# SEVENTY-SIXTH REPORT

of the

# NORTH CAROLINA UTILITIES COMMISSION

## ORDERS AND DECISIONS

Issued from

January 1, 1986, through December 31, 1986

Robert O. Wells, Chairman

Dr. Robert K. Koger, Commissioner

Sarah Lindsay Tate, Commissioner

Edward B. Hipp, Commissioner

A. Hartwell Campbell,[1] Commissioner

Ruth E. Cook, Commissioner

Julius A. Wright, 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] Commissioner A. Hartwell Campbell, resigned effective December 31, 1986

# LETTER OF TRANSMITTAL

December 31, 1986

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, 1986, we hereby present for your consideration the report of the Commission's decisions for the 12-month period beginning January 1, 1986, and ending December 31, 1986.

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

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## of the
## North Carolina Utilities Commission

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DOCKET NO. M-100, SUB 109

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

| In the Matter of | | |
|---|---|---|
| Revision of Certain Rules in Chapter 2 and | ) | ORDER AMENDING |
| Chapter 5 of the Rules and Regulations of the | ) | RULES AND |
| North Carolina Utilities Commission | ) | REGULATIONS |

BY THE COMMISSION: On June 24, 1985, the General Assembly of North Carolina ratified House Bill 684 (Chapter 454) to add a new Article 17 to Chapter 20 of the General Statutes and to make other necessary changes in Chapter 20 and Chapter 62 to accomplish the transfer of certain of the Commission's motor carrier functions to the North Carolina Division of Motor Vehicles.

On July 10, 1985, the General Assembly of North Carolina ratified House Bill 977 (Chapter 676) known as the "Bus Regulatory Reform Act of 1985" to make certain changes in Chapter 62 regarding the regulation of motor carriers of passengers.

The enactment of the legislation referred to above necessitates the revision by the Commission of certain of its Rules and Regulations as set forth in Chapter 2. Motor Carriers and Chapter 5. Investigations by Transportation Inspectors.

On March 5, 1986, the Commission entered an Order in this docket wherein it concluded that certain Rules and Regulations in Chapter 2 and Chapter 5 should be revised/repealed in conformity with Appendix A which was attached to said Order, unless significant protests and requests for hearing were received by April 1, 1986.

The Order of March 5, 1986, was published in the Commission's Calendar of Hearings issued March 6, 1986, and was served upon the North Carolina Trucking Association, Inc.; Motor Carriers Traffic Association, Inc.; Southern Motor Carriers Rate Conference; and the North Carolina Bus Association, Inc.

Comments by the North Carolina Bus Association, Inc., regarding the proposed rule revisions were timely filed with the Commission which contained certain proposed amendments to portions of proposed Rules R2-42, R2-47, and R2-59.

Upon consideration of the comments and the entire record in this proceeding, 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 its Rules and Regulations in Chapter 2 and Chapter 5 should be amended in accordance with Appendix A attached hereto.

IT IS, THEREFORE, ORDERED as follows:

1. That the Commission's Rules and Regulations set forth in Chapter 2 and Chapter 5 are hereby revised/repealed in accordance with Appendix A attached hereto and made a part hereof, effective upon the date of this Order, except as otherwise noted.

2. That a copy of this Order be published in the Commission's Calendar of Hearings and shall be mailed by the Chief Clerk to the following:

North Carolina Trucking Association, Inc.
P. O. Box 2977
Raleigh, North Carolina 27602

Motor Carriers Traffic Association, Inc.
P. O. Box 1500
Greensboro, North Carolina 27402

Southern Motor Carriers Rate Conference
P. O. Box 7219, Station C
Atlanta, Georgia 30357

North Carolina Bus Association, Inc.
P. O. Box 417
Cary, North Carolina 27511

ISSUED BY ORDER OF THE COMMISSION.
This the 20th day of May 1986.

NORTH CAROLINA UTILITIES COMMISSION
Sandra J. Webster, Chief Clerk

(SEAL)

APPENDIX A
ARTICLE 2.
Exemptions.

Rule R2-2. Certificate; vehicle identification, etc.

(a) A carrier which proposes to limit its intrastate for hire operations to commodities and services or passengers which are exempt under G.S. 62-260, or which proposes to own vehicles for the purpose of leasing same, shall apply to the Division of Motor Vehicles in writing, on forms furnished by the Division of Motor Vehicles, and obtain a certificate of exemption.

(b) A certificate of exemption for the transportation of property may also be authorized by the Commission under G.S. 62-261(6) upon its own motion, or upon motion of any motor carrier or any other party in interest. Such motion shall fully and clearly state conditions existing which warrant exemptions from regulations and shall describe the kind of property to be hauled and the territory to be served. A certificate of exemption under this subsection will be issued only after a careful investigation by the Commission. Only in cases of unquestioned merit and urgency will such motion be passed upon by the Commission without notice to other carriers operating in the area and an opportunity to file protest, appear and be heard.

(c) Passengers, fire-fighting equipment, medical and hospital supplies, food, feed, clothing, and other articles necessary for immediate relief of or direct prevention of fires, sickness, accident, storm, flood, or similar catastrophes, may be transported by any person in any available vehicle without notice to or authority from the Commission.

(d) Repealed
(e) Repealed
(f) Repealed

(g) The lease of equipment with driver for use in private transportation of property is prohibited unless the private carrier leases vehicle(s) and driver(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.

(h) Repealed

Rule R2-3. Repealed

Rule R2-4. Repealed

Rule R2-5. Repealed

Rule R2-5.1. Insurance and safety regulation of exempt passenger carriers.

In the application of the insurance regulations of the Commission under G.S. 62-260(f) and certificates of exemption under G.S. 62-260(g) the Commission deems that the term "motor carriers" as included in said sections should be construed under the definition in G.S. 62-3(17) to be limited to motor common carriers or motor contract carriers of exempt passengers for hire who have been issued certificates of exemption by the Division of Motor Vehicles. (NCUC Docket No. M-100, Sub 16, 2/5/68.)

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Rule R2-7. Repealed

## ARTICLE 4.
## Applications.

Rule R2-8. Applications for certificates, permits and transfers; notice.

(a) For Operating Authority.

(1) Application for authority to operate either as a common carrier or as a contract carrier must be made on forms furnished by the Commission, and all the required exhibits must be attached to and made a part of the application. The original and five (5) complete copies of the application, including exhibits, must be filed with the Commission with a copy to the Public Staff. The

original and the copies shall be fastened separately. A filing fee as set forth in G. S. 62-300 must accompany the application before it is considered as being filed.

(2) The application shall be signed and sworn to by the applicant. If the applicant is a partnership, one partner may sign and verify for all; but the names and addresses of all partners must appear in the application and a certified copy of the partnership agreement, as filed in the county wherein the principal office of the partnership is located, must be filed with the Commission. Trade names will not be allowed unless the names and addresses of all owners are given. If the applicant is a corporation, a duly authorized officer of the corporation must verify the application. The names and addresses of the principal managing officers of the corporation must be given and a certified copy of the corporate charter filed with the application.

(b) For Approval of Sale, Lease, or Other Transfer of Operating Authority. (Also see Rule R2-9.)

(1) Application for approval of sale, lease, or other transfer of operating authority shall be typewritten, shall be filed with the Commission with a copy to the Public Staff, by providing an original and five (5) copies and shall be accompanied by a filing fee as set forth in G. S. 62-300. Such applications may necessarily differ according to the nature of the transaction involved, but must include the following:

a. The names and addresses of all parties to the transaction.

b. A full and complete explanation of the nature of the transaction and its purpose.

(2) If the application is for approval of a lease of operating rights, a copy of the proposed lease agreement must be filed with the application and must contain the entire agreement between the parties.

(3) If the application is for approval of a sale of operating rights, a copy of the proposed sales agreement must be filed with the application and must contain the entire agreement between parties, including (i) an accurate description of the operating rights and other property to be transferred, and (ii) the purchase price agreed upon, and all the terms and conditions with respect to the payment of the same.

(4) No sale of a certificate or permit will be approved unless the seller complies with the provisions of G.S. 62-111 by filing a statement under oath, as therein required, with respect to debts and claims; a statement showing gross operating revenues and total number of miles traveled for the latest three months' period preceding the date of filing the application, or for the latest three months' period preceding the date of authority to

suspend operations, if theretofore granted by this Commission; and no such sale will be approved unless the purchaser files with the Commission a statement under oath of his assets and liabilities from which it must appear that the purchaser is solvent and in financial condition to meet such reasonable demands as the business may require.

(5) If the transferee is a corporation, a photostatic copy or certified copy of its corporate charter must be filed with said application unless same is already on file with the Commission.

(6) If the application is for approval of a merger of two or more carriers, or of any agreement by which one carrier seeks to acquire an interest in or control over another carrier, the application shall set out the purpose of such merger, combination or agreement, and the extent of any transfers of operating rights or other properties of the carriers involved, the changes in the financial status and obligations of the individual carriers involved, and all other matters necessary to a full understanding of the transaction and its effect upon other motor carriers.

(c) Notice of Application and Hearings.

(1) Upon receipt of an application for a certificate or permit for the transportation of property, same shall be set for hearing and at least twenty (20) days' notice shall be given in the Commission's calendar of truck hearings, a copy of which shall be mailed to applicant and to any other person desiring it, upon payment of charges to be fixed by the Commission. If no protests are filed to the application within the time provided for in Rule R2-11, or as extended by order of the Commission, the hearing may be cancelled and the Commission may proceed to decide the application on the basis of information contained in the application and sworn affidavits.

(2) Upon receipt of an application for a permit to operate as a contract carrier of passengers, same shall be set for hearing and the Commission shall cause twenty (20) days' notice of the time and place of hearing to be given by mail to the applicant, to other motor carriers of passengers holding certificates or permits to operate in the territory proposed to be served by the applicant, and to other motor carriers of passengers who have pending applications to so operate. Applicant may also be required to publish notice of hearing in a newspaper of general circulation in the area it is proposed to serve. If no protests are filed to the application within the time provided for in Rule R2-11, or as extended by order of the Commission, the hearing may be cancelled and the Commission may proceed to decide the application on the basis of information contained in the application and sworn affidavits.

(3) Upon receipt of an application to operate as a bus company over fixed routes or in charter operation, or both, the Commission,

within ten (10) days after the filing of the application, shall cause notice thereof to be given by mail to the applicant, to other bus companies holding certificates or permits to operate in the territory proposed to be served by the applicant, and to other bus companies who have pending applications to so operate. If no protests, raising material issues of fact to the granting of the application, are filed with the Commission within thirty (30) days after the notice is given, the Commission shall proceed to decide the application. If protests are filed raising material issues of fact to the granting of the application, the Commission shall set the application for hearing as soon as possible and cause notice thereof to be given to the applicant and all other parties of record.

(4) The notice shall give the general nature and scope of the proposed operations and shall also fix the time within which protests, if any, shall be filed to the application. (See Rule R2-11.) See G.S. 62-300. (NCUC Docket No. M-100, Sub 56, 5/24/74; NCUC Docket No. M-100, Sub 75, 10/27/77.)

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Rule R2-15. Proof required.

(a) If the application is for a certificate to operate as a common carrier of property, the applicant shall establish by proof (i) that a public demand and need exists for the proposed service in addition to existing authorized service, (ii) that the applicant is fit, willing and able to properly perform the proposed service, and (iii) that the applicant is solvent and financially able to furnish adequate service on a continuing basis. Uncorroborated testimony of the applicant is generally insufficient to establish public demand and need.

(b) If the application is for a permit to operate as a contract carrier of property or passengers, 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 similar service. (NCUC Docket No. M-100, Sub 75, 10/27/77.)

(c) If the application is for a certificate to operate as a bus company in the transportation of passengers over fixed routes, the applicant shall establish that it is fit, willing and able to provide the transportation to be authorized by the certificate and to comply with the provisions of Chapter 62 of the Public Utilities Act, and that the transportation to be authorized is consistent with the public interest.

In making any findings relating to public interest under section (c) of this Rule, the Commission shall consider, to the extent applicable, (i) the transportation policy of this State as it relates to bus companies under G.S. 62-259.1 and Chapter 62 of the Public Utilities Act; (ii) the value of competition to the traveling and shipping public; (iii) the effect of issuance of the certificate on bus company service and small communities; and (iv) whether issuance of the certificate would impair the ability of any other fixed route carrier of passengers to provide a substantial portion of its fixed route passenger service,. except that diversion of revenue or traffic from a fixed route carrier of passengers, alone, shall not be sufficient to support a finding that issuance of the certificate would impair the ability of the carrier to provide a substantial portion of its fixed route passenger service.

(d) If the application is for a certificate to operate as a bus company engaged solely in charter operations, the applicant shall establish that it is fit, willing and able to perform the proposed charter operations by presenting evidence that: (i) the applicant has sufficient assets to perform properly the proposed operations; (ii) the operation will be conducted only with properly qualified drivers; (iii) the applicant will maintain safe,. clean and attractive buses and equipment; (iv) the applicant will maintain insurance for the protection of the public as provided in this Chapter; (v) the applicant has sufficient equipment to conduct the proposed operations; and (vi) the applicant will observe all applicable laws, rules and regulations of this State.

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Rule R2-22. Beginning operations under a certificate or permit or certificate of exemption for the transportation of passengers.

(a) An order of the Commission, approving an application, or the issuance of a certificate or a permit does not within itself authorize the carrier to begin operations. Operations are unlawful until the carrier shall have complied with the following:

(1) Registration of its rolling equipment with the Division of Motor Vehicles on Form NCMC 19.

(2) Filing insurance with the Division of Motor Vehicles covering its rolling equipment or by providing other security for the protection of the public, as provided by Rule R2-36.

(3) In the case of common and contract carriers, filing tariffs and schedules of rates and charges to be made for the transportation service authorized, as provided by Rule R2-16.

(b) Unless a common or contract carrier complies with the foregoing requirements and begins operating, as authorized, within a period of thirty (30) days after the Commission's order approving the application becomes final, unless the time is extended in writing by the Commission upon written request, the operating rights therein granted will cease and determine. (NCUC Docket No. M-100, Sub 14, 10/5/67).

Rule R2-23. Repealed

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Rule R2-38. Repealed

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Rule R2-42. Inspection of vehicles, books, records, etc.

(a) Auditors, accountants, inspectors, examiners of the Public Staff or Commission Staff or their agents, upon demand and display of proper credentials, shall be permitted by any carrier transporting, or authorized to transport, property or passengers over the public highways of North Carolina for compensation to examine the books, records, accounts, bills of lading, load sheets or manifests, or other records of such carrier relating to the transportation of property or passengers and the terminals, buildings, and other facilities used by such carrier in such transportation business; and all such carriers shall instruct their drivers, agents and employees in charge of such records and facilities to permit such examination.

(b) Repealed

(c) No inspector or other agent of the Commission or the Public Staff shall knowingly and wilfully divulge any fact or information which may come to his knowledge during the course of any such examination or inspection, except to the Commission or as may be directed by the Commission or upon approval of request to the Commission by the Public Staff or by a court or judge thereof. See G.S. 62-316. (NCUC Docket No. M-100, Sub 14, 10/5/67; NCUC Docket No. M-100, Sub 75 10/27/77.)

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Rule R2-44. Process agent.

(a) All motor carriers operating under certificates or permits, or having pending applications to so operate, shall file with the Division of Motor Vehicles a designation in writing of the name and post-office address of a person residing in the State of North Carolina upon whom notice of applications, hearings and orders in proceedings under said Act may be made.

(b) In proceedings before the Commission involving the lawfulness of rates, charges, classifications, or practices, service of notice upon the person or agent who has filed a tariff or schedule in behalf of such carrier shall be deemed to be due and sufficient service upon the carrier.

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Rule R2-46. Repealed

Rule R2-47. Discontinuance of service.

(a) No common carrier or contract carrier shall abandon or discontinue any service authorized by its certificate or permit without first obtaining written authority from the Commission. The petition for such authority shall be filed with the Commission at least thirty (30) days prior to any discontinuance, unless otherwise authorized by the Commission, and if petitioner is a motor carrier of passengers, shall show in support thereof the information set forth in paragraph (c) herein. The discontinuance or nonuse of a service authorized by a certificate or permit for a period of thirty (30) days or longer without the written consent of the Commission shall be considered good cause for cancellation, seasonal service excepted. Upon receipt of a petition for authority to discontinue or abandon service, the Commission may designate a time and place for hearing on the petition. If a petitioning bus company proposes to discontinue service over any intrastate route or proposes to reduce its level of service to any points on a route to a level of service which is less than one trip per day, excluding Saturdays and Sundays, the Commission shall, within ten (10) days after the filing of the petition, require notice to be given to the public by posting notice of the petition in buses serving such routes and in bus stations or other prominent places along said routes. If no objections are filed to the petition by any person or the Public Staff within thirty (30) days after notice is given, the Commission may proceed to decide the petition based on the record and without a hearing.

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

(c) In support of any petition or schedule which proposes to reduce motor passenger carrier service over any North Carolina route or to any North Carolina point to a level which is less than one (1) trip per five (5) days per week excluding Saturdays and Sundays, the proponent carrier shall furnish the data set forth hereinbelow:

(1) A listing of the origin, termination and all intermediate points which will lose the proponent carrier's service.

(2) A statement as to whether the proponent carrier is the last or only intercity motor carrier of passengers to or from the issue points or over the issue route.

(3) A statement identifying any reasonable alternative to the proponent carrier's passenger and express services on the issue route and to or from the issue points, which statement shall identify the location of the alternative services relative to the issue route and points.

(4) For the latest twelve months available to the proponent carrier, a statement showing:

a. total system bus miles operated;
b. total N.C. bus miles operated;
c. scheduled system bus miles operated; and
d. scheduled N.C. bus miles operated.

(5) A statement or exhibits calculating and showing:

a. estimated or actual passenger revenues, at actual and present annualized levels, attributable to that portion of the proponent carrier's operations proposed to be abandoned, but not including passenger revenues which the carrier expects to retain in connection with other services which it will still operate;

b. estimated or actual express revenues, at actual and present annualized levels, attributable to that portion of the proponent carrier's operations proposed to be abandoned, but not including express revenues which the carrier expects to retain in connection with other services which it will still operate;

c. actual or scheduled N.C. bus miles, for the latest twelve (12) months available, operated in service over that portion of the route proposed to be discontinued; and

d. estimated or actual number of interstate and intrastate passengers transported over the issue route or to or from the issue points during the latest twelve (12) months available.

The statements or exhibits containing the calculations and information required under Items A, B, C and D above shall be presented in such a manner and in such detail that the Commission can verify the sampling and apportionment methodologies used and can determine the treatment by the proponent carrier of revenues originating outside the issue route but within the carrier's system going to any issue point; revenues originating at an issue point going to points within the carrier's system but outside the issue route; and revenues originating and terminating along the issue route. The proponent carrier also shall, at a site in North Carolina designated by it, make available for inspection by all parties, and upon order of the Commission shall file, copies of ticket samples, driver reports, station reports, bus bills, schedule information reports, trend sheets or any other source documents which show or were used to develop revenues or passenger counts (whether by schedule, points or route) as determined in Items A through D above.

(6) The proponent carrier shall calculate and furnish its system variable costs and the fully allocated costs attributable to service along and to the issue route and points, with an explanation of how the costs were calculated, and of any assumptions underlying the calculations, which assumptions must be consistent with any used to calculate revenues. The proponent carrier shall furnish such information pursuant to forms and in the format as from time to time shall be approved by the Commission, if any, but nothing herein shall preclude the carrier from submitting, in addition to the above, the same data in a different form or format if it so desires.

xxxxx xxxxx xxxxx xxxxx

Rule R2-55. Repealed

***** ***** ***** *****

Rule R2-59. Time tables.

(a) Information in Table. - Every common carrier of passengers shall file with the Commission with a copy to the Public Staff a time table showing the time of arrival and departure of its coaches at each regular station or stop, and such time table shall further show the number of trips to be made daily over each route or routes. Time tables shall be available in each waiting room at bus stations. Time tables shall bear an issuing date and an effective date.

(b) Time Table Changes. - Any change in or addition to a time table shall be made by reissuing the time table. Each new time table shall cancel the previous time table. Every time table shall bear a number which shall be placed in the upper left-hand corner of the title page and shall be printed in bold type. Time tables shall be numbered consecutively. Five (5) copies of all changes in time schedules shall be filed with the Commission not less than twenty (20) days prior to the effective date of change, together with a certificate that copies thereof have been furnished by first class mail to all connecting carriers and that said changes have been posted in bus stations and at bus stops: Provided, however, that the Commission may order such changes to be made upon shorter notice.

(c) Protest. - Where changes in time schedules, other than changes relating to scheduling of interstate or intrastate transportation provided by a motor common carrier of passengers subject to the jurisdiction of the Interstate Commerce Commission under subchapter II of chapter 105 of Title 49 of the United States Code on an authorized interstate route, are properly posted in accordance with subsection (b) above and no protest is received by the Commission during the first fifteen (15) days after notice is properly posted, the carrier, unless otherwise directed by the Commission, will be allowed to make the change effective on date shown on the schedule, subject to complaint and further order of the Commission. No protest by a connecting or competing carrier to a change of schedule will be considered unless it is filed with the Commission in writing, gives the reasons for such protest and certifies that a copy thereof has been mailed by certified or registered mail to the carrier proposing the change.

(d) Adherence to Schedules. - Time schedules as filed with and approved by the Commission and posted for the information of the public shall be strictly complied with. Habitual or intentional delay to obtain passengers of a competitor will be considered just cause for removing the schedule of the offending carrier.

(e) Effective Date. - This amended rule shall be effective on and after July 1, 1986. (NCUC Docket No. M-100, Sub 10, 11/1/67; NCUC Docket No. M-100, Sub 75, 10/27/77.)

***** ***** ***** *****

Rule R2-61. Transportation of property in buses.

The transportation of property by passenger carriers, as authorized by subsection (g) of G.S. 62-262.1, shall be so limited as not to interfere with the comfort and convenience of passengers, and then only at rates and charges set out in the carrier's published tariff.

***** ***** ***** *****

Rule R2-65. Repealed

Rule R2-67. Repealed

Rule R2-68. Repealed

Rules R2-72 through R2-86. Repealed

Rules R5-1 through R5-6. Repealed

DOCKET NO. M-100, SUB 110

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Rulemaking Proceeding to Prepare a Bill of Rights )
for Residential Customers of Electric and Natural Gas )
Utility Companies )

ORDER ISSUING BILL OF RIGHTS

BY THE COMMISSION: On February 19, 1986, the Commission issued an Order Instituting a Rulemaking Proceeding for the purpose of preparing a "bill of rights" for residential customers of electric and natural gas utility companies and for the further purpose of determining the means for distribution of the same. The bill of rights was described by that Order as a statement of the basic rights of residential customers of electric and natural gas utility companies cast in simple, readable English and distributed in an effort to make such customers more aware of their rights and of the resources available to them when questions or problems arise in connection with their utility service. The Commission attached to its Order Instituting Rulemaking Proceeding proposed drafts of a bill of rights for residential customers of electric service. The Commission set a deadline for the filing of comments and served the Order on the utility companies involved, the Public Staff, and the Attorney General.

Within the time allowed, comments were filed by Carolina Power & Light Company, Duke Power Company, Virginia Electric and Power Company (North Carolina Power), Nantahala Power and Light Company, Public Service Company of North Carolina, Inc., Piedmont Natural Gas Company, Inc., North Carolina Natural Gas Corporation, North Carolina Gas Service, the Public Staff, and the City of Bessemer City.

Each of the commentors suggested various changes to the wording of the proposed drafts in an effort to bring the drafts more closely into line with Commission rules or to make the drafts more understandable or easier to read. None of the commentors regulated by this Commission opposed the issuance and distribution of the bill of rights. The Public Staff heartily endorsed the idea of the bill of rights. With respect to the distribution of the bill of rights, the utility companies generally proposed making the bill of rights available to new applicants for service and mailing the same to existing customers as a bill insert.

On the basis of the comments filed herein, the Commission has made several changes to the wording of the proposed drafts in an effort to make them more accurate and easier to read and understand. The Commission finds good cause to issue the Bill of Rights for Residential Customers of Electric Companies and the Bill of Rights for Residential Customers of Natural Gas Companies attached to the present Order. The Commission further finds good cause to require the electric and natural gas utility companies regulated by this Commission to distribute the appropriate bill of rights--either electric or natural gas--to their customers as hereinafter provided.

Each utility company shall be responsible for promptly printing sufficient copies of the appropriate bill of rights for distribution to its new and existing customers. In printing, the bill of rights may be reduced in size; however, the printing shall adhere to the format, spacing, capitalization, punctuation and underlining as set forth in the bills of rights attached hereto. In printing, each company shall seek to achieve an attractive, readable copy so as to promote the purposes of the bill of rights. Each utility company shall deliver a copy of the appropriate bill of rights to applicants for new service at the time he or she applies for service. Additionally, each utility company shall, once within the next three months, mail a copy of the appropriate bill of rights to each existing customer by enclosing the same as an insert in the company's billing envelope. The Commission will allow three months' time for the mailing to existing customers in order to allow the utilities some flexibility in balancing their workloads and in saving postage.

IT IS, THEREFORE, ORDERED that the Bill of Rights for Residential Customers of Electric Companies and the Bill of Rights for Residential Customers of Natural Gas Companies attached to the present Order shoud be, and the same hereby are, issued for distribution by Carolina Power & Light Company, Duke Power Company, Virginia Electric and Power Company (North Carolina Power), Nantahala Power and Light Company, Public Service Company of North Carolina, INc., Piedmont Natural Gas Company, Inc., North CArolina Natural Gas Corporation, adn North Carolina Gas Service as hereinabove provided.

ISSUED BY ORDER OF THE COMMISSION.
This the 30th day of April 1986.

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

## BILL OF RIGHTS FOR RESIDENTIAL CUSTOMERS OF ELECTRIC COMPANIES

The North Carolina Utilities Commission has prepared this statement and is making it available to you. The Commission wants customers of electric companies to know their rights and whom to contact for help when they have questions or problems. This statement is prepared for residential customers of electric companies regulated by the North Carolina Utilities Commission.

BE AN INFORMED CUSTOMER. KNOW YOUR RIGHTS.

1. As a general rule, you have the right to establish electric service if you satisfactorily establish your credit and you provide the electric company with necessary and reasonable access to your property.

2. You have the right to establish your credit in any one of five ways: (1) you may show that you own land within the county (however, if you are an unsatisfactory credit risk, you cannot establish your credit in this way and you must establish your credit in one of the other four ways); (2) you may provide acceptable credit references; (3) you may show that you have been a residential customer of the same electric company within the last 24 months and established a good payment record over the last 12 months that service was provided; (4) you may provide a satisfactory person to guarantee payment of your bills up to a certain amount if you do not pay them; or (5) you may make a cash deposit with the company. You have the right to have all means of establishing credit explained to you by the electric company's personnel. If you have a problem establishing credit with the company, you have the right to help from the Consumer Services Division of the Public Staff and the right to review by the Commission, as explained in paragraphs 13 and 14 below.

3. If you make a cash deposit with the electric company in order to establish your credit, you have the right to have the deposit returned to you (plus interest at eight percent if the deposit is held more than 90 days) if you later establish your credit by other means, if you pay your bills promptly for a year, or if you discontinue service with the electric company.

4. After the billing date shown on your electric bill, you have the right to 25 days to pay the bill before it will be considered past due.

5. You have the right to be given written notice at least 10 days before your electric service can be cut off for your failure to pay your electric bills. This notice must explain the reason why the electric company plans to cut off the service, state the date on which the company proposes to cut off service, and explain what you can do to keep the service from being cut off.

6. You have the right to name someone else to receive a copy of any cut-off notice sent to you. This other person may be able to help you avoid having your electric service cut off, but he is not obligated to pay your bills for you.

7. You have the right to notify the electric company if there is someone in your household who is either chronically or seriously ill, handicapped or on a life support system and, in that case, you have the right to careful handling of your account should service become subject to being cut off for your failure to pay your electric bills.

8. If the electric company plans to cut off your electric service because you have not paid your electric bills and if you can show that you are unable to pay your account in full at once, you have the right to make installment payments designed to pay your account in full within six months. If you cannot pay your account by installments, the company cannot cut off your service during the winter (between November 1 and March 31) without approval from the Utilities Commission if there is someone elderly (65 years of age or older) or

handicapped in your household and if you are eligible to receive energy assistance from the local social services department.

9. As a general rule, the company cannot cut off your electric service after 4:00 p.m. on a Friday or on a weekend or a holiday. Whenever the electric company plans to cut off your service, you have the right to seek help from the Consumer Services Division of the Public Staff and, if they cannot help you, the right to file a complaint with the Utilities Commission.

10. If you suspect a malfunction, you have the right to have the electric company test your electric meter for accuracy once during a six-month period, without charge, and to have a report of the test results given to you.

11. You have the right to have the electric company help you in understanding its rate schedules, inform you as to how your electric meter is read, and furnish additional reasonable information. You have the right to have the electric company send you a copy of your billing information for the past twelve months. The company will provide your past billing information once a year without charge.

12. You have the right to have any questions or complaints considered by your electric company. The company may not agree with you, but you have the right to prompt and courteous treatment by the company.

13. If you need help with a complaint against your electric company that you cannot resolve by dealing with the company on your own, you have the right to call on the Consumer Services Division of the Public Staff. The Public Staff is a state agency created to investigate complaints affecting the using and consuming public and to represent the public in proceedings before the Utilities Commission. The Consumer Services Division of the Public Staff will work with you and the company in an effort to resolve your complaint informally. The Consumer Services Division office is in Raleigh, and its telephone number is (919) 733-9277.

14. If you cannot resolve your complaint by working with the electric company or with the Consumer Services Division of the Public Staff, you have the right to file a formal complaint against the company with the Utilities Commission. You do not need a lawyer to do this. To file a formal complaint, you should set out in writing your name and address, the name of the electric company, a clear and concise statement of your complaint, and what you want the Utilities Commission to do about your complaint. The complaint should be mailed to the North Carolina Utilities Commission, Post Office Box 29510, Raleigh, North Carolina 27626-0510. The Commission will send a copy of your complaint to the electric company. The company will either satisfy your complaint or file an answer with the Utilities Commission. If the company does not satisfy your complaint and if you want a hearing, the Commission will schedule a public hearing, unless it determines that no reasonable ground exists for a hearing. At the hearing, both you and the company can present testimony. The Public Staff may provide a lawyer to help you present your testimony. After hearing the testimony, the Commission will make a decision and enter an order dealing with your complaint.

This statement gives you a summary of your rights as a residential customer of an electric company regulated by the Utilities Commission. More detailed provisions are set out in the law, Commission rules, and the tariffs of the electric companies. The Utilities Commission wants to inform you of your rights as a consumer and wants you to understand the responsibilities of the electric companies and to call upon the Public Staff or the Utilities Commission for help.

## BILL OF RIGHTS FOR RESIDENTIAL CUSTOMERS OF NATURAL GAS COMPANIES

The North Carolina Utilities Commission has prepared this statement and is making it available to you. The Commission wants customers of natural gas companies to know their rights and whom to contact for help when they have questions or problems. This statement is prepared for residential customers of natural gas companies regulated by the North Carolina Utilities Commission.

BE AN INFORMED CUSTOMER. KNOW YOUR RIGHTS.

1. As a general rule, you have the right to establish natural gas service if you satisfactorily establish your credit, you provide the gas company with necessary and reasonable access to your property, and there is already natural gas service in your area. If there are no natural gas mains near your home, you may or may not have the right to have mains extended to serve you. If mains are extended to serve you, you may be required to pay part of the cost of the extension. If you have a question about your right to natural gas service, you should contact the gas company serving your part of the state.

2. You have the right to establish your credit in any one of five ways: (1) you may show that you own land within the county (however, if you are an unsatisfactory credit risk, you cannot establish your credit in this way and you must establish your credit in one of the other four ways); (2) you may provide acceptable credit references; (3) you may show that you have been a residential customer of the same gas company within the last 24 months and established a good payment record over the last 12 months that service was provided; (4) you may provide a satisfactory person to guarantee payment of your bills up to a certain amount if you do not pay them; or (5) you may make a cash deposit with the company. You have the right to have all means of establishing credit explained to you by the gas company's personnel. If you have a problem establishing credit with the company, you have the right to help from the Consumer Services Division of the Public Staff and the right to review by the Commission, as explained in paragraphs 13 and 14 below.

3. If you make a cash deposit with the gas company in order to establish your credit, you have the right to have the deposit returned to you (plus interest at eight percent if the deposit is held more than 90 days) if you later establish your credit by other means, if you pay your bills promptly for a year, or if you discontinue service with the gas company.

4. After the billing date shown on your gas bill, you have the right to 25 days to pay the bill before it will be considered past due.

5. You have the right to be given written notice at least 10 days before your gas service can be cut off for your failure to pay your gas bills. This notice must explain the reason why the gas company plans to cut off the

service, state the date on which the company proposes to cut off service, and explain what you can do to keep the service from being cut off.

6. You have the right to name someone else to receive a copy of any cut-off notice sent to you. This other person may be able to help you avoid having your gas service cut off, but he is not obligated to pay your bills for you.

7. You have the right to notify the gas company if there is someone in your household who is either chronically or seriously ill, handicapped or on a life support system and, in that case, you have the right to careful handling of your account should service become subject to being cut off for your failure to pay your gas bills.

8. If the gas company plans to cut off your gas service because you have not paid your gas bills and if you can show that you are unable to pay your account in full at once, you have the right to make installment payments designed to pay your account in full within six months. If you cannot pay your account by installments, the company cannot cut off your service during the winter (between November 1 and March 31) without approval of the Utilities Commission if there is someone elderly (65 years of age or older) or handicapped in your household and if you are eligible to receive energy assistance from the local social services department.

9. As a general rule, the company cannot cut off your gas service after 4:00 p.m. on a Friday or on a weekend or a holiday. Whenever the gas company plans to cut off your service, you have the right to seek help from the Consumer Services Division of the Public Staff and, if they cannot help you, the right to file a complaint with the Utilities Commission.

10. If you suspect a malfunction, you have the right to have the gas company test your gas meter for accuracy once during an 18-month period, without charge, and to have a report of the test results given to you.

11. You have the right to have the gas company help you in selecting the most economical rate schedule, inform you as to how your gas meter is read, and furnish additional reasonable information.

12. You have the right to have any questions or complaints considered by your gas company. The company may not agree with you, but you have the right to prompt and courteous treatment by the company.

13. If you need help with a complaint against your gas company that you cannot resolve by dealing with the company on your own, you have the right to call on the Consumer Services Division of the Public Staff. The Public Staff is a state agency created to investigate complaints affecting the using and consuming public and to represent the public in proceedings before the Utilities Commission. The Consumer Services Division of the Public Staff will work with you and the company in an effort to resolve your complaint informally. The Consumer Services Division office is in Raleigh, and its telephone number is (919) 733-9277.

14. If you cannot resolve your complaint by working with the gas company or with the Consumer Services Division of the Public Staff, you have the right

to file a formal complaint against the company with the Utilities Commission. You do not need a lawyer to do this. To file a formal complaint, you should set out in writing your name and address, the name of the gas company, a clear and concise statement of your complaint, and what you want the Utilities Commission to do about your complaint. The complaint should be mailed to the North Carolina Utilities Commission, Post Office Box 29510, Raleigh, North Carolina 27626-0510. The Commission will send a copy of your complaint to the gas company. The company will either satisfy your complaint or file an answer with the Utilities Commission. If the company does not satisfy your complaint and if you want a hearing, the Commission will schedule a public hearing, unless it determines that no reasonable ground exists for a hearing. At the hearing, both you and the company can present testimony. The Public Staff may provide a lawyer to help you present your testimony. After hearing the testimony, the Commission will make a decision and enter an order dealing with your complaint.

This statement gives you a summary of your rights as a residential customer of a natural gas company regulated by the Utilities Commission. More detailed provisions are set out in the law, Commission rules and the tariffs of the companies. The Utilities Commission wants to inform you of your rights as a consumer and wants you to understand the responsibilities of the natural gas companies and to call upon the Public Staff or the Utilities Commission for help.

DOCKET NO. M-100, SUB 111

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

| In the Matter of |  |  |
|---|---|---|
| Proposed Rule Revision - Request to Amend Rule R2-33. | ) | ORDER AMENDING |
| Private Carriage by Regulated Carriers Prohibited | ) | RULE R2-33 |

BY THE COMMISSION: The Commission received a letter by counsel on behalf of an applicant seeking operating authority from the Commission requesting that the Commission either repeal its Rule R2-33 or amend it so as to permit the transportation of regulated and private commodities in the same vehicles at the same time and under the same name provided that the carrier agrees to conditions requiring it to maintain separate records for for-hire and private activities.

Rule R2-33 now reads as follows:

> A common or contract carrier shall use his rolling equipment solely in furtherance of that authority, and shall not transport property for private purposes in the same vehicle or vehicles, or under the same name as that used pursuant to his common or contract carrier authority.

In support for such request, it appears that the Interstate Commerce Commission formerly had a policy similar to Rule R2-33 which was changed in 1978 in the case of Toto Purchasing and Supply Co., Inc., 128 M.C.C. 873 (1978). Subsequently, the Interstate Commerce Commission issued a policy statement reaffirming the Toto case in Ex Parte No. MC-118, on November 24, 1978, stating that for-hire motor carrier operating authority can be granted to an applicant who intends to use it primarily as an incident to the carriage of its own goods and its own nontransportation business, provided (1) that the standard criteria for motor common carrier applications or motor contract carrier applications as the case may be, are met, and (2) that the applicant is agreeable to the imposition of conditions requiring it to conduct its for-hire motor carrier activities and its other activities independently and to maintain separate records for each.

Having considered this matter, the Commission concluded that it should initiate a rulemaking investigation to consider whether or not to modify its Rule R2-33 as set forth above. In its Order of March 18, 1986, the Commission initiated this proceeding and requested that parties desiring to file comments and proposed rules do so by April 25, 1986. The Order of March 18, 1986, was published in the Commission's Truck Calendar of Hearings issued March 28, 1986, and was served upon the North Carolina Trucking Association, Inc.; Motor Carriers Traffic Association, Inc.; Southern Motor Carriers Rate Conference; and North Carolina Movers Association.

Comments in support of the repeal or amendment of Rule R2-33 were timely filed by Eastern Waste Paper Company and The Private Carrier Conference, Inc. No party filed any opposition to the proposal in this docket.

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 R2-33 should be amended as set forth in Exhibit A attached hereto.

IT IS, THEREFORE, ORDERED as follows:

1. That Rule R2-33 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 13th day of May 1986.

NORTH CAROLINA UTILITIES COMMISSION
Sandra J. Webster, Chief Clerk

(SEAL)

EXHIBIT A

Rule R2-33. Private carriage by regulated carriers.* A common or contract carrier may conduct intrastate regulated and private carriage on a tandem or commingled basis provided that separate accounting records of regulated and proprietary transportation operations are maintained.

* Corrected by Errata Order dated May 13, 1986.

DOCKET NO. M-100, SUB 112

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Investigation to Consider Revision of Rule ) ORDER AMENDING
R2-36, Security for the Protection of the ) RULE R2-36
Public )

BY THE COMMISSION: On July 10, 1985, the General Assembly of North Carolina ratified House Bill 977 (Chapter 676 of the 1985 Session Laws) which was cited as the "Bus Regulatory Reform Act of 1985." Section 22 thereof amended G.S. § 62-268 by adding the following new paragraph:

> "Notwithstanding any other provisions of this section or Chapter, bus companies shall file with the Commission proof of financial responsibility in the form of bonds, policies of insurance, or shall qualify as a self insurer, with minimum levels of financial responsibility as prescribed for motor carriers of passengers pursuant to the provisions of 49 U.S.C. § 10927(a)(1)."

The effect of this revision was to require that bus companies, which are defined as any common carrier by motor vehicle which holds itself out to the general public to engage in the transportation by motor vehicle in intrastate commerce of passengers over fixed routes or in charter operations, or both, except as exempted in G.S. § 62-260, maintain minimum levels of financial responsibility of $5,000,000 for vehicles with a seating capacity of 16 passengers or more and $1,500,000 for vehicles with a seating capacity of 15 passengers or less, effective November 19, 1985.

N.C.G.S. § 62-260(f) provides that all motor carriers transporting passengers for compensation under said exemptions or under any special exemptions granted by the Utilities Commission under G.S. § 62-261 shall be subject to the same requirements for security for protection of the public as are established for regulated motor common carriers by the rules of the Utilities Commission. The Commission initially construed this provision to require that motor carriers transporting passengers for compensation under the exemptions set forth in G.S. § 62-260 should maintain the same levels of insurance coverage as are currently required for bus companies, i.e., $5,000,000 for vehicles with a seating capacity of 16 passengers or more and $1,500,000 for vehicles with a seating capacity of 15 passengers or less.

In order to clarify the application of the increased levels of insurance coverage, the Commission sought and obtained an opinion letter from the Attorney General of North Carolina. In the opinion letter from the Attorney General dated February 10, 1986, it is stated that it is the opinion of the Attorney General that the terms "regulated motor common carrier" and a "bus company" are not synonymous. Therefore, motor carriers transporting passengers for compensation under the exemptions contained in G.S. § 62-260 would not be subject to the increased limits of insurance coverage imposed by the Bus Regulatory Reform Act of 1985, but would continue to be required to maintain the minimum insurance coverage set forth in the Commission's current Rule R2-36(a) which provides in pertinent part the following:

R2-36(a) All common and contract motor carriers, including exempt for-hire passenger carriers, shall obtain and keep in force at all times public liability and property damage insurance issued by a company authorized to do business in North Carolina in amounts not less than the following:

SCHEDULE OF LIMITS

Motor Carriers--Bodily Injury Liability--Property Damage Liability

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

Having considered the foregoing, the Commission entered an Order on May 7, 1986, wherein it initiated a rulemaking proceeding to consider possible amendments to Rule R2-36 to prescribe the minimum amounts of financial responsibility necessary for the protection of the public applicable to motor carriers transporting passengers for compensation under the exemptions set forth in G.S. 62-260.

The Order of May 7, 1986, further provided that parties desiring to file comments and proposed rule changes should file same on or before June 4, 1986, and that a copy of said Order should be served by the Chief Clerk upon all bus companies and motor carriers transporting passengers for compensation under the exemptions set forth in G.S. 62-260, as well as other interested parties including the Public Staff, the Attorney General, and the Commissioner of Insurance for the State of North Carolina.

Comments supporting the adoption by the Commission of the minimum levels of financial responsibility set forth in 49 U.S.C. § 10927(a)(1) for exempt carriers of passengers have been filed by the Commissioner of the North Carolina Division of Motor Vehicles, Carolina Coach Company, Southern Coach Company, the North Carolina Bus Association, Inc., and the Public Staff - North

Carolina Utilities Commission. Sampson Transportation Enterprises, Incorporated, an exempt motor carrier of passengers, has filed comments in this docket opposing the increase in minimum insurance limits for exempt carriers of passengers.

Also, comments have been filed by Safety Transit Company, an exempt motor carrier of passengers, proposing that in the event the Commission requires that exempt carriers of passengers maintain the minimum limits set forth in 49 U.S.C. § 10927(a)(1), that a lesser amount of financial responsibility be required for passenger carriers operating for or under the control of the State of North Carolina and/or a local Board of Education.

In his comments, the Commissioner of Motor Vehicles states that the Division of Motor Vehicles would like to go on record as supporting the financial responsibilities of $5,000,000 for vehicles with a seating capacity of 16 passengers or more and $1,500,000 for vehicles with a seating capacity of 15 passengers or less for regulated motor carriers and exempt buses and, further, that the insurance limits should be identical for both categories of passenger carriers.

Carolina Coach Company, in its comments, states that the companies involved in exempt operations must maintain the same amount of insurance coverage as regulated carriers because their mission, the transportation of passengers, is not any different than that of a regulated carrier. The comments filed by Carolina Coach further reflect that an exempt carrier can experience the same types of accidents as the carriers carrying $5,000,000 in insurance and, therefore, question why the minimum levels of insurance coverage should be different.

Southern Coach Company submits in its comments in this docket that the Commission must give maximum consideration to enforcement to all for-hire carriers of passengers of the insurance limits set forth in 49 U.S.C. § 10927(a)(1) and that the enforcement of such insurance limits on common and contract carriers and not on exempt carriers in North Carolina is a gross inequity in the law. Southern Coach Company further states that if a bus with 47 passengers has an accident with $300,000 of liability insurance coverage, that equates to $6,383 per person.

