985 (4-17-85); Affirming Recommended Order Denying Complaint of Richard D. Cornwall (5-30-85)

CONTRACTS

Carolina Power & Light Company - Order Approving Contract with the City of Raleigh for a Street Lighting Agreement
E-2, Sub 504 (5-29-85)

Cascade Power Company - Order Granting Approval of Contract Extending Beyond the Term of the License Issued by the Federal Energy Regulatory Commission
SP-32 (7-2-85)

Cogentrix of North Carolina, Inc., and Cogentrix Carolina Leasing Corporation - Order Approving Contracts for Construction of a Cogeneration Facility to Be Located at the Plant of Pfizer, Inc., in Southport, Brunswick County (Sub 6), and for a Cogeneration Facility to Be Located at the Plant of Collins & Aikman Corporation, Roxboro, Person County
SP-16, Sub 6, and SP-16, Sub 7 (12-20-85)

Duke Power Company - Order Approving Contract (Amend the Service Agreement)
E-7, Sub 398 (5-29-85)

K & K Hydroelectric - Order Approving Contract with Carolina Power & Light Company for the Sale and Purchase of Electricity from K & K Hydroelectric's Hydroelectric Facility on Hitchcock Creek, near Cordova, Richmond County
SP-26 (1-17-85)

Deep River Hydro - Order Approving Contract with L & S Water Power and Carolina Power & Light Company for the Sale and Purchase of Electricity from L & S Water Power's Hydroelectric Facility Located on the Deep River in Franklinville
SP-4, Sub 2 (1-17-85)

Metropolitan Sewerage District of Buncombe County - Order Approving Contract with Carolina Power & Light Company for the Sale and Purchase of Electricity from Metropolitan Sewerage District's Hydroelectric Facility at the Craggy Dam on the French Broad River in the Town of Woodfin, Buncombe County
SP-6 (1-17-85)

Duke Power Company and Saranac Energy Corporation - Order Approving Assignment of Contract of Purchase Power Agreement to McRay Energy Corporation
E-7, Sub 396, SP-17, and SP-43 (3-27-85)

RATES

New River Light and Power Company - Order Approving Revised Rates and Energy Control Residential Tariff
E-34, Sub 23 (12-10-85)

RATES - PURCHASE POWER ADJUSTMENT

Nantahala Power and Light Company - Order Approving Purchase Power Adjustment

By a Factor of 1.3952¢ per kWh	E-13, Sub 80 (1-29-85)
By a Factor of 1.9011¢ per kWh	E-13, Sub 81 (2-26-85)
By a Factor of 1.6601¢ per kWh	E-13, Sub 82 (3-27-85)
By a Factor of 1.7585¢ per kWh	E-13, Sub 83 (4-30-85)
By a Factor of 1.4331¢ per kWh	E-13, Sub 84 (7-8-85)
By a Factor of 1.5093¢ per kWh	E-13, Sub 85 (6-27-85)
By a Factor of 1.3498¢ per kWh	E-13, Sub 86 (7-24-85)
By a Factor of 1.1245¢ per kWh	E-13, Sub 87 (8-20-85)
By a Factor of 0.9504¢ per kWh	E-13, Sub 88 (9-24-85)
By a Factor of 0.8583¢ per kWh	E-13, Sub 89 (10-28-85)
By a Factor of 1.5347¢ per kWh	E-13, Sub 91 (12-27-85)

Western Carolina University - Order Approving Refund Plan Pertaining to a Purchase Power Adjustment Refund Received from Nantahala Power and Light Company
E-35, Sub 14 (9-13-85)

SECURITIES

Carolina Power & Light Company - Order Granting Authority to Enter into Pollution Control Financing
E-2, Sub 488 (5-9-85)

Carolina Power & Light Company - Order Granting Authority to Issue Additional Securities (Common Stock)
E-2, Sub 498 (2-6-85)

Carolina Power & Light Company - Order Granting Authority to Issue and Sell Additional Securities (Long-Term Debt)
E-2, Sub 501 (3-19-85)

Carolina Power & Light Company - Order Granting Authority to Issue and Sell Additional Securities (Common Stock) for Stock Purchase-Savings Program
E-2, Sub 502 (4-16-85)

Carolina Power & Light Company - Order Granting Authority to Enter into Pollution Control Financing
E-2, Sub 505 (7-18-85)

Carolina Power & Light Company - Order Granting Authority to Issue and Sell Securities (Common Stock) for CP&L's Automatic Dividend Reinvestment Plan
E-2, Sub 510 (10-2-85)

Duke Power Company - Order Granting Authority to Issue and Sell First and Refunding Mortgage Bonds
E-7, Sub 394 (2-21-85)

Duke Power Company - Order Granting Authority to Issue and Sell Long-Term Debt Securities
E-7, Sub 404 (11-18-85)

TARIFFS

Carolina Power & Light Company - Order Approving Tariffs
E-2, Sub 503 (9-25-85)

Duke Power Company - Order Approving Tariffs
E-7, Sub 391 (9-23-85)

Duke Power Company - Order Approving Tariffs and Refund Plan
E-7, Sub 391 (10-8-85)

MISCELLANEOUS

Carolina Power & Light Company - Order Terminating Reports (Leslie Coal Mining Company)
E-2, Sub 233 (2-14-85)

Carolina Power & Light Company - Order Approving TOU Water Heater Control Test Program and Rider No. 63
E-2, Sub 481 (3-5-85)

Carolina Power & Light Company - Order Approving Waiver of Rules on Service Charges, Termination Charges, and Customer Deposits in the Event of Natural Disaster
E-2, Sub 499 (2-26-85)

Duke Power Company - Order Approving Revision of Service Regulations to Waive Certain Service Charges, Fees, and Deposits in the Event of Natural Disaster
E-7, Sub 399 (7-10-85)

Duke Power Company - Order Approving Change in Schedule IT
E-7, Sub 403 (9-17-85)

Highlands, Town of - Order Closing Docket - Withdrawal of Application to Construct Electricity Generating Facility to Be Located on the Cullasaja River
SP-45 (8-28-85)

Virginia Electric and Power Company - Order Approving Revision of Terms and Conditions to Waive Certain Charges and Deposits in the Event of a Natural Disaster
E-22, Sub 284 (12-4-85)

FERRY BOATS

AUTHORITY GRANTED

Pittman, Roger Dale - Order Granting Temporary Authority to Transport Passengers from Beaufort Along Front Street on Designated Routes
A-28 (5-6-85)

GAS

COMPLAINTS

Piedmont Natural Gas Company - Order Dismissing Complaint of Anthony Hairston, Sr., and Closing Docket
G-9, Sub 246 (2-26-85)

MERGERS

Piedmont Natural Gas Company, Inc. - Order Granting Authority to Acquire Tennessee Natural Resources, Inc., and Issue Securities in Connection Therewith
G-9, Sub 247 (2-1-85) (Listed also under Securities)

RATES - EXPLORATION AND DEVELOPMENT (E&D)

North Carolina Natural Gas Corporation - Order Approving E&D Refund Plan
G-21, Sub 249 (4-2-85) G-21, Sub 253 (10-1-85)

Pennsylvania and Southern Gas Company - N. C. Gas Service Division - Order Approving Exploration and Development Refund Plan
G-3, Sub 128 (2-26-85)

Pennsylvania and Southern Gas Company - N. C. Gas Service Division - Order Allowing Plan for Refunding Revenues Received from E&D Programs
G-3, Sub 130 (8-20-85)

Piedmont Natural Gas Company, Inc. - Order Approving E&D Refund Plan
G-9, Sub 248 (3-26-85) G-9, Sub 253 (10-1-85)

Public Service Company of North Carolina, Inc. - Order Approving E&D Refund Plan
G-5, Sub 199 (3-26-85) G-5, Sub 202 (2-26-85)

RATES - PURCHASED GAS ADJUSTMENT (PGA)

North Carolina Natural Gas Corporation - Order Allowing PGA Decrease Effective April 1, 1985
G-21, Sub 251 (4-10-85); Errata Order (4-12-85)

North Carolina Natural Gas Corporation - Order Consolidating Dockets and Approving PGA and Treatment of FERC Order 93 and 94 Dollars, November 1, 1985
G-21, Sub 214, and G-21, Sub 254 (11-5-85)

Pennsylvania and Southern Gas Company (North Carolina Gas Service Division) - Order Allowing PGA Decrease Effective April 1, 1985
G-3, Sub 129 (4-10-85)

Pennsylvania and Southern Gas Company (North Carolina Gas Service Division) - Order Allowing PGA Increase Effective November 1, 1985, and Allowing Offset to Transco Bill with Deferred Dollars
G-3, Sub 131 (11-5-85)

Piedmont Natural Gas Company - Order Allowing PGA Decrease Effective April 1, 1985
G-9, Sub 252 (4-11-85)

Piedmont Natural Gas Company - Order Establishing Handling of Discounted Service (DS)
G-9, Sub 252 (4-30-85)

Piedmont Natural Gas Company, Inc. - Order Suspending Proposed PGA Until November 1, 1985
G-9, Sub 255 (9-30-85)

Piedmont Natural Gas Company, Inc. - Order Authorizing and Directing Continued Offsetting the Increase in Cost of Gas (Deferred Account 253.03)
G-9, Sub 255 (10-31-85)

Piedmont Natural Gas Company, Inc. - Order Allowing PGA Decrease to Become Effective November 1, 1985
G-9, Sub 256 (11-5-85)

Public Service Company of North Carolina, Inc. - Order Allowing PGA Decrease Effective April 1, 1985
G-5, Subs 181 and 196 (4-10-85)

Public Service Company of North Carolina, Inc. - Order Allowing PGA Increase Effective November 1, 1985
G-5, Sub 203 (11-5-85)

SECURITIES

Piedmont Natural Gas Company, Inc. - Order Granting Authority to Acquire Tennessee Natural Resources, Inc., and Issue Securities in Connection Therewith
G-9, Sub 247 (2-13-85) (Listed also under Mergers)

Piedmont Natural Gas Company, Inc. - Order Granting Authority to Issue and Sell Securities
G-9, Sub 249 (3-13-85)

Piedmont Natural Gas Company, Inc. - Order Approving Issue and Sale of Debentures
G-9, Sub 254 (9-12-85)

Public Service Company of North Carolina, Incorporated - Order Granting Authority to Issue and Sell First Mortgage Bonds
G-5, Sub 198 (4-1-85)

TARIFFS

North Carolina Natural Gas Corporation - Order Accepting Rate Schedule T-2 Transportation Service for Filing
G-21, Sub 252 (5-30-85)

Public Service Company of North Carolina, Inc. - Order Approving Tariffs
G-5, Sub 200 (11-25-85)

MISCELLANEOUS

North Carolina Natural Gas Corporation - Order Approving General Rules and Regulations, Filed on April 17, 1985, and Amended on May 21, 1985
G-21, Sub 250 (5-29-85)

Pennsylvania and Southern Gas Company, North Carolina Gas Service Division; Piedmont Natural Gas Company, Inc.; and Public Service Company of North Carolina, Inc. - Order Allowing Removal of Restrictions for Sales of Natural Gas to Duke Power Company
G-3, Sub 91; G-5, Sub 149; G-9, Sub 190; and G-100, Sub 18 (8-20-85)

Piedmont Natural Gas Company, Inc. - Order Approving Transportation Procedures
G-9, Sub 257 (10-29-85)

Public Service Company of North Carolina, Inc. - Order Approving Rider C and Granting Motion Seeking Clarification
G-5, Sub 200 (12-2-85)

Public Service Company of North Carolina, Inc. - Order Approving Procedures for Recovering Cost-of-Gas
G-5, Sub 205 (12-9-85)

MOTOR BUSES

APPLICATIONS WITHDRAWN

Nance Charters, Inc. - Order Allowing Withdrawal of Application for Common Carrier Passenger Authority
B-430 (1-4-85)

AUTHORITY GRANTED - COMMON CARRIER

Asheville Outings, Inc. - Order Granting Common Carrier Passenger Authority to Transport Passengers on Designated Routes
B-439 (5-9-85)

Carolina American Tours, McGill, Inc. d/b/a - Order Granting Common Carrier Authority to Transport Passengers in Charter Operations, Statewide
B-3, Sub 10 (12-5-85)

Joshlis Charters, Floyd David Dockery, d/b/a - Order Granting Common Carrier Authority to Transport Passengers in Charter Operations, Statewide
B-405, Sub 2 (12-30-85)

Liberty Lines, R.W. Merrell, Inc., t/a - Recommended Order Granting Common Carrier Passenger Authority on Designated Routes Near Camp Lejeune
B-441 (9-11-85)

Southern Coach Company - Order Granting Common Carrier Authority to Engage in Charter Operations, Statewide
B-30, Sub 54 (10-21-85)

Southern Tours, Inc. - Recommended Order Granting Common Carrier Authority to Engage in Charter Operations, Statewide
B-444 (10-21-85)

BROKER'S LICENSES - CANCELLED

Cardwell Tours, Kay Hutcherson Cardwell, d/b/a - B-311, Sub 1 (10-30-85)
Coastal Host - B-341, Sub 2 (10-21-85)
E & T Tours, Inc. - B-324, Sub 1 (10-9-85)
Touring Buddie, William Sammy Roberts, d/b/a - B-384, Sub 1 (4-12-85)

BROKER'S LICENSES - GRANTED

Cristal Tours, Christine E. Hunt, d/b/a - B-437 (3-12-85)
Group & Individual Travel, Michael C. White - B-438 (5-7-85)
Mike's Travel and Adventures, Michael David Adkins, d/b/a - B-397 (2-28-85)
Woodall, Ruth, Tours, Ruth Woodall, d/b/a - B-443 (10-29-85)

CERTIFICATES CANCELLED

Charlotte City Coach Lines, Inc. - Order Cancelling Certificate No. B-242
B-242, Sub 20 (3-6-85)

T & D Tours, Dunn, Management Services, Inc., d/b/a - Recommended Order Cancelling Operating Authority (Termination of Liability Insurance)
B-389, Sub 3 (11-15-85)

Triad Lines, Inc. - Order Suspending Operating Authority for Failure to Maintain Insurance
B-359, Sub 2 (11-26-85)

COMPLAINTS

Duke Power Company and the City of Durham - Order Dismissing Complaint of LaVonda Bullock, Bonita Cates, etc., with Prejudice and Closing Docket
B-209, Sub 25 (11-19-85)

DISCONTINUANCE OF SERVICE

Jacksonville Union Bus Station - Order Granting Petition to Close the Jacksonville Union Bus Station from 10:00 p.m. until 6:00 a.m.
B-270, Sub 1 (1-9-85)

Trailways Southeastern Lines, Inc. - Recommended Order Granting Petition to Discontinue Service over Four Designated Routes (Between Asheville and the

N.C.- S.C. State Line; Rutherfordton and Asheville; Statesville and Newton; and Lumberton and the Junction of N.C. Highway 710 and U.S. Highway 74)
B-69, Sub 141 (5-10-85)

Trailways Southeastern Lines, Inc. - Order Granting Petition to Discontinue Intrastate Motor Bus Transportation on Designated Routes (N.C. Highway 41 and U.S. Highway 74 to Junction N.C. Highway 410 and to N.C. Highway 130)
B-69, Sub 142 (11-7-85)