The North Carolina Bus Association, Inc., filed its comments in this proceeding and requests the Commission to amend Rule R2-36 to the end that for-hire exempt carriers under G.S. § 62-260 be required to maintain the same minimum levels of financial responsibility as is now required of bus companies under the provisions of G.S. § 62-268. In support thereof, the North Carolina Bus Association states the following:

> "The limits of liability insurance now required under Rule R2-36(a) are inordinately low to say the least. In the opinion of the NCBA, these limits afford scant protection for passengers who are being transported in intrastate commerce by for-hire exempt carriers. If one of those vehicles should be involved in a tragic accident resulting in serious injuries and/or deaths to a large number of its passengers, the financial responsibility of the for-hire carrier to respond in damages could be severely limited if

> the driver of the bus is at fault. We submit that it is extremely doubtful passengers who travel in buses owned by for-hire exempt carriers are aware of the limited protection available for their benefit.
>
> The Bus Regulatory Reform Act of 1985 represents a substantial legislative deregulation of bus companies in intrastate commerce. Every day bus companies compete with for-hire exempt carriers for the business of transporting passengers. This is particularly true in charter service. Bus companies must provide substantial insurance coverage for the benefit of their passengers. There is no sound public policy reason why for-hire exempt carriers should be required to maintain less protection."

The Public Staff - North Carolina Utilities Commission advises in its comments that it is not opposed to the liability limitations being considered by the Commission in this proceeding and that all bus companies operating in intrastate transportation should be required to maintain adequate levels of financial responsibility and adhere to all North Carolina safety requirements.

Sampson Transportation Enterprises, Incorporated, has filed its comments in this docket in opposition to an increase in the minimum levels of financial responsibility for exempt carriers of passengers, and states the following in pertinent part:

> "It is our position that there is no need at all to subject exempt carriers to a requirement for the excessive insurance limits set by the proposed regulation. The safety records of the carriers indicate that nothing more is needed than what is presently in effect. There has never been an instance of an uncompensated passenger on any regulated common carrier in North Carolina under the present insurance limits. It is apparent to us that this is merely an attempt by larger carriers to make the insurance requirements so onerous that smaller carriers are kept out of the business."

Safety Transit Company, an exempt carrier of passengers which contracts with the Rocky Mount City Board of Education to provide school bus transportation, filed its comments wherein it urges the Commission that in considering any amendment to Rule R2-36, it include one of the proposed alternative rule changes set forth in its comments, or otherwise make such additional rule to allow passenger carriers contracting with public school systems to maintain a minimum level of liability insurance not to exceed $1,000,000.00, or in the alternative, a minimum level of liability insurance as may be required by the contracting Board of Education or the State Department of Education.

In support of such request, Safety Transit Company submits that it has been providing public school transportation to the Rocky Mount City School System for the last 20 years. At the present time and for a number of years, it has maintained liability insurance coverage at the rate of $1,000,000.00, an amount far greater than required by Commission Rule R2-36(a). The Rocky Mount City Board of Education has been satisfied with both the safety and job performance by Safety Transit Company and with the level of financial responsibility which Safety Transit has maintained over the past years and at the present time.

Safety Transit Company proposes that in the event the Commission concludes that it is appropriate to require all common and contract motor carriers, including for-hire exempt passenger carriers, to obtain and keep in force public liability and property damage insurance in an amount in excess of $1,000,000 per vehicle, the Commission should include in such rule change one of the following alternative provisions:

> A. "Provided, however, that the following shall be the schedule of limits for passenger carriers engaged in the transportation of passengers for or under the control of the State of North Carolina or any political subdivision thereof, or any board, department, or commission of the State, or any institution owned and supported by the State, or any local Board of Education operating under the authority of the State or the State Department of Education:
>
> "Limit for bodily injuries to or death to one person - $500,000.00; limit for bodily injuries to or death of all persons injured or killed in any accident - $1,000,000.00; limit for loss or damage in any one accident to property of owners (excluding cargo) - $50,000.00.
>
> B. "Notwithstanding the foregoing, a passenger carrier engaged in providing transportation of passengers for or under the control of the State of North Carolina, or any political subdivision thereof, or any board, department, or commission of the State, or any institution owned and supported by the State, or any local Board of Education operating under the authority of the State, or the State Department of Education, shall obtain and keep in force at all times public liability and property damage insurance issued by a company authorized to do business in North Carolina, in the amounts specified above, or in such lesser amounts as is approved by the State of North Carolina, the political subdivision thereof, the board, department, or commission of the State, the institution owned and supported by the State, the local Board of Education, or the State Department of Education, with whom the passenger carrier is contracting in providing such transportation.
>
> C. "Provided, however, that a passenger carrier providing transportation of passengers for or under the control of a local Board of Education operating under the authority of the State, or the State Department of Education, shall obtain and keep in force at all times public liability and property damage insurance in a minimum amount greater than or less than the foregoing schedule of limits as may be specified and approved by the local Board of Education or State Department of Education contracting with said passenger carrier."

Safety Transit Company states that it is their understanding that at the present time there are only two Boards of Education which contract with private carriers for the provision of school bus transportation and that increasing the minimum liability insurance requirements to an amount in excess of

$1,000,000.00, without enacting one of the foregoing additional proposed rule changes, would effectively put the two private contracting school bus operators out of business, and would result in a substantial required capital expenditure by the two city school systems involved.

In further support of its proposed alternatives, Safety Transit Company submits the following in its comments:

The local Boards of Education who contract with passenger carriers to provide school business transportation are in the best position to determine their satisfaction with the services rendered by such passenger carriers, the safety record of such carriers, and the liability insurance limits maintained by such carriers. Because such Boards of Education are publicly elected and represent the public to be served by such passenger carriers, they will be responsive to the public needs, careful to assure the safe performance by the passenger carrier providing public school transportation, and can best determine the minimum level of liability insurance to be required of such passenger carriers.

The provision of public school transportation is unique from that of most other for-hire passenger transportation in that the vehicles involved do not travel in excess of 35 miles per hour, and travel short and well-established routes. Further, private passenger carriers who contract with Boards of Education to provide public school transportation do not use student drivers, but instead use specially licensed, State certified and trained adult drivers over 25 years old who have and are required to maintain excellent safety records.

## CONCLUSIONS

Upon consideration of all of the comments and the entire record in this proceeding, the Commission, acting under the power and authority delegated to it for the promulgation of rules and regulations pursuant to G.S. § 62-31 and in accordance with G.S. § 62-268, concludes that it is in the public interest and necessary for the protection of the public to amend Rule R2-36 to require that motor carriers transporting passengers for compensation under the exemptions contained in G.S. § 62-260 or under any special exemptions granted by the Utilities Commission under G.S. § 62-261 shall be subject to the same requirements for security for the protection of the public as are established for bus companies, i.e., those limits specified in 49 U.S.C. § 10927(a)(1), as set forth in Exhibit A attached hereto.

The Commission further concludes that a passenger carrier providing transportation of passengers exclusively for or under the control of a local Board of Education operating under the authority of the State, or the State Department of Education, shall obtain and keep in force at all times public liability and property damage insurance in the minimum amounts provided for in 49 U.S.C. § 10927(a)(1) or in a minimum amount greater than or less than said limits as may be specified and approved by the local Board of Education or State Department of Education contracting with said passenger carrier, provided however, that in no event shall the minimum level of financial responsibility be less than $1,000,000.00.

Further, the Commission concludes that Rule R2-36 should be further amended as set for the Exhibit A attached hereto to substitute the words "Division of Motor Vehicles" ·for "Commission" in certain places as it appears therein and to make certain other changes necessary to accomplish the transfer of certain of the Commission's motor carrier functions to the North Carolina Division of Motor Vehicles pursuant to House Bill 684 (Chapter 454) ratified June 24, 1985, by the General Assembly of North Carolina.

IT IS, THEREFORE, ORDERED as follows:

1. That Rule R2-36 of the Commission's Rules and Regulations is hereby amended as set forth in Exhibit A attached hereto and made a part hereof to become effective on August 1, 1986.

2. That a copy of this Order shall be served by the Chief Clerk upon all parties of record, bus companies, and motor carriers transporting passengers for compensation under the exemptions set forth in G.S. § 62-260, as well as other interested parties including the Commissioner of Motor Vehicles, the Public Staff, the Attorney General, and the Commissioner of Insurance for the State of North Carolina.

ISSUED BY ORDER OF THE COMMISSION.
This the 1st day of July 1986.

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

APPENDIX A

RULE R2-36. SECURITY FOR THE PROTECTION OF THE PUBLIC

(a) All common and contract motor carriers, including exempt for-hire passenger carriers, shall obtain and keep in force and maintain on file at all times with the Division of Motor Vehicles public liability and property damage insurance issued by a company authorized to do business in North Carolina in amounts not less than the following:

## SCHEDULE OF LIMITS

Motor Carriers--Bodily Injury Liability--Property Damage Liability

| (1)<br>Kind of equipment | (2)<br>Limit for bodily injuries to or death to one person | (3)<br>Limit for bodily injuries to or death of all persons injured or killed in any one accident (Subject to a maximum of $100,000 for bodily injuries to or death of one person) | (4)<br>Limit for loss or damage in any one accident to property of others (excluding cargo) |
|---|---|---|---|
| Freight Equipment: | | | |
| All motor vehicles used in the transportation of property | $100,000 | $300,000 | $50,000 |
| Passenger Equipment: | | | |

The minimum levels of financial responsibility are as prescribed for motor carriers of passengers pursuant to the provisions of 49 U.S.C. § 10927(a)(1), which are $5,000,000 for vehicles with a seating capacity of 16 passengers or more and $1,500,000 for vehicles with a seating capacity of 15 passengers or less. Provided, however, that a passenger carrier providing transportation of passengers exclusively for or under the control of a local Board of Education operating under the authority of the State, or the State Department of Education, shall obtain and keep in force at all times public liability and property damage insurance in the minimum amounts provided for in 49 U.S.C. § 10927(a)(1) or in a minimum amount greater than or less than said limits as may be specified and approved by the local Board of Education or State Department of Education contracting with said passenger carrier, provided, however, that in no event shall the minimum level of financial responsibility be less than $1,000,000.00.

(b) The policy shall have attached thereto endorsement Form F and as evidence of such insurance there shall be filed with the Division of Motor Vehicles certificate of insurance Form E.

(c) In addition to the foregoing insurance, all common carriers of property shall provide cargo security to compensate shippers or consignees for loss of or damage to property belonging to shippers or consignees and coming into the possession of motor common carriers in connection with their transportation service, in not less than the following amounts: (1) for loss of or damage to property carried on any one motor vehicle--$2,500; (2) for loss of or damage to or aggregate of losses or damages of or to property occurring at any one time and place--$5,000. The policy shall have attached thereto endorsement Form I or a facsimile thereof and as evidence of such insurance there shall be filed with the Division of Motor Vehicles certificate of insurance Form H or a facsimile thereof. Contract carriers of property and passenger carriers are not required to carry cargo insurance.

(d) No insurance policy, endorsement, rider or certificate of insurance issued by any insurance company, covering the liability of any motor carrier authorized to operate in North Carolina under a certificate or permit issued by the North Carolina Utilities Commission or certificate of exemption issued by the Division of Motor Vehicles will be accepted by said Division of Motor Vehicles for filing, unless the same is signed by an officer of the insurance company or by a North Carolina resident agent of the insurance company duly licensed by the Insurance Commissioner of the State of North Carolina.

(e) To the end that the Commission or Division of Motor Vehicles may be advised of the risks and liabilities assumed by such motor carriers under such insurance policies, no deductible agreement between insurer and insured shall be deemed valid and enforceable against the insured unless a true and correct copy of such agreement, countersigned as required in subsection (d) hereof, shall have been first filed with and approved by the Commission.

(f) A common carrier or contract carrier or exempt for hire passenger carrier may qualify as self-insurer, or be permitted to post bond in lieu of insurance upon application to and written approval by the Commission, but no such application will be approved unless it shall appear to the satisfaction of the Commission that the applicant is in such financial condition as to be able to pay personal injury and property damage claims arising out of motor vehicle accidents from its own assets without seriously affecting its financial stability and the continuation of its operations. The Division of Motor Vehicles will accept only surety companies, authorized to do business in North Carolina, as surety on bonds referred to in this rule.

(g) In all cases under this rule, actual filing must be made with the Division of Motor Vehicles before operations begin. Letters or telegrams to the effect that insurance is in force will not be accepted in lieu of actual filing.

(h) This amended rule shall be effective on and after August 1, 1986. (NCUC Docket No. M-100, Sub 12, 10/5/67; NCUC Docket No. M-100, Sub 30, 5/25/70; NCUC Docket No. M-100, Sub 75, 10/27/77; NCUC Docket No. M-100, Sub 81, 3/1/79.)

DOCKET NO. M-100, SUB 112

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

| In the Matter of |  |  |
|---|---|---|
| Proposed Rule Revision - Petition to | ) | ORDER AMENDING |
| Amend Rule R2-36(a), Security for the | ) | RULE R2-36(a) |
| Protection of the Public | ) |  |

BY THE COMMISSION: On July 1, 1986, the Commission entered an Order in this docket amending Rule R2-36(a) of the Commission's Rules and Regulations requiring that all common and contract motor carriers, including exempt for-hire passenger carriers, shall maintain public liability and property damage insurance as follows for passenger equipment:

The minimum levels of financial responsibility are as prescribed for motor carriers of passengers pursuant to the provisions of 49 U.S.C. § 10927(a)(1), which are $5,000,000 for vehicles with a seating capacity of 16 passengers or more and $1,500,000 for vehicles with a seating capacity of 15 passengers or less. Provided, however, that a passenger carrier providing transportation of passengers exclusively for or under the control of a local Board of Education operating under the authority of the State, or the State Department of Education, shall obtain and keep in force at all times public liability and property damage insurance in the minimum amounts provided for in 49 U.S.C. § 10927(a)(1) or in a minimum amount greater than or less than said limits as may be specified and approved by the local Board of Education or State Department of Education contracting with said passenger carrier, provided, however, that in no event shall the minimum level of financial responsibility be less than $1,000,000.00.

On October 27, 1986, Bragg Lines, Inc. (Petitioner), filed a petition with the Commission seeking to amend Commission Rule R2-36(a).

In support of its petition, Bragg Lines, Inc., submits the following:

1. Bragg Lines, Inc., contracts with the United States Department of Defense/Fort Bragg Board of Education to provide school buses owned and maintained by Bragg Lines, Inc., and the drivers to operate those buses, for the purpose of providing the school transportation needs of children traveling to and from class for the Fort Bragg Board of Education, Fort Bragg Military Reservation, Cumberland County, North Carolina.

2. Bragg Lines, Inc., has been under contract with the United States Department of Defense/Fort Bragg Board of Education for the last 10 years, providing a similar service. At the present time, Bragg Lines, Inc., maintains liability insurance coverage in the amount of $1,000,000.00, an amount far greater than was previously required by former Utilities Commission Rule R2-36. The Fort Bragg Board of Education has been satisfied with both the safety and job performance levels maintained by Bragg Lines, Inc., and with the level of financial responsibility which Bragg Lines, Inc., has maintained over the past years and maintains at the present time.

3. On July 1, 1986, the North Carolina Utilities Commission entered an Order amending Rule R2-36 increasing the required minimum limits of liability

insurance coverage for exempt carriers of passengers; the limits being raised to a maximum of $5,000,000 per vehicle for vehicles with a seating capacity of 16 passengers or more.

At the same time, however, the Commission recognized and concluded that passenger carriers providing transportation of passengers exclusively for or under the control of a local board of education, operating under the authority of the State of North Carolina, or the State Department of Education, should obtain and keep in force at all times liability insurance limits in the minimum amounts provided for other exempt carriers, or in a minimum amount which may be greater than or less than said limits as may be specified and approved by the local board of education or the State Department of Education contracting with each passenger carrier, but in no event to be less than $1,000,000 per vehicle.

Bragg Lines, Inc., does not fall within the clear letter of this rule inasmuch as its contract is not with a local board of education operating under the authority of the State of North Carolina, nor is it with the State Department of Education; rather, the contract of Bragg Lines, Inc., is with the United States Department of Defense/Fort Bragg Board of Education, an agency of the United States Government. The compelling reasons for the exception granted by the Utilities Commission to passenger carriers under contract to local boards of education or the State Department of Education applies to Bragg Lines, Inc., and its contract with the United States Government and its local board of education as the same compelling financial reasons, the same excellent safety record, and the same supervision and control by the governmental unit, is applicable in the case of Bragg Lines, Inc., as it was in the case of the other carriers considered when Rule R2-36 was amended on July 1, 1986.

Therefore, Petitioner requests that Rule R2-36(a) be amended to require passenger carriers to maintain public liability and property damage insurance as follows:

> "The minimum levels of financial responsibility are as prescribed for motor carriers of passengers pursuant to the provisions of 49 U.S.C. Sec. 10927(a)(1) which are $5,000,000.00 for vehicles with a seating capacity of 16 passengers or more and $1,500,000.00 for vehicles with a seating capacity of 15 passengers or less. Provided, however, that a passenger carrier providing transportation of passengers exclusively for or under the control of a local board of education operating under the authority of the State, or the State Department of Education, or the United States Department of Defense, to the extent that said arm of the United States Government maintains local boards of education in the State of North Carolina, shall obtain and keep in force at all times public liability and property damage insurance in the minimum amounts provided for in 49 U.S.C. Sec. 10927(a)(1) or in a minimum amount greater than or less than said limits as may be specified and approved by the local board of education, the State Department of Education, or the United States Department of Defense contracting with said passenger carrier, provided, however, that in no event shall the minimum level of financial responsibility be less than $1,000,000.00."

Upon consideration of the petition and the record in this matter as a whole, the Commission concludes that Rule R2-36(a) of the Commission's Rules and Regulations should be amended as set forth in Exhibit A attached hereto unless substantial protests or petitions to intervene are filed with the Commission as hereinafter set forth.

IT IS, THEREFORE, ORDERED as follows:

1. That Rule R2-36(a) of the Commission's Rules and Regulations shall be amended effective December 3, 1986, as set forth in Exhibit A attached hereto and made a part hereof unless substantial protests or petitions to intervene are filed with the Commission on or before December 2, 1986. If substantial protests or petitions to intervene are filed in a timely manner, the Commission will enter a further Order in this docket as appropriate.

2. That any protests to the revision of Rule R2-36(a) as set forth herein or petitions to intervene in this docket should be filed with the Chief Clerk, North Carolina Utilities Commission, Post Office Box 29510, Raleigh, North Carolina 27626-0510, on or before December 2, 1986.

3. That a copy of this Order shall be served by the Chief Clerk upon all bus companies and motor carriers transporting passengers for compensation under the exemptions set forth in G.S. § 62-260, as well as other interested parties including the Commissioner of Motor Vehicles, the Public Staff, the Attorney General, and the Commissioner of Insurance for the State of North Carolina.

ISSUED BY ORDER OF THE COMMISSION.
This the 12th day of November 1986.

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

EXHIBIT A

RULE R2-36. SECURITY FOR THE PROTECTION OF THE PUBLIC

(a) All common and contract motor carriers, including exempt for-hire passenger carriers, shall obtain and keep in force and maintain on file at all times with the Division of Motor Vehicles public liability and property damage insurance issued by a company authorized to do business in North Carolina in amounts not less than the following:

## SCHEDULE OF LIMITS

Motor Carriers--Bodily Injury Liability--Property Damage Liability

| (1)<br>Kind of equipment | (2)<br>Limit for bodily injuries to or death to one person | (3)<br>Limit for bodily injuries to or death of all persons injured or killed in any one accident (Subject to a maximum of $100,000 for bodily injuries to or death of one person) | (4)<br>Limit for loss or damage in any one accident to property of others (excluding cargo) |
|---|---|---|---|
| Freight Equipment: | | | |
| All motor vehicles used in the transportation of property | $100,000 | $300,000 | $50,000 |

Passenger Equipment:

The minimum levels of financial responsibility are as prescribed for motor carriers of passengers pursuant to the provisions of 49 U.S.C. § 10927(a)(1), which are $5,000,000 for vehicles with a seating capacity of 16 passengers or more and $1,500,000 for vehicles with a seating capacity of 15 passengers or less. Provided, however, that a passenger carrier providing transportation of passengers exclusively for or under the control of a local Board of Education operating under the authority of the State, or the State Department of Education, or the United States Department of Defense, to the extent that said arm of the United States Government maintains local boards of education in the State of North Carolina, shall obtain and keep in force at all times public liability and property damage insurance in the minimum amounts provided for in 49 U.S.C. § 10927(a)(1) or in a minimum amount greater than or less than said limits as may be specified and approved by the local Board of Education or State Department of Education, or the United States Department of Defense contracting with said passenger carrier, provided, however, that in no event shall the minimum level of financial responsibility be less than $1,000,000.00.

DOCKET NO. M-100, SUB 113

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of

The Tax Reform Act of 1986 ) ORDER INITIATING INVESTIGATION

BY THE COMMISSION: On October 22, 1986, President Reagan signed into law the Tax Reform Act of 1986. Among other provisions which are contained in this wide-ranging tax reform are provisions which will upon implementation significantly reduce the tax rate of most, if not all, investor-owned public utilities engaged in providing electric, telecommunications, and natural gas distribution services in North Carolina. This reduced tax rate when effectuated will have an immediate and favorable impact on the cost of providing the aforementioned public utility services to consumers in North Carolina. It is incumbent upon this Commission to take the appropriate action as required so as to preserve and flow through to ratepayers, as a reduction to public utility rates, any and all cost savings realized in this regard which would otherwise accrue solely to the benefit of the companies' stockholders.

Due to the inherent complexities of income tax expense calculations, the nature of the changes reflected in the Act, the varying effects of the Act on individual utilities, the applicability of the Act to all utilities regulated by this Commission, and the exceedingly short period of time remaining until major provisions of the Act become effective, the Commission opens this docket to examine and quantify the benefits to be derived by each utility subject to its jurisdiction arising from this tax reform.

The Commission, therefore, believes and so concludes that each and every utility subject to the provisions of this Order should be, and hereby is, placed on notice that the federal income tax expense component of all existing rates and charges, effective January 1, 1987, will be billed and collected on a provisional rate basis pending further investigation and disposition of this matter, with accompanying deferred accounting for the amount of reduced taxes, as hereinafter provided.

The financial and regulatory accounting requirements hereinafter imposed upon each affected utility are entirely consistent with recent and existing pronouncements of the Financial Accounting Standards Board (FASB) and its predecessor the Accounting Principles Board and are in keeping with sound practical and theoretical ratemaking practice and procedure. The FASB is the primary rulemaking body of the accounting profession.

IT IS, THEREFORE, ORDERED as follows:

1. That effective January 1, 1987, the federal income tax and the related gross receipts tax components of the rates and charges of all electric, telecommunications, and natural gas distribution companies and all water and sewer companies with annual operating revenues in excess of $250,000 subject to the jurisdiction of this Commission shall be, and hereby are, ordered to be billed and collected on a provisional rate basis pending final disposition of this matter.

2. That effective January 1, 1987, each and every utility subject to the provisions of this Order shall place in a deferred account the difference between revenues billed under rates then in effect, including provisional components thereof, and revenues that would have been billed had the Commission in determining the attendant cost of service based the federal income tax component thereof on the Internal Revenue Code as now amended by the Tax Reform Act of 1986, assuming all other parameters entering into the cost of service equation are held constant.

3. That each and every utility subject to the provisions of this Order shall determine the dollar amount of the impact of the Tax Reform Act of 1986 on its annual level of income tax expense included in its North Carolina jurisdictional cost of service consistent with ordering paragraph No. 2 above and file same with the Chief Clerk of the Commission no later than November 30, 1986. Said filing shall include all workpapers and a statement of all assumptions made in complying with the foregoing requirements. Further, each affected utility in conjunction with the foregoing shall file proposed rate adjustments giving effect to the reduction in its cost of service arising from the Tax Reform Act of 1986. The Commission will consider any additional information or comments any party may wish to offer.

4. That the Chief Clerk shall mail a copy of this Order to each utility subject to the provision thereof.

ISSUED BY ORDER OF THE COMMISSION.
This the 23rd day of October 1986.

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 ) ORDER AMENDING RULE
of Electricity Between Electric Utilities )
and Qualifying Cogenerators or Small Power )
Producers )

BY THE COMMISSION: On October 25, 1984, the Commission issued its Order Adopting Rule in this proceeding adopting Rule R1-37 dealing with applications for certificates of public convenience and necessity filed by qualifying cogenerators or small power producers.

Rule R1-37 provides for an original and 17 copies of the application to be filed with the Chief Clerk of the Commission. The Rule further provides for the Chief Clerk to deliver 6 copies of the application to the Clearinghouse Coordinator at the Office of Policy and Planning in the Department of Administration for distribution by the Coordinator to State agencies having an interest in the application. The Clearinghouse Coordinator has advised the Commission that she needs eight copies of applications in order to provide for full distribution to all interested State agencies. The Commission therefore finds good cause to amend Rule R1-37 to provide for the filing of an original and 19 copies by the applicant and the delivery of eight copies to the Clearinghouse Coordinator.

IT IS, THEREFORE, ORDERED as follows:

1. That Rule R1-37(b)(4) should be, and hereby is, amended to read as follows:

> The application and 19 copies shall be filed with the Chief Clerk of the Utilities Commission.

2. That Rule R1-37(c)(2) should be, and hereby is, amended to read as follows:

> The Chief Clerk will deliver 8 copies of the application and the notice to the Clearinghouse Coordinator of the Office of Policy and Planning of the Department of Administration for distribution by the Coordinator to State agencies having an interest in the application.

ISSUED BY ORDER OF THE COMMISSION.
This the 21st day of January 1986.

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 | ) | ORDER SUSTAINING |
| Proposed Rates and Contract Terms and | ) | EXCEPTION IN PART |
| Conditions to be Offered to Small Power | ) | AND MODIFYING |
| Producers and Cogenerators | ) | RECOMMENDED ORDER |

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, an intervenor, for electricity delivered to Western Carolina from Mr. Hotaling's small power production facility in the past without a contract.

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 on the Public Staff's Exception was held before the Commission on March 25, 1985. Gisele Rankin, Staff Attorney, appeared on behalf of the Public Staff. Richard Kucharski, Legal Counsel for Western Carolina, appeared on behalf of the University.

On March 27, 1985, the Public Staff filed a Motion asking the Commission to declare the Recommended Order a final order except for the one finding of fact and related discussion to which exception had been taken. Western Carolina filed a Response on April 5, 1985, declaring that it would not object to such a ruling. On April 12, 1985, the Commission issued an Order declaring the Recommended Order Establishing Rate and Contract Terms for Western Carolina University to be a Final Order of the Commission except for Finding of Fact No. 9 and the related discussion of Evidence and Conclusions. The Commission did not rule on the Exception pending further proceedings to determine whether it is possible to calculate accurately the compensation that might be due. There followed an exchange of affidavits and other filings dealing with whether sufficient data existed to make this calculation. The Public Staff and Mr. Hotaling subsequently forwent the claim for past compensation on grounds that their primary concern was in getting a contract signed and the past compensation issue was being used to delay contract negotiations.

On March 19, 1986, the Public Staff filed a Motion for Ruling on Exception asserting that it maintained its Exception "to the extent blame is placed on Mr. Hotaling for the delays and the lack of verifiable data." The Public Staff asserted that this aspect of the Hearing Examiner's Recommended Order is not supported by the evidence and is contrary to the weight of the evidence presented at the hearing before the Hearing Examiner. Western Carolina has filed no response to this Motion.

On the basis of the transcript of the hearing, the filings herein, and the entire record in this proceeding, the Commission finds good cause to sustain the Exception of the Public Staff insofar as the Recommended Order of February 20, 1985, places sole responsibility on Richard Hotaling for the delay in contract negotiations and the lack of verifiable data as to the electricity supplied to Western Carolina in the past without a contract. The Commission finds that this aspect of the Order is not supported by the greater weight of the evidence presented at the hearing. The Commission further notes that a contract has now been signed by Richard Hotaling and Western Carolina and that Mr. Hotaling no longer claims compensation for deliveries of electricity prior to the signing of the contract. The Commission therefore concludes that it is no longer necessary to assess any responsibility for the delay in contract negotiations or for the lack of verifiable data as to past deliveries of electricity.

The sustention of this Exception shall be effected by striking from the Recommended Order's discussion of Evidence and Conclusions for Finding of Fact No. 9 the fourth, fifth, and sixth paragraphs of that discussion and the first sentence of the last paragraph of that discussion.

IT IS, THEREFORE, ORDERED as follows:

1. That the Exception filed in this proceeding by the Public Staff on March 6, 1985, should be, and the same hereby is, sustained to the extent that the Recommended Order of February 20, 1985, places the sole responsibility on Richard Hotaling for the delay in contract negotiations and the lack of verifiable data as to past deliveries of electricity; and

2. That the fourth, fifth and sixth paragraphs of the discussion of Evidence and Conclusions for Finding of Fact No. 9 of the Recommended Order and the first sentence of the last paragraph of that discussion should be, and the same hereby are, stricken.

ISSUED BY ORDER OF THE COMMISSION.
This the 10th day of April 1986

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

DOCKET NO. E-100, SUB 47

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Rulemaking Proceeding to Consider Annual ) ORDER REVISING
Fuel Charge Adjustments to Electric Rates ) RULES AND
Pursuant to G.S. 62-133.2 ) PROCEDURES

BY THE COMMISSION: On May 1, 1984, the Commission issued its Order Adopting Revised Rules in this docket adopting Rules R8-52 through R8-55 as Rules of the Commission implementing G.S. 62-133.2, the statute dealing with annual fuel charge adjustments for electric utilities.

On October 24, 1985, the Public Staff filed a Motion asking the Commission to reopen this docket for the purpose of developing and establishing rules under which to apply an experience modification factor in fuel charge adjustment proceedings and general rate cases "on a reasonable, equitable, and consistent basis for all electric utilities." The Public Staff cited the Order issued by the Commission on September 18, 1985, in Docket No. E-2, Sub 503, an annual fuel charge adjustment proceeding for CP&L. By that Order the Commission approved a fuel factor composed of a preliminary fuel factor and an experience modification factor. Although the Public Staff has appealed that Order in order to challenge the Commission's authority to employ an experience modification factor, the Public Staff argued in its Motion that, pending judicial review, the Commission should revise its rules in order to provide for applying experience modification factors in a fair and consistent manner.

Responses to the Public Staff's Motion were filed by CP&L on October 31, by Vepco on November 4, and by Duke Power Company on November 7, 1985. CP&L responded that the Commission had already held a lengthy rulemaking proceeding and that it would be unnecessarily burdensome to hold a new proceeding given the Public Staff's appeal of the Commission's Order in Docket No. E-2, Sub 503. Vepco responded that it did not oppose a new rulemaking proceeding but that the productivity of such a proceeding might be limited in light of the Public Staff's appeal. Duke responded that it supported the Public Staff's request because it believes that uniform standards should be established and applied in all proceedings pursuant to G.S. 62-133.2.

On January 14, 1986, the Commission issued its Order Reopening Rulemaking Proceedings to Consider Annual Fuel Adjustments to Electric Utility Rates Pursuant to G.S. 62-133.2. By this Order the Commission reopened the rulemaking proceeding and proposed certain modifications to its previous rules and procedures. The modifications called for determination of a preliminary fuel factor and an experience modification factor. The Commission invited comments on its proposed modifications and set deadlines for the filing for initial comments and reply comments. All parties of record in the original rulemaking proceeding were continued as parties with full standing in the reopened proceedings. By subsequent motion and by Orders issued on March 19 and April 8, 1986, the deadlines for the filing of initial comments and reply comments were extended.

On May 19, 1986, a petition to intervene was filed by the North Carolina Industrial Energy Consumers (NCIEC). On May 19 and 20, 1986, a petition to intervene and an amended petition were filed by Champion International Corporation, Diamond Shamrock Chemicals Company, Federal Paper Board Company, Inc., Huron Chemicals of America, Inc., LCP Chemicals and Plastics, Inc., Monsanto Company, TexasGulf, Inc., Thorn Apple Valley, Inc., Weyerhaeuser Company, and Cape Industries, collectively known as CIGFUR II. The interventions were allowed by Orders issued by the Commission on May 21 and 22, 1986.

On May 19, 1986, initial comments were filed by the Public Staff, CP&L, Duke Power Company, Vepco, CIGFUR II, NCIEC, and the Kudzu Alliance. The initial comments took the form of responses to certain questions posed by the Commission in its Order of January 14, 1986.

The Commission invited comments as to whether use of an experience modification factor would result in a closer correlation between actual prudently incurred fuel costs and the fuel costs actually recovered. The Commission also invited comments as to whether an experience modification factor using a 90% co-efficient would provide sufficient incentive for efficiency. As to these questions, the Public Staff took the position that the experience modification factor would not insure a closer correlation between fuel costs and recovery of costs. For example, there may be an abnormal generation mix during the test year that does not reoccur in the future, or there may be a variation in the utility's sales. Further, the Public Staff pointed out that the experience modification factor would not provide a closer correlation if the fuel factors were in effect for less than 12 months or if there was a mismatch or overlapping of test periods used to set the fuel factors. The Public Staff asserted that the 90% co-efficient does not provide an incentive for efficiency and that the best incentive/penalty co-efficient that the Commission could adopt would be 100%. CP&L commented that the experience modification factor should continue for a 12-month period since the Commission's method of calculating the experience modification factor assumes a 12-month appliability. Duke took the position that the experience modification factor co-efficient should be 100% and that such a factor would result in a closer correlation if it were implemented along with consistent calendar test periods and appropriate deferred accounting procedures. Duke also suggested a "dead band" or prudency zone dealing with the utility's nuclear capacity factor and linked to the the 100% experience modification factor co-efficient. Duke asserted that the increment or decrement established in the fuel charge adjustment proceeding should run for a 12-month period and carry through any intervening general rate case. Vepco asserted that a utility should be allowed to recover 100% of its prudently incurred fuel expenses. It asserted that a co-efficient of 90% or higher should be used and that any greater deviation would result in rewards or penalties so great so as to be counter-productive. CIGFUR II asserted that neither the 90% co-efficient nor any other "formulistic" approach would result in a closer correlation between prudently incurred fuel costs and fuel costs recovered. It urged the Commission to allow recovery of only actual prudently incurred fuel costs. NCIEC recommended an experience modification factor co-efficient of 100% so that utilities could, over the long run, break even on fuel costs.

The Commission invited comments as to whether the experience modification factor should be used in general rate cases as well as fuel charge proceedings. Most parties who responded to this issue took the position that it would be illogical to treat fuel differently in general rate cases than in fuel charge adjustment proceedings; however, they recognized that the legal justification for the experience modification factor might be different for the two different types of proceedings. The Public Staff took the position that the experience modification factor should be used in both types of proceedings or not used at all. The Public Staff asserted its belief (which is the basis of its appeal of the CP&L Order) that the experience modification factor methodology constitutes prospective ratemaking of the kind forbidden by Utilities Commission v. Edmisten, 291 N.C. 451 (Prospective rate making to recover unexpected past expense, or to refund expected past expense which did not materialize, is as improper as is retroactive rate making. Id at 469). However, the Public Staff acknowledged that the Commission has authority to set provisional rates subject to a subsequent true-up. CP&L asserted that G.S. 62-133.2 authorizes a true-up in general rate cases as well as fuel charge adjustment proceedings and, alternatively, that traditional ratemaking procedures in general rate cases permit a true-up or experience modification factor through the use of provisional rates. Duke took the position that G.S. 62-133.2 authorizes an experience modification factor in fuel proceedings and that the Commission has authority to make a "known and measurable" cost of service adjustment in general rate cases based upon the over-collection or under-collection of prudently incurred fuel costs. Vepco responded that the experience modification factor should be used in both types of proceedings and that if the methodolgy is illegal in general rate cases, its use in fuel proceedings alone might be insufficient. CIGFUR asserted that the Commission should determine actual prudently incurred fuel costs allowable for rate-making purposes in both general rate cases and fuel proceedings and that the Commission should not use a formalistic approach such as the experience modification factor at all. Kudzu asserted that the Commission lacks authority to implement an experience modification factor.

As to the proper accounting period to determine over- and under-collections of fuel costs, all parties asserted that a 12-month test period should be used and most parties pointed out that consecutive test periods should be used to prevent over-lapping test periods or gaps in test periods. The Public Staff asserted that the test period should be updated through the time of the hearing if possible, but that the results would be improved if the test period extended back to the end of the former test period to eliminate gaps. CP&L recommmended that each experience modification factor have a pre-determined 12-month life. Duke suggested that the calendar year should be used as the test period for all utilities. NCIEC suggested that the test period should be left flexible to respond to rapid changes in fuel prices. As to use of deferred accounting methods, the Public Staff opposed this while CP&L, Duke and Vepco supported deferred accounting.

The Commission also invited comments as to what nuclear capacity factor should be used in developing the fuel factor. The Public Staff opposed lifetime nuclear capacity factors. The Public Staff urged the Commission to conduct detailed investigations and to correct lifetime capacity factors for imprudency and abnormal lengthy outages. CP&L supported use of average historical lifetime nuclear capacity factors for each unit. Duke supported system-average nuclear capacity factors with adjustments for new units and known major outages. Vepco found historical lifetime nuclear capacity factors acceptable if allowances were made for unusual events. CIGFUR asserted that historical capacity factors may not be accurate indicators of future performance and that capacity factors should be based on the evidence in each case. NCIEC asserted that the unit lifetime average approach rewards the poor performer and penalizes good performance. It asserts that such an average is not proper since nuclear performance tends to improve with the age of a unit. It suggested that fuel cost be calculated using the greater of either the utility's own experience over the life of the plant or the national average capacity factor for plants of comparable vintage.

On June 9, 1986, reply comments were filed by CP&L, Duke Power Company, and NCIEC.

On that same date, June 9, 1986, the Public Staff filed a Motion for Hearing, opining that it would be advantageous for the Commission to hold an evidentiary hearing. On June 17, 1986, CP&L filed a Response Opposing the Public Staff's Motion. The Commission is of the opinion that the Motion for Hearing should be denied. The Commission has already held lengthy evidentiary hearings in the original rulemaking proceeding, and the Commission takes judicial notice of the record of those hearings. Furthermore, the Commission has before it the detailed comments and reply comments filed by the parties in this reopened proceeding responding to the proposal made by the Commission in its Order of January 14, 1986. The Commission concludes that the record is more than sufficient for the Commission to proceed without further evidentiary hearings.

On the basis of the comments filed herein and the other proceedings judicially noticed, the Commission makes the following:

## FINDINGS OF FACT

1. G.S. 62-133.2 should be implemented by means of annual hearings scheduled by the Commission. Commission Rule R8-54, providing for fuel charge adjustment proceedings to be initiated by application of the utility, should be rescinded.

2. For each utility subject to G.S. 62-133.2, the annual hearing should be held at the same time each year, and the test period for each such hearing should be a 12-month test period uniform over time.

3. In establishing fuel costs, the capacity factor for nuclear production facilities should be normalized based generally on an equally weighted average of each nuclear unit's actual lifetime operating experience and the national average for nuclear production facilities as reflected in the most recent North American Electric Reliability Council's Equipment Availability Report, giving due consideration to new plants and certain unusual events. This normalization requirement assumes that the Commission finds an abnormality having a probable impact on the utility's revenues and expenses existed during the test period.

4. The increment or decrement rider provided for by G.S. 62-133.2 should consist of a primary fuel cost rider, which will reflect the difference between the reasonable and prudent pro forma level of fuel costs based upon the adjusted test year level of operations and the base fuel cost component of rates then in effect, and an experience modification factor (EMF) rider, which will reflect the difference between actual reasonable and prudently incurred fuel costs and the fuel-related revenues that were realized during the test year under the fuel cost component of rates then in effect.

5. The EMF rider should incorporate a 100 percent over- or under-collection co-efficient.

6. The EMF rider will remain in effect for a fixed 12-month period following its establishment and will carry through as a rider to rates established in any intervening general rate case proceedings.

7. Each utility should follow deferred accounting procedures with respect to the difference between actual reasonable and prudently incurred fuel costs and fuel-related revenues realized under the fuel cost component of rates in effect.

## CONCLUSIONS

It is a well established fundamental principle of regulation that public utility rates should be established in a manner so as to be representative of the total level of costs a utility can reasonably be expected to experience on an ongoing basis. In other words, prospective rates cannot reasonably be based totally upon a historical test year. Test year data must be normalized so as to reflect anticipated levels of revenues and costs. This 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 be used as the basis for estimating a public utility's cost of providing public utility service in the near future. Clearly, to the extent that the test year 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. 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); and State ex rel. Utilities Commission v. Thornburg, 316 N.C. 238, ____ S.E. 2d ____ (1986). 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 anticipated that in the aggregate they will approximate the total revenues and expenses of the company, assuming good management.

For good cause, 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 being that fuel costs account for 30 to 40 percent of the total cost of providing electric utility service for most utilities. Therefore, small variances in fuel costs can place a utility in a position to realize substantial over- or undercollection of costs which can result in significant fluctuations in earnings. Earnings fluctuations adversely affect bond ratings which in turn increase the cost of capital to the utility and ultimately result in higher public utility rates to consumers. When a utility has a large percentage of nuclear power, the variations can be exacerbated even further because of the vast differences between nuclear fuel costs and fossil fuel costs. No doubt, for these reasons, the North Carolina General Assembly enacted the existing 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.

Consistent with the foregoing and absent a showing of imprudence, inefficiency, unreasonableness 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 reasonable and 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 unencumered language of G.S. § 62-133(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. However, the Commission wishes to made it clear that it 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 reasonable and 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 (EMF) based upon the variance of the forecasted level of reasonable and prudently incurred fuel cost from that actually experienced. In reaching this conclusion the Commission has been particularly diligent in studying the issues and has considered the evidence and arguments of the companies and all of the intervenors regarding true-ups and retroactive ratemaking. The EMF is not and will not function as a mechanism to automatically and indiscriminately pass through increases or decreases in fuel costs; nor will it operate in any way so as to permit the company to recover costs arising from imprudence or malfeasance. The EMF will minimize, and over time eliminate, cumulative under- and overcollection of reasonable and prudently incurred fuel costs; thereby, enhancing the financial well being of the utility while protecting the interest of the using and consuming public.

The experience modification factor will incorporate a 100 percent over- or undercollection co-efficient. This consideration of total over- or undercollection of actual reasonable and prudently incurred fuel cost will not serve as an impediment to the incentive for efficiency. If fuel costs are increased due to management inefficiency such cost responsibility shall be assigned to the shareholders of the company and not its ratepayers. Further, since the EMF operates prospectively, there will be a signficant time lag between the under- or overcollection of reasonable and prudently incurred fuel cost and the future revenue realization of such under- or overcollection. This time-lag in conjunction with the inevitable disallowance of unreasonable or imprudently incurred fuel costs should provide the utility with considerable incentive to minimize its fuel costs. The Commission believes that such incentivies will provide reasonable assurance that the company will make every effort to hold fuel costs to as low a level as is reasonably possible. Given this view the Commission believes and so concludes that no useful purpose would be served by utilization of an EMF coefficient other than unity. Under this scenerio, as long as the utility reasonably and prudently incurs fuel costs, it would over time be allowed full recovery of such costs. Consistent with the foregoing and in order for the EMF rider to operate in an efficient and effective manner it is necessary that it remain in effect for a fixed 12-month period following its establishment and that it carry through as a rider to rates established in any intervening general rate case proceedings. Such a provision is necessary in order to facilitate the prevention of any time-period gaps or overlaps with regard to the incurring or recovery of reasonable prudently incurred fuel costs.

As most parties pointed out in their comments herein (and as should be clear from the above discussion), it is important to use consecutive test periods in order to prevent the overlapping of test periods or gaps in test periods. To accomplish this result, the Commission has decided to modify its Rules to provide for annual hearings to be held at the same time each year for each utility and to be based on test periods uniform over time for each utility. Our Rule R8-54 provided for fuel charge proceedings to be initiated by application of the utility. The Commission finds good cause to rescind this Rule and to implement G.S. 62-133.2 through R8-55 as revised herein. This is consistent with the provisions of G.S. 62-133.2 which provide for fuel charge proceedings to "be held on an annual basis." Hearings will be held individually, rather than all hearings being held on the same date, so as to allow ample time for investigation and presentation of each proceeding.

In order to take full advantage of the benefits to be derived from utilization of the EMF concept, and, in order to more accurately reflect the financial significance of such utilization, the Commission believes and so concludes that each utility should be required to followed deferred accounting with respect to the difference between actual reasonable and prudently incurred fuel costs and fuel-related revenues realized under the fuel cost component of rates in effect. This accounting technique will minimize fluctuations in earnings which as previously stated will ultimately have a favorable impact on the future level of public utility rates and it will also result in more complete and meaningful financial reporting and disclosure.

Use of the EMF concept does not lessen the need for the Commission to make as accurate an estimate as possible in establishing the reasonable level of fuel costs to be included in rates prospectively. It will continue to be in the best interest of the utility and its ratepayers to minimize the variance between the forecasted level of reasonable and prudently incurred fuel oosts from that actually experienced. This results from the time lag, as previously discussed, and the potential cascading effect of unintentional but nevertheless systematic over- or undercollection of reasonable and prudently incurred fuel costs. In developing prospective fuel costs, under existing circumstances, the most difficult and sensitive parameter to estimate is the appropriate nuclear capacity factor. As previously stated, when a utility's total generating capability is composed of a large percentage of nuclear powered facilities, variations in fuel costs can be significant due to the vast difference between nuclear fuel costs and fossil fuel costs. Given the sensitivity of total fuel costs to changes in the nuclear capacity factor, the variability of the nuclear capacity factor, and the Commission's desire to enhance the efficient and fair operation of the EMF concept, the Commission believes and so concludes in establishing fuel costs that the capacity factor for nuclear production facilities should be normalized based generally on an equally weighted average of each nuclear unit's actual lifetime operating experience and the national average for nuclear production facilities as reflected in the most recent North American Electric Reliability Council's Equipment Availability Report, giving due consideration to new plants and certain unusual events. The foregoing normalization requirement assumes that an abnormality having a probable impact on the utility's revenues and expenses existed during the test period. A nuclear capacity factor benchmark developed in this manner in conjunction with the EMF will encourage fuel cost efficiency for reasons previously discussed and, hopefully, will minimize the variability of recovery of prudently incurred fuel costs.

IT IS, THEREFORE, ORDERED as follows:

1. That the revised Commission Rule R8-55 attached hereto as Appendix A be, and the same is hereby, adopted effective the date of this Order.

2. That Commission Rule R8-54 be, and the same is hereby, rescinded.

3. That the parties may file further comments, if any there be, with respect to the rule revisions and procedural changes adopted pursuant to this Order. Such comments shall be filed on or before Tuesday, September 2, 1986. Should these comments establish good cause for further rule revisions or reconsideration of any of the rule revisions adopted by this Order, the Commission will enter an appropriate ruling by further Order.

ISSUED BY ORDERS OF THE COMMISSION.
This the 14th day of August 1986.
NORTH CAROLINA UTILITIES COMMISSION
(SEAL) Sandra J. Webster, Chief Clerk

APPENDIX A

RULE R8-55

RULE R8-55. Annual hearings to review changes in the cost of fuel and the fuel component of purchased power.

(a) For each utility generating electric power by means of fossil and/or nuclear fuel for the purpose of furnishing North Carolina retail electric service, the Commission shall schedule an annual public hearing pursuant to G.S. 62-133.2(b) in order to review changes in the cost of fuel and the fuel component of purchased power. The annual fuel charge adjustment hearing for Duke Power Company will be scheduled for the first Tuesday of May each year; for Carolina Power & Light Company, the annual hearing will be scheduled for the first Tuesday of August each year; and, for Virginia Electric and Power Company, the annual hearing will be scheduled for the second Tuesday of November each year.

(b) The test periods for the hearings to be held pursuant to paragraph (a) above will be uniform over time. The test period for Duke Power Company will be the calendar year; for Carolina Power & Light Company, the test period will be the 12-month period ending March 31; and, for Virginia Electric and Power Company, the test period will be the 12-month period ending June 30.

(c) The general methodology and procedures to be use in establishing fuel costs, including the fuel cost component of purchased power, shall be as follows:

(1) Fuel cost will be preliminarily established utilizing the methods and procedures approved in the utility's last general rate case, except that capacity factors for nuclear production facilities will be normalized based generally on an equally weighted average of each nuclear unit's actual lifetime operating experience and the national average for nuclear production facilities as reflected in the most recent North American Electric Reliability Council's Equipment Availability Report. Further, in developing the nuclear capacity factor due consideration will be given to plants 2 years or less in age and to certain unusual events. A primary fuel cost rider will then be determined based upon the difference between the fuel costs thus established and the base fuel cost component of rates then in effect. The foregoing normalization requirement assumes that the Commission finds an abnormality having a probable impact on the utility's revenues and expenses existed during the test period.

(2) The fuel cost as described above will be further modified through use of an experience modification factor (EMF) rider. The EMF rider will reflect the difference between actual reasonable and prudently incurred fuel cost and the fuel related revenues that were actually realized during the test period under the fuel cost component of rates then in effect. Revenues collected pursuant to the EMF rider and the primary fuel cost rider established in each fuel adjustment proceeding shall be provisional until made final by operation of the next following EMF rider.

(3) The primary fuel cost rider and the EMF rider as described hereinabove will be charged as an increment or decrement to the base fuel cost component of rates established in the utility's previous general rate case.

(4) The EMF fuel rider will remain in effect for a fixed 12-month period following establishment and will carry through as a rider to rates established in any intervening general rate case proceedings; provided, however, that such carry-through provision will not relieve the Commission of its responsibility to determine the reasonableness of fuel costs, other than that being collected through operation of the EMF rider, in any intervening general rate case proceeding.

(d) Each electric utility, as a minimum, shall submit to the Commission for purposes of investigation and hearing the information and data in the form and detail as set forth below:

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

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

(3) Adjusted test period kWh generation corresponding to normalized test period kWh usage. The methodology for such adjustment shall be the same methodology adopted by the Commission in the utility's last general rate case,, including adjustment by type of generation; i.e., nuclear, fossil, hydro, pumped storage, purchased power, etc. In the event that said methodology is inconsistent with the normalization methodology set forth in paragraph (c)(1) above, additional pro forma calculations shall be presented incorporating the normalization methodology reflected in paragraph (c)(1).

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

(5) Any information required by NCUC Rules R8-52 and R8-53 for each test period which has not already been filed with the Commission. Further, such information for the complete 12-month test period shall be provided by the company to any intervenor upon request.

(6) All workpapers supporting the calculations, adjustments and normalizations described above.

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

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

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

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

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

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

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

(l) Each company shall follow deferred accounting with respect to the difference between actual reasonable and prudently incurred fuel costs, including the fuel cost component of purchased power, and fuel related revenues realized under rates in effect.

DOCKET NO. E-100, SUB 50

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Investigation, Analysis, and Estimation of ) ORDER ADOPTING UPDATED
Future Growth in the Use of Electricity and ) FORECAST AND PLAN FOR MEETING
the Need for Future Generating Capacity for ) LONG-RANGE NEEDS FOR ELECTRIC
North Carolina ) GENERATING FACILITIES IN
) NORTH CAROLINA - 1985/86

HEARD IN: Commission Hearing Room, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina 27602, on April 16-18 and April 23, 1986

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

APPEARANCES:

For Duke Power Company

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For Nantahala Power and Light Company:

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For Kudzu Alliance:

M. Travis Payne, Edelstein & Payne, Post Office Box 12607, Raleigh, North Carolina 27605

For the Using and Consuming Public:

James D. Little and Gisele Rankin, Staff Attorneys, Public Staff-North Carolina Utilities Commission, Post Office Box 29520, Raleigh, North Carolina 27626-0520

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

> "(c) The Commission shall develop, publicize, and keep current an analysis of the long-range needs for expansion of facilities for the generation of electricity in North Carolina, including its estimate of the probable future growth of the use of electricity, the probable needed generating reserves, the extent, size, mix and general location of generating plants and arrangements for pooling power to the extent not regulated by the Federal Power Commission and other arrangements with other utilities and energy suppliers to achieve maximum efficiencies for the benefit of the people of North Carolina, and shall consider such analysis in acting upon any petition by any

> utility for construction. In developing such analysis, the Commission shall confer and consult with the public utilities in North Carolina, the utilities commissions or comparable agencies of neighboring states, the Federal Power Commission, the Southern Growth Policies Board, and other agencies having relevant information and may participate as it deems useful in any joint boards investigating generating plant sites or the probable need for future generating facilities. In addition to such reports as public utilities may be required by statute or rule of the Commission to file with the Commission, any such utility in North Carolina may submit to the Commission its proposals as to the future needs for electricity to serve the people of the State or the area served by such utility, and insofar as practicable, each such utility and the Attorney General may attend or be represented at any formal conference conducted by the Commission in developing a plan for the future requirements of electricity for North Carolina or this region. In the course of making the analysis and developing the plan, the Commission shall conduct one or more public hearings. Each year, the Commission shall submit to the Governor and to the appropriate committees of the General Assembly a report of its analysis and plan, the progress to date in carrying out such plan, and the program of the Commission for the ensuing year in connection with such plan."

On July 17, 1984, the Commission issued an Order scheduling a hearing and inviting participation in this docket. The hearing was originally scheduled to commence on March 19, 1985; however, subsequent to motion filed on October 15, 1984, by the Public Staff for continuance and extension of time, hearings were continued until Spring 1986.

The Commission's Order of December 1, 1983, in Docket No. E-100, Sub 46, contained the Commission's then current findings and conclusions regarding its analysis and plan for meeting the long-range needs for expansion of generating capacity by electric utilities serving North Carolina. In April, 1985, the Commission submitted to the Governor and General Assembly a report updating its previous Order of December 1, 1983. The April 1985 report contained the Commission's most current evaluation at that time.

On December 13, 1985, the Commission issued an Order rescheduling a public hearing in this docket beginning on April 17, 1986. The December 13, 1985 Order required the Public Staff, Carolina Power & Light Company (CP&L), Duke Power Company (Duke), Nantahala Power & Light Company (Nantahala), and Virginia Electric & Power Company (Vepco) to file their forecast reports, testimony and exhibits on or before March 14, 1986. The Order also invited other interested parties to participate in this docket and further directed CP&L, Duke, Nantahala and Vepco to furnish public notice of the hearing in newspapers giving general coverage in their respective North Carolina service areas once a week for two consecutive weeks beginning with the week ending March 8, 1986.

Notice of intervention from the Public Staff and the Attorney General was received and recognized by the Commission. The Commission also received and granted a Petition of Intervention from Kudzu Alliance. On March 24, 1986, Kudzu Alliance filed a motion for extension of time to and including April 11, 1986, in which to prefile its testimony and exhibits. An Order granting an extension of time until April 9, 1986, was issued by the Commission on March 20, 1986.

On April 4, 1986, Kudzu Alliance filed a motion for discovery and subsequently response to said motion was filed by the Public Staff, Vepco and Duke. On April 11, 1985, the Commission issued its Prehearing Order for the purpose of establishing certain basic procedural guidelines for this proceeding. The 1986 Public Staff Report entitled Analysis of Long-Range Needs for Electric Generating Facilities in North Carolina was filed with the Commission on March 14, 1986, as were the testimony and exhibits of CP&L, Duke, Vepco and Nantahala. On April 16, 1986, the Public Staff filed additional testimony of Michael W. Burnette. Testimony and exhibits of the Kudzu Alliance were filed on April 9, 1986. The Attorney General did not file any testimony or exhibits and did not have a representative present during the hearings.

The matter came on for hearing as scheduled on April 16, 1986. At a night hearing in Raleigh, the Commission heard testimony from the following public witnesses:

> Lisa Slade of Chapel Hill, North Carolina, who contended that even if the Shearon Harris nuclear plant were finished, it would be cheaper not to operate it; that it would produce 1000 tons of high level radioactive waste; that the problems with nuclear power could be avoided with more conservation effort and better utilization of solar energy; and that the Harris nuclear plant should be converted to an oil, gas, or coal fired plant if the plant were needed.
>
> Deborah Russell of Pittsboro, North Carolina, who urged the Commission to consider the hematological disorders and the increases of cancer and psychological problems that people experience in living near nuclear power plants; and to consider converting the Harris plant to a safer form of energy.
>
> Bill Cummings of Chapel Hill, North Carolina, who testified that he has grave doubts about the safety of nuclear power in general and the Harris plant in particular; that the Harris plant may be releasing radioactive materials into the environment every day that it is in operation; that the plant may be vulnerable to a terrorist attack; and that he believes there are safer, more economical ways to get the energy we need.
>
> Marian Walker of Wendell, North Carolina, who testified that she had owned real estate within 25 miles of the Three Mile Island nuclear plant; that it took three years to sell it after the TMI accident and then it sold for approximately half of what it was priced at before the accident; and that she doesn't want to see what happened around TMI happen to the area around the Harris plant.
>
> Wes Armstrong of Chapel Hill, North Carolina, who urged the Commission not to license the operation of the Harris nuclear plant and to consider placing more emphasis on weather stripping, insulation, solar power and wind power in planning for future energy needs.
>
> Laura Drey of Durham, North Carolina, who urged the Commission to thoroughly examine safe alternative energy sources instead of the Harris nuclear plant and to consider the safety and health risks posed by operating the Harris plant.

Janet Gustafson of Chapel Hill, North Carolina, who voiced concern over the disposal of the highly radioactive waste that would be created by the Harris nuclear plant and contended that we do not know how to dispose of such waste properly.

Jane Sharp of Chapel Hill, North Carolina, who cited the oil producing countries and the State of Hawaii for large scale installation of solar energy facilities; urged greater use of solar, wind, biomass and geothermal energy resources as an alternative to nuclear energy; and recommended that more effort be spent on developing fluidized bed combustion technology which utilized fuel derived from municipal waste.

Kudzu Alliance presented the testimony and exhibits of Wells Eddleman of Durham, North Carolina, who contended that conservation and alternative energy resources have brought about much lower rates of growth in electricity demand than were forecast by the utilities and the Commission a decade ago; that public witnesses had been forecasting for 12 to 15 years that rates of growth in electricity demand would decline to current levels; and that nuclear power is unacceptable because of the lack of adequate safeguards and the heavy financial burdens associated with nuclear plants.

The Public Staff presented the testimony and exhibits of the following witnesses as a panel: Danny P. Evans, Financial Analyst, Economic Research Division-Public Staff; John Robert Hinton, Financial Analyst, Economic Research Division-Public Staff; Michael W. Burnette, Engineer, Electric Division-Public Staff; Thomas S. Lam, Engineer, Electric Division-Public Staff; Dennis J. Nightingale, Director, Electric Division-Public Staff; and Dr. Ronald A. Schrimper, Professor of Economics at North Carolina State University, Raleigh, North Carolina.

CP&L presented the testimony and exhibits of the following witnesses as a panel: Archie W. Futrell, Jr., Director of Economic and Energy Forecasting and Special Studies for CP&L; and Dr. John L. Harris, Project Economic Analyst for CP&L. CP&L also presented the testimony and exhibits of the following witnesses as a panel: Donald R. Weisenborn, Director of General Planning for CP&L; Bobby L. Montague, Vice President, Planning & Coordination for CP&L; and W.W. Smith, Manager of Planning & Support in the Conservation & Load Management Department of CP&L.

Vepco presented the testimony and exhibits of the following witnesses as a panel: L. W. Ellis, Manager of Power Supply for Vepco, adopting the prefiled testimony of R.L. Flinchum; Robert W. Carney, Supervisor-Cogeneration & Support Services in the Economic Development & Energy Services Department of Vepco; and Allen P. Mitchem, Staff Economist in the Forecasting & Economics Analyis Department of Vepco.

Duke presented the testimony and exhibits of the following witnesses as a panel: H. Neil Stirewalt, Manager of Load Analysis for Duke, adopting the prefiled testimony of Donald H. Denton; William F. Reinke, Manager of System Planning for Duke; Warren H. Owen, Executive Vice President, Engineering, Construction & Production Group for Duke; and David Rea, Manager of Forecasting for Duke. Duke also presented the additional testimony of Donald H. Denton, Jr., Senior Vice President, Marketing and Rates for Duke. In rebuttal, Duke presented the testimony of Dr. Robert M. Spann, a member of the Board of

Directors of ICF, Incorporated, and President of the Private Sector Consulting Group.

Nantahala offered the testimony of N. Edward Tucker, Jr., Executive Vice President and Treasurer of Nantahala. The parties stipulated to Mr. Tucker's testimony, and it was received into evidence without his appearing at the hearing.

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

## FINDINGS OF FACT

1. The two largest electric utilities in North Carolina are Duke Power Company (Duke) and Carolina Power & Light Company (CP&L), which together generate approximately 95% of the electricity consumed in the State. Virginia Electric and Power Company (Vepco) generates most of the remaining 5%. Approximately two thirds of the utility business of both Duke and CP&L is located in North Carolina, with the remainder located in South Carolina. On the other hand, less than five percent of the utility business of Vepco is located in North Carolina, while the major portion of its utility business is located in Virginia.

Nantahala Power and Light Company is the fourth largest electric utility in North Carolina, and generates some of its own energy requirements utilizing hydroelectric facilities. None of the other smaller electric utilities in North Carolina generate their own energy requirements.

2. Nantahala has no plans for construction of additional generating capacity. For several years, Nantahala's existing generating facilities have not been capable of supplying the total requirements of its customers. However, Nantahala has entered into long term agreements with TVA to purchase all electric power needed in excess of the capacity of its own generating plants. The 1983 Nantahala/TVA Interconnection Agreement assures Nantahala of a firm supply of supplemental and backup power and energy from TVA for at least 10 years, and it permits Nantahala to utilize any other source of supplemental power which may be available.

3. The interconnections between CP&L, Duke, Vepco and their neighboring utilities appear to be adequate to withstand the outage of any single transmission facility without seriously threatening the overall bulk power system.

4. The rates of growth in KW peak demand for CP&L, Duke and Vepco for the period 1986-1995, taking into account conservation, load management and emerging alternative energy resources which appear most likely at this time, should fall in the following ranges:

| Forecasted Growth (1986-1995) | |
|---|---|
| CP&L | 2.3% - 2.9% |
| Duke | 2.2% - 2.8% |
| Vepco | 1.5% - 2.3% |

5. CP&L, Duke & Vepco are proposing generating capacity expansion plans for the 1986-1995 period which will improve each utility's respective generation mix. The proposed capacity expansion plans for CP&L, Duke and Vepco are reasonable and in the public interest. In conjunction with ongoing conservation and load management programs, such plans offer the least cost means of meeting the growth in demand for electricity in their respective service areas and should provide a reasonable level of reserve capacity during the period.

6. The appropriate minimum generating reserve margin for CP&L, Duke and Vepco continues to be approximately 20% for planning purposes.

## EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 1

This finding is informational in nature and is based on the files and records of the Commission and the findings of the Commission in previous orders.

## · EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 2

This finding is based on the testimony of Nantahala witness Tucker and on the files and records of the Commission.

Nantahala projects that it will continue to be a winter peaking system, and that its winter peak will grow at an annual rate of 4.7% per year. For example, Nantahala currently projects the following power requirements:

| Winter Peak | Forecasted Loads | Installed Generation | Purchases from TVA |
|---|---|---|---|
| 1986-87 | 193 MW | 89 MW | 104 MW |
| 1990-91 | 231 MW | 89 MW | 142 MW |
| 1996-97 | 291 MW | 89 MW | 202 MW |

Since its planning for construction is limited to its transmission and distribution systems, Nantahala's normal five year budget forecasts are adequate to encompass the lead times necessary for transmission/distribution additions.

## EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 3, 4, 5, AND 6

These findings are based on information contained in the files and records of the Commission, on the findings of the Commission in previous proceedings, and on the testimony and evidence presented in this proceeding.

## RELIABILITY

Reliability of electric power supply is the ability of electric systems to supply the demands of consumers at the time such demands are placed on the systems. It is also the ability of electric systems to withstand sudden disturbances such as short circuits or sudden loss of system components due to scheduled or unscheduled outages. Such reliability can be evaluated by the frequency, duration and magnitude of any adverse effects on consumer service.

## GENERAL ORDERS - ELECTRICITY

A major factor in obtaining desired levels of reliability is the interconnection of electric power systems across the country. For many years, it has been Federal policy to encourage interconnection and coordination among utilities in order to conserve energy, make more efficient use of facilities and resources, and increase reliability.

The North American Electric Reliability Council (NERC) was formed by the electric power industry to promote the reliability of bulk electric power supply in North America. NERC consists of nine (9) regional reliability councils plus one (1) affiliate which together encompass virtually all of the electric power systems in the United States and Canada.

The Southeastern Electric Reliability Council (SERC) is one of the 9 regional councils of NERC, and includes members located in the southeastern states of the United States. SERC is divided into four (4) subregions: Florida (containing the Florida peninsula), Southern (containing the Southern electric system centered in Georgia, Alabama, Mississippi), TVA (containing the Tennessee Valley Authority system,) and VACAR (containing the Virginia-Carolina area).

VACAR consists of Carolina Power & Light, Duke and Vepco in addition to four other utilities serving portions of Virginia, North Carolina and South Carolina.

The 1986-2005 Coordinated Bulk Power Supply Program report by SERC contains the assessment that the interconnected VACAR system can withstand the outage of any single transmission facility of the VACAR system without seriously affecting the bulk power system. It cautions that certain single contingencies can significantly affect transfer capability, and that certain double contigencies may result in some decrease or loss of load, although the effect would be local and no cascading would result.

The 1985 Reliability Review report by NERC contains the assessment that SERC will have adequate capacity margins and projects no reliability problems during the 1985-1994 period if the currently planned generating capacity additions and major transmission line additions are completed as scheduled. The assessment also indicates that there is sufficient transmission line capacity at present to permit significant economy transfers of electric power between the VACAR systems, between VACAR and the other subregions within SERC, and also between SERC and other regional councils during the 1985-1994 period.

## PEAK LOAD GROWTH

The actual systemwide peak loads for CP&L, Duke, and Vepco during the past 15 years include the following:

| | CP&L | Duke | Vepco |
|---|---|---|---|
| 1970 summer peak | 3484 MW | 6284 MW | 4852 MW |
| 1970/71 winter peak | 3400 | 6399 | 4422 |
| 1975 summer peak | 5060 | 8420 | 7133 |
| 1975/76 winter peak | 4968 | 8598 | 6301 |
| 1980 summer peak | 6139 | 10364 | 8484 |
| 1980/81 winter peak | 6402 | 10530 | 8451 |
| 1985 summer peak | 6873 | 11204 | 9819 |
| 1985/86 winter peak | 7763 | 12586 | 9836 |

The compounded annual rates of growth in peak load resulting from the above loads were as follows:

| | CP&L | Duke | Vepco |
|---|---|---|---|
| Summer Peak: | | | |
| 1970 - 1975 | 7.7% | 6.0% | 8.0% |
| 1975 - 1980 | 3.9% | 4.2% | 3.5% |
| 1980 - 1985 | 2.3% | 1.6% | 3.0% |
| Winter Peak: | | | |
| 1970/71 - 1975/76 | 7.9% | 6.1% | 7.3% |
| 1975/76 - 1980/81 | 5.2% | 4.1% | 6.0% |
| 1980/81 - 1985/86 | 3.9% | 3.6% | 3.2% |

The above rates of growth in peak leads indicate that the rates of growth in both summer and winter peak loads are continuing to decline markedly. Furthermore, the rates of growth in winter peak loads continue to be higher than comparable rates of growth in summer peak loads.

## LOAD FORECASTS

The June 1986 Advance Release of the 1986 Electric Power Supply and Demand report by NERC indicates that utility forecasts of 10 year electric demand growth have not changed significantly since last year. The annual rates of growth in electric loads over the 1986-1995 period forecast by the various electric reliability councils are as follows:

| | VACAR | SERC | NERC |
|---|---|---|---|
| Summer Peak | 2.1% | 2.4% | 2.3% |
| Winter Peak | 2.2% | 2.3% | 2.4% |
| Annual Usage | 2.5% | 2.5% | 2.4% |

Forecasting future electric load growth for many years into the future is an imprecise art at best. Virtually all of the forecasting tools in common use today assume that certain historical trends or relationships will continue into the future, and that historical correlations give meaningful clues to future behavioral patterns. As a result, any shift in such correlations or relationships can introduce significant errors into the forecast. A prime example of such a shift in historical relationships was the shift in energy usage patterns following the dramatic increase in fuel oil prices during the mid 1970's, an event which rendered virtually all prior forecasts invalid.

Most forecasting methods require predictions of such things as population levels, real personal income, available housing, prices of alternative fuels and energy sources, etc. Predicting the behavior of such components will produce forecasts of energy consumption which are only a rough guide to the future, especially when the load forecasts are projecting many years into the future.

CP&L, Duke, Vepco, and the Public Staff each utilize generally accepted forecasting procedures. Although their specific forecasting models are different, the econometric techniques employed by each utility are widely used for projecting future trends. Each of the models requires the analysis of large amounts of data and the selection of a broad range of social and economic variables and statistical techniques, thereby leaving a lot of room for differences of opinion among experts in the field.

The November 1985 final report of the Region-Specific Study of the Electric Utility Industry published by the Southern States Energy Board cited fundamental obstacles to the ability of the electric generating industry to provide reliable, economic power for the future, including primarily the failure to agree among all parties on the projected need for new generating capacity, and the failure to provide adequate revenues and cash flow to support construction. The report recommended, in part, that states should implement a mechanism whereby agreement can be reached by all involved parties on a reasonable forecasted range of future power requirements, including anticipated industrial and economic development goals.

While this proceeding is unlikely to achieve agreement by all parties regarding the methodology and assumptions used to develop a given forecast, it does provide a forum for the exchange of ideas and an opportunity for all parties to contribute to the development of a forecast.

## CP&L FORECAST

CP&L witnesses Futrell and Harris testified as a panel that the company's kwh energy sales, after load management, would grow approximately 2.7% per year during 1984-2004. The company's forecast is based on the CP&L service area economic model, which utilized behavioral equations derived for the different sales classifications of the company as well as economic and demographic projections taken from the U. S. Macro Economic Forecast of Data Resources, Inc. The projections include 3.8% to 5.7% annual inflation during the period.

CP&L witnesses Montague, Weisenborn and Smith testified as a panel that the forecast of peak loads was derived by estimating the load factors for each sales classification and then applying the load factors to the forecast of kwh energy sales to determine the peak load forecast. They testified that the company's KW peak load, after load management, would grow approximately 2.5% per year during 1986-2000.

Public Staff witnesses Evans, Hinton, Schrimper, Burnette, Lam & Nightengale testified as a panel that CP&L's kwh energy sales, after conservation and load management, would grow approximately 2.6% per year during 1986-2000. They testified that CP&L's winter peak load, after conservation and load management, would grow approximately 2.5% per year during 1986-2000, and that its summer peak load would grow approximately 1.2% per year during that period. The panel cited the increasing popularity of residential electric space heating as a major factor in the growth of the winter peak.,

The CP&L panel testified that the company's forecast was based on its summer peak load, and that the company is of the opinion that its summer and winter peak loads will be approximately equal. Although CP&L took exception to the Public Staff's prediction that the company would become winter peaking, there was little cross-examination on the point by the company or by the Public Staff.

CP&L and the Public Staff agreed on the impact of conservation and load management programs on the load growth of commercial and industrial customers. However, the Public Staff calculated a greater impact from load control of residential air conditioning and water heating and from residential time of day rates than CP&L did.

The Commission notes that the respective forecasts of the rate of peak load growth arrived at the same 2.5% per year during 1986-2000 even though they differed as to various details. The Commission is of the opinion that the question regarding whether a company is summer peaking or winter peaking will be continually monitored in general rate case where its impact on cost allocation and rate design can best be addressed, and therefore the question need not be determined here. The Commission also endorses any efforts to maximize conservation and load management impacts to the extent practical.

## DUKE FORECAST

Duke witnesses Rea, Stirewalt, Reinke and Owen testified as a panel that the company's kwh energy sales, after conservation and load management, would grow approximately 2.7% per year during 1988-2000. The panel testified that the company's summer peak load, after conservation and load management, would grow approximately 2.7% per year during 1988-2000, and that its winter peak load would grow approximately 2.6% per year during the period. Witness Rea testified that the company's forecast is based on models of the company's service area which include projections of the U.S. economy made by Chase Econometrics and others. The models anticipate that total personal income in the service area will grow at 2.8% per year, that the governments of North Carolina and South Carolina will be encouraging industrial growth, and that the conservation and load management goals of the company will be met.

Public Staff witnesses Evans, Hinton, Schrimper, Burnett, Lam and Nightengale testified as a panel that the company's kwh energy sales would grow approximately 2.7% per year during 1986-2000. The forecast included the effects of load management, but was not adjusted for losses, company use or SEPA contract sales. The panel testified that the company's summer peak load, after conservation and load management, would grow approximately 1.8% per year during 1986-2000, and its winter peak load would grow approximately 2.4% per year during the period.

Witness Rea testified that Duke utilized separate econometric models to forecast the summer and winter peak loads. The actual peak loads were first increased to account for historical load management, and the increased peak loads were then regressed against explanatory variables reflecting economic and temperature-responsive factors to project future explanatory variables. These projections of explanatory variables were then used in the models to determine initial estimates of future peak loads. Finally, the company's load management and conservation goals, excluding interruptible load management, were deducted from the initial estimates of future peak loads to obtain the final forecast of future peak loads.

The Public Staff also utilized separate econometric models to forecast the summer and winter peak loads. However, the Public Staff's regression analysis used the actual peak loads unadjusted for historical load management based on the assumption that any historical load management which has occurred was a response to increases in the real price of electricity, and that the variable in the model representing the real price of electricity explained historical load management impacts.

Duke contended upon cross-examination that the Public Staff's failure to adjust the actual peak loads for load management/conservation (LMC) impacts caused a double counting of the LMC impacts. The Public Staff contended that double counting occurs only if Duke's LMC goals are assumed to have actually occurred in each historic year, that Duke's load control of residential air conditioning and water heating had not actually been activated during the peaks of prior years, and that Duke was unable to furnish data to confirm that interruptible load control for commercial/industrial customers had actually been activated during the peaks of prior years or what such impacts had been.

Duke rebuttal witness Spann testified that the company's summer peak load, after load management and conservation, would grow approximately 2.3% per year during 1986-2000, and the winter peak load would grow approximately 2.1% per year during the period. His forecast was based on a single econometric model to forecast both the summer and winter peaks which incorporated his proposed changes in the Public Staff's models. Upon cross-examination, he testified that his adjustments to the Public Staff's model reflecting load control of residential air conditioning and water heating should not have been made if such load control had not been activated during the historical peaks. He further testified upon cross-examination that his adjustments to the Public Staff's model reflecting interruptible load control of commerical /industrial customers should have been a different unquantified amount until such time as Duke provides data on the actual impact of such interruptible load control.

There was a significant amount of discussion as to whether Duke will be a summer peaking or a winter peaking utility. The Public Staff contended that Duke would be a winter peaking utility in the future, and cited the fact that Duke's actual winter peak (1st quarter of year) was greater than its summer peak (3rd quarter of year) in seven of the past ten years. Duke witness Spann presented the results of a statistical test which he concluded showed there was no difference between the effect of real personal income and electricity prices on the winter peak versus the summer peak. Upon cross-examination, he acknowledged that the variance in mean square error associated with the real personal income and electricity prices variables was ten fold between winter and summer, but he contended that the difference was not statistically significant. Therefore witness Spann assumed the impacts of both real personal income and electricity prices to be the same for the summer peak and the winter peak. Witness Spann also testified that both his forecast and Duke's median forecast showed the winter peak and the summer peak to be within a few percentage points of each other during 1988-2000, and that such a system might be termed an even peaking system.

Based on the evidence presented, the Commission concludes that the need for additional generating capacity will not be materially affected in the long run by whether the company is summer peaking or winter peaking. The question regarding whether a company is summer peaking or winter peaking will be continually monitored in general rate cases where its impact on cost allocation and rate design can best be addressed, and therefore the question need not be determined here.

The Commission also notes that although substantial variation exists between the forecasted peak loads by Duke, the Public Staff and witness Spann, the capacity required to satisfy those peak loads is similar. For capacity planning purposes, there is little difference between the Public Staff and the Duke forecasts.

## VEPCO FORECAST

Vepco witness Mitchem presented the Company's current energy and peak demand forecast for 1986-1999. He testified that the maximum peak load is expected to occur each winter season after 1987, although the projected summer and winter peak loads are so close to each other that actual weather conditions will determine whether the Company is summer peaking or winter peaking in any given year. He explained that the Company's forecast is based on the Wharton Econometric Forecasting Associates model of the national economy, the Virginia Economic Model of the regional economy, and Vepco's own Energy and Peak Demand model for its service area. The models generally project approximately 5% inflation during the period, approximately 10.7% prime interest rates, and steady growth rates in the regional economy somewhat exceeding the growth rates in the national economy. The Company adopted its current forecast in May 1985, and anticipates adopting an updated forecast in mid 1986.

Vepco witness Carney testified that the Company's load management and conservation programs were expected to reduce the Company's peak loads by approximately 97 MW (winter) in 1986, and increase thereafter to approximately 1080 MW (winter) reduction in 1999. He also testified that the Company has approximately 168 MW of installed cogeneration and small power production facilities on its system, of which approximately 117 MW represents firm capacity; that cogeneration and small power production were expected to contribute over 400 MW of firm capacity by 1990; and that all of the estimated contributions from cogeneration/small power production as well as load management/conservation programs have been incorporated into the Company's load forecasts and capacity expansion plans.

The Public Staff did not prepare a forecast for Vepco, although it did recommend that the Company be required to file its updated forecast with the Commission upon completion.

## FORECAST SUMMARY

Tables 1, 2, and 3 attached to this Order illustrate the systemwide annual peak loads which are anticipated for CP&L, Duke and Vepco during 1986-1995. The average annual rates of growth resulting from the forecasted peak loads contained in tables 1, 2, and 3 are as follows:

| | CP&L | Duke | Vepco |
|---|---|---|---|
| 1986-1990 | 3.3% | 2.1% | 2.9% |
| 1990-1995 | 2.1 | 2.6 | 1.0 |
| 1986-1995 | 2.6 | 2.4 | 1.9 |

The range of forecasts resulting from the variety of data used and the different assumptions made requires that flexibility be included in planning generating capacity expansion, and that planning be based on the expectation that actual electric loads in the future could fall anywhere within a range or band of forecasted values. The Commission concludes from the above forecasts that the average annual rates of growth in peak loads during 1986-1995 should fall in the following ranges:

| Forecasted Growth (1986-1995) | |
|---|---|
| CP&L | 2.3% - 2.9% |
| Duke | 2.2% - 2.8% |
| Vepco | 1.5% - 2.3% |

For comparison, the current forecasted ranges of growth are listed below together with the forecasted ranges of growth adopted by the Commission in previous formal proceedings.

| | Current Forecast | Docket E-100,Sub 46 (12-1-83) | Docket E-100,Sub 40 (4-20-82) | Docket E-100,Sub 35 (5-20-80) |
|---|---|---|---|---|
| CP&L | 2.3% - 2.9% | 1.9% - 3.4% | 3.4% - 4.1% | 4.4% - 5.2% |
| Duke | 2.2 - 2.8 | 1.4 - 3.5 | 4.2 - 4.5 | 4.6 - 5.4 |
| Vepco | 1.5 - 2.3 | 1.9 - 3.0 | 2.1 - 3.8 | 4.0 - 5.0 |

The current load forecasts adopted by the Commission are based in large part on the premise that conservation, load management and emerging alternative energy resources represent permanent changes in the approach of society toward the use of energy. However, uncertainties concerning when the various known energy alternatives will become available in sufficient quantity to be of significant impact during the current planning horizon places the Commission in the position of having to evaluate "most likely" forecasts while at the same time working to encourage energy alternatives which could change those "most likely" forecasts. Thus, the Commission finds it necessary to allow for a great deal of flexibility in the planning for generation capacity expansion to match the "most likely" forecasts.

## GENERATION MIX

The Commission has found in previous years that the most economical mix of electric generation for Duke, Vepco and Carolina Power & Light is a combination of hydroelectric generation, coal-fired and nuclear-fueled steam generation, plus combustion turbines. In addition, the Commission recognizes the need for both base load facilities and peak load facilities, as well as for intermediate load or load following facilities. Conservation, load management, and the development of alternative energy sources will also play an increasingly larger role during the latter years of the century, and must be integrated into the overall generation mix of each utility.

Currently, the generation mix of each utility reflects the following installed generating capacities (based on summer ratings):

| | CP&L | | Duke | | Vepco | |
|---|---|---|---|---|---|---|
| | MW | % | MW | % | MW | % |
| Fossil steam | 5245 | 60 | 6526 | 45 | 6020 | 53 |
| Nuclear steam | 2245 | 26 | 6025 | 41 | 3342 | 29 |
| Hydroelectric | 218 | 2 | 1452 | 10 | 1586 | 14 |
| Combustion turbines | 1018 | 12 | 599 | 4 | 439 | 4 |

The actual generation mix for each utility reflects the capacities shown above, plus outside purchases and sales, and the operating efficiencies achieved by utilizing each source of power as close to optimum as possible within the limitations created by plant outages, etc. For example, the actual generation mixes for 1985 were as follows:

| | CP&L | | Duke | | Vepco | |
|---|---|---|---|---|---|---|
| | GWH | % | GWH | % | GWH | % |
| Fossil steam | 23,274 | 67 | 27,629 | 45 | 20,448 | 43 |
| Nuclear steam | 10,900 | 31 | 33,700 | 56 | 20,840 | 44 |
| Hydroelectric (Net) | 576 | 2 | 1,162 | 2 | 588 | 1 |
| Combustion Turbines | 32 | 0 | 4 | 0 | 37 | 0 |
| Net Purchases & Sales | (24) | 0 | (1,816) | (3) | 5,694 | 12 |

As would be expected, the percent of MWH generation from nuclear units exceeds the percent of MW generating capacity represented by such units, reflecting the use of nuclear units for base-load generation. On the other hand, combustion turbines (CTs) contributed very little to the overall production of MWH energy although they do represent a significant percentage of the MW generating capacity available to the companies, reflecting the use of CTs primarily for peak-load generation.

## CP&L CAPACITY EXPANSION PLAN

CP&L witness Montague testified that after the construction of Harris Unit No. 1, the Company's current capacity expansion plan had one unit scheduled, Mayo Unit No. 2. Witness Montague testified that the supply plan was based on the Company's belief that Mayo Unit No. 2 could be installed without sulfur scrubbers. However, on April 10, 1986, the Company received notification from the North Carolina Environmental Management Commission (NCEMC) that regulatory approval to operate Mayo Unit No. 2 without scrubbers had been denied based on legal opinions from the Attorney General of North Carolina and the Regional Counsel of the Environmental Protection Agency. The scrubbers would add approximately $225 million to the costs of Mayo Unit No. 2, and the levelized annual increase in capital and operating costs would be approximately $90 million.

Witness Montague testified that the Company, in anticipation that scrubbers might be necessary for Mayo Unit No. 2, had been investigating various options for providing replacement capacity at a cost lower than Mayo Unit No. 2 with scrubbers. He discussed in some detail the extent to which CP&L is involved in negotiations with other utilities for purchase options and in negotiations with cogenerators. Witness Montague stated that CP&L's strategy is to minimize capital investment in the near term by considering the purchase of power from other utilities and cogenerators. He then detailed negotiations the Company is engaged in with several other utilities and the fact that there is capacity available for purchase in the region in the near term as well as the long term. Witness Montague explained that the negotiations presently under way include the possibility of contracts for unit-power purchases as well as system purchases. A typical unit-power purchase contract would give CP&L the right to capacity from a particular generating plant. The capacity from that generating unit would essentially be the same as if that capacity were a part of CP&L's system. In negotiations involving system purchases, the selling utility would typically provide CP&L with capacity as long as the selling utility had the capability to generate capacity on its own system, or the capability to make purchases from other systems to make up that capacity being sold to CP&L.

Upon cross-examination by the Public Staff, witness Montague indicated that it would take approximately nine years to build a plant similar to Mayo Unit No. 2. He also stated that the Company is studying a number of options that may be available in the 1990s, including coal gasification, combined cycle and atmospheric fluidized bed combustion. He stated that the Company is a member of the Atmospheric Fluid Bed Development Corporation, which is in the process of constructing a 160 MW fluidized bed unit at the Tennessee Valley Authority. Witness Montague described other options available to the Company, such as the purchase of additional cogeneration and the possibility of adding waste heat boilers to the Company's Cape Fear Units No. 3 and 4, which are presently shut down. Witness Montague testified that purchase power would be available until the year 2000 and that purchases involving base load unit-power capacity could be obtained for up to 30 years. He also stated that although CP&L's negotiations for replacement power were not complete at the time of the hearing, the Company's goal was to assure the Commission that adequate steps were being taken to place CP&L in a posture to obtain sufficient lower cost power to replace the need for Mayo Unit No. 2 with scrubbers.

In considering the evidence by the Public Staff and CP&L in regard to capacity expansion schedules, the Commission notes that there was no disagreement between the Public Staff and CP&L as to when new capacity would be needed by CP&L. Neither was there significant disagreement between the Public Staff and the company as to the amount of new capacity that CP&L will have to install in order to meet peak demand projections. If CP&L can obtain sufficient replacement capacity at costs lower than the cost of Mayo Unit No. 2 scrubbed, then CP&L should proceed with that plan in lieu of constructing Mayo Unit No. 2 with scrubbers. To this end, the Commission finds essentially no difference in what CP&L is currently planning and what the Public Staff has proposed. The Commission believes that CP&L should continue with its investigation of alternative capacity to Mayo Unit No. 2 in a scrubbed configuration; that CP&L should from time to time keep the Commission informed of the status of its negotiations with other utilities and with cogenerators for capacity to replace Mayo Unit No. 2; and if and when Mayo Unit No. 2 is cancelled, CP&L should file a report indicating how it will replace the capacity and energy of Mayo Unit No. 2, including the expected replacement cost of the energy and capacity.

The attached tables 1 thru 5 illustrate the installed generating capacities which are anticipated for CP&L, Duke and Vepco during 1986-1995. Tables 1 and 2 indicate that the generation mix for CP&L will become more heavily nuclear after the addition of Harris No. 1 during 1986. Nuclear-fueled steam should then supply approximately one third of the total kwh generation by CP&L through 1994, and coal-fired steam should continue to supply approximately two thirds of the total kwh generation during that period. Tables 1 and 2 also indicate that reserve margins for CP&L should average approximately 25% during 1986-1995, while ranging from approximately 20% to approximately 31% during the period. Much of these reserves will be supplied by combustion turbines, which can be allowed to sit idle at very low cost to the ratepayers when not needed.

## DUKE CAPACITY EXPANSION PLAN

Duke witness Owen testified that construction of Catawba nuclear Unit 2 has been completed for all practical purposes; that the company plans to place the unit into operation in the fall of 1986; that all personnel necessary to operate and maintain unit 2 are already at the plant; and that the unit is now undergoing a series of tests required by NRC regulations at varying power levels from 5% to 100% of full power prior to being declared commercial.

Witness Owen testified that the main access road for the Bad Creek project has been completed and that excavation of the intake channel and powerhouse is expected to be completed in 1986. The Bad Creek project is a pumped storage hydroelectric project which will utilize Lake Jocassee as a lower pond and will connect to the Duke system at the Jocassee Station switchyard. Witness Owen indicated that the Bad Creek units would be added in 1991 and 1992, that additional generating capacity would be needed later in the 1990's, but that the company had not yet decided what size or type of capacity will be added after Bad Creek. He also pointed out that by 1995, 57% of Duke's fossil-fired generating capacity will be least 25 years old, and that by the year 2000 all of Duke's fossil-fired units will be at least 25 years old.

The Public Staff recommended the same capacity expansion schedule as Duke did for the period 1986-1992. In addition, the Public Staff recommended that 800 MW of new coal-fired capacity be added in 1996 and that another 800 MW of new coal-fired capacity be added in 1998. The construction schedule reflects the Public Staff's best economic evaluation and judgement but does not attempt to address questions concerning financial integrity of a specific utility and environmental or safety problems associated with a particular type of unit.

Witness Owen testified that Duke's Plant Modernization Program (PMP), which was formerly called an extended cold shutdown program, is based on refurbishing and extending the life of certain old coal-fired generating units as opposed to building new generating units; that capacity represented by PMP will vary from time to time depending on the status of work on each unit; that units currently in the PMP are not included in Duke's capacity expansion plan although most if not all of the units are expected to be returned to service in the 1990-1995 time frame; and that Duke has a specific schedule and time frame in mind for returning the PMP units to service.