EXEMPTION CERTIFICATES CANCELLED

Crusco Grocery, Noel Transport, Incorporated, c/o - EB-736 (4-15-85)
Helmold Ford, Inc., Ford Motor Company, c/o - EB-734 (4-11-85)
Perry, David Charles - EB-682 (5-7-85)
Sellars, Eddie Autry - EB-666, Sub 2 (4-15-85)

SECURITIES

Carolina Coach Company - Order Approving Authority for Change of Control by Stock Transfer of Certificate No. B-15 from North American Phillips Corporation to Carolina Associates, Inc., c/o Wallner & Company
B-15, Sub 191 (2-26-85)

Seashore Transportation Company - Order Approving Authority for Change of Control by Stock Transfer of Certificate No. B-79, from North American Phillips Corporation, to Carolina Associates, Inc., c/o Wallner & Company
B-79, Sub 26 (2-26-85)

MISCELLANEOUS

Jacksonville Union Bus Station - Order Granting Petition to Close the Jacksonville Union Bus Station from 10:00 p.m. until 6:00 a.m.
B-270, Sub 1 (1-9-85)

MOTOR TRUCKS

APPLICATIONS AMENDED

AHJ Transportation, Austin Hatcher, Jr., d/b/a - Order Amending Application for Common Carrier Authority, Allowing Withdrawal of Protest, and Cancelling Hearing
T-2437 (1-7-85)

Andrews, Archie, Company - Order Amending Application for Common Carrier Authority and Allowing Withdrawal of Protest by Pony Express Courier
T-2466 (3-5-85)

Andrews, Archie, Company - Order Amending Application, Allowing Withdrawal of Protest by Fleet Transport Company, Inc., and Cancelling Hearing
T-2466 (3-18-85)

Anthony's Cargo Express, Inc. - Order Amending Application for Common Carrier Authority, Allowing Withdrawal of Protest, and Cancelling Hearing
T-2392 (1-30-85)

Ashe Lake Garage, Jackie W. Noblett, d/b/a - Order Amending Application for Common Carrier Authority
T-2512 (7-25-85)

Carolina Motor Express, Inc. - Order Amending Application for Common Carrier Authority, Allowing Withdrawal of Protest by Pony Express Courier Corporation, and Cancelling Hearing
T-2477 (4-16-85)

D & L Leasing and Diesel, Inc. - Order Amending Application for Common Carrier Authority and Cancelling Hearing
T-2560 (10-31-85)

Daily Delivery Service, Reginald Gordon Stalls, d/b/a - Order Amending Application, Allowing Withdrawal of Protest, and Cancelling Hearing
T-2372, Sub 1 (5-7-85)

Daniel-Keck Taxi Company, Carl Buchanan Keck, Sr., d/b/a - Order Amending Application for Common Carrier Authority, Allowing Withdrawal of Protest by Fleet Transport Corporation, Inc., and Pony Express Courier Corporation, and Cancelling Hearing
T-2267, Sub 1 (3-15-85)

Deerwood Transport, Inc. - Order Amending Application and Allowing Withdrawal of Protest
T-2506 (6-11-85)

Electric Transport, Inc. - Order Amending Application for Contract Carrier Authority to Substitute Goldston Transfer, Inc., as the Applicant
T-2301, Sub 3 (1-30-85)

First American Carriers, Inc. - Order Amending Application, Allowing Withdrawal of Protest and Cancelling Hearing
T-2520 (8-22-85)

Garrett Enterprises, Inc. - Order Amending Application, Allowing Withdrawal of Protest, and Cancelling Hearing
T-2484 (5-1-85)

Gelco Distribution Services, Inc. - Order Amending Application for Contract Carrier Authority and Cancelling Hearing
T-2479 (4-15-85)

Graham, Garland Robertson - Order Amending Application for Common Carrier Authority and Allowing Withdrawal of Protest
T-1724, Sub 4 (5-31-85)

Hudson Transportation, Inc. - Order Amending Application, Allowing Withdrawal of Protest and Cancelling Hearing
T-2044, Sub 1 (11-22-85)

Industrial Asphalt Transport, Inc. - Order Amending Application for Common Carrier Authority, Allowing Withdrawal of Protests by Infinger Transportation

Company, Inc., A.C. Widenhouse, Inc., and East Carolina Oil Transport, Inc., and Cancelling Hearing
T-1619, Sub 4 (1-30-85)

Landair Transport, Inc. - Order Amending Application, Allowing Withdrawal of Protests, and Cancelling Hearing
T-2504 (8-14-85)

Land-Link, A Division of Europa Auto Search, Inc. - Order Amending Application, Allowing Withdrawal of Protest and Cancelling Hearing
T-2552 (12-4-85)

Long Transportation Services, Inc. - Order Amending Application, Allowing Withdrawal of Protests, and Cancelling Hearing
T-2523 (8-26-85)

Pioneer Transportation Systems, Inc. - Order Amending Application, Allowing Withdrawal of Protest, and Cancelling Hearing
T-2505 (7-10-85)

Reliable Delivery Service, Joel Robert Shores, d/b/a - Order Amending Application for Common Carrier Authority, Allowing Withdrawal of Protest, and Cancelling Hearing
T-2526 (10-11-85)

Santita Trucking Company, Wrathel Mitchell, d/b/a - Order Amending Application, Allowing Withdrawal of Protest and Cancelling Hearing
T-2535 (8-30-85)

Star Freight, Inc. - Order Amending Application for Common Carrier Authority and Allowing Withdrawal of Protest
T-2581 (12-18-85)

Sutphin, Larry Wayne - Order Amending Application for Common Carrier Authority, Allowing Withdrawal of Protest and Cancelling Hearing
T-2554 (12-4-85)

TGH Enterprises, Inc. - Order Amending Application, Allowing Withdrawal of Protest, and Cancelling Hearing
T-2474 (5-30-85)

Thurston Express, Inc. - Order Amending Application and Allowing Withdrawal of Protest
T-2519 (8-19-85)

Tri-County Movers, Joseph J. Alfonso, d/b/a - Order Amending Application, Allowing Withdrawal of Protest, and Cancelling Hearing
T-2498 (6-13-85)

Wooldridge, J. C., Inc. - Order Amending Application for Common Carrier Authority and Allowing Withdrawal of Protest
T-1790, Sub 2 (6-3-85)

APPLICATIONS DENIED

Asurety Delivery Service, Shelia C. Hildebrand, d/b/a - T-2522 (10-28-85)
Dependable Tank Lines, Inc. - T-2421 (1-29-85)
Direct Express Courier Services, Inc. - T-2468 (7-26-85)
Highland Trucking Company, Inc. - (Recommended Order) T-2455 (5-15-85)
Final Order Affirming Recommended Order - T-2455 (7-8-85)
Jim's Trucking Company - (Recommended) - T-2398 (1-4-85)
Swicegood, Donald J. - (Recommended) - T-2465 (4-18-85)

APPLICATIONS WITHDRAWN

Campbell, Tommy - T-2471 (2-7-85)
Carolina Motor Express, Inc. - T-2477 (6-11-85)
Charlotte Bay Trading Company, Inc. - T-2349, Sub 1 (10-11-85)
Distron Division of Burger King Corporation - T-2517 (6-17-85)
Duke Trucking Company, Don Duke, d/b/a - T-2422 (2-25-85)
Magann Carolina, Inc. - T-2391, Sub 1 (1-18-85)
Medley, Floyd M. - T-2147 (2-14-85)
Piedmont Fuel & Distributing Company, Inc. - T-1062, Sub 9 (10-11-85)
Woodard Transportation Company, Inc. - T-2451 (3-12-85)

AUTHORITY GRANTED - COMMON CARRIER

AHJ Transportation, Austin Hatcher, Jr., d/b/a - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, Except Commodities in Bulk, and Group 10, Building Materials, with Restrictions, Statewide
T-2437 (1-28-85)

Able Mobile Home Movers, Charles G. Long, d/b/a - Order Granting Common Carrier Authority to Transport Group 21, Mobile Homes and Other Similar Movable Prefabricated Housing, Statewide
T-2473 (4-17-85)

Allred Boat Transport, David and Virginia Allred, d/b/a - Order Granting Common Carrier Authority to Transport Group 21, Boats, Pleasure, Power, and Sail, up to 35 Feet in Length, Statewide
T-2565 (12-11-85)

Ammons Trucking Company, James Elbert Ammons, Jr., d/b/a - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, Except Commodities in Bulk, in Tank Vehicles, Statewide
T-2441 (2-6-85)

Andrews, Archie, Company - Order Granting Common Carrier Authority to Transport Group 21, General Commodities, with Exceptions and Restrictions, Statewide
T-2466 (4-10-85)

Anthony's Cargo Express, Inc. - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, Statewide, with Restrictions
T-2392 (2-8-85)

Ashe Lake Garage, Jackie W. Noblett, d/b/a - Order Granting Common Carrier Authority to Transport Group 21, Mobile Homes, Between Points and Places in

Specified Counties and from Points and Places in These Counties to Points and Places Throughout the State
T-2512 (7-29-85)

B & M Mobile Home Movers, David Edward Barbour, d/b/a - Order Granting Common Carrier Authority to Transport Group 21, Mobile Homes, from Johnston County to and from all Points in North Carolina
T-2485 (5-9-85)

B.R.T. Transport, Inc. - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, Except Commodities in Bulk, in Tank Vehicles, Statewide
T-2459 (3-26-85)

B-Freight Lines, Inc. - Order Granting Common Carrier Authority to Transport Group 21, General Commodities Except Classes A and B Explosives, Radioactive Materials, and Poisonous Substances, Statewide, with Restrictions
T-2029, Sub 2 (8-30-85)

Baker's Delivery Service, Van Baker, d/b/a - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, Originating or Terminating at Fisher Scientific Company or American Hospital Supply Company and Transported Between the Counties of Wake, Durham, Orange, Alamance, Guilford, and Forsyth
T-2412 (2-15-85)

Barnes, J. A., and Son, Inc. - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, and Group 10, Building Materials, Except Materials in Bulk, in Tank Vehicles, Statewide
T-2425 (1-14-84)

Bryant, Billy, Trailer Moving, Billy Joe Bryant, d/b/a - Order Granting Common Carrier Authority to Transport Group 21, House Trailers, Bulk Barns, Out Buildings not Over 12 Feet Wide or 30 Feet Long, Between Points and Places in all Counties Adjacent to and East of Interstate 85 from the South Carolina State Line to the Virginia State Line
T-2158, Sub 1 (7-29-85)

Burns, Larry H. - Order Granting Common Carrier Authority to Transport Group 21, Mobile Homes, Statewide
T-2499 (7-16-85)

Byrum, A.T., and Son, Inc. - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, Except Commodities in Bulk, in Tank Vehicles, Statewide
T-2446 (2-6-85)

Camp Trucking, Inc. - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, Except Commodities in Bulk, in Tank Vehicles, Statewide
T-2463 (3-29-85)

Cardel Corporation - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, Except Commodities in Bulk, in Tank Vehicles, Statewide, with Restrictions
T-2445 (3-19-85)

Carolina Air Parcel Service, Inc. - Recommended Order Granting Common Carrier Authority to Transport Group 1, General Commodities, Except Commodities in Bulk, in Tank Vehicles, Statewide
T-2449 (3-12-85)

Carolina Storage Corporation - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, with Exceptions, in Designated Counties
T-56, Sub 9 (5-15-85)

Carolina Transportation System, Louis E. Massood, d/b/a - Order Granting Common Carrier Authority to Transport Group 21, General Commodities and Group 16, Furniture Factory Goods and Supplies, Statewide
T-2561 (12-19-85)

Coca-Cola Bottling Co., Consolidated - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, Except Commodities in Bulk in Tank Vehicles, Statewide
T-2533 (10-9-85)

Collins Trucking Company, Walter A. Collins, d/b/a - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, Except Commodities in Bulk, in Tank Vehicles, Statewide
T-2458 (5-7-85)

Cook's Transfer & Storage Company, Inc. - Order Granting Common Carrier Authority to Transport Group 16, Furniture Factory Goods and Supplies, Statewide
T-2528 (9-6-85)

Daily Delivery Service, Reginald Gordon Stalls, d/b/a - Order Granting Common Carrier Authority to Transport Group 21, General Commodities, Except Commodities in Bulk, Between all Points, and Places in the State Except Beaufort, Pitt, Martin, and Washington Counties, with Restrictions
T-2372, Sub 1 (5-30-85)

Davis Mobile Movers, Sherman Davis and Lorena Davis, d/b/a - Order Granting Common Carrier Authority to Transport Group 21, Mobile Homes and Their Contents to and from Designated Counties
T-2375, Sub 1 (4-9-85)

Deerwood Transport, Inc. - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, Except Commodities in Bulk, Statewide, with Restrictions
T-2506 (8-30-85)

Eastern Delivery Service, Inc. - Recommended Order Granting Common Carrier Authority to Transport Group 1, General Commodities, Except Commodities in Bulk, in Tank Vehicles, Statewide
T-1889, Sub 8 (10-3-85)

Eric's Mobile Home Service, James Lee, d/b/a - Order Granting Common Carrier Authority to Transport Group 21, Mobile Homes, Statewide
T-2439 (2-13-85)

Evans, C & N, Trucking Company, Inc. - Order Granting Common Carrier Authority to Transport Group 21, General Commodities with Exceptions and Restrictions, Statewide
T-2036, Sub 3 (12-10-85)

First American Carriers, Inc. - Order Granting Common Carrier Authority to Transport Group 21, General Commodities, Except Classes A and B Explosives and Household Goods, with Restriction, Statewide
T-2520 (9-17-85)

Fulton, Arthur H., Inc. - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, Statewide
T-2515 (9-5-85)

G & L Trucking, Inc. - Order Granting Common Carrier Authority to Transport Group 21, General Commodities, Other than Commodities in Bulk, Statewide
T-2454 (5-29-85)

Garrett Enterprises, Inc. - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, Except Commodities in Bulk in Tank Vehicles, Statewide, with Restrictions
T-2484 (10-2-85)

Gate City Delivery Service, Carl M. Smith, d/b/a - Order Granting Common Carrier Authority to Transport Group 21, Metal, Steel, and Pipe, etc., Statewide
T-2368 (8-30-85)

Grant's Trucking Service, Inc. - Order Granting Common Carrier Authority to Transport Group 21, General Commodities and Building Materials, Except Commodities in Bulk, in Tank Vehicles, Statewide
T-2497 (6-20-85)

Herring Mobile Home Movers, Amos Augustus Herring, d/b/a - Order Granting Common Carrier Authority to Transport Group 21, Mobile Homes, Statewide
T-2495 (6-21-85)

Hewett's Mobile Home Set-Up and Repair, Harry Bert Hewett, d/b/a - Recommended Order Granting Common Carrier Authority to Transport Group 21, Mobile Homes, Manufactured Housing, etc., Between all Points and Places Within the Counties of Brunswick, Bladen, Columbus, Cumberland, Duplin, New Hanover, Onslow, Sampson, Robeson, and Pender
T-2558 (11-26-85)

Highland Transport, Inc. - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, Statewide
T-2480 (9-24-85)

H I T, Ervin Harry Hatcher, d/b/a - Order Granting Common Carrier Authority to Transport Group 21, General Commodities, Except Commodities in Bulk, in Tank

Trucks, Statewide, with Restriction to Shipments Weighing Less Than One Hundred and One Pounds
T-2549 (11-25-85)