The Public Staff stated that it did not attempt to evaluate the PMP in its testimony in this proceeding, but that such omission did not represent an endorsement of the PMP. Nevertheless, the Public Staff's capacity expansion plan includes 1600 MW of new capacity in 1996 and 1998 following the addition of Bad Creek in 1992. The PMP appears to involve approximately 997 MW of existing capacity. Therefore, the Commission is of the opinion that Duke should file a report on the status of generating units in its PMP, including the likely return to service dates.

Duke witness Reinke presented relative bus-bar costs for the Bad Creek project, but cautioned that the figures in his exhibit do not provide an accurate picture of the relative value of pumped storage hydro generating technology versus other alternative generating technologies. He indicated that comparisons between pumped storage hydro and other alternatives must be made over a 30 year period in order to have a sound basis for comparison. He testified that Duke's evaluation of the 1,000 MW Bad Creek project versus 400 MW and 800 MW coal-fired steam units, 250 MW combined cycle units, and 100 MW combustion turbines resulted in lower revenue requirements for Bad Creek over the 30 year study period than any of the alternatives studied.

Duke witness Denton testified that to the extent that the company can use off-peak generation (hopefully nuclear generation) to pump water at Bad Creek from the lower pond to the upper pond in order to produce hydro generation from Bad Creek during on-peak hours, it would improve the company's load factor and also produce lower operating costs.

In response to questions from the Commission, witness Denton testified that Duke was considering alternative methods to obtain new capacity other than the construction of new generating plants. He testified that Duke was considering joint planning with C.P.& L. and had considered joint ventures with approximately nine entities in the southeast, but there are to date no preliminary results from these explorations. Duke is also considering purchased power as an alternative and has had contact with The Southern Company, American Electric Power, and TVA. Witness Denton stated that he did not believe that any of these companies had capacity for firm substitution of Duke owned generation when it is needed. He testified that power pooling has been considered but that it did not add anything to benefit Duke's customers; that Duke has strong interconnections with its neighbors and is developing additional interconnections; and that the VACAR companies have recently installed a computer system to facilitate decision making as to buying and selling between the companies.

Witness Denton testified that Duke's decision as to future generating capacity will be made utilizing "least cost planning" which is being developed by a task force from the System Planning Department, Marketing Department and Rate Department. Least cost planning is an industry term used to identify the planning process selected by a company to integrate demand side options (options available to change the end use characteristics of electricity) with supply side options (generation options) to result in a plan to meet future peak loads at the least cost. Witness Denton testified that although the system load characteristics will be changing during the 1986-2000 forecast, "present studies" by Duke indicate that the additional capacity needed beyond Bad Creek is a peaking unit.

The Commission is of the opinion that Duke should file a copy of its "least cost planning" analysis when it is completed. Thus far the Commission has only been shown a conceptual flow diagram of the planning process. Furthermore, the Commission is of the opinion that Duke should file a copy of its "present studies" which were said to indicate the need for a peaking unit after the addition of Bad Creek. No generating units were included in Duke's capacity expansion plan in this proceeding.

Tables 3 and 4 indicate that the generation mix for Duke will also become more heavily nuclear after the addition of Catawba No. 2 in 1986/1987. Nuclear-fueled steam should then continue to supply more than half of the total kwh generation by Duke through 1995. Although Duke will also significantly increase its pumped storage hydroelectric capacity after the addition of Bad Creek Unit Nos. 1, 2, 3 and 4 in 1991 and 1992, the bulk of its non-nuclear kwh generation will continue to be coal-fired steam through 1995. Tables 3 and 4 also indicate that reserve margins for Duke should average approximately 22% during 1986-1993, while ranging from approximately 18% to approximately 27% during that period. The less than 15% reserves projected for 1994-1995 reflect the fact that Duke does not incorporate undesignated generating units into its formal capacity expansion plan.

## VEPCO CAPACITY EXPANSION PLAN

Vepco witness Ellis testified that the Company is evaluating several capacity sources which may be added to the system in smaller increments and with shorter construction times; that the Company seeks to minimize the capital commitments which must be made in advance of commercial operation, and to reduce the variations in reserve capacity; and that the Company is evaluating a variety of sources of new capacity, including conventional coal-fired units, repowering of existing units, coal-gasification combined cycle, power purchases, and such new technologies as atmospheric fluidized bed combustion, fuel cells, wind energy and photovoltaic cells.

Table 5 indicates that the generation mix for Vepco significantly increased its percentage of pumped storage hydroelectric capacity after the addition of Bath County Unit No. 1 through 6 in 1985. The Bath County project is the largest of its type in the world at the present time. Nevertheless, Vepco will continue to obtain approximately one half of its total kwh generation from fossil-fired steam through 1995, and another one third of its total kwh generation from nuclear-fueled steam during that period. Table 5 also indicates that reserve margins for Vepco should average approximately 25% during 1985-1995, while ranging from approximately 20% to approximately 28% during the period.

## CAPACITY EXPANSION SUMMARY

The Commission concludes that CP&L, Duke and Vepco are each proposing capacity expansion plans which will improve each utility's respective generation mix in favor of lower overall costs during 1986-1995 (relative to what such fuel costs would otherwise be), and that the proposed capacity expansion plans should provide adequate and reasonable levels of reserve capacity during that period if the current load forecasts are on target.

The Commission notes that the total system reserves for CP&L are forecasted to fall below 20% if the new capacity represented by Harris Unit 1 is not added on schedule, and concludes that such new capacity is needed for purposes of this proceeding. The Commission also notes that questions regarding the cost of Harris Unit 1 will be addressed in other proceedings in the near future and need not be determined here. Questions raised by the public witnesses and by Kudzu witness Eddleman regarding the safety of the Harris plant should more appropriately be addressed to the federal Nuclear Regulatory Commission (NRC). The NRC has pre-empted the states in the area of nuclear power safety, and has already reviewed most if not all of the safety related issues raised herein concerning the Harris plant.

Finally, the Commission understands that Duke may be exploring the possibility of building a generating plant jointly with another southeastern utility but that there is nothing firm on such a possibility at this time. The Commission would urge Duke to continue exploring such joint efforts as well as other alternative sources of power. Furthermore, the Commission notes that it has an obligation to develop long range plans for capacity expansion, and that both the Public Staff and Duke itself project the need for additional capacity after 1993. It is therefore essential that Duke provide more specific long range capacity expansion plans for Duke's service area for the years beyond 1993 at the earliest possible time.

## RESERVE MARGINS

The reserve margins (i.e., the ratio of total reserve capacity to actual peak load) is a measure of the ability of the utility to provide an adequate source of electric generation even during forced outages of some of its generating units. In general, total reserve margins of 20-25% will result in actual operating margins (i.e., the ratio of operational reserve capacity to actual load at a given point in time) of 5-10%, because the remaining 15-20%

reserve margins are offset by plant outages, differences between the forecasted loads and actual loads, and variable operating conditions.

It is impractical if not impossible to plan for major generating capacity additions in such a manner that constant reserve margins are maintained. The reserve margins will generally be less than optimum just prior to placing new generating units into service, and they will be greater than optimum just after new generating units are placed into service. Furthermore, the reserve margins must be adequate to account for a variety of uncertainties which are as yet undetermined, such as the impact of regulatory policies regarding nuclear operations, acid rain and other environmental concerns, customer responses to the various conservation and load management programs, and the overall direction of the economy.

CP&L witness Montague testified that the Company currently uses 20% minimum reserve margins to schedule generation additions; that the 20% standard has evolved from analyses of system operating history, the influence of regulatory bodies and management judgement; and that the Company now preferred to explain system reserve requirements in terms of capacity margin (which is the ratio of total reserve capacity to total installed capacity) instead of reserve margin.

Duke witness Reinke testified that it had used an over/under capacity model to determine its planning reserve level; that the model indicates that the planning reserve level which produces the least cost to Duke's customers is between 25% and 30%; and that the Company's reserve margins do not include 997 MW of capacity associated with several coal-fired units in extended cold shutdown status.

Vepco witness Ellis testified that the Company's long-range target reserve margin is still 20%; that it anticipates reserves will range from 16.6% to 22.2% during the 1985-1999 planning period; and that it used a 15 day per year loss-of-load probability and a 0.5% per year unserved energy probability as indices to determine an appropriate target reserve margin.

The Public Staff report indicates that the Public Staff determines reserve margins using both probablistic and non-probablistic methods; that the loss-of-load probability used by the Public Staff may be the most widely used method in the electric utility industry; that the Public Staff also considers the Expected Loss of Capacity index to be useful in analyzing generation reserves; and that the Public Staff's review of historical reserves and loss of load probabilities for CP&L and Duke indicates that a 20% minimum reserve margin would provide adequate and reliable electric service through the study period.

The Commission has found in previous years that minimum reserve margins of approximately 20% should be utilized for planning purposes in North Carolina.

Such reserve margins would be somewhat lower than the average reserve margins found in either SERC or NERC. The Commission continues to be of the opinion that a minimum reserve margin of approximately 20% would be consistent with the responsibilities of the North Carolina utilities within the framework of SERC and NERC, and it would provide an adequate and reasonable level of reserve generating capacity for service in the State.

IT IS, THEREFORE, ORDERED as follows:

1. That the findings and conclusions of this Order are hereby adopted as the Commission's current analysis and plan for the expansion of facilities to meet the future requirements for electricity in North Carolina.

2. That if Carolina Power & Light Company cancels Mayo unit 2, it shall file with the Commission within 90 days after said cancellation a report detailing the expected costs of replacement energy and capacity.

3. That within 90 days after the date of this Order, Duke Power Company shall file with the Commission a report detailing the status of each unit which now is or has been included in Duke's Plant Modernization Program, including the estimated return to service dates for each unit.

4. That within 90 days after the date of this Order, Duke Power Company shall file with the Commission a copy of its current studies which it referred to as indicating that peaking capacity was most needed beyond the Bad Creek units.

5. That Duke Power Company shall file with the Commission a copy of its "least cost" planning analysis when such analysis is completed.

6. That Virginia Electric & Power Company shall file with the Commission a copy of its updated forecast and generating capacity expansion plan for the 1986-2000 period when such forecast and plan is completed.

ISSUED BY ORDER OF THE COMMISSION.
This the 18th day of August 1986.

NORTH CAROLINA UTILITIES COMMISSION
Sandra J. Webster, Chief Clerk

(SEAL)

TABLE I

CAROLINA POWER & LIGHT COMPANY ANALYSIS OF ITS TOTAL SYSTEM CAPACITY AND LOAD

| | 1986 | 1987 | 1988 | 1989 | 1990 | 1991 | 1992 | 1993 | 1994 | 1995 |
|---|---|---|---|---|---|---|---|---|---|---|
| Total MW Capacity From Previous Year (1) | 8,754 | 8,850 | 9,750 | 9,900 | 9,900 | 9,900 | 10,620 | 10,620 | 10,620 | 10,620 |
| Capacity Changes During Year: | | | | | | | | | | |
| Addtl. Cogeneration (2) | 96 | | 150 | | | | | | | |
| Harris #1 (3) | | 900 | | | | | | | | |
| Mayo #2 | | | | | | 720 | | | | |
| Undesignated (4) | | | | | | | | | | 690 |
| Retirements (5) | | | | | | | | | | |
| Total MW Capacity Available at time of Peak Load | 8,850 | 9,750 | 9,900 | 9,900 | 9,900 | 10,620 | 10,620 | 10,620 | 10,620 | 11,310 |
| Forecast MW Load (6) | 7,275 | 7,571 | 7,833 | 8,076 | 8,287 | 8,464 | 8,658 | 8,836 | 8,901 | 9,191 |
| Total Reserves -MW | 1,696 | 2,348 | 2,248 | 2,015 | 1,814 | 2,366 | 2,182 | 2,013 | 1,858 | 2,367 |
| -% | 23.3 | 31.0 | 28.7 | 25.0 | 21.9 | 28.0 | 25.2 | 22.8 | 20.6 | 25.8 |
| Reserves w/o IC's | | | | | | | | | | |
| -MW | 678 | 1,330 | 1,230 | 997 | 796 | 1,348 | 1,164 | 995 | 840 | 1,349 |
| -% | 9.3 | 17.6 | 15.7 | 12.3 | 9.6 | 15.9 | 13.4 | 11.3 | 9.3 | 14.7 |

## TABLE I NOTES

(1) Based on summer rated capacity of installed plants (incl. 1018 MW of I.C. Turbines) plus 75 MW of firm purchases or other resources.

(2) Large cogeneration purchases not included elsewhere in forecast.

(3) Scheduled for commercial operation in fourth quarter of 1986.

(4) Company has not made definite plans for a specific type unit, unit size, or location. Capacity shown is for long range planning purposes, and will be needed in this time frame if load develops as forecasted.

(5) Company has no plans to retire any generating units.

(6) Based on summer peak demand. Incorporates North Carolina Eastern Municipal Power Agency load and the impact of conservation and load management, including cogeneration and small power production.

TABLE 2

PUBLIC STAFF ANALYSIS OF CP&L TOTAL SYSTEM CAPACITY AND LOAD

| | 1986 | 1987 | 1988 | 1989 | 1990 | 1991 | 1992 | 1993 | 1994 | 1995 |
|---|---|---|---|---|---|---|---|---|---|---|
| Total MW Capacity From Previous Year (1) | 8,850 | 8,850 | 9,750 | 9,750 | 9,750 | 9,750 | 10,470 | 10,470 | 10,470 | 10,470 |
| Capacity Changes During Year: | | | | | | | | | | |
| Harris #1 | | 900 | | | | | | | | |
| Mayo #2 | | | | | | 720 | | | | |
| Undesignated | | | | | | | | | | 720 |
| Total MW Capacity Available at time of Peak Load | 8,850 | 9,750 | 9,750 | 9,750 | 9,750 | 10,470 | 10,470 | 10,470 | 10,470 | 11,190 |
| Forecast MW Load (2) | 7,657 | 7,791 | 7,927 | 8,065 | 8,211 | 8,307 | 8,501 | 8,721 | 8,924 | 9,162 |
| Total Reserves -MW | 1,193 | 1,959 | 1,823 | 1,685 | 1,539 | 2,163 | 1,969 | 1,749 | 1,546 | 2,028 |
| -% | 15.6 | 25.1 | 23.0 | 20.9 | 18.7 | 26.0 | 23.2 | 20.1 | 17.3 | 22.1 |
| Reserves w/o IC's | | | | | | | | | | |
| -MW | 175 | 941 | 805 | 667 | 521 | 1,145 | 951 | 731 | 528 | 1,010 |
| -% | 2.3 | 12.1 | 10.2 | 8.3 | 6.3 | 13.8 | 11.2 | 8.4 | 5.9 | 11.0 |

## TABLE 2 NOTES

(1) Based on summer rated capacity of installed plants (incl. 1018 MW of I.C. Turbines) plus 75 MW of firm purchases or other resources.

(2) Based on summer peak demand for 1986-1991 and on winter peak demand for 1992-1995.

TABLE 3

DUKE ANALYSIS OF ITS TOTAL SYSTEM CAPACITY AND LOAD

| | 1986 | 1987 | 1988 | 1989 | 1990 | 1991 | 1992 | 1993 | 1994 | 1995 |
|---|---|---|---|---|---|---|---|---|---|---|
| Total MW Capacity From Previous Year (1) | 14,843 | 14,843 | 15,988 | 15,988 | 15,988 | 15,988 | 16,488 | 16,988 | 16,988 | 16,988 |
| Capacity Changes During Year: | | | | | | | | | | |
| Catawba #2 | | 1,145 | | | | | | | | |
| Bad Creek #1,2 | | | | | | 500 | | | | |
| Bad Creek #3,4 | | | | | | | 500 | | | |
| Undesignated (2) | | | | | | | | | | |
| Retirements (3) | | | | | | | | | | |
| Total MW Capacity Available at time of Peak Load | 14,843 | 15,988 | 15,988 | 15,988 | 15,988 | 16,488 | 16,988 | 16,988 | 16,988 | 16,988 |
| Forecast MW Load (4) | 12,227 | 12,574 | 12,715 | 12,856 | 13,319 | 13,736 | 14,052 | 14,418 | 14,790 | 15,107 |
| Total Reserves -MW | 2,616 | 3,414 | 3,273 | 3,132 | 2,669 | 2,752 | 2,936 | 2,570 | 2,198 | 1,881 |
| -% | 21.4 | 27.2 | 25.7 | 24.4 | 20.0 | 20.0 | 20.9 | 17.8 | 14.9 | 12.5 |
| | Reserves w/o IC's | | | | | | | | | |
| -MW | 2,017 | 2,815 | 2,674 | 2,533 | 2,070 | 2,153 | 2,337 | 1,971 | 1,599 | 1,282 |
| -% | 16.5 | 22.4 | 21.0 | 19.7 | 15.5 | 15.7 | 16.6 | 13.7 | 10.8 | 8.5 |

# TABLE 3 NOTES

(1) Based on summer rated capacity of installed plants (including 599 MW of I.C. Turbines) plus 241 MW of firm purchases. Does not include units in extended cold shutdown status.

(2) Company currently does not propose any generating units for which locations have been established. Eight (8) thermal station sites and six (6) pumped storage sites have been identified for possible future use.

(3) In 1984, the Company removed several small coal-fired units from total system capacity due to advanced age, decreased operating efficiency and general poor condition of the units, and placed them into extended cold shutdown. During the extended cold shutdown period, each unit will be analyzed to determine if corrective maintenance and equipment modification will enable their return to service. Work was completed on Dan River 2 in January 1986, whereupon Dan River 2 was returned to service and Dan River 3 was removed from service.

(4) Based on summer peak demand. 1986 and 1987 reflect short term forecasts, and other years reflect median of long term forecasts. Incorporates load management and conservation effects.

## TABLE 4

## PUBLIC STAFF ANALYSIS OF DUKE TOTAL SYSTEM CAPACITY AND LOAD

| | 1986 | 1987 | 1988 | 1989 | 1990 | 1991 | 1992 | 1993 | 1994 | 1995 |
|---|---|---|---|---|---|---|---|---|---|---|
| Total MW Capacity From Previous Year (1) | 14,843 | 15,988 | 15,988 | 15,988 | 15,988 | 15,988 | 16,488 | 16,988 | 16,988 | 16,988 |
| Capacity Changes During Year: | | | | | | | | | | |
| Catawba #2 | 1,145 | | | | | | | | | |
| Bad Creek #1, 2 | | | | | | 500 | | | | |
| Bad Creek #3, 4 | | | | | | | 500 | | | |
| Total MW Capacity Available at time of Peak Load | 15,988 | 15,988 | 15,988 | 15,988 | 15,988 | 16,488 | 16,488 | 16,988 | 16,988 | 16,988 |
| Forecast MW Load (2) | 11,649 | 12,024 | 12,270 | 12,684 | 13,056 | 13,396 | 13,747 | 14,069 | 14,364 | 14,700 |
| Total Reserves -MW | 4,339 | 3,964 | 3,718 | 3,304 | 2,932 | 3,092 | 3,241 | 2,919 | 2,624 | 2,288 |
| -% | 37.2 | 33.3 | 30.3 | 26.0 | 22.5 | 23.1 | 23.6 | 20.7 | 18.3 | 15.6 |
| Reserves w/o IC's -MW | 3,740 | 3,365 | 3,119 | 2,705 | 2,333 | 2,493 | 2,642 | 2,320 | 2,025 | 1,689 |
| -% | 32.1 | 28.0 | 25.4 | 21.3 | 17.9 | 18.6 | 19.2 | 16.5 | 14.1 | 11.5 |

## TABLE 4 NOTES

(1) Based on summer rated capacity of installed plants (including 599 MW of I.C. Turbines) plus 241 MW of firm purchases. Does not include units in extended cold shutdown status.

(4) Based on winter peak demand.

## TABLE 5

## VEPCO ANALYSIS OF ITS TOTAL SYSTEM CAPACITY AND LOAD

| | 1986 | 1987 | 1988 | 1989 | 1990 | 1991 | 1992 | 1993 | 1994 | 1995 |
|---|---|---|---|---|---|---|---|---|---|---|
| Total MW Capacity From Previous Year (1) | 11,110 | 12,416 | 12,907 | 13,051 | 13,113 | 13,267 | 13,322 | 13,327 | 13,527 | 13,674 |
| Capacity Changes During Year: | | | | | | | | | | |
| Bath County P.S. (2) | 1,260 | | | | | | | | | |
| North Anna Hydro | 1 | | | | | | | | | |
| Undesignated (4) | | | | | | | | | | |
| Conversions (3) | | | | | | | | 200 | 142 | |
| Other (5) | 45 | 491 | 144 | 62 | 154 | 55 | 5 | | 5 | 150 |
| Total MW Capacity Available at time of Peak Load | 12,416 | 12,907 | 13,051 | 13,113 | 13,267 | 13,322 | 13,327 | 13,527 | 13,674 | 13,824 |
| Forecast MW Load (4) | 9,747 | 10,044 | 10,378 | 10,684 | 10,948 | 11,091 | 11,107 | 11,187 | 11,323 | 11,523 |
| Total Reserves -MW | 2,669 | 2,863 | 2,673 | 2,429 | 2,319 | 2,231 | 2,220 | 2,340 | 2,351 | 2,301 |
| -% | 27.4 | 28.5 | 25.8 | 22.7 | 21.2 | 20.1 | 20.0 | 20.9 | 20.8 | 20.0 |
| Reserves w/o IC's | | | | | | | | | | |
| -MW | 2,230 | 2,424 | 2,234 | 1,990 | 1,880 | 1,792 | 1,781 | 1,901 | 1,912 | 1,862 |
| -% | 22.9 | 24.1 | 21.5 | 18.6 | 17.2 | 16.2 | 16.0 | 17.0 | 16.9 | 16.2 |

## TABLE 5 NOTES

(1) Based on winter rated capacity of installed plants (including 550 MW of I.C. Turbines) plus firm purchases and sales, cold reserve shutdown units, cogeneration and small power production from qualifying facilities and other customer owned generation.

(2) Based on 60% share of project owned by Vepco. Reflects commercial operation in December 1985. Vepco will recapture an additional 20% of the project capacity in 1995 or later, when its long term contract to sell said 20% to APS expires.

(3) Based on combined cycle repowering of Chesterfield 1 & 2, with combustion turbines added in April 1992 and steam turbines added in April 1993.

(4) Based on need for additional capacity which has not yet been specified as to unit type, unit size, or location. Capacity assumed to be added in 1995 or later.

(5) Based on miscellaneous upratings of existing units, plus additional purchases from customer owned generation or from others. No retirements are projected within the period covered.

(6) Based on winter peak demand for each calendar year. Includes the impact of conservation and load management.

DOCKET NO. P-100, SUB 65

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Investigation to Consider the Implementation Of A ) ORDER DENYING
Plan For Intrastate Access Charges For All Telephone ) NCLDA'S MOTION
Companies Under the Jurisdiction of the North ) FOR INTERIM
Carolina Utilities Commission ) EMERGENCY RELIEF

BY THE COMMISSION: On January 21, 1986, the North Carolina Long Distance Association (NCLDA) filed a motion in this docket requesting that its members and all other resellers be allowed interim emergency relief from the level of intrastate access charges as approved or allowed in this docket and as applied to resellers and other interexchange carriers by Commission Orders in Docket No. P-100, Sub 72. In said motion, the NCLDA adopted and incorporated its Motion for Reconsideration filed December 27, 1985, in Docket No. P-100, Sub 72 and its Motion for Reconsideration and for Emergency Relief filed January 20, 1986, in the same docket.

On January 31, 1986, the Public Staff filed a response in opposition to NCLDA's Motion for Interim, Emergency Relief. The Public Staff recommended that NCLDA's motion be dismissed.

On February 5, 1986, AT&T Communications of the Southern States, Inc., (AT&T) filed a response in opposition to the NCLDA's motion for emergency relief.

The Commission is of the opinion that the motion filed by NCLDA on January 21, 1986, should be denied for the reasons generally set forth in the responses filed by the Public Staff and AT&T. By this motion, NCLDA has requested the same relief in this docket which it has also sought in Docket No. P-100, Sub 72. The Commission, in the Order Denying Motions of the NCLDA entered this same day in Docket No. P-100, Sub 72, denied the various motions of the NCLDA. For the reasons stated therein, the Commission also denies the NCLDA's motion in this docket and such rationale is hereby incorporated by reference.

IT IS, THEREFORE, ORDERED that the motion for interim emergency relief filed by NCLDA on January 21, 1986, be, and the same is hereby, denied.

ISSUED BY ORDER OF THE COMMISSION.
This the 7th day of February 1986.

NORTH CAROLINA UTILITIES COMMISSION
Sandra J. Webster, Chief Clerk

(SEAL)

DOCKET NO. P-100, SUB 65
DOCKET NO. P-100, SUB 72

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

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| Docket No. P-100, Sub 65 | | |
| In the Matter of<br>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 REDUCING INTRASTATE ACCESS CHARGES AND AUTHORIZING INTRALATA RESALE COMPETITION BY ALL LONG-DISTANCE CARRIERS |
| Docket No. P-100, Sub 72 | ) | |
| In the Matter of<br>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 | ) | |

HEARD IN: Commission Hearing Room 2115, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on July 8 - 11, and July 14 - 18, 1986

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

APPEARANCES:

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and

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and

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and

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and

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Jerry B. Fruitt and Thomas K. Austin, Fruitt & Austin, Attorneys at Law, 1042 Washington Street, Raleigh, North Carolina 27605

For the Using and Consuming Public:

Antionette R. Wike, Chief Counsel, and Vickie L. Moir and Paul L. Lassiter, Staff Attorneys, Public Staff, North Carolina Utilities Commission, P.O. Box 29520, Dobbs Building, Raleigh, North Carolina 27626-0520

BY THE COMMISSION: On February 22, 1985, the North Carolina Utilities Commission entered an Order in Docket No. P-100, Sub 72, authorizing interLATA long-distance competition and stated that, subject to the resolution of certain issues, intraLATA toll competition by resellers would be authorized no later than January 1, 1986, and intraLATA toll competition by facilities-based long-distance carriers would be authorized, after a transition period, on or about January 1, 1987.

On December 19, 1985, the Commission entered a further Order in Docket No. P-100, Sub 72, entitled "Order Authorizing IntraLATA Resale Competition; and Approving IntraLATA Access Charges for Resellers." In that Order, the

Commission found and concluded that a hearing or hearings should be held no earlier than May 1986 to consider the following issues:

1. The appropriate level of access charges;

2. The existing toll pooling and settlement procedures and toll deaveraging;

3. IntraLATA resale of FX and private lines; and

4. IntraLATA competition by facilities-based carriers.

The Commission received comments from interested parties on how best to proceed with hearings to address these issues.

On February 21, 1986, the Commission entered an Order in Docket No. P-100, Sub 87, scheduling a public hearing beginning June 3, 1986 to consider the resale of intraLATA interexchange FX and private lines. In that Order, the Commission additionally stated that it would enter a further Order in Docket No. P-100, Sub 72, scheduling a hearing beginning on or about July 8, 1986 to consider the remaining issues related to implementation of full intrastate long distance competition, including, but not limited to, the appropriate level and structure of intrastate access charges, the existing toll pooling and settlement procedures and toll deaveraging, and the intraLATA competition by facilities-based carriers.

On February 4, 1986, the Commission entered an Order in Docket Nos. P-100, Sub 65, and P-100, Sub 72, entitled "Order Scheduling Hearing and Prehearing Conference" scheduling a consolidated hearing in such dockets beginning July 8, 1986, to consider the issues related to:

1. The appropriate level and structure of access charges;

2. The existing toll pooling and settlement procedures and toll deaveraging;

3. IntraLATA competition by facilities-based carriers; and

4. Such other relevant issues as the parties may care to address.

The Commission sought answers to the following specific questions regarding the appropriate level and structure of access charges:

1. Are the present level and structure of access charges appropriate for the competitive environment?

2. What effect, if any, will bypass of LEC facilities have on the level and structure of access charges?

3. If the present access charge structure is inappropriate, can another uniform access charge structure be maintained in conjunction with total intrastate competition?

4. Is an alternative nontraffic sensitive cost recovery plan appropriate in lieu of the present carrier common line charge?

5. If uniform access charges cannot be maintained, will the existing pooling arrangement have to be changed?

6. If access charges are deaveraged should it be done on a companywide basis or by some other means?

7. If access charges are deaveraged, how should the rate of return be determined for each access charge tariff?

8. If access charges are deaveraged, will it be necessary to implement a plan to minimize the impact on high cost companies?

9. If such a plan is necessary, what should be the criteria for determining high cost companies?

10. How should a high cost company plan be funded?

Additionally, the Order sought answers to the following questions regarding the existing toll pooling and settlement procedures and toll deaveraging:

1. What impact, if any, will total intrastate competition have on the present system of uniform toll rates and toll pooling and settlements procedures?

2. Can uniform intraLATA toll rates be maintained in conjunction with both resale and facilities-based intraLATA competition?

3. If uniform intraLATA toll rates cannot be maintained, what will be the impact on the existing toll pooling and settlement procedures?

4. If it is not appropriate for pooling to continue, what specific plans or alternatives to transition to a nonpooling environment are appropriate?

5. What impact would the discontinuance of pooling have on the LECs?

6. If intraLATA toll rates are deaveraged, should it be done on a companywide basis or by some other means?

7. If toll rates are deaveraged, will it be necessary to implement a plan to minimize the impact on high cost companies?

The Order further sought answers to the following questions concerning intraLATA competition by facilities-based carriers:

1. With the onset of intraLATA facilities-based competition, should the local exchange companies continue to be subject to the present level of regulation?

2. What additional regulatory flexibility, if any, will be needed in a fully competitive intraLATA environment?

3. Are any legislative changes required to accommodate fully competitive intrastate telecommunications services?

By such Order, the local exchange companies (LECs) were directed to file testimony and proposed tariffs by May 16, 1986. Other common carriers (OCCs) and resellers were directed to file their testimony by June 4, 1986. The Public Staff and any other intervenors desiring to file testimony were ordered to do so by June 20, 1986. A prehearing conference was ordered and scheduled for June 27, 1986, for the purpose of simplifying the issues, to arrange scheduling of witnesses, and to encourage the parties to make and enter into stipulations of record.

Hearings were conducted, beginning on July 8, 1986, in which the following witnesses appeared and gave testimony:

Frank J. Alessio, David B. Denton, Ann M. Barkley, and B.A. Rudisill for Southern Bell Telephone and Telegraph Company;

William F. Wardwell and Joseph W. Wareham for Carolina Telephone and Telegraph Company;

R. Chris Harris for Central Telephone Company;

Roy W. Long for Concord Telephone Company;

O. D. Fulp II for Continental Telephone Company of North Carolina, Inc.;

Norman L. Farmer for General Telephone Company of the South;

Harold W. Shaffer for ALLTEL Carolina, Inc., and Sandhill Telephone Company;

Bruce Schoonover for the Atlantic Telephone Membership Corporation, Banardsville Telephone Company, Citizens Telephone Company, Heins Telephone Company, Service Telephone Company, and Wilkes Telephone Membership Corporation;

Robert W. Friedlander, John W. Mayo, and Roy A. Billinghurst for AT&T Communications;

William H. Beard for MCI Telecommunications Corporation;

Oscie O. Brown III for Telecommunications Systems, Inc.;

Ben Johnson for North Carolina Long Distance Association;

Louis R. Jones for Carolina Utility Customers Association, Inc.; and

Hugh L. Gerringer, Jr., and Millard N. Carpenter for the Public Staff.

Based on the foregoing, the testimony and exhibits admitted at the hearings, and the entire record in these consolidated dockets, the Commission now makes the following

## FINDINGS OF FACT

### Jurisdiction

1. This matter is properly before the North Carolina Utilities Commission and the Commission has jurisdiction over the parties and the subject matter considered in these proceedings.

### IntraLATA Competition by Facilities-Based Carriers

2. IntraLATA competition by facilities-based long-distance carriers through resale of authorized LEC services will be permitted effective January 1, 1987. Authorization of facilities-based intraLATA competition will be postponed from the targeted date of January 1, 1987, until regulatory and industry practices have been modified to ensure that the LECs are in a position to effectively compete in their market areas so that such competition will not adversely impact reasonably affordable local service rates.

3. In the interest of avoiding any potential that intraLATA resale competition might jeopardize reasonably affordable local exchange rates, all "1+" and "0" intraLATA traffic will be automatically routed to and retained by the local LEC. This will serve to preserve revenue stability to the LECs, to retain appropriate levels of contribution to the overall revenue requirements of the LECs, and to eliminate, to the maximum degree possible, any stranding of LEC investment in order to preserve reasonably affordable local service rates.

4. As a matter of basic fairness and equality of treatment, the potential of facilities-based intraLATA competition may in the future require that, in their provision of competitive intraLATA toll services, the LECs should ultimately be regulated only to the same degree as the competitive facilities-based carriers. However, there is an inherent risk regarding reasonably affordable local rates associated with regulatory flexibility for the LECs due to the residual type ratemaking process currently utilized by the Commission. Prior to allowing intraLATA facilities-based competition and such regulatory flexibility, the Commission will conduct a proceeding to develop safeguards in the regulatory process in order to avoid cross-subsidization of competitive services with monopoly service revenues. This matter will be addressed in conjunction with further consideration of facilities-based intraLATA competition.

### The Appropriate Level and Structure of Access Charges

5. The present level of intrastate access charges is not appropriate for the competitive environment which currently exists and which is developing in the intrastate long-distance market in North Carolina.

6. Bypass of local exchange company (LEC) facilities is a competitive phenomenon occurring in the competitive communications market which exists today and is growing in North Carolina. Bypass may be characterized as "service" bypass where a LEC's switched access facilities are bypassed in favor of a substitutional special access service. Another form of bypass is referred to as "facility" bypass where a carrier or end-user provides its own

facilities rather than using the access facilities of a LEC. LECs are presently experiencing increased amounts of both forms of bypass due, in large part, to the current high level and structure of access charges. The primary rate element contributing to such high level of access charges is the carrier common line charge (CCLC) which recovers nontraffic sensitive (NTS) costs. The extent of bypass is expected to increase if the current level and structure of access charges is maintained.

7. The bypass of LEC switched access facilities produces reduced revenues to the LECs to meet their overall revenue requirements. Each instance of bypass results in the incremental loss of contribution which the initial network service made to the support of the switched network. The continued threat of bypass of LEC facilities requires modification of the level of access charges for the recovery of nontraffic sensitive costs.

8. A reduction in the current level of contribution made by intrastate carrier access charges to the overall revenue requirement of the LECs should have the effect of stimulating usage ,and promoting the introduction and availability of more beneficial and technologically advanced telecommunications services.

9. An alternative to the present plan which recovers significant amounts of NTS costs through carrier common line charges is needed in view of both the existing and the anticipated levels of intrastate long-distance competition. An immediate reduction in the CCLC from 5.01 cents per access minute (originating and terminating) to 4.0 cents per access minute on originating access and 4.33 cents per access minute on terminating access is warranted effective April 1, 1987. A further reduction in the CCLC to mirror the current interstate charge for originating access of approximately 3.0 cents per access minute will be considered in the latter part of 1987, after a hearing has been conducted. The Commission in 1988 will consider further reductions in the CCLC to mirror potential further reductions in the interstate level of such charges. The current special access surcharge of $1.68 on WATS and 800 service will be discontinued.

10. Studies evaluating the impact of flat rate alternatives to a usage sensitive method of recovering nontraffic sensitive costs shall be formulated by Southern Bell and other interested LECs for consideration by the Commission in a subsequent hearing.

11. Company-specific traffic sensitive switched access charges are compatible with and may be a necessary element of a competitive long-distance market. The elimination of the Commission's imposed requirement for uniform statewide traffic sensitive (TS) switched access rates and the 'use of Company-specific charges for these rate elements can logically be expected to result in TS switched access rates that are deaveraged throughout the State. The Commission will consider the matter of company-specific traffic sensitive access charges in further hearings. With respect to nontraffic sensitive charges, however, a uniform CCLC for all LECs in North Carolina is warranted.

12. The existing pooling of interLATA access revenues is inconsistent with deaveraged, company-specific access charges and may be unsustainable under the competitive scenario which has developed and which is developing in North Carolina. It may not be in the public interest to continue such pooling

indefinitely. This matter will be considered by the Commission in further hearings.

13. The most appropriate method for replacing the pooling of interLATA access charges is the "Bill and Keep of Access" methodology--using the end-office billing approach. Under such an arrangement, the LEC in which the end-user resides will bill its carrier access charges, including the local transport from the end-office to the carrier's point of presence, and will retain the revenues so derived.

14. To minimize the impact of access charge deaveraging and nonpooling of access charges on high cost companies, it may be necessary for a plan to be developed for the creation of a special high cost fund. The necessity for such a plan should take into account only intrastate costs, the impact of company-specific access charges on local service rates, and the net revenue impact of the interstate high cost fund on potential beneficiaries of the state fund. The specific high cost arrangement authorized should be a subject of study by the local exchange companies. Further hearings should be conducted to determine the elements of such a plan, the beneficiary companies to whom it should be directed, and the level of support such a plan should contribute to high cost companies. Once the overall level of such support is identified, details of the method of funding can be developed. Further inquiry will be required by the Commission to investigate these matters. The LECs should be encouraged to develop the procedures for administration of any fund required. The ultimate approval of company-specific switched access charges and the elimination of pooling of interLATA access charges is dependent upon the acceptance and implementation of an acceptable high cost fund by the Commission.

## The Existing Toll Pooling and Settlement Procedures and Toll Deaveraging

15. Pooling of intraLATA toll revenues may in the long term be inconsistent with the characteristics of a fully competitive long-distance environment in which market competitors are able to compete. The continuation of pooling of intraLATA toll revenues will be required until an acceptable nonpooling plan can be developed and implemented. Uniform intraLATA toll tariffs for the LECs are in the public interest at this time.

16. Since neither the pooling of intraLATA toll revenues nor the continuation of the existing settlement procedures for such revenues may be maintainable on a long-term basis in conjunction with intraLATA resale and facilities-based competition, it is necessary to evaluate alternatives. Movement towards a nonpooling plan for intraLATA toll revenues which adequately compensates each LEC that participates in the completion of a long-distance telephone call for the use of its facilities is an essential step to achieving a workable competitive environment in North Carolina. Upon the development of a satisfactory approved nonpooling plan, the existing plan of pooling intraLATA toll, access, and private line revenues may be eliminated, together with the current settlement arrangements under such pooling, and replaced with new arrangements which are more compatible with a fully competitive environment. In a fully competitive environment, the existing intraLATA toll settlement process may be replaced with a plan by which participating LECs are compensated through company-specific access charges.

17. Four alternative plans for intraLATA toll compensation were presented to the Commission for consideration. These are:

A. Primary Carrier Plan under which the dominant LEC carrier in a LATA would be responsible for setting the toll rates in that area and would be due all the intraLATA toll revenues from connecting carriers in the area. The primary carrier would then compensate the other LECs, through company-specific access charges, for originating and terminating intraLATA traffic.

B. IntraLATA Originating Responsibility Plan (ITORP) under which each LEC would file its own intraLATA toll tariffs reflecting company-specific intraLATA toll rates. The LEC which originates an intraLATA call would retain the toll revenue from such and would pay access charges to all other LECs who participated in the call.

C. Pure Originate and Keep Plan under which each LEC would file its own intraLATA toll tariffs reflecting company-specific intraLATA toll rates. Each LEC would be entitled to all of the toll revenues for calls originating in its own service areas, thereby requiring a settlement for sent collect and credit card calls billed by another LEC. No payments would be made to other participating LECs for use of their facilities, other than a billing fee to a LEC which bills a call that was originated by another LEC.

D. Bill and Keep Plan which is similar to Pure Originate and Keep, except that LECs would keep all intraLATA toll revenue which they bill, regardless of point of origination or termination.

18. The ITORP represents the most rational nonpooling plan presented to the Commission. The Commission recognizes that there are administrative problems associated with the ITORP. The LECs should jointly coordinate an effort to develop a rational, adequate, and compensatory nonpooling plan for intraLATA long-distance toll revenues, such as an ITORP or a like plan where all of the LECs participating in the completion of a long-distance telephone call are adequately compensated. Prior to implementation of such a plan, a high cost fund for companies adversely impacted by the nonpooling of intraLATA toll revenue should be considered and evaluated. This matter will be the subject of further consideration in future hearings to be held by the Commission.

19. The present method whereby intraLATA private line and FX revenues are pooled with intraLATA message toll may ultimately need to be replaced in conjunction with the elimination of other aspects of the pooling arrangement. The most appropriate method for replacing intraLATA FX and private line revenue pooling is the "Bill and Keep" plan applied on a "meet point billing" basis. This matter will be considered in further hearings before the Commission.

20. The Commission is unable to determine at this time, with sufficient certainty, whether and to what extent a high cost mechanism will be required in conjunction with the adoption of any of the plans under which the current intraLATA toll pooling is eliminated. The Commission requests that the LECs begin gathering data and information as to the net impact which the ITORP or ITORP-like plan for toll revenues and bill and keep of FX and private line

services will have on individual companies. The Commission will conduct further inquiry to determine the nature and extent to which a high cost mechanism is required and possible implementation problems associated with this nonpooling plan.

## Miscellaneous Matters

21. The experimental subscriber line waiver program for recipients of aid to families with dependent children (AFDC) and supplemental security income (SSI) benefits authorized in Docket No. P-100, Sub 80, should be expanded effective July 1, 1987, to include all local exchange companies operating in North Carolina throughout their service territories and should provide for a 100% matching of the federal subscriber line charge.

22. The 25% discount or differential on originating Feature Group A and B access in nonequal access offices is just and reasonable.

23. LATAwide termination of Feature Group A is inappropriate.

24. The current practice of applying discounted switched access charges to resellers for the portion of a long-distance call between the subscriber's telephone and a reseller's switch or point of presence is appropriate.

## EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 1

By Section 62-110 of the General Statutes of North Carolina, the Legislature authorized the Commission to issue a certificate to any person applying to offer long-distance services as a public utility provided that such person is found to be fit, capable, and financially able to render such service and that such additional service is required to serve the public interest effectively and adequately and, provided further, that in such cases the Commission shall consider the impact on the local exchange customers and shall only permit such additional services if the Commission finds that such authorization will not jeopardize reasonably affordable local exchange service.

G.S. § 62-110 requires that, notwithstanding any other provision of law, the terms, conditions, rates, and interconnections for long-distance services offered on a competitive basis shall be regulated by the Commission in accordance with the public interest. The statute additionally requires the Commission to consider, in promulgating rules necessary to implement the law, whether uniform or nonuniform application of such rules is consistent with the public interest. This legislation specifically requires the Commission to consider whether the charges for the provision of interconnections should be uniform.

## EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 2

The subject of intrastate long-distance competition initially 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 a 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.

On February 22, 1985, the Commission issued an Order Authorizing Intrastate Long-Distance Competition. In the Order, the Commission concluded, among other things, that the authorization of intrastate interLATA competition by other common carriers (OCCs) and resellers in North Carolina is in the public interest and will not jeopardize reasonably affordable local service, but 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. The Commission concluded 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 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 would also be necessary. Thus, the Commission concluded that approximately a two-year transition period to January 1, 1987, would be required before full intraLATA competition could 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.

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 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.

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.

On December 19, 1985, the Commission entered an Order in Docket No. P-100, Sub 72, authorizing intraLATA resale competition beginning January 1, 1986. The Commission specifically found that it was appropriate and in the public interest that intraLATA resale competition through the resale of intrastate intraLATA WATS and MTS provided by the LECs should be allowed effective January 1, 1986, and that such intraLATA competition by resellers would not jeopardize reasonably affordable local exchange service.. The Commission further found that it was in the public interest for the intraLATA compensation plan to continue in effect with respect to intraLATA calls completed by long-distance carriers (other than LECs) over facilities other than resold intrastate WATS and MTS of the LECs and that it was appropriate and in the public interest for switched access charges (including the carrier common line charge) to apply to intraLATA access minutes and that those access charges should be set at the same level as interLATA access charges.

By Order entered in Docket Nos. P-100, Subs 65 and 72, on March 4, 1986, the Commission scheduled a consolidated hearing which is the subject of this Order to consider the following specific issues and such other relevant issues as the parties cared to address:

1. The appropriate level and structure of access charges;
2. The existing toll pooling and settlement procedures and toll deaveraging; and
3. IntraLATA competition by facilities-based carriers.

With regard to the issue of intraLATA competition by facilities-based carriers, virtually all of the testimony in this case, except that of the Public Staff, was predicated, in large part, on the Order Authorizing Intrastate Long-Distance Competition entered in Docket No. P-100, Sub 72, on February 22, 1985, wherein the Commission made the following finding of fact:

> "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....Competiton by intraLATA facilities-based carriers will be allowed after a transition period of approximately two years on January 1, 1987." (Emphasis added).