Industrial Asphalt Transport, Inc. - Order Granting Common Carrier Authority to Transport Group 21, Packaged Roofing Material, Statewide
T-1619, Sub 3 (2-26-85)

L & L Mobile Home Service, Larry E. Bell, d/b/a - Order Granting Common Carrier Authority to Transport Group 21, Mobile Homes, Manufactured Housing, etc., (a) Between Points in Designated Counties and (b) Between Points in Said Designated Counties and Points in the State
T-2569 (12-11-85)

L & J Motor Lines, Inc. - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, Except Commodities in Bulk, in Tank Vehicles, Statewide
T-2530 (12-10-85)

Lentz Transfer & Storage Company - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, Statewide, (Shall Not Be Construed as Conveying More Than One Operating Right)
T-840, Sub 5 (11-25-85)

Lisk, Howard, Inc. - Recommended Order Granting Application in Part for Common Carrier Authority to Transport Group 21, Vegetable Oil, from Fayetteville to all Points in North Carolina
T-1685, Sub 9 (1-16-85)

Long Transportation Services, Inc. - Order Granting Common Carrier Authority to Transport Group 1, General Commodities (Except Commodities in Bulk, in Tank Vehicles) Statewide
T-2523 (9-12-85)

Lower Creek Mobile Homes, Claud E. Mabe, d/b/a - Order Granting Common Carrier Authority to Transport Group 21, Mobile Homes and Parts Pertaining to Mobile Homes, Statewide
T-1516, Sub 6 (10-2-85)

Lumberton Masonary Company - Order Granting Common Carrier Authority to Transport Group 10, Building Materials, Statewide
T-2518 (8-28-85)

Lynn, Garland, Mobile Home Movers, William Garland Lynn, d/b/a - Order Granting Common Carrier Authority to Transport Group 21, Modular Homes, Between all Points and Places in the Counties of Alamance, Guilford, Orange, Person, Caswell, Randolph, Durham, and Rockingham
T-2537 (12-11-85)

McClellan Truck Lines, McClellan Enterprises, Inc. - Order Granting Common Carrier Authority to Transport Group 10, Building Materials, and Group 21, Precast Concrete, etc., Statewide
T-2419 (2-20-85)

Neway Motor Freight, Inc. - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, (Excepting Classes A and B Explosives, Commodities in Bulk, Household Goods, and Shipments of Less Than 101 Pounds if Transported in a Motor Vehicle in Which no One Package Exceeds 100 Pounds), Statewide
T-2527 (10-30-85)

Patterson Storage Warehouse Company, Inc. - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, Except Commodities in Bulk, in Tank Vehicles, Statewide
T-857, Sub 3 (10-16-85)

Persons Mobile Home Movers, James H. Person, d/b/a - Order Granting Common Carrier Authority to Transport Group 21, Mobile Homes, Statewide
T-2461 (3-12-85)

Petroleum Transport Company, Inc. - Order Granting Common Carrier Authority to Transport Group 3, Petroleum and Petroleum Products, Liquid in Bulk in Tank Trucks, Statewide
T-36, Sub 8 (7-23-85) Errata Order Correcting Docket Number (7-30-85)

Pioneer Trucking Company, Inc. - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, Statewide
T-2548 (11-25-85)

Pope Transport Company, E.J. Pope & Son, Inc., d/b/a - Order Granting Common Carrier Authority to Transport Group 21, Liquid Fertilizers and Fertilizer Materials, Statewide
T-2353, Sub 2 (4-11-85)

Poythress Trucking Company, Michael Keith Poythress, d/b/a - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, and Group 21, Plastic Nursery Containers in Bundles, Statewide
T-2448 (6-4-85)

PTS of Maryland, Pioneer Transportation Systems, Inc., d/b/a - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, Except Commodities in Bulk, in Tank Vehicles, Statewide, with Restriction on Weight
T-2505 (11-26-85)

Rothrock, J. L. - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, Except Commodities in Bulk, in Tank Vehicles, Statewide
T-795, Sub 6 (3-12-85)

Santita Trucking Company, Wrathel Mitchell, d/b/a - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, Statewide
T-2535 (9-6-85)

Shaw, A. L., & Sons Trucking Company, Inc. - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, Except Commodities in Bulk, in Tank Vehicles, Statewide
T-2442 (2-6-85)

Sky/Land Couriers, Inc. - Recommended Order Granting Application in Part for Common Carrier Authority to Transport Group 1, General Commodities, Between Gastonia and Points in the State
T-2464 (5-22-85)

Sloop's Welding Service, Billy M. Sloop, d/b/a - Order Granting Common Carrier Authority to Transport Group 21, Mobile Homes, Statewide
T-2510 (7-19-85)

Southern Mobile Home Service, Inc. - Order Granting Common Carrier Authority to Transport Group 21, Mobile Homes or Trailers, Statewide
T-2557 (12-18-85)

Smith, Donald A. - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, Statewide
T-2450 (3-18-85) Errata Order (5-17-85)

Smith, Sam W., Inc. - Order Granting Common Carrier Authority to Transport Group 21, General Commodities, Statewide
T-2555 (11-26-85)

Stevens Van Lines, Inc. - Order Granting Common Carrier Authority to Transport Group 21, General Commodities and Household Goods, Except Commodities in Bulk, in Tank Vehicles, Statewide
T-2453 (2-26-85)

Sutphin, Larry Wayne, - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, Except Packages Weighing Less Than 100 Pounds; Group 15, Retail Store Delivery Service; and Group 18, Household Goods, Statewide
T-2554 (12-12-85)

Swann, A. D., Trucking Company - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, Except Commodities in Bulk in Tank Vehicles, Statewide
T-69, Sub 5 (6-27-85)

Texfi Industries, Inc. - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, Except Commodities in Bulk, in Tank Vehicles, Statewide
T-2521 (9-12-85)

Thurston Express, Inc. - Order Granting Common Carrier Authority to Transport Group 1, General Commodities; Group 10, Building Materials; Group 15, Retail Store Delivery Service; and Group 16, Furniture Factory Goods and Supplies, Statewide
T-2519 (10-14-85)

Tommy's Garage, Thomas W. Billings, d/b/a - Order Granting Common Carrier Authority to Transport Group 21, Mobile Homes, Between all Points and Places in Alleghany County
T-2467 (5-17-85)

Tri-County Movers, Joseph J. Afonso, d/b/a - Order Granting Common Carrier Authority to Transport Group 1, General Commodities and Group 18, Hosehold Goods, Statewide, with the Limitation that Any Individual Package Shipment, or any Multiple Package Shipment to the Same Destination Must Exceed One Hundred Pounds.
T-2498 (8-6-85)

Wallace Trucking Company - Order Granting Common Carrier Authority to Transport Group 21, General Commodities (Except Classes A and B Explosives and Households Goods) Statewide
T-1293, Sub 8 (5-2-85)

Ward Mobile Home Service, Etchell Ward, t/a - Order Granting Common Carrier Authority to Transport Group 21, Mobile Homes, Statewide
T-2544 (11-4-85)

Wastewater Services, Inc. - Order Granting Common Carrier Authority to Transport Group 3, Petroleum and Petroleum Products, Liquid, in Bulk in Tank Trucks, and Group 21, Liquid Chemical Waste By-products from Paper and Cellophane Manufacturing, from the Olin Plant in Pisgah Forest to Champion Paper Company in Canton
T-2496 (6-18-85)

Williams Cartage Company, Inc. - Order Granting Common Carrier Authority to Transport Group 21, General Commodities, Except Commodities in Bulk, in Tank Vehicles, Statewide, with Restriction of Shipments Weighing Less Than One Hundred and One Pounds
T-2486 (6-12-85)

Wooldridge, J. C., Inc. - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, Except Commodities in Bulk, in Tank Vehicles, Statewide, with Restrictions of Shipments Weighing Less Than One Hundred and One Pounds
T-1790, Sub 2 (8-16-85)

Young Transfer, Young Transfer, Inc., d/b/a - Order Granting Common Carrier Authority to Transport Group 21, General Commodities, Except Commodities in Bulk in Tank Vehicles, Statewide
T-182, Sub 6 (8-1-85)

AUTHORITY GRANTED - CONTRACT CARRIER

Acme, Inc., Acme Petroleum and Fuel Company, Inc., d/b/a - Order Granting Contract Carrier Authority to Transport Group 1, General Commodities, and Group 3, Petroleum and Petroleum Products, etc., under Continuing Contracts with Pacemaker Corporation, Acme Retail, Inc., and Acme of South Carolina, Inc.
T-2456 (4-10-85)

Beasley, Valton - Order Granting Contract Carrier Authority to Transport Group 21, Specific Commodities (as Defined) Under Bilateral Contract with N.C. Products Corporation from its Plants Located in Raleigh, Kinston, near Fayetteville, Fairmont, Durham, and Fuquay-Varina to Points and Places Within the State, with Restrictions
T-2432 (1-3-85)

Boatwright, C. J. - Order Granting Contract Carrier Authority to Transport Group 21, Other Specific Commodities, etc., Under Bilateral Contract with Adams Products Company from Its Plants Located in Designated Towns to Points and Places Within the State, with Exceptions
T-2502 (6-18-85)

Bowman, D. M., Inc. - Order Granting Contract Carrier Authority to Transport Group 21, Petroleum Products in Cases and in Drums Over Irregular Routes Between Charlotte and all Points in North Carolina Under a Continuing Contract or Contracts with Mobile Oil Corporation
T-2343, Sub 1 (2-27-85)

Brendle Transport, Inc. - Order Granting Contract Carrier Authority to Transport Group 18, Household Goods, Statewide, Under Continuing contract with Brendle's Inc. T-2538 (10-2-85)

Britt, Jackie Clifton - Order Granting Contract Carrier Authority to Transport Group 21, Other Specific Commodities, viz: Transportation of Concrete Pipe, Concrete Block, Pre-stressed Concrete Products, etc., Under Bilateral Contract with Adams Products Company from Its Plants Located in Designated Towns, with Restrictions Against Cement, Lime, and Mortar in Bulk
T-2508 (7-23-85)

Carolina Storage Corporation - Order Granting Contract Carrier Authority to Transport Group 1, General Commodities, Except Commodities in Bulk, in Tank Vehicles; Group 5, Solid Refrigerated Products; and Group 6, Agricultural Comodities Between all Points and Places in the State Under Continuing Contract with Big Star Food Stores, Inc./Colonial Stores/Grand Union
T-56, Sub 8 (5-15-85)

Champion International Corporation - Order Granting Contract Carrier Authority to Transport Group 21, Pulp, Paper and Related Materials Between Taylorsville and Hickory Under Continuing Contract with Waldorf Corporation
T-2529 (9-9-85)

Coachman, Eric - Order Granting Contract Carrier Authority to Transport Group 21, Other Specific Commodities, etc., Under Bilateral Contract with Adams Products Company from Its Plants Located in Designated Towns to Points and Places Within the State, with Exceptions
T-2500 (6-18-85)

Continental Freight Systems - Order Granting Contract Carrier Authority to Transport Group 21, Commodities as are dealt in or Used by Grocery, Food, Drug, Dairy Products, etc., Between Points in the State Under Continuing Contract with Superbrand Dairy Products, Inc., a Subsidiary of Winn-Dixie Stores, Inc.
T-2531 (9-17-85)

DeBerry, Paul, Jr. - Order Granting Contract Carrier Authority to Transport Group 21, Beer and Beer Kegs, Under Contract with Tarheel Distributing Company of Elizabeth City, Inc., Between Elizabeth City and Winston-Salem
T-2420 (2-26-85)

Dependable Tank Lines, Inc. - Recommended Order on Reconsideration Granting in Part Application for Contract Carrier Authority to Transport Group 21,

Chemicals, etc., from the Facilities of Chembond Corporation, Chatham County, under Continuing Contract with Chembond Corporation
T-2421 (3-12-85)

DPD, Inc. - Order Granting Contract Carrier Authority to Transport Group 21, General Commodities, Paper and Paper Products, Materials, Equipment and Supplies Used in the Manufacture Thereof, Between the Plantsite and Facilities of the Mead Corporation, Located at or near Butner, North Carolina, on the one Hand, and, on the Other, Points in North Carolina
T-2302, Sub 1 (8-1-85)

Draughorn, Roscus - Order Granting Contract Carrier Authority to Transport Group 21, Other Specific Commodities, etc., Under Bilateral Contract with Adams Products Company from Its Plants Located in Designated Towns, with Exceptions
T-2501 (6-18-85)

East-Coast Transport Company, Incorporated - Order Granting Contract Carrier Authority to Transport Group 21, Commodities in Bulk, Under Continuing Contract with Union Chemical Division, Union Oil Company of California, Statewide
T-342, Sub 8 (9-6-85)

Exemptco of Surry County, Bobby Kent Long, d/b/a - Order Granting Contract Carrier Authority to Transport Group 1, General Commodities, Statewide, Under Continuing Contract with Brendle's Inc.
T-2546 (12-18-85)

Faison's Delivery Service, James H. Faison, d/b/a - Order Granting Contract Carrier Authority to Transport Group 21, Office Equipment and Furniture, Between all Points and Places in North Carolina East of Interstate 85, Under Continuing Contract with Pitney Bowes, Inc.
T-2543 (11-26-85) Errata Order (11-27-85)

Filyo, John M. - Order Granting Contract Carrier Authority to Transport Group 21, Other Specific Commodities Under Bilateral Contract with Adams Products Company from Its Plants Located in Designated Towns to Points and Places Within the State with Transportation on Return Movements of Forms, Machinery, etc.: Restriction Against Cement, Lime, and Mortar in Bulk.
T-2564 (12-10-85)

Ford's Contracting Service, William C. Ford, t/a - Recommended Order Granting Application for Contract Carrier Authority to Transport Group 21, Iron, Steel, and Related Products from the Carolina Steel Service Center Located in Greensboro to Points and Places in North Carolina, Under Continuing Contract with Carolina Steel Corporation and Denying Motion for Temporary Operating Authority
T-2081, Sub 2 (2-27-85)

Fuel Oil Service Company - Order Granting Contract Carrier Authority to Transport Group 21, Liquid Fertilizer and Fertilizer Materials, Under Contract with Arcadian Corporation, Statewide, and Under Contract with W.S. Clark and Sons, Inc., Between all Points and Places East of Highway No. 1
T-995, Sub 5 (6-27-85)

Fuller, Thurston Allen, and Edith Jenks Fuller - Order Granting Contract Carrier Authority to Transport Group 1, General Commodities, from Oxford to Butner and Henderson, Under Continuing Contract with Bandag, Incorporated
T-2431 (7-16-85)

Garrison, John Harvey - Order Granting Contract Carrier Authority to Transport Group 21, Other Specific Commodities (as Defined) Under Bilateral Contract with N.C. Products Corporation from its Plants Located in in Raleigh, Kinston, near Fayetteville, Fairmont, Durham, and Fuquay-Varina to Points and Places Within the State, with Restrictions
T-2433 (1-3-85)

Gelco Distribution Services, Inc. - Order Granting Contract Carrier Authority to Transport Group 1, General Commodities, Statewide, under Continuing Contract with Belknap, Inc., with Restrictions
T-2479 (4-17-85)

Harrell, R. O., Inc. - Order Granting Contract Carrier Authority to Transport Group 21, Fly Ash, Dry, in Bulk, Between the Facilities on Monier Resources, Inc., or Ash Management Corporation at or near Belew Creek, or now or Hereafter in Person County on the one Hand and on the Other, Points in North Carolina, and Rejected Materials on Return
T-2064, Sub 3 (11-19-85)

Ivey, Richard, Jr. - Order Granting Contract Carrier Authority to Transport Group 22, Other Specific Commodities, viz: Transportation of Concrete Pipe, Concrete Block, Pre-stressed Concrete Products, etc., Under Bilateral Contract with Adams Products Company from Its Plants Located in Designated Towns to Points and Places Within the State with Restrictions
T-2507 (7-23-85)

Jones, Raymond E. - Order Granting Contract Carrier Authority to Transport Group 21, Other Specific Commodities Under Bilateral Contract with Adams Products Company from Its Plants Located in Designated Towns to Points and Places Within the State with Transportation on Return Movements of Forms, Machinery, Equipment, etc.: Restriction Against Cement, Lime, and Mortar in Bulk
T-2566 (12-10-85)

Lee, Husel G. - Order Granting Contract Carrier Authority to Transport Group 21, Other Specific Commodities, etc., Under Bilateral Contract with Adams Products Company from Its Plants Located in Designated Towns to Points and Places Within the State, with Exceptions
T-2503 (6-18-85)

Liquid Transporters, Inc. - Errata Order to Order Issued September 13, 1984, Granting Contract Carrier Authority
T-2229, Sub 2 (8-20-85)

MD Goldston Inc. - Order Granting Contract Carrier Authority to Transport Group 1, General Commodities in Bulk, in Tank Vehicles, Statewide, Under Continuing Contract with Miller Brewing Company and Its Subsidiaries
T-2493 (6-6-85); Errata Order (correcting name and docket number) (7-6-85)

Macon, Robert L. - Order Granting Contract Carrier Authority to Transport Group 2, Heavy Commodities, and Group 10, Building Materials, Statewide, Under Continuing contract with Adams Products Company
T-1486, Sub 1 (10-2-85)

Marco-Pascal Company, Andrew G. Marcinko and Monica P. Marinko, d/b/a - Order Granting Contract Carrier Authority to Transport Group 1, General Commodities, and Group 21, Wood and Wood Products, Stationary Supplies, Paper and Paper Products Such as Vacuum Cleaning Bags, Rubber and Rubber Products, Statewide, Under Continuing Contracts with Master Woodcraft, Inc., and A.J. Weinstein Company
T-2438 (7-1-85)

Marshall, Sherman W. - Order Granting Contract Carrier Authority to Transport Group 21, Other Specific Commodities, as Specified, Under Bilateral Contract with Adams Products Company from its Plants Located in Designated Towns to Points and Places in the State
T-2488 (5-17-85)

McKoy, Warren - Order Granting Contract Carrier Authority to Transport Group 21, Other Specific Commodities (as Defined) Under Bilateral Contract with N.C. Products Corporation from Its Plants Located in Raleigh, Kinston, near Fayetteville, Fairmont, Durham, and Fuquay-Varina to Points and Places Within the State, with Restrictions
T-2434 (1-3-85)

Mullen's, Henry, Trucking - Henry Henderson Mullen, d/b/a - Order Granting Contract Carrier Authority to Transport Group 10, Building Materials, Between all Points and Places East of Interstate 85 from the South Carolina State Line to the Virginia State Line, Under Continuing Contract with Adams Products Company
T-2478 (5-14-85)

Norris, Larry N. - Order Granting Contract Carrier Authority to Transport Group 21, Other Specific Commodities (as Defined) Under Bilateral Contract with N. C. Products Corporation from Its Plants Located in Raleigh, Kinston, near Fayetteville, Fairmont, Durham, and Fuquay-Varina to Points and Places Within the State, with Restrictions
T-2435 (1-3-85)

O'Boyle Tank Lines, Inc. - Order Granting Contract Carrier Authority to Transport Group 21, Cement in Bulk, from Points in North Carolina to Salisbury, at Facilities of Home Concrete Products, Inc., Under Continuing Contract with Home Concrete Products, Inc.
T-804, Sub 23 (6-12-85)

Pacemaker Corporation - Order Granting Contract Carrier Authority to Transport Group 1, General Commodities, and Group 3, Petroleum and Petroleum Products, etc., Statewide, Under Continuing Contracts with Acme of South Carolina, Inc., and Benson Oil Co., Inc.
T-2476 (5-24-85); Errata Order (6-3-85)

Poteat, Lindsey Ricardo - Order Granting Contract Carrier Authority to Transport Group 21, Other Specific Commodities (as Defined) Under Bilateral

Contract with Adams Concrete Products Company from Its Plants Located in Raleigh, Durham, Rocky Mount, Edenton, Kinston, Fayetteville, and Morrisville to Points and Places Within the State, with Restrictions
T-2427 (1-3-85)

Price, Warren Gene - Order Granting Contract Carrier Authority to Transport Group 21, Other Specific Commodities (as Defined) Under Bilateral Contract with N. C. Products Corporation from Its Plants Located in Raleigh, Kinston, near Fayetteville, Fairmont, Durham, and Fuquay-Varina to Points and Places Within the State, with Restrictions
T-2436 (1-3-85)

Roberson, Norman - Order Granting Contract Carrier Authority to Transport Group 21, Other Specific Commodities, viz: Transportation of Concrete Pipe, Concrete Block, Pre-stressed Concrete Products, etc., Under Bilateral Contract with Adams Products Company from Its Plants Located in Designated Towns with Execptions
T-2509 (7-23-85)

Robinson, Joseph Edward - Order Granting Contract Carrier Authority to Transport Group 21, Other Specific Commodities, etc., Under Bilateral Contract with Adams Products Company from its Plants Located in Specified Towns, with Restrictions Against Cement, Lime, and Mortar in Bulk
T-2550 (11-1-85)

Routh Transportation, V. O Routh,. d/b/a - Order Granting Contract Carrier Authority to Transport Group 21, Fire Proofing Material in 45 Pound Bags, Statewide, Under Continuing Contract with Interior Enterprises, Inc.
T-2568 (12-16-85) Errata Order correcting docket number (12-17-85)

Salem Carriers, Inc. - Order Granting Contract Carrier Authority to Transport Group 17, Textile Mill Goods and Supplies, Between Points and Places in Forsyth, Burke, Ashe, Cherokee, and Union Counties, Under Contract with Hanes Printables Division of Sara Lee Corporation
T-2263, Sub 2 (9-12-85)

Smith, Ernest Thomas - Order Granting Contract Carrier Authority to Transport Group 21, Other Specific Commodities, as Designated, Under Bilateral Contract with Adams Products Company from its Plants Located in Designated Towns to Points and Places Within the State
T-2494 (5-17-85)

Stallings, Harold Ray - Order Granting Contract Carrier Authority to Transport Group 21, Other Specific Commodities, viz: Transportation of Concrete Pipe, etc., Under Bilateral Contract with Adams Products Company from Its Plants Located in Designated Towns to Points and Places Within the State, with Restrictions Against Cement, Lime, and Mortar in Bulk
T-2525 (8-28-85)

Stone, Roy, Transfer Corporation - Order Granting Contract Carrier Authority to Transport Group 21, Glass and Glass Products, from Clinton and Laurinburg to Points in the State Under Continuing Contract with LOF Glass Company Division of Libbey-Owens-Ford Company
T-2481 (5-29-85)

Superior Delivery Service, Inc. - Order Granting Contract Carrier Authority to Transport Group 1, General Commodities, Statewide, Under Continuing Contract with Shaw Furniture Galleries, Inc.
T-2440 (2-26-85)

Tedder, Foster, Sr. - Order Granting Contract Carrier Authority to Transport Group 21, Other Specific Commodities (as Defined) Under Bilateral Contract with Admas Concrete Products Company from Its Plants Located in Raleigh, Durham, Rocky Mount, Edenton, Kinston, Fayetteville, and Morrisville to Points and Places Within the State, with Restrictions
T-2428 (1-3-85)

Trans-Southern Trucking Company - Order Granting Contract Carrier Authority to Transport Group 1, General Commodities, to, from or Between all Points in Guilford, Wake, or Mecklenburg Counties, Under Continuing Contract with Unijax, Incorporated, and Divisions Thereof
T-2541 (11-19-85)

Transport Source, Inc. - Order Granting Contract Carrier Authority to Transport Group 1, General Commodities; Group 5, Solid Refrigerated Products; Group 8, Dry Fertilizer and Dry Fertilizer Materials; Group 9, Forest Products; Group 10, Building Materials; and Group 15, Retail Store Delivery Service, Statewide, Under Continuing Contract with Perth Enterprises, Inc.
T-2447 (2-7-85)

Williams, L. C., Oil Company - Order Granting Contract Carrier Authority to Transport Group 3, Petroleum and Petroleum Products, Liquid, in Bulk, in Tank Trucks, Statewide, Under Continuing Contract with Fast Lane, Inc.
T-2258 (6-12-85)

Williams, Moses - Order Granting Contract Carrier Authority to Transport Group 21, Other Specific Commodities, viz Transportation of Concrete Pipe, etc., Under Bilateral Contract with Adams Products Company from Its Plants Located in Designated Towns, with Restrictions Against Cement, Lime, and Mortar in Bulk
T-2524 (8-28-85)

Wilson, John C., III - Order Granting Contract Carrier Authority to Transport Group 21, Other Specific Commodities Under Bilateral Contract with Adams Products Company from Its Plants in Designated Cities to Points and Places Within the State with Transportation on Return Movements of Forms, Machinery, etc.: Restriction Against Cement, Lime, and Mortar in Bulk
T-2563 (12-10-85)

CERTIFICATES/PERMITS - CANCELLED,

Aaacon Auto Transport, Inc. - C-1266 - T-2321, Sub 1 (6-11-85)

Boward Truck Line, Inc. - C-1154 - T-2093, Sub 1 (4-11-85)

Bowling, I. W., Inc. - C-1077 - T-1821, Sub 2 (5-9-85)

Carey, A. J., Oil Company - P-143 - T-1130, Sub 3 (2-11-85)

Chandler Trailer Convoy, Inc. - Recommended - C-812 - T-2288, Sub 1 (7-31-85)

Clark, Osker - Recommended - T-2323 (6-18-85)

Decato Bros., Inc. - Recommended - C-1110 - T-2084, Sub 1 (4-3-85)

DeHart Motor Lines, Inc. - Recommended - C-177 - T-1569, Sub 5 (3-26-85)

Edwards, William, Inc., Boward Truck Line, Inc., c/o - C-1154
T-2093, Sub 1 (4-11-85)

Friendship Pickup & Delivery, Ernest Lee Benton, d/b/a - Recommended - C-1212
T-2248 (1-9-85)

G & S Movers & Riggers, Ronnie Jack Stillwell, d/b/a - Recommended - C-1107
T-1921, Sub 3 (9-20-85)

Gibson, John Louie - Recommended Order - P-202 - T-1396, Sub 6 (7-31-85)

Hester's Transfer, Steadman Hester, d/b/a - Recommended - C-208
T-81, Sub 2 (5-17-85)

Keever Moving Service, Inc. - Recommended - C-665 - T-2046, Sub 2 (5-20-85)

Lewis Truck Lines, Inc. - Recommended - C-1208 -T-2224 (1-30-85)

McKeithan, Julian Blue - C-724 - T-998, Sub 2 (5-24-85)

Moores Express, Charlie C. Moore, Jr., d/b/a - Recommended - P-410
T-223, Sub 1 (10-21-85)

Piedmont Paper Stock Company, Inc. - Recommended - P-378 - T-2112, Sub 2
(6-18-85)

Roberson, Norman - Recommended - T-2509 (11-15-85)

Vickers, C. L., Transfer, Inc. - C-1173 - T-933, Sub 2 (4-10-85)

Western Carolina Express, Inc. - Recommended - C-879 - T-2079, Sub 3 (6-17-85)

CERTIFICATES/PERMITS - REINSTATED

Alamance Transfer & Storage Company, Inc. - Order Rescinding Order Granting Authorized Suspension - T-921, Sub 3 (12-23-85)

Chandler Trailer Convoy, Inc. - Order Voiding Order Cancelling Certificate No. C-812 - T-2288 (1-30-85)

Clark, Osker - Order Rescinding Order Cancelling Authority Issued June 18, 1985
T-2323 (7-16-85)

Decato Bros., Inc. - Order Voiding Order of April 3, 1985, Cancelling Authority
T-2084, Sub 1 (5-14-85)

DeHart Motor Lines, Inc. - Order Vacating Order of March 26, 1985, Cancelling Operating Authority in Certificate No. C-177 - T-1569, Sub 5 (8-21-85)

Honeycutt, J.B., Co., Inc. - Order Reinstating Operating Authority in Certificate No. C-217 - T-94, Sub 11 (4-3-85)

Keever Moving Service, Inc. - Order Rescinding Order Cancelling Authority T-2046, Sub 2 (6-21-85)

Lewis Truck Lines, Inc. - Order Voiding Order Cancelling Operating Authority in Certificate No. C-1208 - T-2224 (2-26-85)

Piedmont Paper Stock Company, Inc. - Order Rescinding Recommended Order of June 18, 1985 - T-2112, Sub 2 (7-11-85)

CERTIFICATES/PERMITS - SUSPENSION

Alamance Transfer & Storage Company, Inc.- (good cause)
T-921, Sub 3 (12-6-85)

Barnes & Son, J. A., Inc. - (allow time for sale)
T-2425, Sub 1 (11-4-85)

Carolina Air Parcel Service, Inc. - (allow time for sale)
T-2449, Sub 1 (10-28-85)

AUTHORIZED SUSPENSION FOR FAILURE TO MAINTAIN INSURANCE

B R T Transport, Inc. - T-2459, Sub 1 (12-10-85)

Cabarrus Consolidating & Management Company - T-2070, Sub 3 (12-18-85)

Cauthen Gin & Bag Company - T-343, Sub 8 (11-26-85)

Chandler Trailer Convoy, Inc. - T-2288, Sub 1 (11-27-85)

Davis Transportation Company, Tom I. Davis - T-482, Sub 3 (11-26-85)

Eastern Delivery Service, Inc. - T-1889, Sub 8 (12-18-85)

Farrar Transfer & Storage Warehouse, Inc. - T-910, Sub 3 (11-26-85)

Gabler, H. C., Inc. - T-2260, Sub 1 (12-10-85)

Grant's Trucking Service, Inc. - (on 11/12/1985) - T-2497 (11-7-85)

Green Arrow Motor Express Co. - T-2276 (12-18-85)

Interstate Cartage Co., Inc. - T-2295, Sub 1 (11-26-85)

Lewis Truck Lines, Inc. - T-2224, Sub 1 (10-29-85)

Lumber Transport, Inc. - T-2292, Sub 1 (10-29-85)

McClendon, Glenn, Trucking Company, Inc. - T-1803, Sub 4 (11-7-85)

Owens, W. W., & Sons Moving & Storage, Inc. - T-371, Sub 6 (11-7-85)

Piedmont Movers, Inc. - T-1771, Sub 3 (11-7-85)

Pines Mobile Home Park and Service Company, Inc. - T-2230, Sub 1 (12-18-85)

Pope Transport Company, E. J. Pope & Son, Inc., d/b/a - T-2353, Sub 3 (12-10-85)

Quinn, James Elwood, Inc. - T-1792, Sub 1 (10-29-85)

Roberts Express, Inc. - T-2282, Sub 1 (11-27-85)