The following pertinent conclusions were also set forth by the Commission regarding intraLATA competition by facilities-based carriers in the Order of February 22, 1985.

> "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.
>
> "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." (Emphasis added)

Thus, from the very beginning of the process of considering the authorization of intrastate long-distance competition in North Carolina, the Commission has been extremely concerned about the need to proceed with caution with respect to implementation of facilities-based intraLATA competition. This was why the Commission initially established a transition period in order to fully address the problems and issues inherently presented by intraLATA facilities-based competition. The Commission has consistently proceeded in good faith to address and authorize intrastate long-distance competition in North Carolina since enactment of the enabling legislation by the General Assembly effective June 29, 1984. Great strides have been taken and great progress has been made. Intrastate interLATA competition by OCCs and resellers was authorized on February 22, 1985. IntraLATA resale competition through the resale of intrastate WATS and MTS provided by the LECs was authorized effective January 1, 1986. By Orders entered this same date in Docket Nos. P-100, Sub 87, and P-140, Sub 9, the Commission has now authorized the resale of interLATA and intraLATA private line-like and foreign exchange-like services.

Notwithstanding the great progress which has been made to date regarding the authorization and implementation of intrastate long-distance competition in North Carolina, the Commission now finds itself in a position of being unable to authorize facilities-based intraLATA competition effective as of the target date of January 1, 1987, due to the serious concerns and issues which still need to be addressed and resolved regarding such competition. Therefore, the Commission reluctantly finds it necessary to postpone authorization of intraLATA facilities-based competition until it is clear that regulatory and industry practices have been adequately modified in North Carolina in order to ensure that the LECs are in a position to effectively compete in their market areas so that implementation of such competition will not adversely impact reasonably affordable local service rates. The Commission believes that the best policy is to proceed with caution until issues related to matters such as the current access charge and toll pooling mechanisms, a high cost fund, and toll deaveraging, among others, have been satisfactorily resolved. These issues are addressed at length elsewhere in this Order.

The Public Staff has urged the Commission to find that intraLATA facilities-based competition will jeopardize reasonably affordable local exchange service and that such competition is not in the public interest and should not be authorized at this time. Although the LECs generally support authorization of intraLATA facilities-based competition, such support is clearly predicated upon adoption by the Commission of a deliberate plan which both permits the LECs to compete effectively in the intraLATA market while being able to maintain reasonably affordable local exchange service and which also makes radical changes in current regulatory practices and procedures involving such matters as the level and structure of access charges, toll deaveraging, and the existing toll pooling and settlement procedures. The Commission is simply not in a position to formally adopt such a deliberate plan and adequately resolve all of these issues today. Further hearings and evidence will be required.

The Commission is also concerned that Southern Bell, unlike the other LECs, is limited in its ability to accommodate competition by the MFJ prohibition against entering the interLATA market. Thus, this could cause an imbalance between Southern Bell, on the one hand, and all other carriers--AT&T-C, the OCCs, and resellers, and the other LECs--on the other. Only Southern Bell would be prevented by law from seeking to make up lost intraLATA toll revenues by entering the interLATA market of its competitors.

The result might likely be higher local rates for Southern Bell. The Commission is unwilling to place such a burden on a LEC and its subscribers absent the development and implementation of adequate safeguards and procedures. The Commission notes that the Virginia Corporation Commission is of the same opinion with regard to the Chesapeake and Potomac Telephone Company - Investigation of Competition for IntraLATA, Interexchange Telephone Service, No. PUC850035, (June 30, 1986).

In order to allow interexchange carriers (IXCs) to legally provide intrastate intraLATA service to their customers in North Carolina, the Commission will authorize those carriers to compete effective January 1, 1987, through the resale of WATS, 800 service, MTS, private line-like and FX-like services provided by the LECs. This will enable the IXCs to provide intraLATA service to their customers by means of authorized resold services. This expansion of intraLATA resale competition to include IXCs is in the public interest and will not jeopardize reasonably affordable local service. Authorization of intraLATA resale competition by IXCs will not require the Commission to immediately discontinue the LECs' uniform intraLATA toll rates or dissolution of the intraLATA toll pooling and settlement arrangements at this time, which could certainly have an unfavorable impact upon local service rates.

Furthermore, the prospect of carriers vigorously competing for intraLATA toll traffic and thus maximizing efficiency and minimizing costs to subscribers did not appear to dominate the latest phase of these proceedings. AT&T-C witness Friedlander stated, for example, that his company intends to offer only such intraLATA toll service as is incidental to the provision of interLATA service. None of the OCC witnesses expressed any intention of vigorously serving the intraLATA toll market, other than in high traffic corridors, over their own facilities. Thus, the Commission does not believe that the IXCs will be irreparably harmed by the decision to postpone authorization of intraLATA facilities-based competition pending further hearings and study in 1987, since they will in fact be allowed to engage in intraLATA competition effective January 1, 1987, through the resale of authorized services provided by the LECs. This action will serve to foster further intraLATA competition in North Carolina while also protecting the LECs and their local service customers as the Commission undertakes further study of the major issues and problems associated with implementation of intraLATA facilities-based competition.

The Commission further concludes that if any OCC which has previously been certified by the Commission to provide interLATA telecommunications services now also desires to provide intraLATA service as a reseller, such company should file a verified application or petition with the Commission requesting that its certificate of public convenience and necessity be amended to authorize intraLATA resale, including proposed tariffs and a description of 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 authorized resold services provided by 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 authorized resold services leased from the LECs or (2) that it possesses no facilities capable of completing intraLATA calls (other than those originated over 800 service) except authorized services leased from the LECs. The compensation plan will not apply to intraLATA calls completed over LEC facilities authorized for resale. The authorized facilities include MTS, WATS, 800 service, FX-like, and private line-like services. The Commission will consider requests for amended certification on an expedited basis.

## EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 3

The Commission is highly sensitive to the concern, expressed in the recent legislation authorizing intrastate competition and identified by the Public Staff in its testimony, that the introduction of intrastate long-distance competition should not jeopardize reasonably affordable rates for local exchange service. The Commission is also aware of the interrelationships which exist between the total revenue requirements of the LECs and the revenue streams which flow from local, toll, and access services. Considerable contribution and support of these total revenue requirements are derived from intraLATA toll.

AT&T-C, other interexchange carriers, and resellers take the position that the intraLATA long-distance market should be completely opened up to competition and when that is done, "1+" calling should be made available for presubscription by all competitors. It is argued that, with equal access, the IXCs and resellers are already able to enlist customers to subscribe to their "1+" interLATA service and that "1+" intraLATA service is a logical extension of that service. It is also alleged that customers will be more likely to choose the same carrier for both intra- and interLATA calling. The LECs, while generally acknowledging these concepts, argue that Southern Bell is prohibited by the MFJ from providing interLATA services and that while most other LECs are not legally restricted from providing interLATA services, they are in fact not currently providing those services. The LECs are generally confined to their traditional, certificated territories which makes it much more difficult, if not impossible, to become an interLATA carrier. Under the MFJ, the issue of intraLATA presubscription is clearly reserved to the states. The Commission is of the opinion that opening intraLATA "1+" calling to competitors can reasonably be expected to shift much of the LECs' intraLATA toll business to their competitors, which could severely impact the revenue streams which support the LECs' total revenue requirements.

In consideration of these matters, the Commission believes that it is in the public interest at this time to take all reasonable actions which will serve to protect the revenue streams which the LECs derive from intraLATA toll. One way in which this can be done, while still recognizing the need to authorize resale competition in the intraLATA arena, is to require that all

"1+" and "0" calls be automatically routed to the LEC. The Commission believes that this requirement is reasonable and is necessary to protect reasonably affordable local exchange service. While some parties will undoubtedly argue that preservation of "1+" calling to the LECs gives them a competitive advantage, the Commission believes that this is not an unfair advantage since interexchange carriers have interLATA presubscription and the balance which interLATA presubscription has struck results in fair and reasonable treatment.

## EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 4

In their testimony, the LECs argue that, with the introduction of intrastate competition, they should not be the recipient of more stringent regulation than their competitors. The Commission concludes that this concern is appropriate only to those elements of the LECs' businesses which are, in fact, subject to competition by others who are less heavily regulated. Since the Commission at present has authorized only intraLATA resale competition and has postponed the introduction of facilities-based intraLATA competition, consideration of this issue should be postponed.

Upon implementation of full facilities-based intraLATA toll competition, it may be necessary to relax regulatory constraints on the services of the LECs which are subject to competition. However, there is an inherent risk associated with regulatory flexibility for the LECs due to the residual type ratemaking procedures currently utilized by the Commission. Prior to consideration of relaxed regulation for the LECs, the Commission will conduct a proceeding to develop safeguards in the regulatory process in order to avoid cross-subsidization of competitive services with monopoly services. This matter should be addressed in conjunction with further consideration of facilities-based intraLATA competition.

## EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 5, 6, AND 7

The evidence for these findings of fact is found in the testimony of the witnesses for the LECs and interexchange carriers. From this testimony, it is clear that the local exchange companies are facing increasingly higher levels of bypass of their switched access facilities. The migration away from switched access facilities may take the form of bypass through a lower priced substitutional service (service bypass), or it may appear as a "facility" bypass where a carrier or end-user provides its own facilities rather than accessing the switching facilities of the LEC.

Even with a ban on facilities-based intraLATA competition, switched access facilities are confronted with competition from "service" bypass arrangements, and this competition reduces the revenues derived by the LECs for the support of their overall revenue requirements. Similarly, technological advancements and the use of jurisdictional arbitrage are making it easier for carriers and end-users to use interLATA "facility" bypass to avoid the prohibition against intraLATA facilities-based competition.

Witnesses for both the LECs and the interexchange carriers identified the high level of access charges as the primary stimulus for bypass of LEC access facilities. Expert witnesses for both Southern Bell and AT&T-C testified that current access charges are too high and that this high level of access charges acts to encourage bypass while at the same time discouraging growth of long-distance service. Their testimony is that the currently high level of access charges is inappropriate in the competitive environment which exists and which is developing in North Carolina today.

According to witnesses for most of the LECs and the interexchange carriers, the primary contributor to the high level of access charges today is the carrier common line charge which is being applied to recover nontraffic sensitive costs. These witnesses state that these NTS costs and the CCLC do not represent true elements of the cost of providing carrier access. Rather, it is asserted, the CCLC provides substantial contribution to the overall revenue requirements of the LECs, and this level of contribution will be continually eroded as access services, to which the CCLC is applied, are bypassed in favor of other services or facilities.

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

The evidence for these findings of fact is found in the testimony of the witnesses for the LECs and interexchange carriers. The expert witnesses for Southern Bell and AT&T-C testified that the current level of access charges exceeds the level which would exist in a truly competitive market. More specifically, the witnesses testified that this is caused by the currently excessive contribution level which intrastate carrier access charges make to the overall LEC revenue requirements. This has the effect of depressing usage and impeding the introduction and availability of more beneficial and technologically advanced telecommunications services.

Southern Bell and AT&T-C both assert that the currently high level of access charges act to deprive many citizens of new and more beneficial telecommunications services. Southern Bell's witness Allessio testified that, on the basis of studies he had performed, both business and residence customers would enjoy lower average total telephone bills if carrier access charges were reduced to market levels and the reduction amount was shifted to end-user charges. This would result from higher volumes to toll usage which would be stimulated by the lower access charges.

Witness Farmer testified on behalf of General Telephone Company that the present method of recovering NTS costs through CCLCs, based on separations which use the frozen subscriber plant factor (SPF), acts to drive the CCLCs to ever higher levels as the incidence of bypass becomes more prevalent. As carriers and end-users elect to bypass LEC switched facilities due to the currently high costs, there are relatively fewer units for recovering the NTS costs. This prompts higher CCLCs which, in turn, stimulates even more bypass.

Southern Bell proposed that the CCLC should be reduced and that the shortfall should be recovered from end-user access charges. General's witness proposed a phased-in plan whereby the recovery of NTS costs would be shifted from the CCLC mechanism to a flat rate subscriber line charge (SLC) over a phase-in period.

In regard to reducing the current level of the CCLC, the Commission believes that any reduction must be done on a phased-in basis. Thus, the Commission will authorize a reduction in the CCLC element of access charges from the current level of 5.01 cents for originating and terminating access to 4.0 cents and 4.33 cents for originating and terminating access, respectively, effective April 1, 1987. It is the Commission's intent in the latter part of 1987 barring any unforeseen events to consider further reductions in the CCLC to the now current federal CCLC level of approximately 3.0 cents for originating access and to retain 4:33 cents for terminating access. This matter will be considered in further hearings by the Commission. The Commission will in 1988 consider further changes in the CCLC to remain at parity with the federal CCLC level.

The Commission recognizes that this is an ambitious schedule for reducing the CCLC. However, the Commission is convinced that the foregoing reasons warrant such a reduction. The Commission believes this action will be beneficial to all telephone consumers in North Carolina.

The impact of this access charge reduction on the operating results of the various LECs is admittedly somewhat uncertain at present. Southern Bell witness Denton presented an exhibit which reflects the impact on Southern Bell's local rates of flowing through to local rates various reductions in the CCLC including some that approximate the reduction approved by the Commission. The exhibit of witness Denton is deficient since it does not reflect any stimulation in access minutes resulting from access charge reductions. It seems reasonable to assume that reduced access prices will be translated into reduced long-distance rates and, therefore, stimulation of the LECs' access network will occur. Further, no other factors impacting the cost of service of the company are considered in witness Denton's exhibit.

It is the proposal of Southern Bell as well as many of the other LECs, to flow through any access charge reductions to local service rates in the form of end-user charges. The Commission is reluctant to implement any local rate increases in conjunction with access charge reductions absent a clear and convincing showing that there is a bona fide need for such increases. The Commission recognizes that there are many mitigating factors which will serve to offset the impact of these access charge reductions on the LECs' financial positions.

The Commission recognizes that many of the LECs are currently operating in a favorable financial position relative to their authorized rates of return. Certain of the local companies not in this position have recently been before the Commission for general rate increase requests.

The allowed returns on equity for many local exchange companies were established during periods of historically high inflation, high interest rates, and thus required historically high returns on common equity. It is reasonable to assume that returns authorized in the current economic environment would likely be less than those authorized in the past. This phenomenon was evidenced in the recently decided ALLTEL Carolina, Inc., general rate case in Docket No. P-118, Sub 39, where the authorized return on equity for ALLTEL was lowered by the Commission from 14.5% (authorized December 1984) to 13.2% authorized in November 1986.

The Commission has also recently instituted an investigation in Docket No. M-100, Sub 113, to consider the impact of the Tax Reform Act of 1986 on the regulated public utilities in North Carolina. It is anticipated that the federal tax reform provisions will, upon implementation, significantly reduce the tax rate of most, if not all, investor-owned public utilities including the local exchange companies. This reduced tax rate when effectuated will have an immediate and favorable impact on the cost of providing telecommunications services in North Carolina.

AT&T-C has voluntarily agreed to flow through any access charge reductions to its long-distance customers in the form of message toll service reductions. Such reductions are to be implemented concurrently by Order issued in Docket No. P-140, Sub 9. It can reasonably be anticipated that other carriers will implement similar rate reductions. The Commission believes that it is entirely prudent and reasonable that tax savings resulting from the Tax Reform Act experienced by the LECs should be used to offset access charge reductions approved in this proceeding. The reduction in the CCLC will result in the reduction of intrastate long-distance rates to consumers by long-distance carriers.

Finally, the Commission believes that basic local rate increases should only be implemented after all alternative sources of rate restructuring have been considered. Thus, the Commission will only consider basic local rate increases to offset access charge reductions upon the showing by a company that such changes are justified. The existing North Carolina statutes and Commission rules will be applicable.

The Commission concludes that the current surcharge of $1.68 on WATS and 800 service should be eliminated. This matter is discussed more fully in Orders issued concurrently in Docket Nos. P-140, Sub 9, and P-100, Sub 86.

The Commission also requests that Southern Bell and any other interested LECs generate alternative flat rate plans to the current usage sensitive method of recovering nontraffic sensitive access costs (CCLC) for Commission evaluation. These plans should be presented to the Commission in a hearing to be scheduled by further Order which will consider further access charge reductions, elimination of the pool for interLATA access, a high cost fund plan relative to nonpooling of access, and company-specific traffic sensitive switched access charges.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 11 AND 12

The evidence for these findings of fact is found in the testimony of the witnesses for the LECs and interexchange carriers who, with minor exception, generally agree that company-specific access charges are compatible with, and are a necessary element of, a competitive long-distance market. Further, it is asserted by these witnesses that the deaveraging of access charges will provide incentives to the LECs to reduce their cost of access so that they may remain competitive. The Commission concludes that the matter of company-specific traffic sensitive access charges warrants further consideration and will be the subject of further hearings in 1987. However, in regard to nontraffic sensitive charges the Commission believes that at the present time that it is prudent to maintain a uniform CCLC for all of the LECs.

Most of these witnesses agree that the existing pooling of interLATA access charges is also inconsistent with a fully competitive environment and company-specific access rates. The witnesses further assert that such pooling would be counter-productive to incentives designed to encourage the LECs to become competitive by reducing the individual company costs which underlie access charges.

Several witnesses testified, however, that some elements of uniformity of access tariffs could be maintained. General's witness testified that a basic and simplified uniform access charge structure could be maintained in conjunction with competition. He recommended such as long as flexibility in pricing and pricing development is permitted. This uniform structure would, as recommended, contain a common set of rate categories and like-numbered tariff sections. The flexibility recommended would permit the mirroring of individual rate development techniques used in a LEC's interstate access tariffs. As previously stated, the Commission will allow the LECs to file company-specific switched access charges for consideration in a subsequent hearing, but the Commission intends to retain a statewide uniform CCLC at present.

Several companies suggested that mirroring of interstate access tariffs should be permitted, at least in part, in initial company-specific tariffs. The Commission will consider permitting such mirroring of interstate traffic sensitive access tariffs in further hearings to be scheduled in 1987.

## EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 13

The evidence for this finding of fact is found in the testimony of the witnesses for the LECs and interexchange carriers. The LEC industry members generally supported the "Bill and Keep of Access" methodology, using the end-office billing approach, as the appropriate method for the replacement of the present pooling of interLATA access revenues. Southern Bell witness Rudisill presented several estimates of the impact of a "bill and keep" method of eliminating pooling of interLATA access on the various pool participants. The amounts presented by witness Rudisill were debated by various parties in the hearing and may not be entirely accurate for all companies. Although the Commission recognizes that in the long run, access pooling is inconsistent with a fully competitive environment, the Commission is concerned about the impact of nonpooling on several of the pool participants. It is obvious that there will be LECs which lose access revenues and LECs which gain access revenues as a result of nonpooling. Therefore, the Commission will make the elimination of the pooling of access charges contingent upon the development and approval of a satisfactory high cost fund plan to ameliorate the impact of access nonpooling on those LECs that would lose significant access revenues. Access nonpooling will be the subject of further hearings by the Commission to be conducted in 1987.

## EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NO. 14

The Commission received varying comments on whether a high cost fund or funds would be needed if access charges are deaveraged and not pooled. Most LECs recognized that such a fund may be necessary, depending on other decisions which the Commission makes in this proceeding.

General's witness recognized that such a plan, funded by a flat rate charge to interexchange carriers, may be needed to minimize the impact of access charge deaveraging, company-specific access tariffs, and shifts of NTS cost recovery. He testified, however, that such a plan should take into account only intrastate, company-specific impacts on local service rates and the net revenue impact which the high cost fund would have on the beneficiary LECs. Other witnesses also testified that the fund should be targeted to benefit only those LECs whose local service rates would be adversely impacted by the changes.

The Commission will conduct a further investigation into the matter to obtain additional information. The Commission requests that the LECs meet in an effort to obtain, if possible, a consensus on the type and funding source for a high cost fund. LECs which do not agree with the industry plan may file suggested plans, if desired. The Commission considers it reasonable for the Public Staff and the Attorney General to participate in these meetings if they wish to do so. In addition to an industry consensus plan, the Commission would like Southern Bell with input from other interested LECs to formulate a high cost plan which in essence phases in nonpooling of access charges over three and five year periods for consideration and review by the Commission. These plans should be filed with the Commission for consideration in the further hearings to be held in 1987.

## EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 15, 16, 17, 18, 19, AND 20

The evidence for these findings of fact is found in the testimony of the witnesses for the LECs and the interexchange carriers. There was general agreement among the LEC witnesses that statewide uniform intraLATA toll rates are not sustainable in a fully competitive environment. The Public Staff supported maintaining the existing access and intraLATA toll pools. It is the Public Staff's position that the present intrastate toll arrangement in North Carolina provides telephone subscribers with efficient and reliable long-distance service at reasonable rates.

Pooling of intraLATA toll revenues and continuation of the existing settlement procedures may well not be sustainable in a fully competitive long-distance market. The current pooling process provides for an averaging of costs. The continuation of pooling with full intraLATA competition would require low cost LECs to subsidize high cost LECs while attempting to compete with other toll carriers in their service areas, which is clearly inequitable. However the proposed nonpooling plans all admittedly contain flaws. The four alternative plans are discussed below:

### Originate and Keep Plan

Under an Originate and Keep plan, each LEC would be due all the toll revenues for long-distance calls originating in its service area. This plan would require that revenues for calls which originate in one area but are billed in another area be returned to the originating location. According to Southern Bell, this could be accomplished by an enhancement to the Credit-Card and Third-Number System (CATS). Deaveraged (company-specific) toll rates are an essential element of this plan to prevent shortfall/windfall conditions which would occur otherwise. Southern Bell proposed that the Commission adopt an Originate and Keep plan.

The major disadvantage of the Originate and Keep plan is that only the originating carrier would receive compensation for a toll call. Neither the terminating nor the intermediary carrier would receive any compensation although the facilities owned by those carriers would be used in completing the toll call. Consequently, the originating to terminating traffic patterns would dramatically affect revenues available to the originating and terminating LECs. Access would not be imputed to the originating LEC or paid by the originating LEC to the other LECs which participate in the completion of intraLATA calls. Other long-distance carriers which complete intraLATA calls would be charged access. This would place the LECs and their competitors on an unequal footing. Since the plan requires company-specific toll rates, cost companies would be faced with the task of developing and filing toll tariffs. The evidence suggests that the Originate and Keep plan could result in immediate and severe rate shock to consumers.

Bill and Keep Plan

A Bill and Keep plan is similar to the Originate and Keep plan described above. Under a Bill and Keep plan, a LEC would keep all toll revenues which it bills (revenues from sent-paid, received-collect messages) even though such calls would also be handled in part by other carriers. The result of this plan is that the revenues a LEC would receive for a call would not necessarily bear any relationship to the cost the collecting LEC would incur for handling such a call. No party favored the implementation of this plan for replacing the present intraLATA toll pooling and settlement arrangements. This plan was supported by the LECs for replacing the intrastate access charge pooling and settlement arrangements. While this plan is clearly a just and equitable plan for discontinuing pooling of access charges, this plan does not offer an adequate solution for nonpooling of intraLATA toll.

Primary Carrier Plan

Under a Primary Carrier Plan, the dominant carrier in a LATA would be responsible for setting the toll rates and would be due all the intraLATA toll revenues from connecting carriers in that area. The primary toll carrier would then compensate other carriers via access charges for originating and terminating intraLATA traffic. One so-called advantage offered for this plan is that it would provide a framework for imposing an end-user charge for the recovery of NTS costs. Carolina Telephone Company and a number of the other independent telephone companies favored this plan.

Southern Bell, Central Telephone Company, and certain other parties opposed the Primary Carrier Plan due to certain of its disadvantages. Some of these disadvantages are:

1. IntraLATA competitors, who choose to serve selected portions of the LATAs and whose business is predominantly long haul interstate toll, would have significant advantages over the primary carrier;

2. The primary carrier would bear the total risk for competitive toll loss in the nonprimary LECs' territories while the nonprimary LECs would retain access revenue regardless of who supplied the toll service;

3. Unless there is a firm agreement to transition carrier common line charges to a market based-level, the primary carrier could be disadvantaged;

4. The primary carrier could bypass the other LECs' toll switching, operator services, and billing and collection facilities, thereby leaving the non-primary LECs with stranded investment and a revenue deficit; and

5. The primary carrier, especially if Southern Bell is the primary carrier in its LATAs, would be forced to serve end-users whom it does not now serve.

It should be noted that Carolina Telephone Company, one of the main supporters of the Primary Carrier Plan, now serves over 90% of the customers in its LATA/GMAs, whereas Southern Bell serves less than 80% of the customers in its LATAs.

ITORP

Under ITORP or the IntraLATA Originating Responsibility Plan revenues from intraLATA toll services would be due to the originating company. The companies which provide facilities used to terminate these services would, in turn, be compensated by the originating company via access charges on terminating traffic. Under this plan, the LEC which originates a MTS, WATS, or 800 service call would retain the revenue and pay access charges to all other LECs who participate in completing the call. The philosophy is that all carriers would receive adequate and fair compensation for the services they perform in handling the toll call.

Almost all of the LECs testified that an ITORP arrangement is, theoretically, the most accurate method to compensate each LEC for its costs of providing intraLATA toll service and should be the ultimate plan to aim towards in the future. At the same time, almost all the LECs, except Central Telephone Company, were of the opinion that an ITORP would be much too complex to implement by January 1, 1987. Several problems with ITORP are as follows:

1. Administration. Since ITORP would require companies to file individual company specific toll tariffs in order to have toll revenues match toll costs, most LECs would be faced with the new tasks of (a) developing tariffs which would generate sufficient revenues to cover terminating access charges billed by other carriers plus the costs of providing originating service; (b) developing access tariffs that would generate sufficient revenues to cover the cost of providing terminating access; (c) refiling tariffs each time connecting carriers changed access rates; and (d) refiling toll tariffs and/or access tariffs to react to windfall/shortfall conditions created by ITORP in particular areas.

2. Structure. Because only terminating access charges would be billed under ITORP, the pricing and structure of the intraLATA access tariffs would necessarily be different than that of the interLATA access tariffs.

3. Billing. ITORP would require at least one LEC in each LATA to make major billing system changes, requiring large system development costs, in order to serve as a clearinghouse for billing the system.

4. Pricing Policies. Under ITORP, toll pricing could quickly become directionalized, with subscribers in rural, high-cost service areas being faced

with immediate, large toll rate increases, or, alternatively, large local rate increases to alleviate shortfall/windfall situations.

5. Implementation. The computer software and system needed to implement an ITORP arrangement would take a considerable amount of time to develop.

ITORP is the most reasonable of the plans presented to the Commission since all LECs participating in a call are reimbursed for services rendered. There are significant administrative difficulties involved in an ITORP or an ITORP-like plan. The Commission believes that the LECs should begin to consider such a plan, to explore the difficulties involved, and to coordinate efforts to analyze the various factors which must be considered in such a plan. This matter will be an issue in later proceedings before, the Commission to be scheduled in 1988. Prior to implementation of such a plan, the Commission will consider high cost fund plans to minimize the impact of nonpooling of toll revenues on high cost companies. The Commission would also like to further analyze potential pricing policy problems associated with the plan.

Despite an industry consensus on bill and keep of FX and private lines, the Commission is interested in evaluating the impact of such a plan on the LECs and subscribers prior to implementation. This matter will also be a subject for consideration by the Commission in further hearings.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 21

By Final Order entered in Docket No. P-100, Sub 80, on June 4, 1986, the Commission approved and established an experimental subscriber line charge waiver program effective July 1, 1986, in Mecklenberg, Halifax, and McDowell counties served by Southern Bell Telephone and Telegraph Company, Carolina Telephone and Telegraph Company, and Continental Telephone Company, respectively. This program is currently available to recipients of aid to families with dependent children (AFDC) and supplemental security income (SSI) benefits who reside in the three counties listed above. The current waiver program provides for a 50% reduction in the $2.00 federal subscriber line charge for eligible customers which is matched by a similar reduction in the customers' residential rates for basic local service. The Commission believes that this experimental program should now be expanded to include all of the LECs operating in North Carolina throughout their service territories and should provide for a 100% matching of the federal subscriber line charge. The Commission will soon be entering an Order in Docket No. P-100, Sub 80, providing for this expansion of the experimental subscriber line waiver program effective July 1, 1987.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 22

The North Carolina Long Distance Association (NCLDA) and MCI recommended that the current intrastate nonpremium discount of 25% on originating access should be increased to the current interstate nonpremium discount of 55% on originating and terminating access. NCLDA further recommends that the discount on Feature Group (FGA) remain after equal access is implemented to recognize the technical differences between the access arrangements as well as to help minimize so-called competitive advantages. These are issues which have been fully considered by the Commission in previous Orders. The Commission continues to believe the decisions previously rendered are appropriate. The

Commission finds the 25% differential on nonpremium originating access adequate to reflect the technical differences between premium and nonpremium access. With the implementation of equal access, FGD interconnection or premium-type access is available to all market participants and the necessity for a discount no longer exists in the Commission's opinion.

## EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 23

NCLDA witness Johnson recommended that the current local termination restriction on FGA service be altered to allow for LATAwide termination of FGA. Witness Johnson argues that Feature Group (FGC) interconnection which is available only to AT&T-C includes LATAwide termination and thus that the local termination restriction for FGA is inappropriate. AT&T-C argues that LATAwide termination for AT&T-C is accomplished by establishing a point of presence (POP) in each end-office within a LATA.

The Commission finds that it is reasonable to maintain local termination for FGA. Although NCLDA contends that FGA purchased by AT&T-C includes LATAwide termination, the Commission notes that AT&T-C accomplishes LATAwide termination by purchasing FGC at each end-office within the LATA. Other long-distance carriers may likewise obtain LATAwide FGA termination by purchasing FGA from each end-office within the LATA.

## EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 24

NCLDA witness Johnson testified that the current structure of applying originating access charges to the resellers for the portion of a long-distance call between the end-user and the reseller's switch is inappropriate. This matter has been fully explored in previous Orders issued by the Commission in these dockets. The ultimate decision rendered by the Commission on this matter was done after careful and full consideration of all of the evidence in this regard. No new evidence regarding this issue was presented in this case and thus the Commission finds no merit in altering the present arrangement. Since facilities-based carriers will be allowed to resell authorized LEC services effective January 1, 1987, originating access will apply in a similar manner to facilities-based carriers that resell LEC facilities and route calls in a manner analogous to a reseller. Originating access does not apply for resold MTS.

IT IS, THEREFORE, ORDERED as follows:

1. That intraLATA interexchange resale competition by all interexchange carriers be, and is hereby, authorized effective January 1, 1987. Any interexchange carrier, which has previously been certified by the Commission to provide interLATA telecommunications services and now also desires to provide intraLATA service as a reseller, shall file a verified application or petition with the Commission requesting that its certificate of public convenience and necessity be amended to authorize intraLATA resale, including proposed tariffs and a description of the nature of the proposed service to be offered. Such companies shall 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 authorized resold services provided by the LECs, it can file an affidavit to the effect that either (A) its switching equipment is programmed to route

intraLATA calls (other than those originated over 800 service) only over authorized resold services leased from the LECs, or (B) that it possesses no facilities capable of completing intraLATA calls (other than those originated over 800 service) except authorized services leased from the LECs. Such applications for amended certificates shall be processed on an expedited basis.

2. That all "1+" and "0" intraLATA toll traffic shall be automatically routed to and retained by the local serving LEC which shall complete such traffic using the facilities of such other LECs as are necessary.

3. That the carrier common line charge element of intrastate access charges shall be reduced from the present rate of 5.01 cents per access minute for originating and terminating access to 4.0 cents per access minute for originating access and 4.33 cents per access minute for terminating access effective April 1, 1987. That the current special access surcharge of $1.68 on WATS and 800 service shall be discontinued. Southern Bell Telephone and Telegraph Company shall file amended access tariffs to be concurred in by the other LECs by January 12, 1987. These tariff shall be approved upon further Order of the Commission.

4. That the Commission shall issue further Orders scheduling hearings in 1987 to consider further reductions in access charges, nonpooling of interLATA access, company-specific traffic sensitive switched access charges, and high cost company plans.

5. That the experimental subscriber line waiver program for recipients of aid to families with dependent children (AFDC) and supplemental security income (SSI) benefits authorized in Docket No. P-100, Sub 80, should be expanded effective July 1, 1987, to include all local exchange companies operating in North Carolina throughout their service territories and should provide for a 100% matching of the federal subscriber line charge.

6. That any motions not previously ruled upon or allowed are hereby denied.

ISSUED BY ORDER OF THE COMMISSION.
This the 23rd day of December 1986.

NORTH CAROLINA UTILITIES COMMISSION
Sandra J. Webster, Chief Clerk

(SEAL)

COMMISSIONER TATE, DISSENTING IN PART

I dissent from a portion of this Order because I believe all parties should be able to rely on Commission Orders. In the P-100, Sub 72, Order, the Commission stated that intraLATA competition could begin on January 1, 1987. There was evidence presented at the hearings in this docket that at least one party had constructed facilities in reliance on the Commission allowing intraLATA competition. The majority now finds that such competition should not be allowed. I agree. However, fairness requires that any party who has constructed facilities between the two Orders should be grandfathered. The Commission has found good reason to change its mind but parties who have made investments in reliance on a previous Order should not have to suffer financial harm when the Commission reverses itself. I hope that any party who has made facility-based investments will petition the Commission for relief. Surely the majority would respond equitably if it can be shown that construction was undertaken in reliance on the Commission's former Order.

December 22, 1986 Sarah Lindsay Tate, Commissioner

DOCKET NO. P-140, SUB 9
DOCKET NO. P-100, SUB 86
DOCKET NO. P-100, SUB 65

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

DOCKET NO. P-140, SUB 9

In the Matter of
Application of AT&T Communications of the Southern States, Inc., for an Adjustment of Its Rates and Charges Applicable to Intrastate Telephone Service in North Carolina

and
DOCKET NO. P-100, SUB 86

In the Matter of
Investigation of Intrastate WATS and 800 Service Rates and Charges of All Local Exchange Telephone Companies Under the Jurisdiction of the North Carolina Utilities Commission

and
DOCKET NO. P-100, SUB 65

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
ESTABLISHING RATE
DESIGN GUIDELINES

HEARD IN: Commission Hearing Room 2115, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on March 25, 26, 27, and 28, 1986, and April 1, 2, 3, and 4, 1986

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 J. A. Wright

APPEARANCES:

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BY THE COMMISSION: On October 28, 1985, in Docket No. P-140, Sub 9, AT&T Communications of the Southern States, Inc. (AT&T-C, Company, or Applicant), asked for authority to adjust all of its intrastate interLATA rates and charges for Channel Services, Wide Area Telecommunications Service (WATS), 800 Service, and Long Distance Message Telephone Service (MTS) and to introduce a charge for verification and interrupt service for MTS customers. The Company's proposed charges would produce an annual gross revenue increase of $10,403,178. As part of the filing, AT&T-C requested emergency interim rate relief of approximately $6,300,000.

On November 25, 1985, the Commission entered an Order in Docket No. P-140, Sub 9, declaring the application to be a general rate case under N.C.G.S. § 62-137, suspending the proposed tariffs for interim and permanent relief, and scheduling an oral argument on the interim rate relief request. On December 6, 1985, the Commission issued an Order granting the interim rate relief, which by Order dated December 18, 1985, was affirmed to be in the form of an interim suspension of the $25.00 special access surcharge on WATS and 800 Service access lines.

On December 12, 1985, Southern Bell Telephone and Telegraph Company (Southern Bell) filed tariffs, with an effective date of February 1, 1986, to adjust the Company's intrastate intraLATA rates and charges for WATS and 800 Service. Under the proposals of AT&T-C and Southern Bell, intraLATA and interLATA WATS and 800 Service would be tariffed and provided separately, rather than jointly under the uniform statewide tariffs heretofore in effect. By Order dated December 30, 1985, the Commission concluded that the request of AT&T-C for adjustments in its WATS and 800 Service rates should be separated from its general rate case and docketed in another proceeding, Docket No. P-100, Sub 86, for consideration in conjunction with Southern Bell's proposed tariff changes in intraLATA WATS and 800 Service. The Commission further concluded that all local exchange companies under the jurisdiction of the Commission should be made parties to Docket No. P-100, Sub 86. The December 30, 1985, Order suspended the rates and tariffs on WATS and 800 Service and set Docket No. P-100, Sub 86, for hearing on March 4, 1986, in the Commission Hearing Room, Dobbs Building, Raleigh, North Carolina.

Motions for intervention were filed by the North Carolina Long Distance Association (NCLDA), North Carolina Attorney General, Carolina Utility Customers Association (CUCA), MCI Telecommunications Corporation (MCI), Carolina Telephone and Telegraph Company (Carolina), Southern Bell, First Union Corporation, and Central Telephone Company (Central).

In the application filed on October 28, 1985, the Applicant sought permanent authority to adjust and increase its rates and charges for intrastate long-distance telephone service effective November 27, 1985. The Commission, being of the opinion that the application constituted a general rate case, concluded that the rates and charges should be suspended for up to 270 days, and the Commission on November 25, 1984, issued a general Order suspending the proposed rates.

On February 4, 1986, the North Carolina Long Distance Association filed a Motion to combine all AT&T-C's rate matters into one hearing. Other parties filed responses and pleadings, and the Commission upon consideration of all of the factors denied the Motion to combine on
February 21, 1986.

On May 25, 1986, in the Commission Hearing Room the case came on for hearing and the following person sponsored by the North Carolina Attorney General gave testimony: William C. Corley, Assistant SBI Directory, and Samuel J. Rule, Directory of Telecommunications for the State of North Carolina.

Lawrence Whyte testified for the Village of Fearrington, North Carolina. The following witnesses testified for AT&T-C: R. E. Forenberry, Vice President, Regulatory Affairs; Marion R. McTyre, District Manager, Accounting Regulatory; John A. Sturgis, District Manager, Capitol Recovery of AT&T-C Inc.; Charles E. Willis, Manager, State Pricing and Implementation Department; Robert A. Friedlander, District Manager in the State Pricing and Implementation Organization; and Steve Vinson, District Manager, Treasury Department of AT&T-C. Edgar L. Honeycutt, Jr., Staff Manager in Rates Organization of Southern Bell, testified for Southern Bell; David B. Denton, Segment Manager Rates, testified for Southern Bell; Charles Houser, Vice President and General Manager of Tel/Man, Inc., testified on behalf of his company and the NCLDA; Louis R. Jones, Burlington Industries, testified on behalf of his company and the Carolina Utility Customers Association; George E. Mattingly, Vice President of First Computer Services, Inc., in charge of telecommunications for First Union Corporation, testified on behalf of First Union Corporation. The Public Staff presented the testimony and exhibits of the following witnesses: William W. Winters, Supervisor of Communications, Public Staff Accounting Division; Jocelyn Perkerson, Accountant with the Public Staff; Leslie C. Sutton, Engineer with the Communications Division of the Public Staff; George T. Sessoms, Jr., Director of the Economic Research Division of the Public Staff; and John T. Garrison, Jr., Communications Engineer with the Public Staff. AT&T-C presented the testimony and exhibits of Marion R. McTyre in rebuttal.

On June 9, 1986, the Commission issued a Notice of Decision and Order in these dockets. On July 16, 1986, the Commission issued an Order Granting Reduction in Intrastate WATS and 800 Service Special Access Surcharge which stated that AT&T-C should be allowed an opportunity to earn a rate of return of 12.11% 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, AT&T-C was allowed a reduction in access charges of $6,445,345 on an annual basis. Southern Bell was required to file a revised access service tariff on behalf of the local exchange companies consistent with the Commission's decision to reinstate for AT&T-C a $1.68 per month special access surcharge on WATS and 800 service. On June 25, 1986, Southern Bell filed the required revised special access surcharge tariff in accordance with the Commission Order. In the July 16, 1986, Order the Commission indicated that elimination of $23.32 of the $25 special access charge applicable to WATS and 800 service would be subject to change depending upon the outcome of the access charge hearings to be conducted in early July 1986. In reaching these decisions, the Commission stated that it was not the intention of the Commission to have parties in the proceeding conclude that there was no need for rate restructuring. Rather, the Commission concluded that it was better to wait until after the access charge hearings were completed to allow the Commission to rule on the rate proposals of the LECs and AT&T-C in a more orderly manner. The Commission has now heard and ruled upon the access proceedings under separate Order issued concurrently with this Order. The Commission will now rule upon the rate design proposals of AT&T-C.

Based on the foregoing, the application, the testimony and exhibits received into evidence at the hearing, and the entire record in this proceeding, the Commission now makes the following

## FINDINGS OF FACT

1. The Applicant, AT&T Communications of the Southern States, Inc., is a public utility duly authorized to do business in North Carolina. The Applicant is providing telecommunications service in North Carolina and is subject to the jurisdiction of this Commission. AT&T-C 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. The findings, evidence, and conclusions contained in the July 16, 1986, Order issued in these dockets remain in full force and effect except with regard to the rate design issues.

3. The special access surcharge currently applicable to WATS and 800 services of $1.68 per month per line should be discontinued.

4. The WATS and 800 service charges should be modified as specified in a separate Order issued concurrently in Docket No. P-100, Sub 86.

5. AT&T-C should file tariffs reflecting the rate design specified in the conclusions contained herein.

## CONCLUSIONS

The evidence relating to rate design issues is contained in the testimony and exhibits of Public Staff witnesses Garrison and Gerringer, AT&T-C witnesses Friedlander and Willis, and the numerous public witnesses appearing in this case. The Commission's decision in this proceeding relating to rate design must recognize the potential impact to customers in light of the overall revenue requirements determined for AT&T-C. The Commission must also determine the types of services which AT&T-C should be allowed to resell as well as the appropriate rates for reselling those services.

The Commission issued an Order on July 16, 1986, in these dockets establishing the revenue requirements for AT&T-C and providing for $6,445,345 annually in rate relief to AT&T-C in the form of removal of $23.32 of the $25.00 special access surcharge on WATS and 800 service. The special form of rate relief was authorized pending resolution of the access charge proceeding.

In separate Order issued today in Docket Nos. P-100, Subs 65 and 72, the Commission has ruled upon the issues raised in the access and competition proceeding. Therefore, the Commission may now reasonably rule upon the rate design proposals of AT&T-C in this proceeding. The Commission has determined in the access proceeding that the carrier common line charge should be reduced from the current 5.01 cents per access minute to 4.0 cents per minute on originating access and 4.33 cents per minute on terminating access. The Commission also concludes therein that the surcharge of $25.00 on WATS and 800 service should be eliminated. Each of these decisions will impact upon the rates authorized in this case. In all likelihood the rate proposals of AT&T-C and the Public Staff would be different from those proposed in the case if the decisions since rendered by the Commission regarding revenue requirements and access charges had been known during the hearing process. Thus, the Commission must evaluate the stated rate design proposals in light of the decisions since rendered.

In a separate Order issued today in Docket No. P-100, Sub 86, the Commission authorized interLATA WATS and 800 service rate restructuring for AT&T-C. The rates authorized reflect in part the Public Staff's proposal of an income neutral rate design approach for these services. However, the Commission has eliminated the last two proposed taper points of 120 to 180 hours and over 180 hours from these schedules. In light of the Commission's decision regarding access charges and elimination of the last two taper points, the authorized WATS and 800 service rates are no longer income neutral to AT&T-C. Since AT&T-C will experience access cost decreases on its WATS and 800 services, the revenues-cost relationship for these services will be improved. The Commission believes this rate relief is justified in light of the evidence presented.

A brief summary of AT&T-C's proposals for rate design of its MTS service and Private Line service follows:

- The rates for the first five mileage bands of MTS service should be increased with decreases for the remaining mileage band rates;
- The day save rate period offering a 25% discount for calls made during the weekday from noon to one p.m. should be eliminated;
- The night/weekend rate period discount of 50% should be reduced to 45%;
- Verification requests should be charged $1.25;
- Interrupt requests should be charged $1.80;
- The recurring station terminal rate elements for Private Line service should be increased;
- The recurring channel terminal and interexchange channel elements for Private Lines service should be decreased;
- The nonrecurring rate elements for Private Line service should be increased;
- A new rate element should be instituted to recover the surcharge cost for Private Line service;
- The 5000 Series (Telpak) for Private Line service should be eliminated;
- Types 1009 and 1010 offerings in the 1000 Series for Private Lines service should be grandfathered such that new installations of these offerings will be permitted only where the required facilities are available;
- The switched access charges associated with the open-end of Foreign Exchange service should be billed directly to the end user by the local exchange companies; and
- The MTS and Private Line services should be offered for resale.