Rogers Trucking, Inc. - T-2405 (11-26-85)

Senn Trucking Company - T-1932, Sub 2 (10-29-85)

Smith, Alvin Alexander - T-1175, Sub 3 (12-10-85)

Smith Transfer & Storage, a Division of Smith Furniture Co. - T-1815, Sub 2 (11-27-85)

Smith, Larry M., Trucking, Inc. - T-2178, Sub 1 (11-27-85)

Stewart, Herman - T-2402 (11-26-85)

Truck Transfer Service, Inc. - T-2254, Sub 1 (11-7-85)

Tru Pak Moving & Storage, Tru Pack Products, Co., d/b/a - T-1429, Sub 1 (11-27-85)

Watson Moving & Storage, Inc. - T-2280, Sub 2 (11-26-85)

Winston Carriers, Inc. - T-1987, Sub 2 (12-18-85)

Yellow Transportation Services of Guilford, Inc. - T-2352 (10-29-85)

COMPLAINTS

Wendell Transport Corporation - Order Closing Docket in Complaint of Kenan Transport Company
T-1287, Sub 42 (8-21-85)

INCORPORATION AND TRANSFERS

Able Mobile Home Movers, Inc. - Order Approving Incorporation and Transfer of Certificate No. C-1323 from Charles G. Long, d/b/a Able Mobile Home Movers
T-2473, Sub 1 (7-1-85)

Lewis, Joe, Mobile Home Moving and Service, Inc. - Order Approving Incorporation and Transfer of Certificate No. C-1133 from Joe Lewis, d/b/a Joe Lewis Mobile Home Moving Service
T-2034, Sub 3 (7-3-85)

Morgan Trucking, Inc. - Order Approving Incorporation and Transfer of Permit No. P-399 from Larry Edison Morgan
T-2166, Sub 2 (9-25-85)

Owens, W. W., & Sons Moving & Storage, Inc. - Order Approving Incorporation and Transfer of Certificate No. C-752
T-371, Sub 6 (7-25-85)

T & W Mobile Home Movers, Inc. - Order Approving Incorporatrion and Transfer of Certificate No. C-1008 from Thomas D. Robertson and Dexter Wayne Winfield, d/b/a T & W Mobile Home Movers, Inc.
T-2559, Sub 1 (12-11-85)

Transport, L. B., Inc. - Order Approving Incorporation and Transfer of Certificate No. C-1337 from Larry H. Burns
T-2499, Sub 1 (9-17-85)

MERGERS

McLean Trucking Company - Order Approving Pledge of Certificate No. C-264 as Collateral and Merger as Surviving Corporation with Delta Lines, Inc., Delta California Industries, Inc., and a noncarrier Holding Company (DCI)
T-106, Sub 9 (8-19-85)

MCO Transport, Inc. - Order Approving Merger of Parmenter Transport Company, Inc., Holder of Certificate No. C-1177
T-2278, Sub 1 (12-19-85)

NAME CHANGE

Admiral Transportation Services, Whitley, Clayton, Helms Associate, Inc. d/b/a - Order Approving Name Change from Whitley, Clayton, Helms and Associates, Inc., d/b/a Rucker Moving Systems
T-2475, Sub 1 (11-25-85)

B & B Movers, J. P. Cauley, Jr., d/b/a - Order Approving Use of Trade Name
T-2570 (10-22-85)

C & H Nationwide, Inc. - Order Approving Name Change from C & H Transportation Company, Inc. (Certificate No. 1156)
T-2096, Sub 1 (2-11-85)

Commercial Courier Express, Inc. - Order Approving Name Change from Commercial Couriers, Inc. (Certificate No. CP-75)
T-1791, Sub 5 (9-18-85)

ORDERS LISTED

Davis Mobile Movers, Sherman Davis and Lorena Davis, d/b/a - Order Approving Name Change from Sherman Davis, d/b/a Davis Mobile Movers (Certificate No. C-1281)
T-2375, Sub 2 (1-14-85)

Dedicated Fleet, Inc. - Order Approving Name Change from Sonoco Transportation, Inc.
T-2130, Sub 3 (11-18-85)

Joyful Homes, Inc. - Order Approving Name Change from Jones Mobile Home Service, Inc.
T-1575, Sub 6 (8-27-85)

Leaseway Customized Transport, Inc. - Order Approving Name Change from General Trucking Service, Inc.
T-2226, Sub 1 (10-16-85)

Smith Dray Line & Storage Co., of N. C., Inc. - Order Approving Name Change from Ingle Transfer & Storage Co., Inc.
T-853, Sub 5 (6-4-85)

Sonoco Transportation, Inc. - Order Approving Name Change from Baker Transport, Inc.
T-2130, Sub 1 (1-3-85)

Wooldridge, J.C., Incorporated - Order Approving Name Change of Certificate No. C-658 from J. C. Wooldridge, Inc.
T-1790, Sub 2 (9-20-85)

RATES

North Carolina Motor Carriers Association, Inc., Agent, Kenan Transport, Inc., and Other Independent Filers - Order Granting Increase in Rates and Charges on Transportation of Commodities in Bulk, in Tank Trucks by 5%
T-825, Sub 285 (3-26-85)

North Carolina Trucking Association, Inc., Agent - Order Granting Increase in (NCTA Tariff 8-W) Rates and Charges by 5% on the Transportation of Unmanufactured Tobacco in North Carolina
T-825, Sub 287 (7-15-85)

North Carolina Trucking Association, Inc., Agent - Order Granting Increase in Rates and Charges by 1%, Minimum Increase of 1 Cent, on the Transportation of General Commodities in North Carolina
T-825, Sub 288 (11-5-85)

North Carolina Trucking Association, Inc., Agent - Order Granting Increase in Rates and Charges by 6% on Shipments Weighing Less Than 2,000 Pounds, etc.
T-825, Sub 289 (12-27-85)

SALES AND TRANSFERS

A-1 Moving and Storage, Inc. - Order Approving Application for Authority to Acquire Control by Stock Transfer of Certificate No. C-643 from John B. Hendren to David C. Hendren
T-871, Sub 5 (4-23-85)

AAA Cooper Transportation - Order Approving Sale and Transfer of Certificate No. C-1227 from Breeze Transportation Company, Inc.
T-2482 (3-22-85)

B & B Movers, James William Barbour, d/b/a - Order Approving Sale and Transfer of Certificate No. C-1241 from Richard Martin Burkett, d/b/a B & B Movers
T-2314, Sub 1 (3-22-85)

Builders Transport, Incorporated - Order Approving Control by Stock Transfer of Sonoco Transportation, Inc.
T-2130, Sub 2 (6-26-85) Errata Order Correcting Name and Sub Number (7-31-85)

Bulldog Trucking of Georgia, Inc. - Order Approving Sale and Transfer of Certificate No. C-196 from The Mason And Dixon Lines, Inc.
T-2545 (8-23-85)

Campbell's Transfer, Tommy Campbell, d/b/a - Order Approving Sale and Transfer of Certificate No. C-932 from George Junior Wyatt
T-2471, Sub 1 (3-22-85)

Cary Oil Co., Inc. - Order Approving Sale and Transfer of Certificate No. C-322 from Rogers Transportation Company, Inc.
T-2469 (2-22-85)

Cauley, James Percy, Jr. - Order Approving Sale and Transfer of Certificate No. 1241 Issued to James William Barbour, d/b/a B & B Movers
T-2570 (10-17-85)

Davis, W. L., Mobile Home Movers, William Larry Davis, d/b/a - Order Approving Sale and Transfer of Certificate No. C-882 Issued to Myrtle K. Long, d/b/a Long's Body Shop
T-2254, Sub 2 (5-22-85)

DeHaven's Transfer & Storage of Raleigh, Inc. - Order Approving Sale and Transfer of Certificate No. C-624 from David Alexander Mercer, d/b/a Mercer's Moving & Hauling
T-2490 (4-23-85)

Denver Mobile Home Moving Service, CDL Realty & Construction, Inc., d/b/a - Order Approving Sale and Transfer of Certificate No. C-1268 from CDL Housing, Inc.
T-2590 (12-19-85)

Federated Transport, Inc. - Order Approving Authority for Sampson-Bladen Oil Company to Acquire Control by Stock Transfer of Certificate No. C-1076 from H. Shelton Castleberry and Gene Castleberry
T-2492 (4-23-85) Errata Order (correcting Certificate Number) (4-25-85)

Freight Shuttle, Inc. - Order Approving Sale and Transfer of Certificate No. C-896 from Home Transportation Company, Inc.
T-2532 (7-17-85)

Glover Trucking Co., James Harold Glover Trucking Company, Inc., d/b/a - Order Approving Sale and Transfer of Certificate No. C-34 from Clay's Transfer Company, Inc.
T-2457 (1-16-85)

King Arthur's Court, Arthur Joseph Lesmann & Charles Alton Butler, d/b/a - Order Approving Sale and Transfer of Certificate No. C-1033 from Thomas Woodrow Shirley, d/b/a Smithfield Motor Company
T-2256, Sub 1 (6-26-85)

McGil Group, Inc. - Order Approving Authority to Acquire Control by Stock Transfer of Interstate Carriers, Inc., Holder of Common Carrier Certificate No. C-1233
T-2287, Sub 1 (1-3-85)

McGil Group, Inc. - Order Approving Authority to Acquire Control by Stock Transfer of Home Transportation Company, Inc., Holder of Common Carrier Certificate No. C-896
T-1330, Sub 3 (1-4-85)

McGil Group, Inc. - Order Approving Authority to Acquire Control by Stock Transfer of Superior Trucking Company, Inc.
T-1170, Sub 2 (2-22-85)

McLaughlin, Tucker W. - Order Approving Transfer of Certificate No. C-163, by Stock Acquisition from Robert L. Morris, Floyd B. Morris, and Ruby Morris Wright
T-2574 (10-17-85)

MD Goldston, Inc. - Order Approving Sale and Transfer of Certificate No. C-189 from Goldston Transport, Inc.
T-2493 (4-23-85)

Milovitz Mobile Home Moving, William Ray Milovitz, d/b/a - Order Approving Sale and Transfer of a Portion of Certificate No. C-1008 from Robert L. Edwards, d/b/a Edwards Mobile Home Moving and for Common Carrier Authority to Transport Group 21, Mobile Homes or Houses or House Trailers, etc., in Designated Counties
T-1853, Sub 4 (9-17-85)

Minton, Edwin - Order Approving Sale and Transfer of Certificate No. C-1243 from Paul J. Elliott, d/b/a Car Center
T-2470 (2-22-85)

Mobile Home Services, Alan McChesney Brown, Jr., d/b/a - Order Approving Sale and Transfer of a Portion of Certificate No. C-980 Issued to Claud E. Mabe, d/b/a Lower Creek Mobile Homes
T-2587 (12-19-85)

Modular Transport, Inc., a Georgia Corporation - Order Approving Authority to Acquire Control by Stock Transfer of Certificate No. C-1022 Held by Modular Transport, Inc., an Indiana Corporation
T-2376, Sub 1 (5-24-85)

Piedmont Paper Stock, Chesapeake Corporation, d/b/a - Order Approving Sale and Transfer of Permit No. 378 from Piedmont Paper Stock Company, Inc.
T-2112, Sub 3 (8-21-85)

Quality Carriers, Inc. - Order Approving Authority To Acquire Control by Stock Transfer of O'Boyle Tank Lines, Inc., Holder of Permit No. P-467
T-2511 (6-26-85)

Randlemen, Thomas W. - Order Approving Sale and Transfer of Certificate No. C-346 from Super Motor Lines, Inc.
T-2576 (11-25-85)

Riverside Mobile Home Movers, Billy D. Ivey, d/b/a - Order Approving Sale and Transfer of Certificate No. C-936 from Thomas Rodney Mattison, d/b/a Riverside Mobile Home Movers
W-2588 (11-22-85)

Rucker Moving Systems, Whitley, Clayton, Helms and Associates, Inc., d/b/a - Order Approving Sale and Transfer of Certificate No. C-892 from Rucker Moving & Storage Co.
T-2475 (3-22-85)

Swinson Trucking Company, Inc. - Order Approving Sale and Transfer of Certificate No. CP-15 from Henry Faircloth Transfer, Inc.
T-2577 (11-22-85)

T & W Mobile Home Moving, Thomas D. Robertson & Dexter Wayne Winfield, d/b/a - Order Approving Sale and Transfer of Certificate No. C-1008 Issued to Robert L. Edwards, d/b/a Edwards Mobile Home Moving
T-2559 (10-17-85)

Transport South, Inc. - Order Approving Sale and Transfer of Certificate No. 1163 from Metro Transport Company, Inc.
T-2291, Sub 1 (8-21-85)

SECURITIES

McLaughlin, Tucker W. - Order Approving Transfer of Control of Gorris Eggleston Oil Transport, Inc., Holder of Common Carrier Certificate No. C-163 by Stock Acquisition from Robert L. Morris, Floyd B. Morris, and Ruby Morris Wright
T-2574 (10-17-85)

Stone, Roy, Transfer Corporation - Order Approving Petition for Temporary Authority to Control and Application for Permission to Guarantee Obligation and Pledge Assets and Stock
T-2481, Sub 1 (11-13-85)

Stone, Roy, Transfer Corporation - Order Approving Application for Authority to Transfer Control of Permit No. P-488 Through the Transfer of all of Its Capital Stock from Mary Elizabeth Bassett Morten, et al., to BILCO, Inc.
T-2481, Sub 1 (12-18-85)

USA Eastern, Inc. - Order Approving Authority to Acquire Control by Stock Transfer of Certif. No. C-62 and Name Change from Shippers Freight Lines, Inc.
T-2578 (11-25-85) Errata Order (12-19-85)

MISCELLANEOUS

Fuel Oil Service Company - Order Approving Request to Allow Name Change of Contracting Shipper from New Bern Oil and Fertilizer Company to Royster-New Bern, Inc.
T-995, Sub 6 (11-25-85)

Johnny's Transfer Company, Inc. - Order Approving Request to Allow Name Change of Contracting Shipper from Continental Forest Industries, The Continental Group, Inc., to Continental Fibre Drum, Inc., a Subsidiary of Sunoco Products Company
T-1966, sub 2 (11-25-85)

RAILROADS

AGENCY STATIONS

Southern Railway Company - Recommended Order Approving Petition to Discontinue Agency Station at Swannanoa on a Six-Month Trial Basis
R-29, Sub 464 (1-10-85)

Southern Railway Company - Order Dismissing Exceptions and Affirming Recommended Order of January 10, 1985, Approving Petition to Discontinue Agency Station at Swannanoa on a Six-Month Trial Basis
R-29, Sub 464 (2-22-85)

CERTIFICATES CANCELLED

Atlantic & East Carolina Railway Company - Order Cancelling Certificate No. R-10
R-10, Sub 21 (6-13-85)

COMPLAINTS

Seaboard System Railroad, Inc. - Final Order Approving Work and Closing Docket in Complaint of The Lumbee Indians of Robeson County
R-71, Sub 93 (5-24-85)

MOBILE AGENCY

Seaboard System Railroad, Inc. - Recommended Order Granting Application to Abolish Its Existing Lumberton Mobile Agency and to Establish a New Mobile Agency Based at Fayetteville
R-71, Sub 131 (2-5-85)

Seaboard System Railroad, Inc. - Order Granting Application to Abolish Its Existing Mobile Agency at Shelby and to Relocate It to Charlotte (Including Shelby) as No. 2 Mobile Agency, Charlotte
R-71, Sub 137 (8-30-85)

Southern Railway Company - Order Granting Petition to Abolish Mobile Agency Route NC-8 and to Modify Mobile Agency Route NC-7 at Liberty
R-29, Sub 466 (4-30-85)

Southern Railway Company - Order Granting Petition to Close the Open Station at Burlington-Graham and to Add to Mobile Agency Route SOU-NC-9 from Burlington-Graham to Durham
R-29, Sub 507 (10-8-85)

Southern Railway Company - Order Granting Petition to Close the Freight Agency Station of Hendersonville and Pisgah Forest and to Establish New Mobile Agency SOU-NC-16 Based at Asheville
R-29, Sub 515 (12-18-85)

OPEN AND PREPAY STATIONS

Seaboard System Railroad, Inc. - Order Granting Application to Retire Team Track T-8 at Denver and to Amend that Point in the Open and Prepay Station from a Public to a Private Siding
R-71, Sub 136 (10-11-85)

Southern Railway Company - Order Granting Petition to Retire and Remove Station No. 3350 at Glen Alpine from the Open and Prepay Tariff
R-29, Sub 484 (1-4-85)

OPEN NONAGENCY STATIONS

Seaboard System Railroad, Inc. - Order Granting Application to Convert Its Former Mobile Agency at Burgaw to an Open Nonagency Station Under Governing Jurisdiction of Its Agency Station at Wilmington
R-71, Sub 133 (2-22-85)

Seaboard System Railroad, Inc. - Order Granting Application to Convert Its Agency Station at Acme to an Open Nonagency Station Under Governing Jurisdiction of Its Agency Station at Wilmington
R-71, Sub 135 (7-2-85)

Southern Railway Company - Order Granting Petition to Remove the Depot at Stantonsburg, Presently a Nonagency Station
R-29, Sub 510 (10-11-85)

SIDETRACKS AND TEAM TRACKS

Atlantic and East Carolina Railway Company - Order Granting Petition to Retire and Remove Track No. 27-17 at Kinston
R-10, Sub 19 (3-20-85)

Atlanic and East Carolina Railway Company - Retire and Remove Track No. 24-4 at Kinston
R-10, Sub 20 (5-31-85)

Norfolk Southern Railway Company - Recommended Order to Remove Two Industrial Tracks at New Bern
R-4, Sub 141 (2-21-85)

Seaboard System Railroad, Inc. - Retire Team Track at Pikeville
R-71, Sub 132 (4-25-85)

Seaboard System Railroad, Inc. - Retire Team Track at Laurinburg and to Remove that Point from the Open and Prepay Station List
R-71, Sub 134 (7-18-85)

Seaboard System Railroad, Inc. - Retire Team Track T-8 at Denver
R-71, Sub 136 (10-11-85)

Southern Railway Company - Recommended Order Allowing Amended Petition to Retire and Remove a Portion of Track No. 142-35 at Asheville
R-29, Sub 477 (4-22-85)

Southern Railway Company - Recommended Order Granting Petition to Retire and Remove Track No. 181-1 at Spindale
R-29, Sub 480 (5-3-85)

Southern Railway Company - Retire and Remove Track No. 201-2 at Mud Cut
R-29, Sub 481 (2-15-85)

Southern Railway Company - Retire and Remove Track No. 183-3 at Rutherfordton
R-29, Sub 485 (4-12-85)

Southern Railway Company - Retire and Remove Track No. 98-2 at Staley
R-29, Sub 486 (3-20-85)

North Carolina Railroad Company (Southern Railway System) - Retire and Remove Track Nos. 301-17 and 301-18 at High Point
R-29, Sub 487 (1-24-85)

Southern Railway Company - Retire and Remove Track No. S66-1 at Icard
R-29, Sub 489 (1-30-85)

Southern Railway Company - Retire and Remove Track No. 31-2 at Winston-Salem
R-29, Sub 490 (4-12-85)

Southern Railway Company - Retire and Remove the Unused Team Track No. 195-1 at Thermal City
R-29, Sub 491 (3-8-85)

Southern Railway Company - Retire and Remove Track No. 284-35 at Greensboro
R-29, Sub 492 (1-30-85)

Southern Railway Company - Retire and Remove Team Track No. 21-2 at Hendersonville
R-29, Sub 494 (6-7-85)

Southern Railway Company - Retire and Remove Track No. 55-2 at Durham
R-29, Sub 496 (4-12-85)

Southern Railway Company - Recommended Order Granting Petition to Retire and Remove Track No. 100-7 at North Wilkesboro
R-29, Sub 497 (9-3-85)

Southern Railway Company - Retire and Remove Track No. 20-2 at Burlington
R-29, Sub 498 (4-25-85)

Southern Railway Company - Retire and Remove Track No. 1-17 at Greensboro, Formerly Serving Thompson-Arthur Paving Company
R-29, Sub 499 (6-26-85)

Southern Railway Company - Retire and Remove the Track Formerly Serving Erwin Construction Company at Griffith
R-29, Sub 501 (10-18-85)

Southern Railway Company - Retire and Remove Track No. 32-8 at Mebane
R-29, Sub 502 (6-18-85)

Southern Railway Company - Retire and Remove a Tract at Mt. Airy, Formerly Serving Mt. Airy Chair Company
R-29, Sub 503 (6-18-85)

Southern Railway Company - Retire and Remove Track No. 344-6 at Chine Grove
R-29, Sub 504 (8-27-85)

Southern Railway Company - Retire and Remove a Track at Murphy, Formerly Serving Murphy Concrete Products
R-29, Sub 505 (8-6-85)

Southern Railway Company - Retire and Remove a Track at Buena Vista, Formerly Serving Buena Vista Fuel Company
R-29, Sub 506 (8-6-85)

Southern Railway Company - Retire and Remove Track No. 142-15 at Asheville
R-29, Sub 508 (8-27-85)

Southern Railway Company - Retire and Remove Track No. 44-4 at Statesville
R-29, Sub 509 (10-18-85)

Southern Railway Company - Retire and Remove Track No. 66-2 at Lincolnton
R-29, Sub 512 (10-9-85)

Southern Railway Company - Retire and Remove Track No. 320-1 at Lexington
R-29, Sub 513 (9-19-85)

Winston-Salem Southbound Railway Company - Recommended Order Granting Application to Retire 2.079 Miles of Its Industrial Track Known as the Tar Branch Terminal Line at Winston-Salem
R-35, Sub 13 (10-25-85)

TELEPHONE

APPLICATIONS WITHDRAWN OR AMENDED

AT&T Communications of the Southern States, Inc. - Order Granting Motion to Amend Certificate of Public Convenience and Necessity and Restating Bypass Prohibition
P-140 (12-11-85)

Car Call, Inc. - Order Allowing Withdrawal of Application for a Certificate to Resell Cellular Service, Closing Docket, and Cancelling Hearing
P-160 (6-27-85)

Millicom of Raleigh-Durham, Inc. - Order Allowing Withdrawal of Application for a Certificate to Construct and Operate a Cellular Radio Telephone System in the Cities of Raleigh, Durham, and Chapel Hill
P-144 (2-19-85)

SouthernNet of North Carolina, Inc. - Order Granting Motion to Amend Application and Scheduling Hearing
P-146 (5-1-85)

CELLULAR MOBILE RADIO TELECOMMUNICATIONS SERVICE

ALLTEL Cellular Associates of the Carolinas - Order Approving Revised Rates and Tariffs and Granting Certificate to Provide Wholesale Cellular Mobile Radio Telephone Service in the Charlotte/Gastonia/Monroe Metropolitan Statistical Area and Approving Initial Rates, Charges, and Regulations
P-149 (4-10-85)

ALLTEL Mobile Communications of the Carolinas, Inc. - Order Approving Revised Rates and Tariffs and Granting a Certificate to Resell Cellular Radio Telecommunications Service and for Approval of Initial Tariff Containing Rates and Regulations
P-147, Sub 2 (4-10-85)

Carolina Metronet, Inc. - Recommended Order Granting Certificate to Provide Retail and Wholesale Cellular Radio Communications Services and Requiring Undertaking
P-153 (8-13-85)

Centel Cellular Company of North Carolina - Recommended Order Granting Certificate to Provide Retail and Wholesale Cellular Radio Telecommunications Service in the Greensboro/Winston-Salem/High Point Metropolitan Statistical Area and Ordering the Filing of Revised Tariffs
P-150 (4-24-85)

Centel Cellular Company of North Carolina - Order Making Recommended Order of April 24, 1985, Final and Effective
P-150 (5-7-85)

Central Carolina Communications, Inc. - Recommended Order Granting Certificate to Resell Cellular Mobile Radio Telecommunications Service and Approving Tariff
P-170 (12-5-85)

Greensboro Cellular Telephone Company - Recommended Order Granting Certificate to Resell Cellular Service and Approving Revised Tariffs
P-152 (5-9-85)

Greensboro Cellular Telephone Company - Final Order Adopting Recommended Order of May 9, 1985
P-152 (5-10-85)

Metro Mobile CTS, Inc. - Recommended Order Granting Certificate and Approving Revised Tariff
P-151 (4-10-85)

Metro Mobile CTS, Inc. - Final Order Adopting Recommended Order of April 10, 1985
P-151 (4-10-85)

Metro Mobile CTS of Charlotte, Inc. - Recommended Order Granting Certificate to Provide Cellular Radio Telecommunications Service in the Charlotte-Gastonia Metropolitan Statistical Area and Requesting a Revised Version of Its Rates
P-155 (11-6-85)

Metro Mobile CTS of Charlotte, Inc. - Recommended Order Issuing Certificate and Approving Revised Rates, and Tariffs
P-155 (12-6-85)

Motorola Cellular Service, Inc. - Recommended Order Granting Certificate to Provide Resale of Cellular Mobile Radio Telecommunications Service and Approving Revised Tariff
P-168 (11-12-85)

Raleigh-Durham MSA Limited Partnership - Recommended Order Granting Certificate to Provide Wholesale Cellular Radio Telecommunications Service and Ordering the Filing of Revised Tariffs
P-148 (5-13-85)

CERTIFICATES

Central Carolina Communications, Inc. - Recommended Order Granting Certificate to Resell Cellular Mobile Radio Telecommunications Service in the State and Approving Tariff
P-170 (12-5-85)

Greensboro Cellular Telephone Company - Recommended Order Granting Certificate to Provide Retail and Wholesale Cellular Radio Communications Services and Requiring Undertaking
P-152, Sub 2 (12-6-85)

Greensboro Cellular Telephone Company - Final Order Adopting Recommended Order of December 6, 1985
P-152, Sub 2 (12-10-85)

Metro Mobile CTS of Charlotte, Inc. - Order Approving Assignment of Certificate Issued to Metro Mobile CTS, Inc.
P-151 (5-23-85)

Metro Mobile CTS of Charlotte, Inc. - Recommended Order Issuing Certificate to Provide Wholesale Cellular Mobile Radio Telephone Service in the Charlotte/Gastonia Metropolitan Statistical Area and Approving Initial Rates, Charges, and Regulations
P-155 (12-6-85)

United TeleSpectrum, Inc. - Recommended Order Granting Certificate to Provide Cellular Mobile Radiotelephone Service Within the Raleigh-Durham Metropolitan Statistical Area and Approving Tariffs
P-157 (8-27-85)

COMPLAINTS

AT&T Communications of the Southern States, Inc. - Order Closing Docket in Complaint of Mrs. Ralph F. McCall
P-140, Sub 7 (3-26-85)

Carolina Telephone and Telegraph Company, AT&T, and Southern Bell Telephone and Telegraph Company - Order Dismissing Complaint of James D. Couey, President, Coastal Marketing and Development Corporation, with Prejudice and Authorizing Collection of Outstanding Accounts
P-89, Sub 20 (5-23-85)

Carolina Telephone and Telegraph Company - Order Closing Docket in Complaint of Elizabeth Henderson
P-7, Sub 684 (8-21-85)

Carolina Telephone and Telegraph Companay - Recommended Order Requiring Restoration of Telephone Service in Complaint of Dennis Turlington
P-7, Sub 695 (12-18-85)

North State Telephone Company - Order Closing Docket in Complaint of Mrs. Patricia Stover
P-42, Sub 100 (6-14-85)

Southern Bell Telephone and Telegraph Company - Order Accepting Settlement in Complaint of Reece, Noland & McElrath, Inc., and Closing Docket
P-55, Sub 852 (3-20-85)

Southern Bell Telephone and Telegraph Company - Order Reaffirming Order Issued on March 20, 1985, and Closing Docket
P-55, Sub 852 (4-4-85)

Southern Bell Telephone and Telegraph Company and AT&T Communications - Order Dismissing Complaint of Dr. Marie Assaad, Attorney-in-Fact for Souraya Farid

Fares and Halim Faltas with Prejudice, Cancelling Hearing, and Closing Docket
P-55, Sub 860 (9-17-85)

Southern Bell Telephone and Telegraph Company - Order Dismissing Complaint and Closing Docket in Complaint of Ms. Brenda Hicks, The Atlantic Group
P-55, sub 863 (11-27-85)

Southern Bell Telephone and Telegraph Company and BellSouth Advertising and Publishing Corporation - Order Closing Docket in Complaint of Roger Wood, d/b/a HANDEE Mart
P-89, Sub 21 (4-15-85)

EXTENDED AREA SERVICE

Continental Telephone Company of North Carolina - Order Implementing Madison Countywide Extended Area Service
P-128, Sub 11 (7-26-85)

SALES AND TRANSFERS

ALLTEL Carolina, Inc. - Order Approving Sale and Transfer of all of Its South Carolina Property, Including Its Franchise to Serve ALLTEL South Carolina, Inc., on the Terms and Conditions Set Forth Herein
P-118, Sub 35 (12-2-85)

Communication Specialists of Jacksonville, Inc. - Order Approving Sale and Transfer of the Operating Facilities and Rights from the Communication Specialists Company Operating in Jacksonville, North Carolina
P-136, Sub 1 (2-13-85) Errata Order (2-21-85)

SECURITIES

Citizens Telephone Company - Order Granting Authority to Borrow Funds
P-12, Sub 82 (7-1-85)

Continental Telephone Company of Virginia - Order Granting Authority to Sell First Mortgage Bonds
P-28, Sub 40 (12-6-85)

Ellerbe Telephone Company - Order Granting Approval of Proposed Redemption of Company Stock
P-21, Sub 43 (4-5-85)

Ellerby Telephone Company - Order Granting Authority to Borrow Funds
P-21, Sub 44 (7-26-85)

General Telephone Company of the Southeast - Order Granting Authority to Issue and Sell First Mortgage Bonds and Common Stock
P-19, Sub 203 (4-9-85)

General Telephone Company of the Southeast - Order Granting Authority to Merge, Assume Debt, Issue Common and Preferred Stock, and Enter into Affiliated Transaction
P-19, Sub 204 (9-25-85)

Randolph Telephone Company - Order Approving Loan from the Rural Telephone Bank
P-61, Sub 64 (11-13-85)

TARIFFS

ALLTEL Carolina, Inc. - Order Approving (Tariffs) Rates and Requiring Public Notice
P-118, Sub 31 (1-3-85)

Carolina Metronet, Inc. - Order Amending Recommended Order Issued August 13, 1985, and Approving Tariffs
P-153 (8-23-85)