The Public Staff, in its rate design recommendation, emphasized the need to avoid drastic increases for the various types of services provided by AT&T-C. This position is based upon the overall revenue requirement as recommended by the Public Staff as well as the recognition that "rate shock" would occur under the proposals by AT&T-C. While the Public Staff recognized a need for more revenues from the Private Line services of AT&T-C, the Public Staff also apparently realized that the substantial increases proposed for Private Line service by AT&T-C could adversely affect the local exchange companies as well as AT&T-C. To minimize the effect on both AT&T-C and the local exchange companies, the Public Staff recommended a moderate increase to the Private Line service.

The Public Staff's recommendations for MTS and Private Line service are summarized below:

- The rates for the first three mileage bands for MTS service should remain unchanged with the rates for the remaining bands being decreased;
- The day-save rate period offering a 25% discount for calls made during the weekday from noon to one p.m. should not be eliminated;
- The night/weekend rate period discount of 50% should not be reduced to 45%;
- Verification requests should be charged $0.70;
- Interrupt requests should be charged $1.00;
- The station terminal rate elements for Private Line service should be increased;
- The 5000 Series (Telpak) for Private Line service should not be eliminated;
- The nonrecurring rate elements for Private Line service should be increased;
- AT&T-C's MTS service should be offered for resale;
- Only AT&T-C's channel terminal and interexchange channel elements of its Private Line service should be offered for resale; and
- Resellers' access to AT&T-C's points of presence for the resale of Private Line service, including Feature Group A access for Foreign Exchange service, should be provided by the local exchange companies from the special or switched access tariff.

AT&T-C has proposed significant rate increases for channel services. AT&T-C has proposed reductions in the interLATA/interexchange channel and channel terminal rates which are facilities provided by AT&T-C. Alternatively, AT&T-C proposed significant increases in the station terminal components of channel terminals. The station terminals are the end-link components which represent the access facilities provided by the LECs and connect a customer's premise to AT&T-C. AT&T-C contends that there is a $13.7 revenue deficiency in the provision of these services which would be alleviated if the Company's rate proposals are accepted.

AT&T-C also proposes to eliminate the Telpak Channel Service offerings, to introduce a charge to cover the special access service surcharge, to revise the channels service tariffs to provide for resale, to have the access charges for the open end of FX service billed to the end-user instead of AT&T-C, to treat telephone answering service facilities the same as Series 2000 Type 2010 Channel Services, and to grandfather the Series 1000, Type 1009 and 1010 Channel Service offerings.

Public Staff witness Garrison proposed that the rates for private line services be increased. However, because of the customer impact and its associated bypass potential, the Public Staff contends that the increase in rates should be limited. Witness Garrison proposed that the station terminal elements and Telpak D be increased no more than 25%. The Public Staff did not recommend that any other rate changes for private line services be allowed. The Public Staff also recommends that the changes proposed by AT&T-C for nonrecurring rate charges for private line rates be allowed. The Public Staff contends that its proposed rate changes will improve the private line revenue to cost ratio while limiting the "rate shock" that would occur if AT&T-C's proposal were to become effective. In the Public Staff's opinion this proposed rate would also limit the potential for bypass.

The Public Staff recommends that the approved private line rates not be applicable for resold private line services. Since those carriers which resell private line service are not only subscribers of AT&T-C but also providers of long-distance services, the Public Staff contends it is reasonable that the applicable rate structure for resold private line services be the same rates that a facilities-based carrier would pay to obtain these services. The manner in which these services would be provided is described below.

1. Obtain access from the LEC's special access tariff to and from the AT&T-C points of presence.

2. Obtain the interexchange channel component consisting of channel terminals and the interexchange channel itself, as well as other miscellaneous services from AT&T-C's proposed private line tariffs. In addition, the Series 5000 Channel Service (Telpak Series) should be included at the rates proposed by the Public Staff.

The evidence in this case indicates that the rates AT&T-C charges for its Private Line service do not reflect the manner in which the special access expenses are incurred for the provision of this service. Additionally, it appears that an attempt to match the Private Line rate elements to the special access expense elements would require an extraordinary amount of time and expense, both to the AT&T-C and to the local exchange companies. Matching the Private Line rate elements would also create a tremendous disparity in the effect on individual customers. The incompatibility of private line rates to access charges may represent an issue which deserves further consideration by the Commission in later hearings.

With regard to the rates for Private Line service to nonreselling customers, the Commission concludes that in view of the overall revenue requirement for AT&T-C and in consideration of the impact on customers the recurring rates proposed by AT&T-C for its Private Line service should not be allowed. The Public Staff's proposal for recurring rates (no more than a 25% increase in any station terminal element) would allow AT&T-C to receive more revenues for its Private Line services than at present resulting in a better cost to revenue relationship. Thus, the Commission concludes that AT&T-C should increase each of its recurring station terminal rates by no more than 25%. In addition, the impact to customers of eliminating the 5000 Series (Telpak) Private Line service would greatly outweigh any benefits to AT&T-C resulting from the elimination. Thus this service should not be eliminated at this time. The Commission also concludes that the nonrecurring rates proposed by the Public Staff are reasonable.

In the matter of reselling AT&T-C's Private Line services, the Commission is of the opinion that access expenses paid by resellers should be equal to the access expense paid by AT&T-C. In that vein, neither the rates proposed by AT&T-C for its station terminal rates nor the rates proposed by the Public Staff for station terminal rates would accomplish that goal. This is due to the averaging concept used by both AT&T-C and the Public Staff in their proposals. The best way to ensure that the resellers pay access equal to that paid by AT&T-C is to require that the resellers obtain access from the local exchange companies to AT&T-C's point of presence. However, the evidence in this case indicates that part of the cost of AT&T-C's access expense is recovered in the channel terminal and interexchange channel mileage rate elements. Therefore, it would be inappropriate to charge resellers the same rates for those nonaccess elements as nonreselling customers. Thus, the Commission concludes that the rates proposed by AT&T-C for its nonaccess rate elements are reasonable for the purpose of providing resold services.

AT&T-C proposed to institute rates for long-distance verification and interrupt services of $1.25 and $1.80, respectively. The Commission in an Order issued November 10, 1986, in this docket approved rates of $.70 and $1.00, respectively, for these services.

The final area of rate design is message toll service. Recognizing the revenue requirement established in the July 16, 1986, Order, the Commission cannot justify reduction or elimination of the discounted rate periods for AT&T-C's MTS service. With respect to the 25% discount for the noon to 1:00 p.m. day-save rate period, the evidence in this case indicates that some customers have altered their calling patterns to take advantage of this period. While the usage in this period is small compared to the total usage for MTS service, the elimination of the discount for this rate period will result in a 33% increase in charges paid by these customers. The Commission is also of the opinion that the reduction in the discount for the night/weekend rate period is not justified. The argument used by AT&T-C can be equally applied to the evening rate period; however, there was no proposal to reduce the discount for this period. The Commission also notes that the evidence presented shows that the night/weekend rate period is recovering its access and billing and collection costs.

Consistent with the Commission's already stated conclusions regarding AT&T-C's MTS service, the rates to be filed by AT&T-C should provide for a continuation of the 25% discount for the day-save rate period on weekdays from noon to 1:00 p.m. as well as the 50% discount for the night/weekend, rate period. In addition, the Commission also concludes that the rates in the below 30 mile bands should not be increased as proposed by AT&T-C. In view of the rate decrease flowing to MTS rates, it seems reasonable to preserve the current rates on the low mileage bands.

The Commission has approved access charge reductions as well as specific rate restructuring which will result in increased revenues and lowered costs to AT&T-C. AT&T-C has voluntarily agreed to flow through access charge reductions to MTS services. It is the Commission's intent that all rate changes approved herein and access charge reductions approved in Docket Nos. P-100, Subs 65 and 72, be flowed through in the form of lower MTS rates so as to maintain the revenue requirements found fair in the July 16, 1986, Order issued in this docket. The precise amount of such reductions will be established in tariffs filed pursuant to this Order. AT&T-C shall file a statement quantifying the financial impact of the access charge reductions ordered on the company and the impact of each of the specific rate changes approved on the company.

IT IS, THEREFORE, ORDERED as follows:

1. That AT&T Communications be, and is hereby, required to file proposed specific tariffs reflecting changes in rates and charges, as contained in the Conclusions of this Order and Appendix A attached hereto, and to file specific regulations to effect these changes on or before Monday, January 12, 1987. AT&T-C shall also file statement quantifying the financial impact on the Company of the specific rate changes approved on or before Monday, January 12, 1987. Workpapers supporting such proposals. should also be filed with the Commission. (Formats such as item 30 of the minimum filing requirements, N.C.U.C. Form P-1, are suggested). Comments to the Company's rate schedule proposals shall be filed within 10 working days thereafter.

2. That AT&T Communications of the Southern States, Inc. shall file proposed customer notices with the Commission for approval on or before Monday, January 12, 1987.

3. 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 by the Commission with a targeted implementation date of April 1, 1987.

ISSUED BY ORDER OF THE COMMISSION.
This the 23rd day of December 1986.

NORTH CAROLINA UTILITIES COMMISSION
Sandra J. Webster, Chief Clerk

(SEAL)

APPENDIX A

## APPROVED RATE INCREASES FOR END-USER (NONRESOLD) CHANNEL SERVICES
(Docket No. P-140, Sub 9)

| Item of Service | USOC | Present Rate per Unit | Approved Rate per Unit | Increase per unit |
|---|---|---|---|---|
| **A7.1.3 Foreign Exchange Service** | | | | |
| Monthly Recurring Charges | | | | |
| Sta Ter/End 1/Ty 2006 | 9B1++ | 0.40 | 0.50 | 0.10 |
| Type 2010 | 9B1++ | 10.30 | 12.88 | 2.58 |
| Sta Ter/End 2/Ty 2006 | 9B2++ | 26.20 | 32.75 | 6.55 |
| Type 2010 | 9B2++ | 40.20 | 50.25 | 10.05 |
| Sta Ter/End 3/Ty 2006 | 9B3++ | 45.80 | 57.25 | 11.45 |
| Type 2010 | 9B3++ | 59.95 | 74.94 | 14.99 |
| Sta Ter/End 4/Ty 2006 | 9B4++ | 91.15 | 113.94 | 22.79 |
| Type 2010 | 9B4++ | 105.70 | 132.13 | 26.43 |
| Sta Term 1st Zone | 1LSS+ | 9.00 | 11.25 | 2.25 |
| Sta Term Add Zone | 1LSS+ | 17.95 | 22.44 | 4.49 |
| Nonrecurring Charges | | | | |
| Sta Ter/End 1/Ty 2006 | 9B1++ | 74.75 | 420.00 | 345.25 |
| Type 2010 | 9B1++ | 121.50 | 420.00 | 298.50 |
| Sta Ter/End 2/Ty 2006 | 9B2++ | 136.00 | 420.00 | 284.00 |
| Type 2010 | 9B2++ | 183.50 | 420.00 | 236.50 |
| Sta Ter/End 3/Ty 2006 | 9B3++ | 136.00 | 420.00 | 284.00 |
| Type 2010 | 9B3++ | 183.50 | 420.00 | 236.50 |
| Sta Ter/End 4/Tye 2006 | 9B4++ | 136.00 | 420.00 | 284.00 |
| Type 2010 | 9B4++ | 183.50 | 420.00 | 236.50 |
| Bridging per Sta Term | MPA1X | 42.75 | 106.00 | 63.25 |
| **B3.2.1 Series 1000 Channels** | | | | |
| Monthly Recurring Charges | | | | |
| Band 1 Type 1001,HD | HB15+ | 20.10 | 25.13 | 5.03 |
| Type 1001,DX | WB15+ | 24.10 | 30.13 | 6.03 |
| Type 1002,DX | HB16+ | 24.30 | 30.38 | 6.08 |
| Type 1002, DX | WB16+ | 29.15 | 36.44 | 7.29 |
| Type 1009 | 6B19+ | 12.70 | 15.88 | 3.18 |
| Type 1010 | 6B1A+ | 12.70 | 15.88 | 3.18 |
| Each Add'l Type 1001,HD | HE15+ | 20.10 | 25.13 | 5.03 |
| Type 1001,HD | WE15+ | 24.10 | 30.13 | 6.03 |
| Type 1002,HD | HE16+ | 24.30 | 30.38 | 6.08 |
| Type 1002,DX | WE16+ | 29.15 | 36.44 | 7.29 |
| Type 1009 | 6F19+ | 12.70 | 15.88 | 3.18 |
| Type 1010 | 6F1A+ | 12.70 | 15.88 | 3.18 |

| Item of Service | USOC | Present Rate per Unit | Approved Rate per Unit | Increase per Unit |
|---|---|---|---|---|
| Monthly Recurring Charges (cont.) | | | | |
| Band 2 Type 1001,HD | HB25+ | 57.30 | 71.63 | 14.33 |
| Type 1001,DX | WB25+ | 60.70 | 75.88 | 15.18 |
| Type 1002,DX | HB26+ | 58.30 | 72.88 | 14.58 |
| Type 1002,DX | WB26+ | 61.20 | 76.50 | 15.30 |
| Type 1009 | 6B29+ | 28.20 | 35.25 | 7.05 |
| Type 1010 | 6B2A+ | 28.20 | 35.25 | 7.05 |
| Each Add'l Type 1001,HD | HE25+ | 57.30 | 71.63 | 14.33 |
| Type 1001,DX | WE25+ | 60.70 | 75.88 | 15.18 |
| Type 1002,HD | HE26+ | 58.30 | 72.88 | 14.58 |
| Type 1002,DX | WE26+ | 61.20 | 76.50 | 15.30 |
| Type 1009 | 6F29+ | 28.20 | 35.25 | 7.05 |
| Type 1010 | 6F2A+ | 28.20 | 35.25 | 7.05 |
| Band 3 Type 1001,HD | HB35+ | 76.35 | 95.44 | 19.09 |
| Type 1001,DX | WB35+ | 79.25 | 99.06 | 19.81 |
| Type 1002,DX | HB36+ | 77.30 | 96.63 | 19.33 |
| Type 1002,DX | WB36+ | 80.25 | 100.31 | 20.06 |
| Type 1009 | 6B39+ | 40.65 | 50.81 | 10.16 |
| Type 1010 | 6B3A+ | 40.65 | 50.81 | 10.16 |
| Each Add'l Type 1001,HD | HE35+ | 76.35 | 95.44 | 19.09 |
| Type 1001,HD | WE35+ | 79.25 | 99.06 | 19.81 |
| Type 1002,HD | HE36+ | 77.30 | 96.63 | 19.33 |
| Type 1002,DX | WE36+ | 80.25 | 100.31 | 20.06 |
| Type 1009 | 6F39+ | 40.65 | 50.81 | 10.16 |
| Type 1010 | 6F3A+ | 40.65 | 50.81 | 10.16 |
| Band 4 Type 1001,HD | HB45+ | 106.85 | 133.56 | 26.71 |
| Type 1001,DX | WB45+ | 109.75 | 137.19 | 27.44 |
| Type 1002,DX | HB46+ | 107.80 | 134.75 | 26.95 |
| Type 1002,DX | WB46+ | 110.75 | 138.44 | 27.69 |
| Type 1009 | 6B49+ | 68.60 | 85.75 | 17.15 |
| Type 1010 | 6B4A+ | 68.60 | 85.75 | 17.15 |
| Each Add'l Type 1001,HD | HE45+ | 106.85 | 133.56 | 26.71 |
| Type 1001,HD | WE45+ | 109.75 | 137.19 | 27.44 |
| Type 1002,HD | HE46+ | 107.80 | 134.75 | 26.95 |
| Type 1002,DX | WE46+ | 110.75 | 138.44 | 27.69 |
| Type 1009 | 6F49+ | 68.60 | 85.75 | 17.15 |
| Type 1010 | 6F4A+ | 68.60 | 85.75 | 17.15 |
| Sta Term 1st Zone | 1LSS1 | 8.80 | 11.00 | 2.20 |
| Sta Term Add Zone | 1LSS+ | 17.60 | 22.00 | 4.40 |
| Nonrecurring Charges | | | | |
| Band 1 Type 1001,HD | HB15+ | 329.25 | 512.00 | 182.75 |
| Type 1001,DX | WB15+ | 337.00 | 512.00 | 175.00 |
| Type 1002,DX | HB16+ | 329.25 | 512.00 | 182.75 |
| Type 1002,DX | WB16+ | 337.00 | 512.00 | 175.00 |
| Type 1009 | 6B19+ | 89.25 | 512.00 | 422.75 |
| Type 1010 | 6B1A+ | 89.25 | 512.00 | 422.75 |

| Item of Service | USOC | Present Rate per Unit | Approved Rate per Unit | Increase per Unit |
|---|---|---|---|---|
| Nonrecurring Charges (cont.) | | | | |
| Each Add'l Type 1001,HD | HE15+ | 279.75 | 512.00 | 232.25 |
| Type 1001,DX | WE15+ | 273.00 | 512.00 | 239.00 |
| Type 1002,HD | HE16+ | 279.75 | 512.00 | 232.25 |
| Type 1002,DX | WE16+ | 273.00 | 512.00 | 239.00 |
| Type 1009 | 6F19+ | 89.25 | 512.00 | 422.75 |
| Type 1010 | 6F1A+ | 89.25 | 512.00 | 422.75 |
| Band 2 Type 1001,HD | HB25+ | 376.00 | 512.00 | 136.00 |
| Type 1001,DX | WB25+ | 383.75 | 512.00 | 128.25 |
| Type 1002,DX | HB26+ | 376.00 | 512.00 | 136.00 |
| Type 1002,DX | WB26+ | 383.75 | 512.00 | 128.25 |
| Type 1009 | 6B29+ | 121.50 | 512.00 | 390.50 |
| Type 1010 | 6B2A+ | 121.50 | 512.00 | 390.50 |
| Each Add'l Type 1001,HD | HE25+ | 319.50 | 512.00 | 192.50 |
| Type 1001,DX | WE25+ | 326.25 | 512.00 | 185.75 |
| Type 1002,HD | HE26+ | 319.50 | 512.00 | 192.50 |
| Type 1002,DX | WE26+ | 326.25 | 512.00 | 185.75 |
| Type 1009 | 6F29+ | 121.50 | 512.00 | 390.50 |
| Type 1010 | 6F2A+ | 121.50 | 512.00 | 390.50 |
| Band 3 Type 1001,HD | HB35+ | 376.00 | 512.00 | 136.00 |
| Type 1001,DX | WB35+ | 383.75 | 512.00 | 128.25 |
| Type 1002,DX | HB36+ | 376.00 | 512.00 | 136.00 |
| Type 1002,DX | WB36+ | 383.75 | 512.00 | 128.25 |
| Type 1009 | 6B39+ | 121.50 | 512.00 | 390.50 |
| Type 1010 | 6B3A+ | 121.50 | 512.00 | 390.50 |
| Each Add'l Type 1001,HD | HE35+ | 319.50 | 512.00 | 192.50 |
| Type 1001,DX | WE35+ | 326.50 | 512.00 | 185.25 |
| Type 1002,HD | HE36+ | 319.50 | 512.00 | 192.50 |
| Type 1003,DX | WE36+ | 326.75 | 512.00 | 185.25 |
| Type 1009 | 6F39+ | 121.50 | 512.00 | 390.50 |
| Type 1010 | 6F3A+ | 121.50 | 512.00 | 390.50 |
| Band 4 Type 1001,HD | HB45+ | 376.00 | 512.00 | 136.00 |
| Type 1001,DX | WB45+ | 383.75 | 512.00 | 128.25 |
| Type 1002,DX | HB46+ | 376.00 | 512.00 | 136.00 |
| Type 1002,DX | WB46+ | 383.75 | 512.00 | 128.25 |
| Type 1009 | 6B49+ | 121.50 | 512.00 | 390.50 |
| Type 1010 | 6B4A+ | 121.50 | 512.00 | 390.50 |
| Each Add'l Type 1001,HD | HE45+ | 319.50 | 512.00 | 192.50 |
| Type 1001,DX | WE45+ | 326.75 | 512.00 | 185.25 |
| Type 1002,HD | HE36+ | 319.50 | 512.00 | 192.50 |
| Type 1002,DX | WE46+ | 326.75 | 512.00 | 185.25 |
| Type 1009 | 6F49+ | 121.50 | 512.00 | 390.50 |
| Type 1010 | 6F4A+ | 121.50 | 512.00 | 390.50 |
| Restore Priority per Sta Term | N/A | 0.00 | 106.00 | 106.00 |

| Item of Service | | USOC | Present Rate per Unit | Approved Rate per Unit | Increase per Unit |
|---|---|---|---|---|---|
| **B3.2.2 Series 2000 Channels** | | | | | |
| Monthly Recurring Charges | | | | | |
| Band 1 | Type 2001 | 9B11+ | 19.80 | 24.75 | 4.95 |
| | Type 2012 | XB1S+ | 31.40 | 39.25 | 7.85 |
| | Type 2014 | 4S1S+ | 43.85 | 54.81 | 10.96 |
| | Type 2015 | 4S1T+ | 10.25 | 12.81 | 2.56 |
| | Type 2020 | UB1C+ | 45.20 | 56.50 | 11.30 |
| | Type 2021 | YB1D+ | 25.15 | 31.44 | 6.29 |
| | Type 2022 | OB1E+ | 52.25 | 65.31 | 13.06 |
| | Type 2040 | OB1P+ | 18.30 | 22.88 | 4.58 |
| | Type 2041 | UB1Q+ | 50.30 | 62.88 | 12.58 |
| Band 2 | Type 2001 | 9B21+ | 60.00 | 75.00 | 15.00 |
| | Type 2012 | XB2S+ | 67.50 | 84.38 | 16.88 |
| | Type 2014 | 4S2S+ | 84.00 | 105.00 | 21.00 |
| | Type 2015 | 4S2T+ | 50.50 | 63.13 | 12.63 |
| | Type 2020 | UB2C+ | 85.40 | 106.75 | 21.35 |
| | Type 2021 | YB2D+ | 62.05 | 77.56 | 15.51 |
| | Type 2022 | OB2E+ | 92.40 | 115.50 | 23.10 |
| | Type 2040 | OB2P+ | 63.25 | 79.06 | 15.81 |
| | Type 2041 | UB2Q+ | 88.70 | 110.88 | 22.18 |
| Band 3 | Type 2001 | 9B31+ | 80.40 | 100.50 | 20.10 |
| | Type 2012 | IB3S+ | 89.55 | 111.94 | 22.39 |
| | Type 2014 | 4S3S+ | 104.50 | 130.63 | 26.13 |
| | Type 2015 | 4S3T+ | 70.85 | 88.56 | 17.71 |
| | Type 2020 | UB3C+ | 105.85 | 132.31 | 26.46 |
| | Type 2021 | YB3D+ | 87.55 | 109.44 | 21.89 |
| | Type 2022 | OB3E+ | 112.85 | 141.06 | 28.21 |
| | Type 2040 | OB3P+ | 87.55 | 109.44 | 21.89 |
| | Type 2041 | UB3Q+ | 111.40 | 139.25 | 27.85 |
| Band 4 | Type 2001 | 9B41+ | 126.90 | 158.63 | 31.73 |
| | Type 2012 | XB4S+ | 141.25 | 176.56 | 35.31 |
| | Type 2014 | 4S4S+ | 151.00 | 188.75 | 37.75 |
| | Type 2015 | 4S4T+ | 117.35 | 146.69 | 29.34 |
| | Type 2020 | UB4C+ | 152.35 | 190.44 | 38.09 |
| | Type 2021 | YB4D+ | 139.30 | 174.13 | 34.83 |
| | Type 2022 | OB4E+ | 160.25 | 200.31 | 40.06 |
| | Type 2040 | OB4P+ | 139.30 | 174.13 | 34.83 |
| | Type 2041 | UB4Q+ | 163.15 | 203.94 | 40.79 |

| Item of Service | USOC | Present rate per Unit | Approved rate per Unit | Increase per Unit |
|---|---|---|---|---|
| Monthly Recurring Charges (cont.) | | | | |
| 1st Zone 2001 | 1LS++ | 8.80 | 11.00 | 2.20 |
| 1st Zone 2012 | 1LS++ | 9.60 | 12.00 | 2.40 |
| 1st Zone 2014 | 1LS++ | 17.60 | 22.00 | 4.40 |
| 1st Zone 2020 | 1LS++ | 17.60 | 22.00 | 4.40 |
| 1st Zone 2021 | 1LS++ | 8.80 | 11.00 | 2.20 |
| 1st Zone 2022 | 1LS++ | 17.60 | 22.00 | 4.40 |
| 1st Zone 2040 | 1LS++ | 8.80 | 11.00 | 2.20 |
| 1st Zone 2041 | 1LS++ | 17.60 | 22.00 | 4.40 |
| Add Zone 2001 | 1LS++ | 17.60 | 22.00 | 4.40 |
| Add Zone 2012 | 1LS++ | 19.20 | 24.00 | 4.80 |
| Add Zone 2014 | 1LS++ | 35.15 | 43.94 | 8.79 |
| Add Zone 2020 | 1LS++ | 35.15 | 43.94 | 8.79 |
| Add Zone 2021 | 1LS++ | 17.60 | 22.00 | 4.40 |
| Add Zone 2022 | 1LS++ | 35.15 | 43.94 | 8.79 |
| Add Zone 2040 | 1LS++ | 17.60 | 22.00 | 4.40 |
| Add Zone 2041 | 1LS++ | 25.15 | 43.94 | 8.79 |
| Nonrecurring Charges | | | | |
| Band 1 Type 2001 | 9B11+ | 126.25 | 420.00 | 293.75 |
| Type 2012 | XB1S+ | 140.75 | 420.00 | 279.25 |
| Type 2014 | 4S14+ | 176.75 | 420.00 | 243.25 |
| Type 2015 | 4S1T+ | 172.00 | 420.00 | 248.00 |
| Type 2020 | UB1C+ | 176.75 | 420.00 | 243.25 |
| Type 2021 | YB1D+ | 129.25 | 420.00 | 290.75 |
| Type 2022 | 0B1E+ | 176.75 | 420.00 | 243.25 |
| Type 2040 | 0B1P+ | 130.25 | 420.00 | 289.75 |
| Type 2041 | UB1Q+ | 212.75 | 420.00 | 207.25 |
| Band 2 Type 2001 | 9B21+ | 187.50 | 420.00 | 232.50 |
| Type 2012 | XB2S+ | 203.00 | 420.00 | 217.00 |
| Type 2014 | 4S24+ | 238.00 | 420.00 | 182.00 |
| Type 2015 | 4S2T+ | 236.00 | 420.00 | 184.00 |
| Type 2020 | UB2C+ | 238.00 | 420.00 | 182.00 |
| Type 2021 | YB2D+ | 213.75 | 420.00 | 206.25 |
| Type 2022 | 0B2E+ | 239.00 | 420.00 | 181.00 |
| Type 2040 | 0B2P+ | 201.00 | 420.00 | 219.00 |
| Type 2041 | UB2Q+ | 258.25 | 420.00 | 161.75 |
| Band 3 Type 2001 | 9B3++ | 187.50 | 420.00 | 232.50 |
| Type 2012 | XB3++ | 203.00 | 420.00 | 217.00 |
| Type 2014 | 4S3++ | 238.00 | 420.00 | 182.00 |
| Type 2015 | 4S3T+ | 236.00 | 420.00 | 184.00 |
| Type 2020 | UB3C+ | 238.00 | 420.00 | 182.00 |
| Type 2021 | YB3++ | 213.75 | 420.00 | 206.25 |
| Type 2022 | 0B3E+ | 239.00 | 420.00 | 181.00 |
| Type 2040 | 0B3P+ | 201.00 | 420.00 | 219.00 |
| Type 2041 | UB3Q+ | 258.25 | 420.00 | 161.75 |

| Item of Service | USOC | Present Rate per Unit | Approved Rate per Unit | Increase per Unit |
|---|---|---|---|---|
| Nonrecurring Charges (cont.) | | | | |
| Band 4 Type 2001 | 9B41+ | 187.50 | 420.00 | 232.50 |
| Type 2012 | XB4S+ | 203.00 | 420.00 | 217.00 |
| Type 2014 | 4S44+ | 238.00 | 420.00 | 182.00 |
| Type 2015 | 4S4T+ | 236.00 | 420.00 | 184.00 |
| Type 2020 | UB4C+ | 238.00 | 420.00 | 182.00 |
| Type 2021 | YB4D+ | 213.75 | 420.00 | 206.25 |
| Type 2022 | OB4E+ | 239.00 | 420.00 | 181.00 |
| Type 2040 | OB4P+ | 201.00 | 420.00 | 219.00 |
| Type 2041 | UB4Q+ | 258.25 | 420.00 | 161.75 |
| Restore Priority per Sta Term | N/A | 0.00 | 106.00 | 106.00 |
| B3.2.2 Series 5000 Channels | | | | |
| Monthly Recurring Charges | | | | |
| Type 5800 | 1LKD4 | 161.55 | 201.94 | 40.39 |
| Type 5800 Work. | ZZ3UQ | 0.67 | 0.84 | 0.17 |
| Type 5800 Spare | ZZ3UU | 0.67 | 0.84 | 0.17 |
| B3.3.1 Multipoint Service | | | | |
| Nonrecurring Charges | | | | |
| Station Term. Conn. to Bdg.-2001 | MPA1X | 99.00 | 106.00 | 7.00 |
| Station Term. Conn. to Bdg.-2020 | MPA7X | 56.25 | 60.00 | 3.75 |
| Station Term. Conn. to Bdg.-2022 | MPA9X | 56.25 | 60.00 | 3.75 |
| B3.4.1 Data Conditioning | | | | |
| Nonrecurring Charges | | | | |
| Type C2 | P3H | 33.00 | 32.00 | (1.00) |
| Type D1 | QHA | 361.25 | 818.00 | 456.75 |
| Type D2 | QHB | 477.75 | 818.00 | 340.25 |
| B6.3 Dataphone Digital Service | | | | |
| Monthly Recurring Charges | | | | |
| Acess Lines - Type 1 | | | | |
| Speed 2.4 KBPS | DDB | 128.70 | 160.88 | 32.18 |
| Speed 4.8 KBPS | DDE | 136.45 | 170.56 | 34.11 |
| Speed 9.6 KBPS | DDF | 170.95 | 213.69 | 42.74 |
| Speed 56 KBPS | DDG | 341.05 | 426.31 | 85.26 |
| Access Lines Fixed Type 2 | | | | |
| Speed 2.4 KBPS | 1L7AJ | 167.90 | 209.88 | 41.98 |
| Speed 4.8 KBPS | 1L7BJ | 177.50 | 221.88 | 44.38 |
| Speed 9.6 KBPS | 1L7CJ | 199.45 | 249.31 | 49.86 |
| Speed 56 KBPS | 1L7DJ | 317.00 | 396.25 | 79.25 |

| Item of Service | USOC | Present rate per Unit | Approved rate per Unit | Increase per Unit |
|---|---|---|---|---|
| Monthly Recurring Charges (cont.) | | | | |
| Per Mile - Type 2 | | | | |
| Speed 2.4 KBPS | 1L7AR | 2.25 | 2.81 | 0.56 |
| Speed 4.8 KBPS | 1L7BR | 2.70 | 3.38 | 0.68 |
| Speed 9.6 KBPS | 1L7CR | 3.00 | 3.75 | 0.75 |
| Speed 56 KBPS | 1L7DR | 7.75 | 9.69 | 1.94 |
| Nonrecurring Charges | | | | |
| Access Lines - Type 1 | | | | |
| Speed 2.4 KBPS | DDB | 95.25 | 569.00 | 473.75 |
| Speed 4.8 KBPS | DDE | 95.25 | 569.00 | 473.75 |
| Speed 9.6 KBPS | DDF | 143.75 | 569.00 | 425.25 |
| Speed 56 KBPS | DDG | 211.75 | 569.00 | 357.25 |
| Access Lines Fixed Type 2 | | | | |
| Speed 2.4 KBPS | IL7AJ | 132.00 | 569.00 | 437.00 |
| Speed 4.8 KBPS | IL7BJ | 132.00 | 569.00 | 437.00 |
| Speed 9.6 KBPS | IL7CJ | 132.00 | 569.00 | 437.00 |
| Speed 56 KBPS | IL7DJ | 256.00 | 569.00 | 312.50 |
| Restoration Priority<br>Per Station Term | N/A | 0.00 | 106.00 | 106.00 |
| B6.4 Accunet T1.5 Service | | | | |
| Nonrecurring Charges | | | | |
| Terminating Channels | LTC1X | 575.90 | 785.00 | 209.10 |

## DOCKET NO. P-100, SUB 72

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Investigation to Consider Whether Competitive Intrastate ) ORDER
Offerings of Long-Distance Telephone Service Should Be ) DENYING
Allowed in North Carolina and What Rules and Regulations ) MOTIONS OF
Should Be Applicable to Such Competition If Authorized ) NCLDA

BY THE COMMISSION: On September 30, 1985, the North Carolina Utilities 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." 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 local exchange companies (LECs) in lieu of a flat rate local service charge.

The Commission requested the parties to comment on the September 30, 1985, Order during hearings scheduled to begin on October 2, 1985, to consider the authorization of intraLATA resale competition. During the course of the hearing, most of the parties offered comments with respect to the Commission's decision to authorize a 45% access charge discount to pure resellers. Written comments concerning this issue were subsequently filed by Southern Bell Telephone and Telegraph Company (Southern Bell), Carolina Telephone and Telegraph Company (Carolina), 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).

Based on the comments filed by the various parties, the Commission subsequently issued an Order in this docket on November 25, 1985, entitled "Order On Reconsideration Regarding InterLATA Access Charges For Resellers." In such Order, the Commission concluded 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."

On December 19, 1985, the Commission entered a further Order in this docket entitled "Order Authorizing IntraLATA Resale Competition; and Approving IntraLATA Access Charges For Resellers." In said Order, the Commission found that it was appropriate to apply the same level of access charges to intraLATA access minutes as were applied to interLATA access minutes.

On December 27, 1985, NCLDA filed a motion in this docket entitled "Motion For Reconsideration; Motion for Stay; Motion for Emergency Relief." NCLDA requested the Commission to either reconsider its Order On Reconsideration dated November 25, 1985, and reinstitute the 45% access charge differential or stay the effectiveness of the November 25, 1985, Order pending further hearings or allow an immediate interim emergency reduction in access charges to resellers of 50%.

On January 16, 1986, the Public Staff filed a Response to NCLDA's Motion For Reconsideration recommending that the Commission deny NCLDA's motion.

On January 17, 1986, NCLDA filed a Motion For Expedited Access Charge Hearing. NCLDA requested the Commission to set a hearing to determine the appropriate level of access charges in the latter half of March 1986, and that hearings presently scheduled for March in Docket Nos. P-100, Sub 86 and P-140, Sub 9 be delayed.

On January 20, 1986, NCLDA filed a Motion for Reconsideration and For Emergency Relief. In this motion, NCLDA asked for reconsideration of the "Order Authorizing IntraLATA Resale Competition; and Approving IntraLATA Access Charges For Resellers" which was issued December 19, 1985. NCLDA requested the Commission to grant the following relief:

(1) That resellers be required to pay only intercept, termination, transport and local switching access charge components on the originating end of intraLATA calls; and

(2) That resellers not be required to pay the CCLC component of access charges on resold intraLATA calls; and

(3) That the 4.72¢ of compensation on calls placed over private lines be reduced by the amount of revenue the LEC receives for lease of the private line; and

(4) That the effectiveness of the December 19, 1985, Order be stayed pending reconsideration; or

(5) That an immediate interim emergency reduction in access charges to resellers of 50% be allowed, and that an immediate, interim emergency reduction of 2¢ per minute be made in the compensation plan.

On January 21, 1986, NCLDA filed a Reply to the Public Staff's Response to NCLDA's Motion For Reconsideration.

On January 22, 1986, AT&T filed a Response To NCLDA's Motion For Expedited Access Charge Hearing. AT&T is opposed to any action that would delay the hearings currently scheduled to begin on March 4, 1986, and March 25, 1986. AT&T pointed out that because its rate case test year ends June 30, 1985, any delays in the present schedule would result in test year data and other information developed in the course of investigation being too far removed in time for a reasonable hearing.

On January 24, 1986, AT&T filed a Response in Opposition to NCLDA's Motion For Reconsideration; Motion For Stay; Motion For Emergency Relief. AT&T is opposed to any decision that would grant an additional access charge discount (45% or 50%) to a selective class of long-distance competitors as requested by NCLDA.

On January 31, 1986, the Public Staff filed a Response to NCLDA's Motion For Reconsideration which was filed on January 20, 1986. The Public Staff also filed a Response to NCLDA's Motion for Expedited Access Charge Hearings and a Response to NCLDA's Reply Letter which was filed on January 21, 1986.

Also on January 31, 1986, TSI filed a Response In Opposition To The Motions of the NCLDA.

On February 4, 1986, NCLDA filed a response to the Public Staff's Response to NCLDA's motion for reconsideration of the December 19, 1985, Order Authorizing IntraLATA Resale Competition.

Based upon a careful consideration of the various motions and responses and replies thereto and the entire record in this proceeding, the Commission concludes that NCLDA's various motions for reconsideration, stay, emergency relief and expedited access charge hearing should be denied.

As pointed out by the Public Staff and many other parties and agreed to in part by the NCLDA, the Commission has already heard and ruled upon most if not all of the arguments made by NCLDA in support of its motions. The Commission is not persuaded that any previous decisions on these arguments need to be reconsidered.

NCLDA contends that the Miller Bill (1983 Session Laws, Chapter 1043, Section 2, 1984 Session) imposes a duty on the Commission to create a competitive toll marketplace which will provide the widest possible array of choices to the consumer. NCLDA further contends that the Miller Bill provides the Commission with ample discretionary power to treat resellers differently from other competitive toll carriers.

The Commission does not agree with NCLDA's arguments. The Miller Bill clearly does not impose a duty on the Commission to create a competitive marketplace with the widest possible array of choices to the consumer. As stated in the February 22, 1985, Order Authorizing Intrastate Long-Distance Competition, the Miller Bill gives the 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. Although the Commission, in its discretion, could have found that competitive offerings of long-distance service were not in the public interest, the Commission has adopted an orderly plan for implementation of full intrastate competition pursuant to the Miller Bill.

As to NCLDA's argument that the Miller Bill would allow the Commission to treat resellers differently from other competitive long-distance carriers, the Commission thoroughly addressed the issues of discrimination and preference or unfairness in the November 25, 1985, Order on Reconsideration. The Commission further notes that the decision to reconsider and eliminate the access charge discount for pure resellers in the Order on Reconsideration was only partially based upon considerations related to unlawful discrimination. Another very important factor, if not the controlling factor, considered by the Commission was the fact that the pure reseller concept and discount was affected by inherent administrative difficulties of a severe nature which became very clear during the hearings which began on October 2, 1985, and from the written comments filed by the parties. Specifically, the Commission reached the following pertinent conclusions in the Order on Reconsideration which are hereby reaffirmed:

> "...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 reasonably 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..."(Emphasis added)

With respect to NCLDA's argument that it should receive credit for its use of FX or private lines in the determination of compensation owed for unauthorized calls under the intraLATA compensation plan, the Commission notes that resellers are not currently authorized to use FX or private lines to complete intraLATA calls. If they do, resellers should pay full compensation. If resellers use intraLATA WATS as they are supposed to, they will not owe any compensation at all. This argument, then, is without merit.

With respect to the assertion of NCLDA concerning a "double recovery" of access charges, the record in this docket demonstrates rather conclusively that there is no "double recovery" of any access costs when full originating access charges are levied on WATS resellers, because there is no "equivalent" of a carrier common line charge built into WATS rates on the originating end.

In the February 22, 1985, Order Authorizing Intrastate Long-Distance Competition, the Commission established an orderly plan to transition North Carolina to a fully competitive state by January 1, 1987. The Commission has already met its goal to implement intraLATA resale competition by January 1, 1986. In the December 19, 1985, Order authorizing such competition, the Commission stated its intention to hold further hearings no earlier than May 1986, to consider issues related to implementation of total intrastate competition by January 1, 1987. The Commission is not persuaded that the existing schedule of hearings should be altered to allow an expedited access charge hearing prior to the hearings scheduled in Docket No. P-100, Sub 86 and Docket No. P-140, Sub 9. Nor is there any basis in the record for granting emergency interim relief through an access charge or compensation reduction for resellers. Considerations of fairness and equity dictate treating resellers the same as other competing interexchange carriers in order to refrain from establishing any undue preference or advantage.

IT IS, THEREFORE, ORDERED as follows:

1. That the "Order on Reconsideration Regarding InterLATA Access Charges For Resellers" and the "Order Authorizing IntraLATA Resale Competition; and Approving IntraLATA Access Charges For Resellers" entered in this docket on November 25, 1985, and December 19, 1985, respectively, be, and the same are hereby, reaffirmed.

2. That the various motions for reconsideration, stay, emergency relief and expedited access charge hearing filed herein by the NCLDA be, and the same are hereby, denied.

ISSUED BY ORDER OF THE COMMISSION.
This the 7th day of February 1986.

NORTH CAROLINA UTILITIES COMMISSION
Sandra J. Webster, Chief Clerk

(SEAL)

DOCKET NO. P-100, SUB 79

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

| | | |
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| In the Matter of<br>Proceeding to Consider Tariffs for Services<br>Provided to Cellular Radio Telecommunications<br>Companies by Landline Telephone Company | )<br>)<br>) | ORDER RULING ON<br>CELLULAR<br>INTERCONNECTION TARIFFS |

HEARD IN: Commission Hearing Room 213, Dobbs Building, 430 N. Salisbury Street, Raleigh, North Carolina, on Tuesday, September 17, 1985, through Thursday, September 19, 1985

BEFORE: Commissioner A. Hartwell Campbell, Presiding; and Commissioners Sarah Lindsay Tate and Robert K. Koger

APPEARANCES:

For Alltel Carolina, Inc.:

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

For Alltel Cellular Associates and for Centel Cellular Company of NC:

William E. Anderson, DeBank, McDaniel, Heidgerd, Holbrook & Anderson, P. O. Box 6503, Raleigh, North Carolina 27602

For Carolina Metronet, Inc., and for Greensboro Cellular Telephone Company:

Jerry B. Fruitt, P. O. Box 12547, Raleigh, North Carolina 27606-2547

For Carolina Telephone & Telegraph Company:

Jack H. Derrick, General Attorney, Robert Carl Voight, Senior Attorney, 720 Western Boulevard, Tarboro, North Carolina 27886

For Central Telephone Company:

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

For General Telephone Company of the Southeast:

Mary U. Musacchia, 4100 North Roxboro Road, Durham, North Carolina 17514

For Metro Mobil CTS of Charlotte, Inc:

Robert J. Keller, Fleischman & Walsh, PC, 1725 North Street, NW, Washington, DC 20036

Arthur W. O'Connor, Jr., Moore, Ragsdale, Liggett, Ray & Foley, P. O. Box 349, Raleigh, North Carolina 27602-0439

For Raleigh/Durham MSA Limited Partnership:

Rod Johnson, Rita M. Cain, United TeleSpectrum, Inc., 2546 Broadway, Kansas City, Missouri 64108

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

R. Douglas Lackey, Solicitor, 4300 Southern Bell Center, Atlanta, Georgia 30375

For North Carolina Department of Justice:

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

For the Public Staff:

Paul L. Lassiter, Staff Attorney, and Michael L. Ball, Staff Attorney, Public Staff/Legal Division, North Carolina Utilities Commission, P. O. Box 29520, Raleigh, North Carolina 27626-0520
For: The Using and Consuming Public

BY THE COMMISSION: By a series of recent orders, the Federal Communications Commission (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 Band 825-845 MHz and 870-890 MHz for Cellular Communication 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. On March 5, 1986, the FCC issued a Memorandum and Order in the matter of The Need to Promote Competition and Efficient Use of Spectrum for Radio Common Carrier Services (FCC No. 86-85) which provide further insight into the FCC's policies regarding the provision of cellular services. 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.

On February 22, 1985, the Public Staff filed a petition requesting that the Commission institute a proceeding to consider tariffs for the interconnection of cellular radio telephone companies with landline telephone companies. The Public Staff pointed out in its petition that there were applications for wholesale cellular authority currently pending before the Commission at that time and that these cellular applicants planned to be ready to begin operation in the reasonably near future. The Public Staff further pointed out that these cellular companies would require various services from the landline telephone companies in order to interconnect with those landline companies. However, there were then no tariffs covering such services on file with the Commission, and the Public Staff indicated that some of the landline companies might be unaware of what service would be requested of them.