Carolina Telephone and Telegraph Company - Order Allowing Tariffs to Become Effective
P-7, Sub 679 (12-18-85)

Carolina Telephone and Telegraph Company - Order Allowing Reclassification of Exchange Rate Groups
P-7, Sub 696 (10-8-85)

Econowats, Inc. - Order Approving Revised Tariffs
P-154 (9-5-85)

Raleigh-Durham MSA Limited Partnership - Order Approving Tariffs
P-148 (10-23-85)

Southern Bell Telephone and Telegraph Company - Order Allowing Tariffs to Become Effective
P-55, Sub 806 (12-18-85)

MISCELLANEOUS

(Carolina Telephone and Telegraph Company) - Order Approving Petition to Accelerate the Amortization of Embedded Station Connection Investment (Inside Wiring) and Withdraw Undertaking
P-7, Sub 693, and P-100, Sub 64 (7-16-85)

(Communications Properties Associates) - Order Approving Joint Application for Corporate Reorganization
P-172 (12-23-85)

Greensboro Cellular Telephone Company and Centel Cellular Company of North Carolina - Order Denying Promotional Rate Plans Without Prejudice and Suspending Further Filings Until January 1, 1986
P-152, Sub 1, and P-150, Sub 2 (8-8-85)

Southern Bell Telephone and Telegraph Company - Order Approving Bill Insert Service Advertising Plan Subject to Complaint and Hearing Procedures
P-55, Sub 861 (8-8-85)

WATER AND SEWER

APPLICATIONS DENIED, DISMISSED, OR WITHDRAWN

Mulkey Homesites Water System - Recommended Order Dismissing Application to Transfer the Franchise to Provide Water Utility Service in Mulkey Subdivision, Cherokee County, from Cherokee Holding Company
W-818 (7-17-85)

C & L Utilities, Inc. - Order Allowing Withdrawal of Application and Closing Docket
W-535, Sub 4 (9-24-85)

CERTIFICATES CANCELLED

B & C Builders, Inc. - Order Cancelling Certificate for Providing Water Utility Service in Olde Well South Subdivision, Catawba County
W-697, Sub 2 (5-21-85)

Fairway Shores Water Company - Order Cancelling Certificate to Provide Water Utility Service in Fairway Shores Subdivision, Montgomery County
W-309, Sub 3 (7-30-85)

Hensley Enterprises, Inc. - Order Authorizing Discontinuing Water Service in Rhyneland Park Subdivision, Gaston County, and Cancelling Certificate
W-89, Sub 25 (4-3-85)

Lafayette Water Corporation - Order Cancelling Certificates in Docket Nos. W-43 and W-43, Sub 3
W-43, Sub 17 (7-30-85)

Model Enterprises, Inc. - Order Cancelling Certificate to Provide Water Utility Service in Emerald Shores Subdivision, Montgomery County
W-728, Sub 1 (7-30-85)

Sea Watch, Inc. - Order Approving Discontinuing Water Service in Sea Watch Estates Subdivision, Carteret County, and Cancelling Certificate
W-769, Sub 1 (4-3-85)

CERTIFICATES GRANTED

A-1 Pump and Water Conditioning - Recommended Order Granting Water Utility Franchise to Furnish Water Service in Robinfield Estates Subdivision, Wake County, and Approving Rates
W-823 (10-9-85)

Bald Head Island Utilities, Inc. - Recommended Order Granting Certificate to Provide Water and Sewer Service in the Bald Head Island Development, Brunswick County, and Approving Rates
W-798 (2-20-85)

Belvedere Utility Company, United States Development Corporation, d/b/a - Recommended Order Granting Certificate to Furnish Water and Sewer Service in

Belvedere Plantation Subdivision, Pender County, and Approving Rates
W-809 (5-2-85)

Brick Landing Utility Corporation - Recommended Order Granting Certificate to Provide Sewer Service in Brick Landing Plantation, Brunswick County, and Approving Rates
W-817 (6-5-85)

Brookwood Water Corporation - Order Granting Certificate to Furnish Water Service in Ellerslie Subdivision, Cumberland County, and Approving Rates
W-177, Sub 21 (1-29-85)

Brookwood Water Corporation - Order Granting Certificate to Furnish Water Service in Woodland Run Subdivision, Cumberland County, and Approving Rates
W-177, Sub 22 (12-12-85)

CAC Utilities, Inc. - Recommended Order Granting Certificate to Furnish Sewer Service in Mallards Crossing Subdivision, Wake County, and Establishing Rates
W-812 (1-23-85)

CAC Utilities, Inc. - Order Granting Certificate to Furnish Sewer Service in Windsor Oaks Subdivision, Wake County, and Approving Rates
W-812, Sub 1 (2-19-85) Errata Order (4-19-85)

Carolina Water Service, Inc., of North Carolina - Order Issuing Certificate Previously Granted in Docket No. W-354, Sub 15, on October 24, 1985
W-354, Sub 15 (4-3-85)

Carolina Water Service, Inc. - Order Granting Certificate to Furnish Water Service in Courtney Subdivision, Mecklenburg County, and Approving Rates
W-354, Sub 31 (3-26-85)

Carolina Water Service, Inc., of North Carolina - Order Granting Franchise to Provide Sewer Service in The Lakes at Gracie Farms Subdivision, Craven County
W-354, Sub 34 (4-16-85)

Carolina Water Service, Inc., of North Carolina - Order Granting Franchise to Provide Water and Sewer Service in Parks Farm Subdivision, Mecklenburg County, and Approving Rates
W-354, Sub 36 (3-12-85)

Carolina Water Service, Inc., of North Carolina - Order Granting Certificate to Provide Water and Sewer Utility Service in Emerald Point Subdivision, Mecklenburg County, and Approving Rates
W-354, Sub 42 (10-2-85)

Dream Weaver Utilities - Order Granting Certificate to Furnish Water Service in West Ridge Subdivision, Wake County, and Approving Rates
W-786, Sub 5 (1-23-85)

Dream Weaver Utilities, Inc. - Order Granting Certificate to Provide Water Service in White Oak Plantation Subdivision, Johnston County, and Approving Rates
W-786, Sub 7 (6-5-85)

Dream Weaver Utilities, Inc. - Order Granting Certificate to Provide Water Service in Brookfield Subdivision, Wake County, and Approving Rates
W-786, Sub 8 (6-5-85)

Eagle Heights Utilities, Inc. - Recommended Order Granting Certificate to Furnish Water Service in Eagle Heights Subdivision, Buncombe County, and Establishing Initial Rates
W-826 (9-6-85) Errata Order (9-10-85)

Glen, Kirk, Water System, Kirk Glen, Inc., d/b/a - Recommended Order Granting Certificate to Provide Water Service in Kirk Glen Subdivision, Buncombe County, and Approving Rates
W-838 (12-18-85)

Hasty Water Utilities, Inc. - Order Granting Certificate to Furnish Water Service in High Meadows Subdivision, Wake County, and Approving Rates
W-736, Sub 10 (1-29-85) Errata Order (2-7-85)

Hasty Water Utilities, Inc. - Order Granting Certificate to Furnish Water Service in Windsor Oaks Subdivision, Wake County, and Approving Rates
W-736, Sub 11 (2-13-85)

Hasty Water Utilities, Inc. - Order Granting Certificate to Furnish Water Service in Windemere Subdivision, Wake and Franklin Counties, and Approving Rates
W-736, Sub 12 (2-19-85)

Hasty Water Utilities, Inc. - Order Granting Certificate to Furnish Water Service in The Point Subdivision, Wake County, and Approving Rates
W-736, Sub 13 (3-12-85)

Hasty Water Utilities, Inc. - Order Granting Certificate to Furnish Water Service in Bridgepoint North, Bridgepoint South, and Chelsea Subdivisions, Wake County, and Approving Rates
W-736, Sub 15 (8-21-85)

Hasty Water Utilities, Inc. - Order Granting Certificate to Furnish Water Service in Byrum Woods Subdivision, Wake County and Approving Rates
W-736, Sub 16 (8-22-85)

Hasty Water Utilities, Inc. - Order Granting Certificate to Furnish Water Service in Belle Ridge Subdivision, Wake County and Approving Rates
W-736, Sub 17 (8-22-85)

Hasty Water Utilities, Inc. - Order Granting Certificate to Furnish Water Utility Service in Monticello and Hallmark Subdivisions, Wake County, and Approving Rates
W-736, Sub 19 (10-9-85)

Heater Utilities, Inc. - Order Granting Certificate to Furnish Water Service in Adams Mountain, Banbury Woods, Forestbrook, Manchester, and Mallards Crossing Subdivisions, Wake County, and Approving Rates
W-274, Sub 34 (3-4-85)

Heater Utilities, Inc. - Order Granting Franchise to Furnish Water Service in Sancroft Subdivision, Wake County, and Approving Rates
W-274, Sub 35 (7-16-85)

Lewis Water Company, Inc. - Order Granting Certificate to Provide Water Service in Rustic Trails and Bayberry Subdivisions, Gaston County, and Approving Rates
W-716, Sub 4 (3-12-85)

Lewis Water Company, Inc. - Order Granting Franchise to Provide Water Service in Providence Acres Subdivision, Gaston County, and Approving Rates
W-716, Sub 5 (8-14-85)

Mallard Head Condominiums, Inc. - Recommended Order Granting Certificate to Provide Water and Sewer Service in Mallard Head Condominiums, Iredell County, and Approving Rates
W-824 (7-8-85)

Mid South Water Systems, Inc. - Order Granting Certificate to Furnish Water Service in Greenfield Subdivision, Catawba County, and Approving Rates
W-720, Sub 20 (1-17-85)

Mid South Water Systems, Inc. - Order Granting Certificate to Furnish Water Service in South Hall Subdivision, Mecklenburg County, and Approving Rates
W-720, Sub 29 (3-12-85)

Mid South Water Systems, Inc. - Order Granting Certificate to Furnish Water Service in Heronwood Subdivision, Iredell County, and Approving Rates
W-720, Sub 30 (1-17-85)

Mid South Water Systems, Inc. - Order Granting Certificate to Furnish Water Service in Greenbriar of Matthews Subdivision, Mecklenburg County, and Approving Rates
W-720, Sub 31 (4-24-85)

Mid South Water Systems, Inc. - Order Granting Certificate to Furnish Water and Sewer Service in Country Valley Subdivision, Catawba County, and Approving Rates
W-720, Sub 32 (1-23-85)

Mid South Water Systems, Inc. - Order Granting Certificate to Furnish Water Service in Brighton on Matthews Subdivision, Mecklenburg County, and Approving Rates
W-720, Sub 34 (2-6-85)

Mid South Water Systems, Inc. - Order Granting Certificate to Furnish Water Service in Wexford Subdivision, Mecklenburg County, and Approving Rates
W-720, Sub 35 (4-3-85)

Mountains Utility Company, Inc., c/o Fairfield Mountains, Inc. - Final Order
W-808 (11-21-85)

Pelican Trace Utilities, Inc. - Recommended Order Granting Certificate to Provide Sewer Service in Pelican Trace Subdivision, Brunswick County, and

Approving Rates
W-833 (12-18-85)

Peppertree Atlantic Beach Associates - Recommended Order Granting Certificate to Provide Sewer Service in Peppertree Resort Villas, Carteret County, and Approving Rates
W-834 (11-21-85)

Pines Utilities, Inc. - Order Granting Certificate to Furnish Sewer Service in Pines Mobile Home Park and the Immediate Environs, Onslow County, and Approving Rates
W-822 (6-14-85)

Precision Utility Limited - Recommended Order Granting Certificate to Furnish Sewer Utility Service in Adam Mountain Subdivision in Wake County and Approving Initial Rates
W-832 (11-13-85)

Rock Creek Environmental Company - Recommended Order Granting Certificate to Furnish Water and Sewer Service in Rock Creek Subdivision, Onslow County, and Approving Rates
W-830 (12-19-85)

Ruff Water Company, Inc. - Order Granting Certificate to Provide Water Service in Copperfield Subdivision, Gaston County, and Approving Rates
W-435, Sub 5 (4-24-85)

S & G Development Corporation - Recommended Order Granting Certificate to Furnish Water Service in H & J Mobile Home Park in Onslow County and Approving Rates
W-800 (1-29-85)

Sentry Utilities, Inc. - Recommended Order Granting Certificate to Furnish Sewer Service in Hickory Grove Subdivision, Onslow County, and Approving Rates
W-811 (4-12-85)

Terres Bend Water System, John F. Swinson, t/a - Recommended Order Granting Certificate to Furnish Water Service in Terres Bend Subdivision, Cabarrus County, and Establishing Initial Rates
W-821 (7-1-85); Errata Order (7-8-85); Errata Order (8-12-85)

TET Utility Company, Inc. - Order Granting Certificate to Provide Water Service in Mallard Crossing Subdivision, Mecklenburg County, and Approving Rates
W-759, Sub 3 (4-10-85)

White Oak Plantation, Inc. - Recommended Order Granting Certificate to Provide Sewer Utility Service in White Oak Plantation Subdivision, Johnston County
W-825 (5-29-85); Errata Order (correcting docket number) (7-5-85)

White Oak Plantation, Inc. - Order Adopting Recommended Order Issued May 29, 1985
W-825 (5-30-85); Errata Order (correcting docket number) 7-5-85)

Woodhaven Water System, Woodhaven Homes, d/b/a - Recommended Order Granting Certificate to Furnish Water Service in Woodhaven Subdivision, Henderson County, and Approving Rates
W-805 (3-4-85)

COMPLAINTS

Bailey's Utilities, Inc. - Order Closing Docket in Complaint of James L. Freeman
W-365, Sub 22 (5-21-85)

Cape Fear Utilities Company - Order Closing Docket in Complaint of Roger K. Wolff
W-279, Sub 12 (2-26-85)

Clear-Flow Utilities of Greensboro - Recommended Order in Complaint of Gail Withers, Chairperson, Walnut Tree Community Action Committee, and Lynn C. Riddle
W-738, Sub 12, and W-738, Sub 15 (8-28-85)

Environmental Pollution Control, Inc. - Order Dismissing Complaint of Dana R. Lawrentz
W-774, Sub 2 (9-5-85)

Glendale Water, Inc. - Recommended Order in Complaint of Ms. Phyllis Vermillion, et al.
W-691, Sub 29 (12-23-85)

Hensley Enterprises, Inc. - Order Closing Docket in Complaint of Hubert Griffin
W-89, Sub 26 (6-14-85)

Touch and Flow Water Systems - Order Closing Docket in Complaint of Thomas L. Morgan
W-201, Sub 33 (8-14-85)

DISCONTINUANCE OF WATER SERVICE

Dotson, Gerald - Order Allowing Discontinuance of Water Utility Service in Kanuga Park Subdivision, Henderson County, and Allowing the City of Hendersonville to Provide the Service
W-580, Sub 2 (12-2-85)

NAME CHANGE

Bailey's Utilities, Inc. - Order Approving Stock Transfer and Name Change to Fisher Utilities, Inc.
W-365, Sub 25 (9-12-85)

Dream Weaver Utilities, Inc., Charles Andrew Perry, d/b/a - Order Granting Request to Change Name from Charles Andrew Perry, d/b/a Dream Weaver Utilities
W-786, Sub 9 (5-15-85)

Scientific Water and Sewerage Corporation - Order Approving Request to Change the Name of a Subdivision from Summersill Heights to Summersill Estates on Its Certificate
W-176, Sub 15 (1-4-85)