The Commission agreed that a proceeding to consider interconnection of cellular companies with landline telephone companies should commence as requested by the Public Staff. The Commission further concluded that the wholesale cellular applications currently before the Commission and the landline telephone companies involved should be made parties thereto and that the proceeding should be undertaken expeditiously. The Commission determined that any cellular company needing to interconnect with the landline company before the outcome of this proceeding could do so by way of interim contract arrangements.

By an Order dated March 12, 1985, the Commission established proceedings and scheduled a hearing. Due to scheduling conflicts, the Commission found it necessary to reschedule the hearing in this case and issued its Order rescheduling the hearing on April 12, 1985.

Upon request for a continuance by Alltel Mobile Communications, Carolina Metronet, Greensboro Cellular Telephone Company, and Raleigh/Durham MSA Limited Partnership, the Commission found good cause to continue and reschedule the hearing. On May 31, 1985, the Commission issued an Order Rescheduling the hearing to September 17, 1985.

This matter came on for hearing on September 17, 1985. At that time, the Commission proposed that the witnesses be presented in panels to expedite the hearing. After discussion, it was determined that Southern Bell would first present its witness. Next, the witnesses for the other landline telephone companies would be presented as a panel followed by a panel of witnesses for the Raleigh/Durham MSA Limited Partnership. The last panel was to be the witnesses for the remaining cellular companies, and the Public Staff was to put on its witness at the conclusion of the hearing. Pursuant to this procedure, the following witnesses testified:

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| Southern Bell: | Benjamin D. Williams, Segment Manager in the Rates and Service Cost Organization Department |
| Alltel Carolina, Inc.: | Harold W. Shaffer, Rates and Tariffs Coordinator |
| Carolina Telephone: | Warren D. Hannah, Cost of Service Manager |
| Central Telephone: | Clayton E. Rawn, Business Affairs Manager - NC |
| General Telephone: | Alfred A. Banzer, Pricing and Tariff Manager |

Raleigh/Durham MSA Limited Partnership:
Robert J. Marino, President of United TeleSpectrum; Harry Midgley, Engineering Manager for United TeleSpectrum; and T. P. Williamson, Consultant

Alltel Cellular Associates Mobile:
Dan Thompson, President, - Network Department

Centel Cellular: James L. Thoreen, General Regulatory/Budget Manager

Metro Mobile CTS of Charlotte:
Christopher P. Witze, President and Chief Operating Officer

Public Staff: Millard N. Carpenter, Utilities Engineer in the Communications Division

During the course of the proceeding various other motions were made and Orders were entered relating thereto, all of which are a matter of record.

Based on the evidence and the entire record in this proceeding, the Commission now makes the following

## FINDINGS OF FACT

1. This matter is properly before the Commission, and the Commission has jurisdiction over the subject matter considered in the proceeding.

2. The Federal Communications Commission (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, charges for interconnection with the landline telephone network, and regulations for service.

3. The FCC has defined the status of cellular companies to be that of common carriers generally engaged in the provision of local exchange telecommunications with the local exchange companies. However, jurisdiction over the compensation arrangement between the cellular carrier and the local exchange company specifically resides with the state regulatory bodies.

4. The local exchange companies and the cellular carriers should enter into negotiations for the purpose of developing contractual interconnection agreements.

5. Cellular carriers should be required to compensate the local exchange company (LEC) for all costs incurred by the LEC in the provisions of interconnection to landline facilities. It is appropriate to require the cellular carrier to compensate the LEC for interconnection with the landline companies to originate calls (land to mobile) and to terminate calls (mobile to land).

6. The service area boundaries of the cellular carriers, as granted by the FCC, overlap with or encompass varying LEC boundaries. The local service

area of a cellular carrier should be the cellular geographical service area (CGSA).

7. Loss of toll revenue should not be considered in the initial interconnection agreements negotiated by the parties. It is appropriate for the parties to undertake a joint study quantifying the level of toll revenue lost by the local exchange companies as a result of cellular service.

8. There are two principal types of interconnections between the cellular carrier and the local exchange companies. A Type 1 interconnection is a four-wire trunk type connection with DID characteristics. A Type 2 interconnection is a more complex connection arrangement, similar to an interoffice trunk, with the result that the cellular switch appears to be a class 5 office to the local exchange. The FCC has mandated that the cellular carrier is entitled to the type of interconnection that is reasonable given its system design, provided there are no technical barriers to providing such service. The FCC however specifically left the terms and conditions of interconnection to be negotiated in good faith between the cellular operator and the telephone company subject to the jurisdiction of the state regulatory authorities.

9. Cellular carriers are entitled to reasonable accommodation of the telephone numbering requirements on the same basis as independent wireline telephone companies.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 1

Finding of Fact No. 1 is jurisdictional in nature and is uncontested.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 2

It should be noted that a series of decisions by the Federal Communications Commission encourage the provision of cellular mobile radio telephone service and specify certain aspects of how such service is to be encouraged and provided. Those FCC decisions, which will be referred to herein collectively as the Cellular Radio Decisions, are set forth in *An Inquiry Into the Use the Bands 825-845 MHz and 879-890 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 FCC 2d 469 (1981) ("Final Decisions"), modified 89 FCC 2d 58 (1982) ("Reconsideration Order"), and further modified FCC 82-308 (released July 8, 1982), ("Further Reconsideration Order"). The cellular Radio Decisions find and provide, *inter alia,* the following conclusions:

1. There is a pressing need for cellular service in order to relieve the severe congestion that exists on conventional two-way mobile systems around the country, especially in major metropolitan areas;

2. The public interest would best be served through an FCC licensing plan which licenses up to two 20MHz systems in each market area, one such system, or block of frequencies, to be for a wireline carrier and another for a competing nonwireline carrier;

3. The FCC approved a scheme whereby, for an initial period, one wireline carrier and one nonwireline carrier would be determined as licensed pursuant to FCC procedures to provide cellular service in competition with each other in major metropolitan market areas;

4. The FCC preempted state regulatory authorities from denying FCC licensed wireline and nonwireline carriers authority to provide cellular service on the grounds of lack of need for the provision of such service; and

5. The FCC preempted state regulatory authorities with respect to certain aspects of the market structure within which cellular service would be provided, in that no state prohibition of the resale of such service by resellers of the FCC designated wireline and nonwireline providers in each market would be permitted.

Under these decisions, the FCC has preempted this Commission and other provisions of state law regarding a determination of the present or future need for the cellular mobile radio telephone service (i.e., with respect to entry regulation and with respect to technical standards). However, the federal preemption does not extend to other terms upon which cellular service may be offered. The FCC explicitly reserved to the states jurisdiction over the charges, classifications, practices, services, facilities, and regulations for service. The FCC required that "reasonable interconnection" be offered to cellular carriers by the landline telephone companies (LECs). Given the broad reservation of jurisdiction to the states, it is clear that the states retain jurisdiction to set reasonable rates and charges for such interconnection.

A Memorandum Opinion and Order was also issued in the matter of The Need to Promote Competition and Efficient Use of Spectrum for Radio Common Carrier Services (FCC Docket No. 86-85) on March 5, 1986, wherein the FCC stated its policy on the interconnection of cellular systems with the landline telephone companies. In this order, the FCC restated its policy regarding the type and form of interconnection with LECs available to cellular carriers and its policy regarding blocks of telephone numbers. The FCC specifically left the matter of compensation arrangements to the carriers and the state regulatory bodies.

## EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 3

Each of the witnesses in the case presented testimony as to the appropriate status of cellular companies relative to the landline telephone companies. The cellular companies collectively asserted that the cellular service providers are common carrier providers of exchange telecommunications service and should not be treated as end users or interexchange carriers. Metro Mobile CTS of Charlotte, Inc. (Metro Mobile), states in its brief that cellular service is an exchange telecommunications service that is functionally equivalent to the service provided by landline companies. Functional similarities cited by the cellular companies include furnishing services to a number of customers within a franchised service area, supplying local switching, origination and termination functions for end users, and providing subscribers with access to other communications services through interconnection arrangements.

Alltel Cellular Associates (Alltel Cellular) maintains that a cellular carrier, although a novel and unique type of telecommunications entity, is not a customer but is truly a telecommunications provider with its own transmission and switching equipment and its own network costs. Centel Cellular Company (Centel Cellular) submits that those specific facts that distinguish cellular companies from landline carriers are in fact "distinctions without a difference." Carolina Metronet, Inc., and Greensboro Cellular Telephone Company assert in their brief that cellular carriers are by definition of their statutory authority common carriers of telecommunications service. According to these cellular companies, the services provided by cellular common carriers are complementary to those of the landline carriers with the interchange of traffic between the cellular company and local exchange company being much like the interexchange of traffic between the local telephone companies. Raleigh/Durham MSA Limited Partnership alleges that cellular carriers are in many relevant ways equal to landline service providers and should, as a matter of law, be treated as co-carriers with the landline companies.

Southern Bell Telephone and Telegraph Company (Southern Bell) argues that the interconnection services provided by local exchange companies to cellular providers should reflect the premium nature of the service offered by cellular providers and that the rates and charges should contribute to basic exchange service. Southern Bell asserts that cellular providers, unlike the LECs, are not rate base regulated and do not have the attendant responsibility for universal service. It is Southern Bell's position that cellular services are an important adjunct to and an extension of the existing landline telephone system but do not have equivalent status to landline carriers.

Carolina Telephone and Telegraph Company's (Carolina Telephone) position is that cellular companies are not local exchange companies in the traditional sense and do not provide many services provided by local exchange companies. Carolina Telephone contends that cellular service is supplemental to local exchange service and that cellular service should not be competitive with local exchange service.

General Telephone Company of the South East (GTSE) contends that the cellular carriers provide an enhanced service to LEC subscribers and not a service in lieu of local exchange service. GTSE characterizes cellular operations as incidental communication services.

The Attorney General takes issue with the cellular assertion of a co-carrier status. Though the Attorney General acknowledges that there are some analogies between the cellular companies and the LECs, the Attorney General believes these similarities are limited. The Attorney General contends that the cellular companies, unlike the LECs, face competition and provide a service which enhances LEC service in a manner similar to that of radio common carriers and mobile radio. The analogy of cellular carriers with interexchange carriers is also rejected by the Attorney General.

The Public Staff takes the position that co-carrier status is not appropriate for cellular carriers in the sense in which the cellular companies advocate it. Rather the Public Staff advocates that cellular carriers be treated as access customers of the LECs. The Public Staff asserts that the cellular carriers improperly use the rubric of co-carrier status to advocate the manner in which interconnection rates and charges should be structured.

The Public Staff rejects the notion of cost sharing or reciprocal access payment arrangements advocated by the cellular carriers under the rubric of co-carrier status. It is the Public Staff's belief that interconnection between the cellular carrier and the LEC is essential to the cellular carrier, whereas cellular interconnection is an adjunct service to the LEC.

Thus, based on a value of service concept, the Public Staff asserts that cellular companies should provide a contribution to local exchange service. The Public Staff further contends that any requirement of payment by the LECs to cellular carriers for interconnection could jeopardize reasonably affordable local service rates.

The Commission has carefully considered the evidence presented on this matter in the case. The status of cellular carriers relative to the LECs is indeed crucial to the rendering of a reasonable decision in the case. The Commission believes that the FCC decision on the matter is critical.

Thus a careful examination of the orders issued by the FCC is imperative. Upon the receipt of the March 5, 1986, Memorandum Opinion and Order of the FCC, the Commission on March 14, 1986, requested comments of the parties. Each of the parties filed comments thereafter. Almost without exception, each of the parties contend that their respective prior positions advocated in the case remain unaffected by the FCC order. The cellular companies contend that the FCC order removes all controversy in the proceeding and is fully supportive of their position. Specifically, the cellular companies contend that the FCC mandates co-carrier status between the landline carrier and the cellular carrier. The cellular carriers further contend that co-carrier status dictates interconnection agreements and terms in the manner that they have proposed.

Alternatively, each of the LECs indicate in comments that the interconnection recommendations initially proposed remain just and reasonable and relatively unchanged by the recent FCC order. Likewise, the Public Staff remains firm on the positions it advocated in the case.

Excerpts from the March 5, 1986, FCC order relevant to these issues are shown below.

> "Part 22 licensees are common carriers generally engaged in the provision of local exchange telecommunications in conjunction with the local telephone companies and are therefore 'co-carriers' with the telephone companies."
>
> "A cellular system operator is a common carrier, rather than a customer or end user, and as such is entitled to interconnection arrangements that 'minimize unnecessary duplication of switching facilities and the associated costs to the ultimate consumer.' Id. Underlying these policies, the Commission stated, was the goal of interconnection arrangements most favorable to the end user. Id at 495."
>
> "As a related matter, in our Access Charge proceeding, we ruled that radio common carriers and cellular carriers were not 'interexchange carriers' subject to the imposition of access charges for exchange

access and were also not 'end users' subject to subscribers line charges." MTS /WATS Market Structure 97FCC 2d 834, 881-883 (1984).

"5. Compensation Arrangements. In view of the fact that cellular carriers are generally engaged in the provision of local, intrastate, exchange telephone service, the compensation arrangements among cellular carriers and local telephone companies are largely a matter of state, not federal, concern."

Based upon the foregoing excerpts from the March 5, 1986, FCC order, it is clear that the intent of the FCC is to allow cellular carriers to have the status of common carriers generally engaged in the provision of local exchange telecommunications with the local exchange companies. It is thus the conclusion of the Commission that cellular carriers should be accorded the status of common carriers with the local exchange companies. However, it is likewise clear that the FCC views the compensation arrangements between the cellular carrier and the local exchange company to be a matter of concern for the carriers and state regulatory commissions. Thus the approval of common carrier status does not dictate in the Commission's opinion specific compensation arrangements as alleged by the cellular carriers. The matter of appropriate compensation will be more fully discussed hereinafter.

## EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 4

The evidence for this finding of fact is found in the testimony of each of the witnesses representing the cellular carriers, the local exchange companies, and the Public Staff. The position of Metro Mobile is indicative of that advocated by the cellular carriers collectively. Metro Mobile contends that a negotiated settlement resulting in a contractual agreement represents the best solution in the matter. Metro Mobile asserts that a negotiated settlement will lead to an agreement which is most acceptable to all parties involved and is consistent with the law and public policy. It is Metro Mobile's belief that only the landline and cellular parties can possibly develop an arrangement that adequately considers all of the technical and administrative realities in the industry. Since Metro Mobile views cellular to landline interconnections as carrier to carrier interconnections, Metro Mobile maintains that negotiated settlements and contractual agreements are more indicative of relationships existing between the entities. Metro Mobile believes that many aspects of the technical and business relationship are neither appropriately nor adequately defined by tariffs. Examples of these matters include testing and maintenance of service procedures, intercarrier compensation agreements, joint planning and provisioning procedures, and supporting forecasting requirements. Since the cellular industry is new and rapidly evolving, Metro Mobile contends negotiated settlements and contractual agreements are more efficient than tariffs and may prove to be more flexible. The position advocated by Metro Mobile does not circumvent Commission's authority since it is recommended that any resultant contract be submitted to the Commission for evaluation to ensure conformance with the public interest. It is Metro Mobile's final recommendation that the Commission make some basic policy decisions to serve as a framework in which the parties could successfully negotiate.

The local exchange companies with one exception advocate interconnection agreements governed by tariffs rather than contracts. Southern Bell contends that this issue is interwoven with the issue of the status of cellular carriers relative to LECs. While interexchange carriers take services under tariffs, the independent telephone companies interconnect with the public switched network pursuant to contracts for the joint provisioning of service. Southern Bell's position is that the cellular providers offer the public an extension of local telephone service or a premium service and that the interconnection making the service possible should be tariffed. According to Southern Bell, tariffs have the advantage of having been filed with the Commission, subjected to whatever review process the Commission desires and exposed to all persons who might take services under the tariffs. Carolina Telephone also advocates tariffs rather than contracts. Carolina Telephone contends that tariffs are the best means to ensure equal treatment and to allow for close Commission oversight and are less costly to administer than individual contracts. The Public Staff also endorses the use of tariffs rather than contracts for reasons similar to those advanced by Southern Bell and Carolina Telephone.

Central Telephone Company (Centel), unlike the other LECs, advocates contracts rather than tariffs on the basis that contracts allow more flexibility.

The Commission has carefully considered this issue and believes that the most equitable resolution of the matter is for the cellular carriers and the local exchange companies to enter into negotiations for the purpose of developing contractual interconnection agreements. The Commission believes that a negotiated settlement will result in an agreement that is the most just and equitable to the parties involved. Contractual agreements offer greater flexibility. The Commission concludes that the landline telephone companies and cellular carriers should begin negotiations immediately upon issuance of this Order and should report the results of such negotiations to the Commission at 30-day intervals. Upon satisfactory conclusion of the negotiations, the parties shall submit the contractual agreements for review by the Public Staff and approval by the Commission. The approved contractual arrangements shall be filed with the Commission and be available for review by any interested individual. In the event a mutually satisfactory agreement cannot be achieved by the parties, the matter should be referred to the Commission for ultimate resolution.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 5 THROUGH 7

The matter of appropriate compensation was addressed by all parties in the proceeding. The cellular carriers collectively advocate joint provisioning of service by the cellular and landline companies. Joint provisioning of service entails a sharing of trunking cost between the cellular and landline switches by landline telephone companies and cellular carriers as well as reciprocal payment for costs incurred in terminating traffic on the LECs' facilities as well as cellular carriers. In the cellular companies' view, LECs should compensate cellular companies for the cost of calls originated on the landline companies' facilities or land-to-mobile calls. Alternatively, the cellular carrier would compensate LECs for the cost of calls terminating on LECs' facilities or mobile-to-landline calls. The cellular carriers contend that the local serving area of the cellular system should be its Cellular Geographical Service Area (CGSA). The cellular carriers assert that the rate treatment for cellular calls within the CGSA should be uniform in order to avoid customer confusion and discriminatory treatment. The cellular companies concede that a cellular system may be used to complete calls across landline toll boundaries but contend that such a conclusion does not automatically lead to the result that the cellular systems will have any significant impact on basic telephone service rates in North Carolina. Metro Mobile witness Witze testified that the contention made by certain parties that every cellular call crossing a landline toll boundary represents a call which would have been made on the landline system absent cellular services is fallacious. Witness Witze further contends that some cellular calls which cross landline toll boundaries might likely not cross landline boundaries if placed over landline facilities. The cellular carriers also contend that cellular service will serve to stimulate long haul intraLATA and interLATA toll calling and thus may provide an increased source of revenues for the landline companies. Since short haul toll is generally believed to be less profitable than long haul toll traffic, the cellular companies assert that cellular service may actually have a positive impact on the LECs' toll service profitability. Metro Mobile contends that only with reliable empirical data can the Commission properly address this issue. Metro Mobile suggests that the Commission could require the cellular carrier and LECs to conduct a study to determine the level of diverted or lost toll resulting from cellular service.

Southern Bell proposed to charge cellular providers usage sensitive rates for interconnection with the landline facilities. Southern Bell witness Williams testified that cellular companies are high volume users with usage rates 11 to 12 times that of typical PBX customers and because of that fact usage sensitive rates are properly reflective of the increased burden placed on the public switched network by cellular providers. Southern Bell argues that usage sensitive rates are appropriate for persons that utilize the public switched network as a part of a telecommunications business. In Southern Bell's view telecommunications service providers should not be subsidized by any other user of the public switched network and the most appropriate way to achieve this result is to use usage sensitive pricing. The charges Southern Bell proposes to implement for interconnection are primarily taken from tariffs already approved by the Commission in prior dockets. An exception to this, however, relates to four-wire connecting circuits and four-wire trunking terminating equipment which are elements required by the cellular industry. Southern Bell believes that most cellular providers will take a two-way, four-wire trunk circuit which will connect the cellular provider's mobile telephone switching office (MTSO) with the wire center serving that MTSO. This trunk (or trunks) will provide the interconnection between the cellular system and the public switched network. In addition, the cellular provider may desire to purchase facilities from the local exchange company to connect the cellular providers' MTSO with the various antennas located throughout the cellular carrier's CGSA. For present purposes, however, the pricing of the interconnection with the public switched network is the main issue in dispute.

The components of the circuit necessary for the interconnection of the MTSO and the serving wire center can be defined as the trunk termination equipment, which is the equipment located in the telephone company's serving wire center and the four-wire circuit itself. Southern Bell has proposed a nonrecurring installation charge of $98 for the four-wire trunk termination equipment located in the serving wire center and a monthly recurring charge for that equipment of $82. For a four-wire circuit, Southern Bell proposes a separate nonrecurring installation charge per trunk of $237, and the monthly recurring rate for that four-wire circuit of $25, plus the measured trunk rate. The measured trunk rate consists of two components, a minimum charge which is paid irrespective of actual usage and the usage charge itself. The usage charge is 6¢ for each initial minute or fraction thereof and 2¢ for each additional minute thereafter. These usage charges apply only to messages originating on the cellular system and are subject to an off-peak discount of 50%. In addition, each customer's bill is subject to additional discounts, depending on the size of the customer's bill.

Southern Bell asserts that there is no question that cellular configurations create the potential for toll bypass. While Southern Bell agrees that there may be some toll displacement, it concedes that the quantity of potential loss is uncertain at this time. Therefore, Southern Bell suggests that the toll displacement issue be deferred pending empirical evidence of the amount of toll displacement. Southern Bell's proposal is predicated upon the implementation of the rates offered by Southern Bell. Southern Bell believes the rates it proposes will help to support the local exchange service and cannot reasonably be said to be a hindrance to the cellular industry's well-being and growth. As a result Southern Bell submits that its tariffs should be approved.

GTSE's proposed interconnection rates are based upon usage as well as switched access connection charges. The structure of GTSE's rates is the Federal access tariff as approved by the FCC. It is GTSE's belief that the access charge methodology accurately reflects the underlying costs, inclusive of an appropriate rate of return, of providing access to the local exchange network. GTSE witness Banzer testified that the cost per minute of use per mile of the traffic sensitive portion of exchange access service is essentially the same regardless of whether the usage is for total state or interstate purposes. In witness Banzer's opinion traffic sensitive cost elements are indifferent to the type of usage being transmitted over the network. Likewise this is true for common plant and equipment that is used for exchange access, whether the equipment is used for local, intrastate, or interstate calling. GTSE's proposed charges relate to total access minutes regardless of the originating or terminating point of the call. Whether the call originates on the cellular system or from the landline network, access minutes are calculated based upon the total time the switch is being utilized regardless of origination. In summary, GTSE believes that its tariff, mirrored on its federally-filed access charge tariff and based on Parts 67 and 69 allocation procedures, is fair and reasonable for both GTSE and those cellular companies which seek to interconnect with the network.

Centel advocates interconnection rates which cover the costs of facilities used to provide interconnection. Centel believes a rate structure including an element for usage would best ensure that the rates to cellular companies cover relevant costs. Centel witness Rawn proposes usage rates which would apply to all minutes of use originating from or terminating in Centel's local exchange network. Witness Rawn also proposes to apply a flat rate to cover the nontraffic sensitive costs for the connection between the serving central office and the cellular company's switching location.

Carolina Telephone advocates usage sensitive charges. It is Carolina Telephone's contention that usage sensitive rates are needed to ensure that cellular carriers, who are high volume users, pay for the full costs imposed on the local exchange companies' systems. Carolina Telephone further contends that cellular interconnection rates should be set high enough to avoid the possibility that the cost of cellular interconnections will be subsidized by the local ratepayer. Carolina Telephone advocates inclusion of some level of contribution to local rates in the established interconnection rates.

The Attorney General contends it is imperative that the rates approved for cellular carriers be no different for services provided by LECs for analogous service offerings to other customers. The Attorney General advocates a tariff structure which charges variable costs services such as switching costs on a usage sensitive basis and charges common usage of fixed costs on a flat rate basis. The Attorney General contends that the record in the case does not provide sufficient evidence regarding the impact of cellular toll bypass on LEC services. Thus, the Attorney General urges caution in applying any charge analogous to the Carrier Common Line Charge (CCLC) which is levied upon interexchange carriers utilizing switched access services of the LECs.

The Public Staff advocates a separate usage sensitive cellular access tariff similar in function to the long-distance access tariff. The Public Staff views cellular service as a unique and new form of service and requires a new and unique tariff for the necessary interconnections. Although it might be possible to rate the service based on elements taken from the general subscriber tariff or the existing access tariff, the Public Staff believes that the cellular business does have a special status and that a special tariff is the most appropriate way to ensure that cellular companies are given the proper treatment.

The Public Staff recommends application of access charges very similar to those applicable to AT&T-Communications and other long-distance carriers for facilities furnished by the LECs. In addition to the access charges, the Public Staff recommends application of additional rates proposed by Southern Bell to cover the DID and four-wire facilities required by the cellular carriers which were not encompassed in the access charges.

There was little disagreement among the parties that the rates for cellular interconnection should be usage sensitive. There was however no agreement as to a specific level of rates or as to the applicability of usage sensitive rates to mobile-to-land or land-to-mobile calls or all calls.

Both Southern Bell and the Public Staff in its revised testimony recommended that usage sensitive rates be applicable for mobile-to-land local calls and that a monthly flat rate apply to cover land-to-mobile local calls and nontraffic sensitive costs. GTSE's proposed access charges would apply for both mobile-to-land and land-to-mobile calls. The Public Staff had initially recommended charges for usage in both directions but in revised testimony pointed out that in cases in which both local and long-distance incoming calls were handed off to the cellular company by the serving LEC, there is no means of distinguishing between an incoming local call and an incoming long-distance call. Because this technical problem prevents the LEC from distinguishing between these types of incoming calls and because the Public Staff took the position that access charges should not apply to the cellular carrier for terminating land-to-mobile long-distance calls, the Public Staff revised its testimony. In its revised testimony, the Public Staff proposed to limit application of the usage sensitive access charge to mobile-to-land local calls and to impose the monthly flat rate to cover land-to-mobile calls and any other nontraffic sensitive costs not otherwise covered.

The Public Staff recommended application of the same switched access charges less the carrier common line charge that are applicable to certified intrastate long-distance carriers. Public Staff witness Carpenter testified that the carrier common line charge should not apply since the monthly flat rate would cover the nontraffic-sensitive costs. The Public Staff further concludes that usage sensitive charges equal to the sum of switched access charges which are applicable to the long-distance carriers should apply to cellular carrier for mobile-to-land calls. A monthly flat rate equal to 80% of the respective LEC's business individual line (B-1) rate should apply to each access line in the Public Staff's view. In addition, the Public Staff advocates that charges equal to each of the LECs' respective DID number rates which are applicable to regular PBX trunk customers should apply and the four-wire channel and four-wire trunk termination rates and charges proposed by Southern Bell should apply. The Public Staff believes that the rate application it proposes is reasonable and fairly balances the interests of the cellular companies on the one hand and the local service customers of the LECs on the other hand.

The Public Staff contends that it is clear to the extent that a cellular customer uses the facilities of a cellular carrier to complete intraLATA long-distance calls in lieu of using LEC facilities and incurring intraLATA MTS charges, the long-distance revenues of the local exchange companies will be reduced. However, the Public Staff concedes that it is not clear at the present time the extent to which toll diversion will occur.

The Public Staff contends that the toll diversion problem is very similar in nature to the toll diversion problem relating to intrastate long-distance carriers in Docket No. P-100, Sub 72. In that docket, the Commission established a compensation plan which was intended to avoid a negative impact on local exchange companies and, eventually, on rates for basic local service, because of the facilities-based long-distance carriers' handling unauthorized intraLATA long-distance calls.

The Public Staff contends that the Compensation Plan is a suitable mechanism for addressing the potential loss of intraLATA MTS revenue due to intraLATA competition from facilities-based cellular carriers. Although the Public Staff concedes the plan has some anomalous results as pointed out in the hearing, it believes the plan is not unlike the provisions which were established for Centel Cellular in the Greensboro area. Under the Public Staff's plan, each cellular customer will be assigned a single landline local calling area and his calls within the cellular service area will, for purposes of the Cellular Compensation Plan, be treated as local or long-distance according to whether that call would be local or long distance from the customer's assigned local calling area. As in the Compensation Plan which was developed in Docket No. P-100, Sub 72, calls completed over LEC facilities which provide revenue equivalent to that which the LECs would realize from intraLATA MTS would not be subject to compensation. The cellular carriers are able through the use of their radio facilities to avoid the access charges which are applicable to long-distance carriers. Because of the lack of that additional revenue source for the LECs, the Public Staff believes the LECs will not realize sufficient revenue from the use of WATS by the cellular carriers to completely exclude the cellular carriers' use of WATS from the Cellular Compensation Plan. To ensure compensation to replace average intraLATA revenue per minute, the Public Staff advocates a Cellular Compensation Plan which would apply in those cases in which WATS facilities are used but access charges are not applicable. An example of such a case is a mobile-to-land call where the cellular switch is reached by the mobile-through-radio facilities and the call is extended from the switch to the landline station through WATS facilities.

As to the use of foreign exchange facilities or other LEC-provided facilities used in an effort to provide intraLATA long-distance service without the use of intraLATA MTS, the Public Staff contends that unless authorized such facilities should 'not be made available on an intrastate basis. If such facilities are furnished by the LECs for interstate purposes but are used incidentially or otherwise for completion of intraLATA calls, the Public Staff believes compensation must be paid for such use to the LECs. The Public Staff cites an exception to this; namely, the use of foreign exchange service as authorized by the Commission for Centel Cellular in Docket No. P-150. The Public Staff believes this type of arrangement with restrictions as imposed in the Centel case may be used by other cellular carriers.

There was some discussion during the hearing over the use of 21¢ per minute as the appropriate level of revenue to be used in the Cellular Compensation Plan. In the Public Staff's opinion, the 21-cent revenue amount is reasonable to use as the target for a Cellular Compensation Plan.

The Public Staff believes that the Compensation Plan is necessary for the protection of the interests of the basic local exchange subscribers and that the Plan can be administered on a reasonable basis. In the Public Staff's opinion, implementation of such a plan will provide consistent treatment between the long-distance carriers and the cellular carriers in the area of intraLATA long-distance calls.

The Commission has carefully considered the issue of appropriate compensation for interconnection by the cellular carriers with the LECs as well as the issue of lost toll revenue.

Though the FCC in its order appears to dictate common carrier status for cellular carriers, the FCC specifically does not speak to the appropriate compensation arrangements. That matter is left to the carriers themselves as well as state regulatory jurisdictions. However, the FCC does indicate that cellular carriers are not to be treated as end users nor as interexchange carriers. The Commission does not believe the designation of co-carrier status is the determinative factor in the compensation arrangement. It is evident to the Commission from the evidence presented in the case that the benefits of interconnection accrue primarily to the cellular carriers. Indeed, interconnection with the landline companies is imperative to the operations of the cellular carrier. However, the converse relationship does not apply. Thus the joint cost provisioning proposal advanced by the cellular carriers does not properly reflect the direction of the flow of benefits derived from interconnection since the flow of benefits appears to generally accrue to the cellular carriers. The Commission therefore concludes that the cellular carriers should compensate the LECs for the costs incurred by the LECs to provide for interconnection. Competitive economic pricing theory would dictate that the appropriate pricing structure is one where the price is established to equate the marginal revenue or marginal benefits of the service provided are equated to the marginal costs. The marginal benefits to the general body of landline customers for cellular interconnection appears to be quite low.

Though there are generally believed to be positive externalities (current subscribers find their telephone service more valuable) associated with the addition of customers to the system, it seems clear that those positive externalities diminish as the calling scope becomes larger. This phenomenon is frequently evidenced in EAS matters where the polling results involving large and small exchanges is frequently negative in the large exchanges. It is noted that the currently approved CGSAs are located in the larger population areas in North Carolina. Although it can be reasonably argued that specific individuals may find significant benefits in making landline-to-mobile calls, it is seemingly obvious that the general body of landline subscribers will derive little or no benefit from such increased calling scope. Thus, the Commission believes that the cellular carriers seeking interconnection with the LECs should bear the cost of interconnection.

The issue of the specific appropriate rates for interconnection was a matter in much dispute in the proceeding. As previously discussed, the Commission believes that a negotiated settlement of the specific rates and charges will lead to the most just and equitable resolution of the matter. The Commission does however recognize that a general consensus was developed by a number of parties in the case as to the propriety of usage sensitive rates. The Commission concludes that it is appropriate in the negotiation process for parties to develop rates which include a usage sensitive component to cover traffic sensitive or variable costs.

The issue of cost based rates versus rates inclusive of a contribution element was debated in the case. The cellular carriers generally advocate cost based rates while the LECs would include varying levels of contribution in the rates. The Commission believes that rates based upon the economic costs of providing the service are appropriate and more clearly reflect the true costs of providing interconnection service. While the inclusion of a contribution element in the rates may serve to lower basic exchange rates for landline customers for a time, such a procedure seems quite inappropriate in the emerging competitive environment. Such contribution would in all likelihood be short-lived and might result in significant harm to the cellular carriers. Thus the Commission finds that the rates negotiated should be based upon the economic costs of providing the service.

The related issue of toll displacement was also a matter very much in contention in the case. Since the cellular service area licensed by the FCC and landline local service areas are not contiguous, the potential exists for cellular calls to be placed which cross landline companies' local service boundaries. Such an event could result in the loss of toll revenue by the LECs. The Commission believes that the arguments advanced by the cellular carriers regarding the merits of allowing local calling within the CGSA are compelling and have merit. The Commission believes that establishing restricted local calling areas within a CGSA so as to superimpose the landline companies' local calling areas upon the cellular companies' service territory may well be unworkable and contrary to the public interest in this instance. The Commission does however believe toll revenues lost by the LECs as a result of the cellular calls crossing landline boundaries reflect an economic cost to the LECs of providing the interconnection service. However, no competent empirical evidence was presented in the case to quantify lost toll revenues. Thus the Commission finds that a joint study should be undertaken by the LECs and the cellular carriers involved in cellular operations in an attempt to quantify toll revenues lost by the LECs. Since the data is not available at present, it is not appropriate that lost toll revenues be considered in the initial agreements reached between the LECs and the cellular carriers. The Commission suggests that the study begin at the earliest practical date and be conducted for a period of no less than six months. The results of such a study should be presented for review and comment by the Public Staff. The Commission will thereafter evaluate the merit of the study results and determine the appropriate disposition of the matter.

## EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 8

Rates for interconnection with the cellular companies were filed by four local exchange companies: Southern Bell, General, ALLTEL-Carolina, and Lexington Telephone Company. The rates of Southern Bell, ALLTEL-Carolina, and Lexington were intended to cover the offering of Type 1 interconnection in accordance with an industry standard termed TA-76. Although at least some of the cellular carriers had ordered and had in service at the time of the hearing in this docket Type 1 interconnection, the cellular carriers indicated a desire for the opportunity to subscribe to Type 2 interconnection in either of its two forms, Type 2A, offered from a tandem local exchange company switch, or Type 2B, furnished directly through high traffic trunks from a local exchange company end office. The Type 2 connection is described in an industry standard termed TA-NPL-000145 and was generally described by witnesses as an interoffice - trunk type connection that resulted in the cellular office resembling a Class 5 office to the local exchange, with respect to the call routing functions performed by the local exchange end-office for the cellular carrier. Raleigh-Durham MSA witness Midgely testified that TA-NPL-000145 had gone through the industry review process but had not yet been published at the time of the hearing. The offering of GTSE in Durham is similar to a Type 2A in the handling of local calls in that on a land-to-mobile call it will forward seven digits to the cellular carrier's point of presence (POP) after the carrier's dedicated NNX is received. On a call orginated at the mobile station and terminated in a landline station in the Durham local calling area, the call will proceed through the cellular carrier's system to the Durham point of presence (POP) and from there it will be handed off to GTSE to distribute to the called land station.

GTSE's interconnection offering in Durham differs from a true Type 2A arrangement in that, among other things, there is no provision for calls originating from or terminating to land stations other than those within the Durham local calling area. Carolina Metronet, the cellular carrier to which GTSE was furnishing this type of interconnection, was planning to route all toll traffic (i.e., calls to or from land stations outside the CGSA) through its interconnection facility with Southern Bell in Raleigh, rather than through the Durham interconnection. To the extent that the costs of a true Type 2 arrangement differs from the simplified arrangement offered by GTSE, GTSE's proposed rates are not appropriate for a true Type 2 interconnection and in fact may not cover the cost of Type 2 interconnection.

Southern Bell indicated a willingness to study the feasibility and cost of Type 2 interconnection and the distributed NNX arrangement but was not in a position to price the service at the time of hearing.

The Commission concludes that, in those areas in which the cellular companies have expressed an interest in Type 2 interconnection and distributed NNX arrangements, the local exchange companies should be encouraged to offer to the cellular carriers on a timely basis rates and charges applicable to that service and to provide the arrangements which the cellular carriers desire, if technically feasible. The rates and charges for such arrangements must cover all costs of providing the arrangement including any extraordinary costs involved. The Commission believes this decision conforms with the FCC's stated general interconnection policy for cellular systems. Specifically, the FCC determined that "a telephone company is required to provide a form of interconnection to non-wireline carriers no less favorable than that used by the wireline cellular carrier and a form of interconnection that is reasonable to the particular cellular system to be negotiated by the cellular carrier and the LEC. The cellular carrier is entitled to reasonable interconnection, the form of which depends on the cellular system design and other factors. Cellular carriers are entitled to interconnection arrangements that minimize unnecessary duplication of switching facilities and the associated costs to the ultimate consumer." The FCC recognized that "the terms and condition of interconnection depend on innumerable factors peculiar to the cellular system, the local telephone network and the local regulatory policies." On that basis, the FCC found that the terms and conditions of interconnection were matters to negotiate in good faith by the cellular carrier and the LECs. The Commission thus concludes that the FCC policy is determinative of this matter and that cellular carriers are entitled to the type of interconnection that is reasonable given its system design providing there are no technical barriers to providing such service. The terms and conditions of interconnection should be negotiated in good faith by the cellular carrier and the LEC. However, rates relating to interconnections should cover all costs incurred by the LEC in providing such interconnection.

## EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 9

The cellular carriers contend that control over the telephone numbers of cellular subscribers should reside with the cellular companies. Pursuant to a nationwide agreement, the telephone industry has reserved two NXX codes in each market exclusively for cellular use, one for the wireline and one for the nonwireline. Thus, the cellular carriers contend each cellular carrier has been reserved an exclusive 10,000-number NXX code. The cellular carrier thus maintains that there should be no charge for telephone numbers except initial set-up costs.

Southern Bell asserts that, with the Type 1 interconnection currently available, the telephone numbers assigned to each cellular provider are maintained in the Southern Bell switch. Southern Bell also provides the appropriate messages to persons calling inactive numbers.

The cellular provider whose CGSA straddles several exchange areas takes numbers for cellular use from each exchange. In order to allow the use of one NXX with the Type 1 interconnection, Southern Bell has agreed to "split" NXXs if the cellular providers want this service, although the price has not been determined. The "split" NXX would allow the use of a single 10,000-block of numbers (a single NXX) in the CGSA, but assigns specific portions of the 10,000-number block to specific home exchanges. Using this arrangement, a call outside the home exchange would result in a toll call. In the event that the price of the "split" NXX is not acceptable, then the Type 1 interconnection would be utilized with different NXXs in each different toll-free calling area.

Under Southern Bell's tariff, utilizing a Type 1 interconnection, Southern Bell proposes to charge cellular providers the same amount and to furnish numbers in the same fashion as Southern Bell does for the other users of numbers in its service area. Like the measured usage rate, Southern Bell contends that the numbers charge is merely an incorporation of existing and previously approved tariff rates which are as applicable to the cellular providers as other North Carolina customers. Under its tariff filing, there will be an initial charge of $886.00 for establishing the trunk groups between the MTSO and serving wire center and for the first 20 numbers. The recurring charge of $19.25 per 100 numbers for additional numbers simply reflects what any other person requiring numbers will pay in North Carolina.

The cellular providers have objected to the fact that an alternative form of interconnection is not available under Southern Bell's proposal and have objected to both the numbers charge and the lack of a "distributed" NXX. The alternate interconnection arrangement which the cellular providers seek is often referred to as a Type 2 tandem interconnection. Under this form of interconnection, the MTSO is connected directly with Southern Bell's tandem switch and the serving wire center is eliminated entirely. In these circumstances, the MTSO in essence becomes an end office and the entire block of 10,000 numbers would reside in the cellular provider's switch. At the same time, the cellular providers want the number charges eliminated.

In the interim, with regard to the Type 1 interconnection, the cellular providers want a "distributed" NXX which allows any landline caller to reach any mobile phone in the CGSA, irrespective of the relative geographic relationship of the calling and called parties. This would allow the use of a single NXX within the CGSA and would relieve the cellular providers of the requirement that numbers be secured in each exchange.

In its April 7, 1986, comments to the FCC order, Southern Bell concedes that it may be beneficial to have the parties meet for the purpose of discussing the provisioning of numbers to see if an accommodation or agreement can be reached.

The Commission believes that the FCC order is a controlling factor on this matter. In its March 5, 1986, Memorandum Opinion and Order in FCC 86-85 the FCC concludes the following regarding telephone numbers:

"NXX Codes and Telephone Numbers Telephone companies administer the assignment of NXX codes and telephone numbers under the North American numbering plan in World Zone one. They do not 'own' codes or numbers, but rather administer their distribution for the efficient operation of the public switched telephone network. Accordingly, telephone companies may not impose recurring charges solely for the use of number. Companies may impose a reasonable initial connection charge to compensate the costs of software and other changes associated with new numbers. Cellular telephone companies are part of the network and are entitled to reasonable accommodation of their numbering requirements on the same basis as an independent wireline telephone company. We expect telephone companies responsible for the administration of the number plan to accommodate the needs of cellular carriers for NXX codes and telephone numbers in accordance with the status of cellular companies as providers of local exchange service." See generally Amendment of Part 22 (A/B Switch), CC Docket No. 85-25, FCC 85-539, 50 Fed. Reg. 45,843, released October 11, 1985.

Based upon the foregoing the Commission concludes that the LECs may impose a reasonable initial charge to compensate for the costs of software and other charges associated with new numbers. The LECs may not charge recurring charges solely for the use of numbers. However, recurring charges may be appropriate in situations where the LECs incur recurring costs in providing service in this regard. The Commission believes and so concludes that it is appropriate for the parties to attempt to negotiate the appropriate rates and charges associated with telephone number provisioning.

IT IS, THEREFORE, ORDERED as follows:

1. That the cellular carriers and affected local exchange companies shall begin immediately to enter into negotiations for the purpose of resolving the specific rates, charges, and terms of cellular interconnection to the landline telephone companies' facilities to be finalized in a contractual agreement. The progress of such negotiations shall be reported to the Commission in 30-day intervals.

2. That upon successful completion of negotiations, the affected parties shall file proposed contractual agreements with the Commission. The Public Staff shall have 20 working days thereafter to review and comment upon such agreements. An Order approving the agreements or modifying such agreements shall be issued thereafter.

3. That approved contractual agreements shall be filed with the Commission for review by any interested individual.

4. That in the event an agreement cannot be reached by the parties, the matter shall be referred to the Commission for appropriate disposition.

5. That the LECs and cellular carriers shall jointly undertake a study to determine the level of displaced toll revenues resulting from cellular service. The status of such study shall be reported to the Commission six months from the date of this Order.

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

NORTH CAROLINA UTILITIES COMMISSION
Sandra J. Webster, Chief Clerk

(SEAL)

DOCKET NO. P-100, SUB 80

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

| In the Matter of | | |
|---|---|---|
| Investigation to Consider Optional Program<br>Established by the Federal Communications<br>Commission to Assist Low Income Telephone<br>Consumers Through an Interstate Residential<br>Subscriber Line Charge Waiver Mechanism | )<br>)<br>)<br>)<br>) | ORDER APPROVING<br>INTERSTATE SUBSCRIBER<br>LINE CHARGE WAIVER<br>MECHANISM |

BY THE COMMISSION: In June 1985 the Federal Communications Commission (FCC) implemented a $1.00 per month "interstate subscriber line charge" for residential and single line business telephone consumers. This charge will be increased to $2.00 per month in June 1986. Specifically, the FCC stated that it would establish:

> "...an optional program providing for a 50 percent reduction in the subscriber line charge for customers meeting a state established means test subject to verification. The revenue shortfall would be funded through the interstate carrier common line charge. States taking advantage of this assistance mechanism would be required to make an equal monetary reduction in the local exchange rate for subscribers who qualify for the subscriber line charge reduction. The reduction in local rates would be funded from intrastate sources..."

Based on the foregoing, on March 28, 1985, the Commission issued an Order instituting an investigation to determine whether a program should be implemented in North Carolina to aid low income households through the interstate residential subscriber line charge waiver mechanism and soliciting comments from parties having an interest in issues related to the investigation.