RATES

Billingsley, W. D. & John T. - Recommended Order Granting Partial Increase in Rates and Charges for Water Service in Dogwood Acres, Rockingham County
W-632, Sub 1 (4-4-85)

Brightwater Water Department, Inc. - Order Granting Rate Increase for Water Service in Brightwater Subdivision, Henderson County
W-151, Sub 5 (2-6-85)

Carolina Water Service, Inc. - Order Restraining Rate Increase (in Subdivisions Subject to Pending Transfer Proceeding in Docket No. W-354, Sub 40, Pending Further Order of the Commission in that Proceeding)
W-354, Sub 39, and W-354, Sub 40 (12-11-85)

Cowan Valley Estates Water System, Paul E. Cowan and Lynda Cowan, d/b/a - Order Approving Rates and Assessment for Emergency Operator
W-829 (11-27-85)

Emerald Village Water System, R. E. Graham, d/b/a - Recommended Order Granting Rate Increase for Water Service in Emerald Village Subdivision, Wake County
W-184, Sub 3 (12-11-85)

Eno Industrial Sewer Facility - Order Granting Rate Increase for Sewer Service in Eno Industrial Park, Durham County
W-763, Sub 1 (1-23-85)

Goss Utility Company - Order Approving Rate Increase, Cancelling Hearing and Requiring Public Notice
W-457, Sub 6 (8-30-85)

Glynnwood Mobile Home Park, Carroll A. Spencer, d/b/a - Recommended Order Granting Increase in Rates for Water Service in All Service Areas in New Hanover County
W-454, Sub 4 (11-15-85)

Hare, John E. - Recommended Order Granting Increase in Rates and Charges for Water Service in Meadow Lake Subdivision, Wake County
W-417, Sub 3 (3-26-85)

Hasty Water Utilities, Inc. - Recommended Order Granting Partial Increase in Rates for Providing Water Service in Wake and Johnston Counties
W-736, Sub 9 (2-26-85)

Hasty Water Utilities, Inc. - Final Order Affirming Recommended Order of February 26, 1985, Except as Modified
W-736, Sub 9 (3-27-85)

Heater Utilities, Inc. - Recommended Order Approving Partial Increase in Rates for Water Service in all Its Service Areas in North Carolina
W-274, Sub 33 (3-26-85)

Heater Utilities, Inc. - Order Adopting Recommended Order of March 26, 1985
W-274, Sub 33 (3-27-85)

Holiday Island Property Owners Association, Inc. - Order Approving Rates for Water Service in Holiday Island Subdivision, Perquimans County
W-386, Sub 4 (5-14-85)

King's Grant Water Company - Recommended Order Granting Partial Rate Increase for Water Service in all Its Service Areas in New Hanover County
W-250, Sub 5 (3-22-85)

Mercer Environmental Corporation - Order Approving Rates for Water Service in all Its Service Areas Served by Water Purchased from Onslow County
W-198, Sub 18 (8-1-85)

Mobile Hill Estates Water System; Dale Mishue, Trustee - Order Granting Rate Increase for Water Service in Mobile Hill Estates, Wake County, and Requiring Public Notice
W-224, Sub 2 (7-30-85)

Routh and Hennis, Inc. - Order Approving Rate Increase for Water Service in Canterbury Trails Subdivision, Randolph County
W-497, Sub 2 (1-8-85)

Scientific Water and Sewerage Corporation - Recommended Order Granting Partial Increase in Sewer Rates and Requiring Partial Decrease in Water Rates
W-176, Sub 17 (7-9-85)

Scientific Water and Sewerage Corporation - Order on Reconsideration of Order Issued July 9, 1985
W-176, Sub 17 (8-22-85)

Scientific Water and Sewerage Corporation - Order Approving Rate Increase by Passing Through to Its Customers an Increase in Cost of Purchased Water from Onslow County
W-176, Sub 18 (8-1-85)

Sherwood Forest Utility, Inc. - Recommended Order Approving Rate Increase for Water and Sewer Service in All of Its Service Areas in Transylvania County
W-706, Sub 3 (10-22-85)

Smawley, Elon - Order Granting Rate Increase for Water Service in Crestview Subdivision, Burke County, and Requiring Public Notice
W-333, Sub 3 (8-27-85)

Viking Utilities Corporation, Inc. - Order Approving Rate Increase, Cancelling Hearing, and Requiring Public Notice
W-740, Sub 3 (6-14-85)

Willow Creek Builders, Inc. - Recommended Order Granting Partial Rate Increase for Sewer Service in Willow Creek Subdivision, Davidson County
W-387, Sub 1 (9-27-85) Errata Order (10-15-85)

SALES AND TRANSFERS

Carolina Water Service, Inc., of North Carolina - Order on Reconsideration of the Order Issued on December 14, 1984
W-354, Sub 28, and W-354, Sub 29 (2-15-85)

Carolina Water Service, Inc., of North Carolina - Order Approving Transfer of Franchise to Provide Water Service in Forest Brook and Ole Lamp Place Subdivisions, Gaston County, North Carolina, from Pierce-Heavner Builders, Inc., and Approving Rates
W-354, Sub 30 (4-3-85)

Carolina Water Service, Inc., of North Carolina - Order Approving Transfer of Franchise to Provide Water Service in Watauga Vista Subdivision, Macon County, from Watauga Vista Water Corporation
W-354, Sub 32 (4-16-85)

Carolina Water Service, Inc., of North Carolina - Order on Reconsideration of Order Approving Transfer of Franchise to Provide Water and Sewer Service in Bear Paw Subdivision, Cherokee County, and Approving Rates
W-354, Sub 33 (2-15-85)

Carolina Water Service, Inc., of North Carolina - Order Approving Transfer of Franchise and Approving Rates to Provide Water Service in High Meadows Subdivision, Alleghany County, from High Meadows Water and Utilities Company
W-354, Sub 37 (4-16-85)

Community Utilities, Inc. - Order Approving Transfer of Water Franchise in Seven Lakes Development, Moore County, from The Mor Group, Inc., and Cancelling Temporary Operating Authority
W-845 (12-9-85)

Crestwood Water Company, Eric T. Helms, d/b/a - Order Approving Transfer of Ownership of Water Utility System Providing Service in Crestwood Subdivision, Mecklenburg County, to a Nonprofit Homeowners Association, d/b/a Crestwood Water Company
W-592, Sub 3 (2-19-85)

Figure "8" Island Utility Company - Order Approving Transfer of Utility System to Owner Exempt from Regulation and Cancelling Franchise
W-246, Sub 5 (10-15-85)

Genoa Water System, Wells Investment Corporation, d/b/a - Order Approving Transfer of Water Utility Franchise in Hickory Hills Subdivision, Wayne County, from Hickory Hills Service Company, Inc., and Approving Rates
W-321, Sub 7 (7-15-85)

Harris, John L. - Order Approving Transfer of Water Utility Franchise in Sherrill Park Subdivision, Rowan County, to South Rowan Investment Corporation
W-807 (1-17-85)

LaGrange Waterworks Corporation - Order Approving Transfer of Water Utility Franchises in Borden Heights Subdivision and Julie-Shaw Heights Subdivision in Cumberland County to the City of Fayetteville (Owner Exempt from Regulation)
W-200, Sub 18 (11-5-85)

Lowesville Water Company, Inc. - Order Approving Transfer of the Water Utility Franchise in Lowesville Square Development, Lincoln County, to Lincoln County (Owner Exempt from Regulation)
W-613, Sub 2 (4-24-85)

Mid South Water System, Inc. - Recommended Order Granting Transfer of Franchise to Provide Water Service in Cedar Wood Acres, Charleston Park, Green Road, Hovis Road, Starbrook Road, Westerly Hills, and Winningfield Park Subdivisions, Gaston County, from Fred L. Payne Water Company and Allowing Rate Increase
W-720, Sub 33 (2-7-85)

Mid South Water System, Inc. - Order Approving Transfer of Franchise to Provide Water Service in Olde Creek Subdivision, Mecklenburg County, from F. W. Huntley Construction Company, Inc., and Approving Rates
W-720, Sub 36 (7-15-85)

Mor Group, Inc., The - Order on Exceptions to Recommended Order Granting Temporary Authority and Approving Rates
W-815 (10-7-85)

Mulkey Homesites Water System - Recommended Order Granting Application and Requiring Refunds
W-818 (11-27-85)

Park Utility Corporation - Order Approving Transfer of Ownership of Franchise to Provide Sewer Utility Service in Crystal Park Subdivision, Cumberland County, to the Public Works Commission of the City of Fayetteville
S-6, Sub 1 (4-3-85)

Triad Utilities, Inc. - Recommended Order Approving Transfer of Franchise to Provide Water Service in Chatham and Polk Landing Subdivisions, Chatham County, from Fearrington Utilities, a North Carolina Partnership, and Approving Partial Rate Increase
W-802 (1-8-85)

Triad Utilities, Inc. - Recommended Order Modifying Recommended Order of January 8, 1985, and Requiring Fearrington Utilities to Report Progress Made Concerning Approval of Plans for Polks Landing Subdivision and the Improvements Required by the Commission
W-802 (3-6-85)

SECURITIES

Huffman, H.C., Water Systems, Inc. - Order Approving Stock Transfer from Horace and Peggy Huffman to Thomas Carroll and Mary S. Weber
W-95, Sub 10 (11-2-85)

TARIFFS

Cape Fear Utilities, Inc., et al. - Order Revising Tariff
W-279, Sub 13 (5-7-85)

Clear Flow Utilities, Inc. - Order Approving Tariff Revisions
W-738, Sub 17 (11-5-85)

Hasty Water Utilities, Inc. - Order Approving Tariff Change
W-736, Sub 14 (4-5-85)

Linville Ridge Development - Order Approving Tariff Revision
W-766, Sub 1 (3-27-85)

Mercer Environmental Corporation - Order Amending Tariff
W-198, Sub 17 (8-22-85)

TEMPORARY AUTHORITY

McMahan, Harold D. - Recommended Order Granting Temporary Operating Authority to Furnish Water Utility Service in Beard Acres in Randolph County and Approving Rates
W-791 (10-22-85)

Mid South Water Systems, Inc. - Order Granting Temporary Operating Authority to Furnish Water Utility Service in White Rock Subdivision in Cleveland County and Approving Rates
W-720, Sub 22 (1-17-85)

Mor Group, The, Inc. - Recommended Order Granting Temporary Operating Authority to Transfer the Franchise to Provide Water Service in Seven Lakes Development, Moore County, from Longleaf, Inc., and Approving Rates
W-815 (7-16-85)

R.O.E. Water Utility Company - Recommended Order Granting Temporary Operating Authority to Furnish Water Service in Rolling Oaks Estates Subdivision in Buncombe County and Approving Rates
W-820 (6-25-85)

Smith, R. Wiley - Recommended Order Granting Temporary Operating Authority to Provide Water Service in the Dogwood Knolls Subdivision in Buncombe County with the Interim Rate Continued
W-792, Sub 1 (1-3-85)

MISCELLANEOUS

A & B Water Company, Ronald R. Bach, d/b/a - Recommended Order Declaring Public Utility Status for Bach Mobile Home Park and Emerald Isle Park, Catawba County
W-819 (5-14-85) Errata Order (5-16-85)

AWS Utilities, Inc. - Order Declaring Utility Status
W-848 (12-11-85)

ORDERS LISTED

Alternative Waste Treatment Systems, Inc. - Order Declaring Utility Status
W-839 (10-8-85)

Avalon Water Systems, Inc., Larry Lee Alls, Sr., d/b/a - Recommended Order Finding Abandonment and Emergency in the Colonial Estates Subdivision, Randolph County
W-382, Sub 7 (4-17-85)

Bailey's Utilities, Inc., et al. - Recommended Order Denying Motions and Petitions
W-365, Subs 15, 21, and 23; W-786, Subs 2 and 3, and W-691, Sub 28 (6-5-85)

Bayview Water Works, Jim Mason and Heber Latham III, d/b/a - Order Closing Docket (as requested by Applicant)
W-565, Sub 3 (7-5-85)

Carolina Pines Country Club, Inc. - Order Cancelling Hearing and Closing Docket in Application for Authority to Increase Rates for Water Utility Service in Croatan Woods and Hickory Hills Subdivision, Craven County
W-341, Sub 3 (9-4-85)

Cowan Valley Estates Water System, Paul E. Cowan, d/b/a - Order Declaring Public Utility Status and Finding Emergency
W-829 (10-30-85) Order Amending Order of October 30, 1985 (10-31-85)

Dream Weaver Utilities, Charles A. Perry, d/b/a - Order Restricting Water Use in Tuck-A-Hoe Subdivision, Wake County, and Requiring Public Notice
W-786, Sub 6 (4-17-85)

Duke Power Company - Order Approving Revised Water Department Service Regulations for North Carolina
W-94, Sub 11 (6-5-85)

Emerald Plantation Utility Company - Order Declaring Utility Status
W-843 (10-22-85)

Environmental Pollution Control, Inc. - Order Declaring Emergency and Authorizing Application for Emergency Operator
W-774, Sub 1 (11-6-85)

Environmental Pollution Control, Inc. - Order Amending Order of November 6, 1985
W-774, Sub 1 (11-6-85)

Figure "8" Island Utility Company - Order Closing Docket
W-246, Sub 4 (11-13-85)

Hydraulics, Ltd., Inc. - Recommended Order Specifying Improvements
W-218, Sub 30 (1-30-85) W-816 (2-21-85)

Inlet Bay Utilities, Inc. - Order Declaring Utility Status
W-828 (7-15-85)

Knob Creek Properties, Inc., and Knob Creek Properties, Inc., BIG, Inc., t/a - Order Allowing Implementation of Metered Rates to Commercial Customers and Requiring Reports
W-486, Sub 3 (7-9-85)

Mountain Acreage, Inc. - Order Closing Docket and Excepting Water System from Regulation
W-790 (10-31-85)

Mountains Utility Co., Inc., c/o Fairfield Mountains, Inc. - Order Determining Rate Base Treatment of Developer Investment
W-808 (11-7-85)

Ogden Village Utilities, Inc. - Order Declaring Public Utility Status (Proposed Public Sewer System in Ogden Village Shopping Center, New Hanover County
W-836 (8-27-85)

Oyster Bay Utilities, Inc. - Order Declaring Utility Status (Proposed Public Sewer Systems in Oyster Bay Condominiums, Brunswick County
W-831 (8-22-85)

Payne, Fred L., Water Company - Order Closing Docket (Applicant and Mid South Water System, Inc., Requested Water Franchise Be Transferred to Mid South)
W-110, Sub 6 (1-9-85)

Pelican Trace Utilities, Inc. - Order Declaring Public Utility Status (Plans Construct Public Sewer Systen in Pelican Trace Subdivision, Brunswick County)
W-833 (8-13-85)

Robertson Brothers Utilities - Order Declaring Public Utility Status
W-837 (11-21-85)

Rock Creek Environmental Company - Order Declaring Public Utility Status (Proposed Public Water and Sewer System to Serve Rock Creek Subdivision, Onslow County)
W-830 (8-14-85)

Tarheel Utility Management, Inc. - Order Declaring Utility Status
W-827, Sub 1 (10-24-85)

Waverly Mills, Inc. - Order Granting Suspension of Franchise for One Year
W-734 (10-18-85)