Many of the comments which were filed in April expressed the belief that the Commission lacked the legal authority to implement a waiver for low income subscribers based on the following statutory law and the Commission's own ruling:

G.S. 62-140(a) which then provided that -

> "No public utility shall as to rates or services make or grant any unreasonable preference or advantage to any person or subject any person to any unreasonable preference or disadvantage. No public utility shall establish or maintain any unreasonable difference as to rates or service either as between localities or as between classes of service."

Docket No. E-100, Sub 36, wherein the Commission stated that:

> "The North Carolina General Statutes give no explicit authority to the Commission to appropriate money to 'needy' consumers to help them pay their electric bills. The Commission is expressly prohibited by

G.S. 62-140 from approving discriminatory rates which would intentionally tax some consumers so that other low usage and/or low income users may be subsidized. Until such time as the General Assembly grants authority to the Commission to implement a lifeline rate, the Commission is prohibited from doing so."

Subsequently, the General Assembly ratified House Bill 1010 which amended G.S. 62-140 and allows the Commission to reduce local telephone rates for low income residential consumers who meet a means test established by the Commission in order to match any reduction in the interstate subscriber line charge authorized by the FCC. (Appendix A).

The bill also adds a new section to G.S. 105-130.38 which allows local telephone companies to receive a tax credit to recoup the reduced charges.

On August 12, 1985, the Commission issued an Order Requesting Further Comments. Most of the parties who addressed the issue of what means test should be established suggest using one or more of the existing assistance programs.

Supplemental Security Income (SSI)
Low Income Energy Assistance
Food Stamps
Aid to Families with Dependent Children (AFDC)
Medicaid

On November 20, 1985, the Commission issued an Order Requiring Information to determine the feasibility and effect of using either AFDC or SSI, or using both AFDC and SSI as the means test. In addition, the Commission concluded that the assistance of the Department of Human Resources is vital if a waiver is to be implemented to assist low income telephone subscribers. Therefore, the Commission required that Southern Bell Telephone and Telegraph Company, Carolina Telephone and Telegraph Company, and Continental Telephone Company meet together with officials of the Department of Human Resources to gather certain specific information as set forth herein. (Appendix B).

On January 10, 1986, Southern Bell filed the "Committee Response to Commission Order of November 20, 1985." The Committee Response contains the recommendations of Southern Bell, Carolina Telephone Company, Continental Telephone Company, and the Department of Human Resources which resulted from their joint discussions.

The General Procedural Recommendations are as follows:

Subscribers eligible for the waiver could receive initial notification of their eligibility from the agency involved. This notification could accompany the regular monthly check. An application form would also be included (Appendix C). Without the recipient's signature on this application/release, the agencies involved would be unable to certify eligibility for the waiver. It should be noted that the ability to readily notify program recipients varies by agency and by program. For example, SSI recipients would have to be notified through some other means due to the national scope of this program. The Committee Response also pointed out that "Recipients of the Food Stamp program, although not mentioned by the Commission in its Order, would be administratively easier to notify than AFDC recipients according to the Division of Social Services of the Department of Human Resources. The telephone companies would accumulate all application forms and apply the credit on the subscribers' monthly bills (an explanation would appear on each telephone bill).

The telephone companies would, either coincident with or at a later date, announce the availability of the waiver in bill inserts accompanying the regular monthly billing. The availability of this waiver to specified customers would also be announced in news releases to various media. Following the initial notification and the provision of application forms by any agency involved, procedures would have to be developed for advising and providing new applicants with information about the waiver and copies of the application form. Agency case workers would more than likely be responsible for providing this information. In some cases, the form might have to be provided prior to some people being certified for a program. State and federal representatives have said it would be cost prohibitive for them to provide the application after eligibility for benefits is determined. (There is a possibility that AFDC recipients could be mailed an application after their eligibility for AFDC is determined.) However, it is noted that providing the application at the time the client applies for benefits will increase the risk of error or of fraud.

The telephone companies would certify eligibility semiannually by providing the agency involved with a computer tape containing files of all waiver recipients by name, address, social security number, date of birth, etc. The agency will compare this listing with its files of program recipients and provide the respective telephone company a list of names of persons no longer eligible for the waiver. Participants who are not matched in this process will be notified by the respective telephone company that waiver eligibility would be discontinued.

This procedure means that if a person is denied eligibility in a program, but maintains his or her telephone service, the credit will continue to be applied until the semiannual certification of eligibility is completed.

The Committee Response states that this procedure can be implemented by the three telephone companies involved in the preparation of this document. It can be assumed that other telephone companies in the State might not have a billing system that is capable of crediting customer bills on a monthly basis. Additionally, they may not be able to provide a computer tape to certify eligibility.

The Committee Response included the following request:

> "In order to develop the most efficient system possible and to verify our ability to certify eligibility with the agency involved, we recommended that this proposal be tried in three North Carolina counties if the governmental agencies can mail an application to their clients on a county basis only. Counties could be selected so that they would be served by Carolina Telephone, Continental, and Southern Bell. Neither the agencies that might be involved nor the telephone companies have any experience with a program such as this

> one. A trial would enable all of us to verify and test the most efficient methods possible for certifying eligibilities. We estimate that it might take from four to eight months to make the necessary arrangemnts to implement such a program."

The information requested in the November 20, 1985, Commission Order relating to estimates of the number of recipients, administrative cost and annual operating cost for AFDC and SSI recipients is summarized in Appendix D. Also, the Committee Response on its own initiative included estimates relating to food stamp recipients which are also reflected in Appendix D. Continental filed certain cost revisions on February 21, 1986.

On January 28, and January 31, 1986, intervenors, the Public Staff, Attorney General, and Legal Services filed Comments in Response to the Committee Response. All intervenors commended the committee who developed the proposed implementation plan. A brief summary of the intervenors' positions is restated here:

North Carolina Legal Services

Legal Services favors food stamps because it is the only program based solely on poverty as a criteria for eligibility. Also, Legal Services points out that of the three telephone companies involved in the proposed program, 120,708 households in their service areas receive food stamps, while only 78,750 households receive AFDC or SSI.

Legal Services disagrees with using the 90% penetration rate or, i.e., assuming that 90% of the households subscribe to telephone service. In addition, Legal Services questions the companies' estimates of costs and why the costs vary so between companies. For instance, it cost Continental seven times as much as Southern Bell to administer the waiver for AFDC recipients. Legal Services also raises the question of why it costs Southern Bell and Carolina Telpehone less money per household to implement both AFDC and SSI than for either program individually.

The following is the estimated cost per household each company has provided:

| | Southern Bell | | Carolina Telephone | | Continental | |
|---|---|---|---|---|---|---|
| | Admin. Costs | Annual Costs | Admin. Costs | Annual Costs | Admin. Costs | Annual Costs |
| AFDC | $1.00 | $3.14 | $1.79 | $2.80 | $7.77 | $1.94 |
| SSI | 1.64 | 3.41 | 2.28 | 2.87 | 7.77 | 1.94 |
| AFDC & SSI | .65 | 3.01 | 1.26 | 2.72 | 7.77 | 1.94* |

*This cost corrects an arithematical oversight contained in the Committee Report filed January 10, 1986.

The Attorney General

The Attorney General finds admirable the Committee members' apparent commitment to implementing this program. He concurs that a trial period is a prudent course of action but he requests that the trial be limited to three months with any problems occurring not be used to judge the continuance of such an undertaking.

In addition, the Attorney General urges that this Commission require implementation of the waiver program for Food Stamp recipients. The Attorney General points out that the Committee reported that notifying Food Stamp recipients would be easier and less expensive for the Department of Human Resources than notifying AFDC or SSI recipients.

The Attorney General believes that the Committee's costing data based on an assumption that 90% of the eligible population has telephone service overstates the cost of the program.

Additionally, the Attorney General states that cost to provide service appears to vary so significantly from telephone company to telephone company that it appears either that some are incredibly inefficient vis-a-vis others or that their costing methodologies are radically different from each other. For example, it costs Contel $7.77 per household in administrative costs, nearly eight times what Southern Bell states its administrative costs are ($1.00). It costs Bell $.65 to do what it costs Carolina Telephone $1.26 to do (administrative costs of AFDC and SSI combined), but it costs both significantly less than Continental's $7.77 cost to do the same thing. Absent any attempt to reconcile or at least explain these enormous differences, the Attorney General suggests that the Commission discount any assertion that cost is a significant burden on participating telephone companies.

### The Public Staff

The Public Staff believes the cost estimates for the program stated in the Committee's filing are higher than would actually be incurred. The figures are based on the assumption that 90% of the households receiving SSI, AFDC, and food stamp benefits subscribe to telephone service. Ninety percent (90%) is approximately the overall saturation rate in the State of North Carolina. The Public Staff does not believe it reasonable to assume that the percentage of low income households subscribing to telephone service is as high as the overall saturation rate.

The Public Staff believes that a program to assist low income households through waiver of the subscriber line charge should assist as many low income households as possible in maintaining or bringing telephone service within their economic means and thereby promote the goal of universal service. The Public Staff therefore supports the waiver being made available to all subscribers who receive either AFDC, SSI, or food stamp payments.

The Public Staff agrees with the Committee's recommendation that the program be implemented on an experimental basis in three counties. The Public Staff states that such an approach seems reasonable and appropriate. It is unclear from the January 10, 1986, filing how quickly the experimental program could be implemented or the length of its proposed duration. The Public Staff does not want the experimental program to delay availability of the waiver statewide any longer than necessary. The Public Staff therefore encourages the Commission to take appropriate action to expedite the implementation and completion of the experimental program. Three or four months from the issuance of a Commission Order approving such a program appears to be a reasonable time for the implementation and completion of the experimental phase.

## CONCLUSIONS

The Commissioners of the North Carolina Utilities Commission have thoroughly reviewed and deliberated on all matters filed in this docket and conclude that the program should be offered to AFDC and SSI recipients in three counties for one year. There is presently much uncertainty regarding the costs associated with the program. All intervenors believe that the cost estimates for the program stated in the Committee's filing are higher than would actually be incurred. The figures are based on the assumption that 90% of the households receiving AFDC, SSI, and food stamp benefits subscribe to telephone service. The intervenors state that 90% is approximately the overall saturation rate in the State of North Carolina. Intervenors do not believe that the percentage of low income households subscribing to telephone service is as high as the overall saturation rate. The Commission believes that the Public Staff should be requested to monitor the experiment on an ongoing basis and determine the actual cost associated with the experiment and the percentage of households receiving AFDC and SSI who subscribe to telephone service. The Commission believes that this information would enable all parties to evaluate the efficiency and cost effectiveness of the program. While the Commission grants the request to initiate the experiment in three counties by three telephone companies, additional counties and/or telephone companies may be added during the course of the experiment.

IT IS, THEREFORE, ORDERED as follows:

1. That within 15 days from the issuance of this Order Southern Bell, Carolina Telephone Company, and Continental Telephone Company shall file with the Commission the names of three counties in each company's service area where the interstate subscriber line charge waiver could be implemented. One of the three counties submitted should have the largest number of AFDC and SSI recipients within the service area. The Commission will select one of the three counties in each service area and will notify the parties which three counties have been selected.

2. That upon receiving notification of the three counties that have been selected, the aforementioned telephone companies shall coordinate with governmental agencies and shall prepare to implement the subscriber line charge waiver to recipients in those counties who receive AFDC and SSI. The earliest date upon which the waiver can be made available shall be filed with the Commission.

3. That the waiver shall be 50% of the interstate subscriber line charge throughout this experiment.

4. That the interstate subscriber line charge waiver experiment shall continue for one year from the beginning date of the experiment and thereafter until the review of the experiment is concluded.

5. That this Order shall be filed with the Secretary of the Federal Communications Commission (FCC), 1919 M Street, N.W., Washington, D. C. 20554, for approval of matching funds.

6. That this Order shall not become final until notice of approval of matching funds is received from the FCC by the North Carolina Utilities Commission.

7. That upon receipt of notice of approval of matching funds, this Commission will issue a further Order naming the implementation date and such other matters as this Commission deems relevant.

8. The ·initial designation of three telephone companies and three counties for the 12 month experiment shall be without prejudice to adding additional telephone companies and additional counties during the course of the experiment.

9. That the Public Staff is hereby requested to monitor the experiment on an ongoing basis and determine the actual cost and the actual penetration rate and file this information with the Commission.

ISSUED BY ORDER OF THE COMMISSION.
This the 24th day of February 1986.

NORTH CAROLINA UTILITIES COMMISSION
Sandra J. Webster, Chief Clerk

(SEAL)

Commissioner Ruth E. Cook Concurs
Commissioner J. A. Wright Dissents

APPENDIX A
GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 1985
RATIFIED BILL

CHAPTER 694
HOUSE BILL 1010

AN ACT TO CLARIFY THE DEFINITION OF PREFERENCE OR ADVANTAGE IN UTILITIES REGULATION AND TO PROVIDE A CORPORATE INCOME TAX CREDIT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 62-140(a) is amended to add at the end the following sentence:

"Provided further, that it shall not be considered an unreasonable preference or advantage for the Commission to order, if it finds the public interest so requires, a reduction in local telephone rates for low-income residential consumers meeting a means test established by the Commission in order to match any reduction in the interstate subscriber line charge authorized by the Federal Communications Commission."

Sec. 2. Division I of Article 4 of Chapter 105 of the General Statutes is amended by adding a new section to read:

"§ 105-130.38. Credit for certain telephone subscriber line charges. A corporation that provides local telephone service to low-income residential consumers at reduced rates pursuant to an order of the North Carolina Utilities Commission is allowed a credit against the tax imposed by this Division equal to the difference between:

(1) The amount of receipts the corporation would have received during the taxable year from those low-income customers had the customers been charged the regular rates for local telephone service and fees; and

(2) The amount billed those low-income customers for local telephone service during the taxable year.

This credit is allowed only for a reduction in local telephone service rates and fees and is not allowed for any reduction in interstate subscriber line charges. This credit may not exceed the amount of tax imposed by this Division for the taxable year reduced by the sum of all credits allowed under this Division, except tax payments made by or on behalf of the corporation."

Sec. 3. This act is effective on January 1, 1986.

In the General Assembly read three times and ratified, this the 11th day of July, 1985.

Robert B. Jordan III
President of the Senate

Liston E. Ramsey
Speaker of the House of Representatives

## APPENDIX B
## DOCKET NO. P-100, SUB 80

Representatives of Southern Bell Telephone & Telegraph Company, Carolina Telephone & Telegraph Company and Continental Telephone Company shall work with representatives of the Department of Human Resources to develop the following information.

1. The number of telephone subscribers in your service areas who are AFDC recipients and the administrative cost associated with initial implementation of the program to AFDC recipients only and the annual cost of operating the program after initial implementation.

2. The number of telephone subscribers in your service areas who are SSI recipients and the administrative cost associated with initial implementation of the program and the annual cost of operating the program after initial implementation.

3. The number of telephone subscribers in your service area who are recipients of AFDC and SSI and the combined cost associated with initial implementation of the program and the annual cost of operating the program after initial implementation.

4. A detailed statement setting forth the methodology and all assumptions underlying the estimated costs of implementing and operating this program.

5 Southern Bell, Carolina Telephone Company and Continental Telephone Company are hereby requested to quantify the economic impact that the North Carolina Corporate income tax credit, as provided by House Bill 1010 which was enacted by the General Assembly of North Carolina in its 1985 session, will have on the cost of providing public utility telecommunications services. Specifically, such quantification shall include the extent to which the tax credit will offset or compensate for the revenue lost due to waiver of subscriber line access charges for certain low income telephone subscribers and the extent to which any residual tax credit will contribute to defraying the cost of administering this program.

6. An agreeable procedure by which the Department of Human Resources would determine and certify eligibility.

## APPENDIX C
## APPLICATION FOR
## SUBSCRIBER LINE CHARGE WAIVER

FULL NAME    SOCIAL SECURITY NO.    (AREA CODE) TELEPHONE NO.

ADDRESS    CITY    STATE    ZIP CODE

DATE OF BIRTH

I certify that I am a recipient of SSI, or AFDC [circle the appropriate program(s)] benefits and I give the local telephone company the right to verify with the appropriate state or federal agency that I currently receive these benefits.

Date    Signature

This form must be completed in full or the application will not be accepted. The credit will appear on your telephone bill within 60 days.

## APPENDIX D

| AFDC*<br>Number of Households | | Administrative Cost | Annual Operating Cost |
|---|---|---|---|
| Southern Bell | - 24,427 | $24,336 | $ 76,816 |
| Carolina | - 23,299 | 41,735 | 65,160 |
| Continental | - 1,076 | 8,360 | 2,090 |

| SSI<br>Recipients | | | |
|---|---|---|---|
| Southern Bell | - 14,797 | $24,336 | 50,502 |
| Carolina | - 17,107 | 38,955 | 49,018 |
| Continental | - 2,188 | 16,998 | 4,250 |

* Telephone companies agreed to assume 90% of the households subscribing to telephone service.

| AFDC & SSI<br>Recipients | | Administrative Cost | Annual Operating Cost |
|---|---|---|---|
| Southern Bell | - 37,263 | $24,336 | $112,022 |
| Carolina | - 38,386 | 48,509 | 104,492 |
| Continental | - 3,101 | 24,095 | 6,023 |

The Department of Social Services representative estimated that there is only a 5% overlap between these two programs, therefore, a factor of .95 was used.

| Food Stamp<br>Recipients | | Administrative Cost | Annual Operating Cost |
|---|---|---|---|
| Southern Bell | - 58,813 | $24,336 | $170,749 |
| Carolina | - 56,839 | 56,795 | 152,599 |
| Continental | - 5,056 | 39,281 | 9,820 |

DOCKET NO. P-100, SUB 80

COMMISSIONER COOK, CONCURRING: I reluctantly concur in the decision of the Majority in this case because I believe that the "experimental" waiver program adopted by the Commission is far too restrictive to be effective and will benefit only a small portion of the eligible low-income telephone consumers in North Carolina. The Commission has decided to conduct a yearlong experiment to evaluate the efficiency and cost effectiveness of the waiver program. I believe that the program should in fact be evaluated on an ongoing basis to ensure that it operates in an efficient and cost-effective manner.

I agree with the Public Staff and Attorney General that the experimental phase of the waiver program should be completed in three or four months in order to work out any problems resulting from its implementation. The experimental phase should not be used to delay any longer than absolutely necessary the availability of the waiver program statewide, nor should it be used to judge the wisdom of full implementation. A 12-month "experiment" limited to three counties in North Carolina clearly defeats the purpose and intent of the waiver program and will only serve to limit its effectiveness.

Furthermore, the companies themselves stated that four to eight months was ample time to experiment in one county in each of their services areas. Why, then, this additional delay? Moving at a snail's pace is not the way to provide relief when the Commission has the clear authority to order otherwise. Help delayed is help denied -- and I take strong exception to the Commission's action in thwarting the intent of the program. An extended experiment discriminates against those SSI and AFDC recipients who happen to reside in the "wrong" geographical area of North Carolina.

I also believe that the Majority has further limited the potential effectiveness of the waiver program by adopting a plan which will match only 50% of the interstate residential subscriber line charge. The Federal Communications Commission (FCC) announced on December 10, 1985, that it would waive the entire subscriber line charge (which is presently $1.00 and will increase to $2.00 on June 1, 1986) for eligible households in states willing to adopt a matching plan.

I support the 100% waiver plan authorized by the FCC and believe that such a plan would clearly be more beneficial to qualifying low-income telephone customers in North Carolina and would better serve to promote and maintain universal telephone service. I think it is most unfortunate that the Majority is unwilling to adopt a 100% waiver plan which would match the federal residential subscriber line charge dollar for dollar.

Instead, what the Commission has ordered is an "experimental" program that matches only 50% of the subscriber line charge. What a weak, puny program it is! It is "experimental" in nature when it should have carried with it a commitment to statewide implementation, with a brief period allowed for start-up problems. It is stretched to a year when three months would have sufficed. It is limited to three counties--cold comfort to those AFDC and SSI recipients living in the other ninety-seven, and it utilizes a 50% reduction when, according to the Legislature and the FCC, it could have been a reduction of 100%. The Commission is handing out crumbs where, in my opinion, a loaf is called for.

I have concurred in this Order for one reason and one reason alone. A beginning has been made. A small step on the long road to preserving universal telephone service has been taken.

In summary, I favor adoption of a waiver plan for qualifying recipients of SSI and AFDC benefits which would be implemented on a statewide basis as soon as possible and which would provide for the maximum waiver possible based upon a 100% matching plan.

Ruth E. Cook, Commissioner

February 21, 1986

DOCKET NO. P-100, SUB 80

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

| In the Matter of | |
|---|---|
| Investigation to Consider Optional Program )<br>Established by the Federal Communications )<br>Commission to Assist Low Income Telephone )<br>Consumers Through an Interstate Residential )<br>Subscriber Line Charge Waiver Mechanism ) | ORDER DENYING MOTIONS FOR RECONSIDERATION |

BY THE COMMISSION: On February 24, 1986, the Commission issued an "Order Approving Interstate Subscriber Line Charge Waiver Mechanism." In the aforementioned Order the Commission concluded that the waiver should be offered on an experimental basis by Southern Bell Telephone and Telegraph Company, Carolina Telephone and Telegraph Company and Continental Telephone Company to AFDC and SSI recipients in three counties for one year. The Commission Order contemplates that 50% of the subscriber line charge will be reduced in the local exchange rate and a matching 50% reduction will occur at the federal level. The Order does not become final until notice of approval of matching funds is received from the FCC by the North Carolina Utilities Commission.

On March 6, 1986, the Attorney General filed a Motion for Reconsideration. On March 13, 1986, the Public Staff filed a Motion for Reconsideration. Essentially, both the Public Staff and the Attorney General moved the Commission to include Food Stamp recipients in the program and shorten the duration of the experimental program to four months. The Attorney General requests that the Commission reconsider limiting the experiment to three counties and facilitate application of the program on a statewide basis as soon as possible. In addition, the Attorney General suggests adoption of a plan to match the FCC waiver of the full 100% of the interstate subscriber line charge. The Public Staff suggests that the Commission seek comments regarding a program under which there would be a 100% waiver of the subscriber line charge at the state level matched by a 100% waiver at the federal level.

Based upon a careful consideration of the Motions for Reconsideration filed herein by the Attorney General and the Public Staff and the entire record in this proceeding, the Commission concludes that said Motions for Reconsideration should be denied.

Notwithstanding the denial of the pending Motions for Reconsideration, the Commission concludes that some clarification and discussion is appropriate with respect to the "Order Approving Interstate Subscriber Line Charge Waiver Mechanism" entered herein on February 24, 1986. Specifically, the Commission will elaborate on its decision to initiate a reduction in local rates equivalent to 50% of the interstate subscriber line charge which must be matched by a 50% reduction at the federal level and on its decision to conduct a one year experiment in three counties using AFDC and SSI as the eligibility requirement.

Language in the first paragraph of the Notice to the Public, March 28, 1985, and the Order Requiring Information issued by this Commission on November 20, 1985, states that the FCC adopted an optional program to assist low income households through a subscriber line charge waiver mechanism whereby the FCC waives 50% of the charge provided the State makes an equal monetary reduction in the local exchange rate for subscribers who qualify under a State established means test. Therefore, this investigation requiring comments and the filing of cost data has centered around the FCC Order released December 28, 1984, in the effect at the time this investigation was instituted. That FCC Order unmistakably contemplates a 50% matching by state and federal reduction, thus completely offsets the interstate subscriber line charge for subscribers who meet the State established means test. Furthermore, the December 28, 1984, FCC Order was in effect when the General Assembly of North Carolina in the 1985 Session Ratified House Bill 1010 enabling this Commission to match any reduction in the interstate subscriber line charge. This Commission agrees with the FCC's premise that the waiver of the subscriber line charge for low income households is a necessary and appropriate first. step to ensure the preservation of universal telephone service. At this point in time, the Commission does not believe it prudent to enact or to initiate an investigation relating to a 100% matching by state and federal reductions as allowed under the FCC Order released December 27, 1985. Such a reduction would more than offset the interstate subscriber line charge. It behooves us all to balance the need for the decrease in telephone rates against the cost on the taxpayer. The Commission's jurisdiction relates to preservation of universal telephone service and the Commission's Order issued herein on February 24, 1986, is for the purpose of protecting those most likely to be priced out of the telephone market by imposition of the interstate subscriber line charge.

As to the decision not to include Food Stamp recipients, the Commission is mindful of the January 10, 1986, Committee Response to Commission Order of November 20, 1985, wherein the Department of Human Resources indicated that recipients of the Food Stamp program would be administratively easier to notify than AFDC recipients. On the other hand, the Committee Response Analysis states that "a reason not to use the Food Stamp program is the fact that it has the least stable client body." The analysis goes on to say that the administrative cost of adding and deleting these customers could be significant.

In selecting both AFDC recipients and SSI recipients, the Commission has focused on low income families with dependent children and on low income elderly and handicapped families. It should also be noted that the more recent FCC Order released December 27, 1985, specifically targets AFDC and SSI recipients.

The Commission's decision to implement the program for 12 months in three selected counties without prejudice to adding additional telephone companies and additional counties during the course of the experiment makes good administrative and economic sense for a program that is entirely new to North Carolina.

Accordingly, the Commission concludes that the February 26, 1986, Order Approving Interstate Subscriber Line Charge Waiver Mechanism is fully and lawfully supported in the record, is not discriminatory, and is in the public interest.

IT IS, THEREFORE, ORDERED as follows:

1. That the Motions for Reconsideration filed herein by the Attorney General and the Public Staff on March 6, 1986, and March 13, 1986, respectively, be, and the same are hereby, denied.

2. That the "Order Approving Interstate Subscriber Line Charge Waiver Mechanism" entered in this docket on February 24, 1986, be, and the same is hereby, reaffirmed and shall remain in full force and effect.

ISSUED BY ORDER OF THE COMMISSION.
This the 21st day of March 1986.

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

Commissioner Cook dissents for the reasons stated in her concurring opinion to the original Order issued in this docket on February 24, 1986. Commissioner Cook would allow the Motions to Reconsider which were filed by the Attorney General and the Public Staff, because they reflect her initially stated concerns.

## DOCKET NO. P-100, SUB 80

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Investigation to Consider Optional Program )
Established by the Federal Communications ) ORDER NAMING
Commission to Assist Low Income Telephone ) COUNTIES
Consumers Through an Interstate Residential )
Subscriber Line Charge Waiver Mechanism )

BY THE COMMISSION: On February 24, 1986, the Commission issued an Order Approving Interstate Subscriber Line Charge Waiver Mechanism. In the aforementioned Order, the Commission concluded that the waiver should be offered by Southern Bell Telephone and Telegraph Company, Carolina Telephone and Telegraph Company and Continental Telephone Company to AFDC and SSI recipients in three counties for one year, without prejudice to adding additional telephone companies and additional counties during the course of the experiment.

The same Order required the aforementioned telephone companies to file with the Commission the names of three counties in each Company's service area where the interstate subscriber line charge waiver could be implemented. The Order stated that one of the three counties submitted should have the largest number of AFDC and SSI recipients within the service area and that the Commission would select one of the three counties in each service area.

On March 11, 1986, Continental Telephone Company filed a letter naming three counties and the combined AFDC/SSI recipients as follows:

| County | AFDC/SSI |
|---|---|
| McDowell | 525 |
| Madison | 478 |
| Jackson | 405 |

On March 11 and March 13, Southern Bell Telephone and Telegraph Company and Carolina Telephone and Telegraph Company each filed the names of three counties but did not include the number of recipients. The Commission has since determined the approximately number of AFDC/SSI recipients in each of the specified counties and those approximations are included herein as follows:

Southern Bell

| County | AFDC/SSI |
|---|---|
| Guilford | 8,523 |
| Mecklenburg | 12,254 |
| Wake | 8,950 |

Carolina Telephone

| County | Combined<br>AFDC/SSI |
|---|---|
| Halifax | 4,703 |
| Wilson | 3,467 |
| Pitt | 4,726 |

Carolina Telephone Company recommended that Halifax County be selected since it is served from a single company business office compared to Pitt which is served by two business offices.

It is the Commission's opinion that good cause exists to initiate the interstate subscriber line charge waiver in Halifax, Mecklenburg, and McDowell Counties.

IT IS, THEREFORE, ORDERED as follows:

1. That Carolina Telephone and Telegraph Company, Southern Bell Telephone and Telegraph Company, and Continental Telephone Company shall prepare to implement the interstate subscriber line charge waiver in Halifax, Mecklenburg, and McDowell Counties respectively.

2. That the aforementioned telephone companies shall coordinate implementation plans with the affected governmental agencies in those three counties and shall file with this Commission the earliest date upon which the waiver can be made available.

ISSUED BY ORDER OF THE COMMISSION.
This the 24th day of March 1986.

NORTH CAROLINA UTILITIES COMMISSION
Sandra J. Webster, Chief Clerk

(SEAL)

DOCKET NO. P-100, SUB 80

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Investigation to Consider Optional Program )
Established by the Federal Communications )
Commission to Assist Low Income Telephone ) FINAL ORDER
Consumers through an Interstate Residential )
Subscriber Line Charge Waiver Mechanism )

BY THE COMMISSION: On February 24, 1986, the Commission issued an "Order Approving Interstate Subscriber Line Charge Waiver Mechanism." The Order required Southern Bell Telephone and Telegraph Company, Carolina Telephone and Telegraph Company, and Continental Telephone Company to file with the Commission the names of three counties in each company's service area where the interstate subscriber line charge waiver could be implemented.

On March 11 and 13, 1986, the aforementioned telephone companies filed the names of the counties where the waiver could be implemented. By Order issued March 25, 1986, the Commission named Mecklenburg, Halifax, and McDowell Counties to initiate the waiver mechanism.

On May 14, 1986, the "Committee Response to Commission Order of March 24, 1986" was filed (Attachment A). The Response set forth the specific guidelines for implementation of the program which includes the following: Notification to Applicants, Certification Form, Processing Forms, Verification Procedures, and Tracking Procedures.

On May 22, 1986, a letter from the FCC was filed stating that the Bureau is pleased that the North Carolina Utilities Commission has chosen to use the benefits made available by the federal lifeline assistance program. The Bureau also expressed its hope that, once the trial period for this lifeline program has been completed, the North Carolina Utilities Commission will develop a lifeline program which will take advantage of the benefits available under the expanded lifeline assistance program. The Bureau requested that Southern Bell Telephone and Telegraph Company, Carolina Telephone and Telegraph Company, and Continental Telephone Company file appropriate revisions to their access tariffs stating that 50% of the subscriber line charge does not apply to those subscribers receiving the 50% state-provided reduction in their local service rates. As a result, the current $2.00 interstate subscriber line charge will not be imposed on those AFDC and SSI recipients who qualify for the waiver in the aforementioned Counties.

On May 28, 1986, Intervenor N.C. Legal Services Resource Center filed "Intervenor's Comments Regarding the Committee Response of May 14, 1986," for the purpose of clarifying procedures regarding the Committee's plan to implement the subscriber line charge waiver mechanism. Intervenors suggest that eligibility should be certified for line charge waiver at the time of recertification for AFDC benefits. The Commission intends that the method of recertification for AFDC recipients shall be the same as the committee recommended for new application for AFDC. Intervenors suggest that SSI recipients should be allowed to request verification forms to be mailed to them by local Social Security Offices. The Committee Response says that "SSI recipients will be advised through this information to contact their local social security office for the verification form." (Emphasis added.) The Commission contemplates that "contact" includes telephone requests and that the Social Security Office will mail the form to the applicant when requested to do so.

The Commission is of the opinion that good cause exists to initiate the interstate subscriber line charge waiver in Mecklenberg, Halifax, and McDowell Counties on July 1, 1986.

IT IS, THEREFORE, ORDERED as follows:

1. That on or before June 9, 1986, Southern Bell Telephone and Telegraph Company, Carolina Telephone and Telegraph Company, and Continental Telephone Company shall file with the Common Carrier Bureau of the Federal Communications Commission appropriate revisions to their access tariffs stating that 50% of the subscriber line charge does not apply to AFDC and SSI recipients residing in Mecklenberg, Halifax, and McDowell counties who are receiving the state-provided reduction in their local service rates. Special permission shall be requested on the filings to make the filings effective July 1, 1986. A copy of the filings shall be provided to all parties of record.

2. That the three aforementioned telephone companies shall file with the North Carolina Utilities Commission appropriate modifications to the General Subscriber Service tariffs reflecting the 50% local credit for AFDC and SSI recipients residing in the aforementioned counties. The filings shall be made on or before June 9, 1986, on short notice with an effective date of July 1, 1986.

3. That the specific guidelines for implementation of the means test as listed in the Committee Response filed with the North Carolina Utilities Commission shall be included in the appropriate intrastate tariff.

4. That this Order along with the Committee Response (Attachment A) shall be filed with the Secretary of the Federal Communications Commission (FCC), 1919 M Street, N.W., Washington, D.C. 20554.

ISSUED BY ORDER OF THE COMMISSION.
This the 4th day of June 1986.

NORTH CAROLINA UTILITIES COMMISSION
Sandra J. Webster, Chief Clerk

(SEAL)

DOCKET NO. P-100, SUB 83

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Fairfield Harbour, Inc.: Request for Opinion )
Letter Regarding Hotel/Motel Exemption )
Specified in N.C.G.S. 62-3(23)g )

ORDER DECLARING
HOTEL STATUS

HEARD IN: Commission Hearing Room 2115, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on May 5, 1986, at 2:00 p.m.

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

APPEARANCES:

Walter Daniels and Paul Overhauser, Attorneys, Post Office Box 13039,
Research Triangle Park, North Carolina 27709
For: Fairfield Harbour, Inc.

Robert Carl Voigt, Senior Attorney, Carolina Telephone & Telegraph
Company, 720 Western Boulevard, Tarboro, North Carolina 27886
For: Carolina Telephone and Telegraph Company

Gisele Rankin, 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 matter was instituted on March 7, 1986, when counsel for Fairfield Harbour, Inc. filed a letter with the Commission requesting a formal opinion regarding whether or not a "condominium hotel" being developed by Fairfield Harbour in New Bern, North Carolina, would be considered to be a "hotel" or "motel" for purposes of N.C.G.S. 62-3(23)g and thus exempt from regulation as a public utility so that the Company could provide telephone service through a privately-owned PBX switchboard system.

The Commission initially considered this matter during its Regular Staff Conference on Monday, March 24, 1986. The Commission received oral and written comments from the Public Staff, Carolina Telephone and Telegraph Company, Southern Bell Telephone and Telegraph Company, and Fairfield Harbour, Inc.

Due to the conflicting nature of the positions of the various parties who offered written and oral statements and opinions regarding the "condominium hotel" being developed by Fairfield Harbour, Inc., the Commission held a subsequent public hearing on May 5, 1986. At this hearing, evidence was presented by Fairfield Harbour, Inc., and arguments were made by Carolina Telephone and Telegraph company, the Public Staff, and Fairfield Harbour, Inc. The Commission in open hearing ruled that briefs and proposed orders on this matter be submitted to the Commission within twenty (20) days of the mailing of the transcript of the testimony of the hearing. This deadline was later extended to Friday, June 20, 1986, by order of the Commission dated June 12, 1986.

The parties filed their briefs and proposed orders on June 20, 1986. Fairfield Harbour also submitted a late-filed exhibit. On June 25, 1986, Fairfield Harbour filed an addendum to the late-filed exhibit. On July 11, 1986, the Public Staff filed a response to the addendum to the late-filed exhibit. On July 18, 1986, Fairfield Harbour filed a reply to the Public Staff response.

Based upon the testimony and exhibits presented in this matter and the record as a whole, including the late-filed exhibit of Fairfield Harbour and its addendum thereto and the responses and replies, the Commission makes the following

## FINDINGS OF FACT

1. On March 7, 1986, counsel for and on behalf of Fairfield Harbour, Inc. filed a letter with the Commission requesting a formal opinion regarding whether or not a "condominium hotel" being developed by Fairfield Harbour, Inc. in New Bern, North Carolina, would be considered a "hotel" or "motel" for purposes of G.S. 62-3(23)g and thus exempt from regulation as a public utility so that the Company could provide telephone service through a privately-owned PBX switchboard system.

2. Fairfield Harbour, Inc. is a subsidiary of Fairfield Communities and has owned the Fairfield Harbour development in New Bern since 1978. The "condominium hotel" referred to in the above-described letter is part of a group of buildings and facilities which include units owned under the Unit Ownership Act, Chapter 47A of the General Statutes, commonly referred to as condominiums, and also units owned under the Time Share Act, G.S. 93A-39, et seq., commonly referred to as time share units.

3. The "condominium hotel" being developed by Fairfield Harbour has leased a telephone switchboard with 392 extensions since 1982 which it has outgrown as of last September or October. Fairfield Harbour has made arrangements to replace it with a larger switch that has station message detail recording equipment.

4. Unless Fairfield Harbour carries its burden of proof to show its facilities qualify for the "hotel"/"motel" exemption set forth in G.S. 62-3(23)g, it is prohibited from providing telephone service to these facilities through a privately-owned switchboard system ("PBX").

5. There are four types of facilities at Fairfield Harbour's development in New Bern: detached single family houses; condominiums which are a part of the hotel pool by virtue of their owners' having signed mandatory agency agreements with Fairfield Harbour; condominiums occupied by their owners or otherwise rented out; and time share units.

6. The condominiums included in the hotel pool by virtue of the mandatory agency agreements and the time share units are currently connected to the PBX leased by Fairfield Harbour, Inc.

7. The question of the status of a place as a hotel is generally one of fact to be determined from the circumstances of the case.

8. The appropriate standard to be used in determining the status of a place or entity as a hotel is as follows: The place or entity must hold itself out indiscriminately to the public as receiving transient guests for compensation and furnishing them with lodgings. The quantity and nature of advertising, the existence of a lobby, a registration process, a reservations clerk, restaurants and meeting rooms, the provision of maid and linen service,

the proximity of the rooms or units to each other, and whether or not it is licensed under North Carolina law as a hotel are all factors to be considered.

'9. (a) Fairfield Harbour currently offers overnight lodging to transient guests.

(b) Fairfield Harbour advertises as a hotel in numerous publications and media.

(c) Fairfield Harbour is professionally managed by individuals educated and experienced in operating hotels.

(d) Fairfield Harbour accepts reservations like any hotel and has implemented a sophisticated computerized reservation system.

(e) Fairfield Harbour has a lobby and front desk check-in area similar in appearance to many hotels.

(f) Fairfield Harbour implements a guest registration procedure similar to that of other hotels.

(g) Fairfield Harbour provides maid service to its guests.

(h) Fairfield Harbour provides restaurant service to its guests.

(i) Fairfield Harbour provides valet service to its guests.

(j) Fairfield Harbour provides concierge service to its guests.

(k) Fairfield Harbour provides a pool and other recreational facilities to its guests.

(l) Guests check out of Fairfield Harbour in a manner similar to other hotels, at which time they pay a room charge based on the length of occupancy, and are billed for phone calls made from their room.

(m) Fairfield Harbour maintains a bookkeeping and accounting system similar to that of other hotels.

(n) Fairfield Harbour provides conference facilities.

(o) Fairfield Harbour books conventions and other group reservations.

10. The provision of phone service to rooms that are a part of the Fairfield Harbour hotel operations is essential to the operation of the hotel and is demanded by guests at the hotel. If the hotel were unable to offer this service to its guests, it would likely sustain significant damage to its business and would impair the provision of services to hotel guests.

11. The 148 rooms owned under the Unit Ownership Act, more specifically described in Fairfield Harbour's late-filed exhibit as Harbourside Villas, labeled N, Harbourmaster Villas, labeled M, and Waterwood Condominiums, labeled K, are available to the public for occupancy as transient lodging at least 50 weeks a year.

12. The 139 units owned under the Time Share Act, more specifically described on Fairfield Harbour's late-filed exhibit as Waterwood Units, Harbourside, Sandcastle Village, and Sandcastle Cove and labeled as G, L, P, H. W, and J, are available to the public for occupancy as transient lodging less than 50% of the time. These units are occupied by their owners 29% of the time and by other time share owners through exchange programs 25% of the time.

13. The granting of hotel status to the 148 rooms described in Finding of Fact No. 11 is conditioned upon the receipt of a copy of a mandatory agency agreement reformed to meet the requirement set forth hereinafter in Conclusion II and evidence indicating that the owners of these 148 rooms or units have all signed a reformed and approved agreement. Until the Commission issues an Order either approving or disapproving a mandatory agency agreement, Fairfield Harbour can continue to provide telephone service through its privately-owned or leased PBX switchboard system.

## CONCLUSIONS AND DISCUSSION OF EVIDENCE

### I.

A. The 148 condominium units owned under the Unit Ownership Act constitute a "hotel" or "motel" pursuant to G.S. 62-3(23)g and therefore fall within the exemption from public utility status under G.S. 62-3(23)g.

B. The 139 time share units owned under the Time Share Act do not constitute a "hotel" or "motel" pursuant to G. S. 62-3(23)g and do not fall within the exemption.

G. S. 62-3(23)g exempts hotels and motels from regulation as a public utility as follows:

> "The term 'public utility' shall not include a hotel or motel which imposes charges to guests for local or long-distance telephone calls when such calls are completed through the use of local access lines or long-distance message telecommunications service (MTS) of a public utility, and the applicable charges for telephone calls displayed in each guest room."

The statute does not provide a definition of the words "hotel" or "motel". Resort must be had to applicable rules of statutory construction.

It is well established that the primary rule of construction of statutes is to ascertain and declare the intent of the legislature and to carry such intention into effect to the fullest degree. See In Re: Brownlee, 301 N.C. 532 (1980); 73 Am Jur 2d, Statutes, §145. In attempting to ascertain the legislative intent, the Commission must first resort to the words of the statute. Stevenson v. City of Durham, 281 N.C. 300 (1972). If the language is clear and unambiguous, there is no room for judicial construction, and the

Commission must give the statute its plain meaning. Utilities Commission v. Southern Bell Telephone & Telegraph Company, 288 N.C. 201 (1975). If the language is not clear and unambiguous, then the courts and the Commission use general principles of statutory construction to resolve any questions.

When these rules are applied to G.S. 62-3(23)g and the words of that statute are analyzed in an effort to interpret its meaning, it becomes apparent that the statute is clear on its face, except that the phrase "hotel or motel" is not defined. Thus, the statute has no plain meaning in this respect and construction is necessary.

To construe this statute, the Commission must decide what types of entities are included within its purview. An important aid to construction is the consideration of the nature and purpose of the statute and the consequences which would follow from a construction one way or the other. Campbell v. Church, 298 N.C. 476 (1979). Further, as a general rule, a strict or narrow construction is applied to a statutory exception. 73 Am Jur 2d, Statutes, §313. Since G.S. 62-3(23)g creates an exception to the general legislative policy that persons engaged in resale of telephone service are considered public utilities, under the rules of statutory construction previously discussed, the statute must be narrowly construed.

With regard to the purpose of the statute, it is generally accepted that the exception was passed so that hotels and motels could assess a surcharge in lieu of the commission payments for intrastate toll calls made through their switchboards, which payments were eliminated by the new competitive environment.

With regard to the consequences that will follow from an interpretation one way or the other, if the statute is too narrowly construed, entities that operate as hotels in terms of at least part of their facilities will be denied the ability to provide their paying transient guests the telephone service guests expect from a hotel. If the statute is too broadly construed, local telephone companies lose revenue to which they are entitled under North Carolina law.

In the absence of a clear indication to the contrary, words in a statute will be given their ordinary meaning unless they have acquired a technical significance. Newlin v. Gill, 293 N.C. 348 (1977). In determining a word's ordinary meaning, courts have relied upon dictionaries, legal encyclopedias, interpretations by courts of other jurisdictions, and other statutes. McCarly v. McCarly, 289 N.C. 109 (1976); Student Bar Association v. Byrd, 293 N.C. 594 (1977). The purpose of the statute is also considered. Transportation Service v. Robeson County, 283 N.C. 494 (1973).

Webster's Third New International Dictionary (1971) defines "hotel" as (a) "a house licensed to provide lodging and usually meals, entertainment and various personal services for the public"; (b) "a building of many rooms chiefly for overnight accommodation of transients . . . with a large open street-level lobby. . . . containing easy chairs, with a variety of compartments for eating, drinking,. . . . group meetings, . . . . with shops and with telephone booths, writing tables, and washrooms freely available."

Black's Law Dictionary, Fifth Edition, citing a Utah case, defines hotel as a building held out to the public as a place where all transient persons who come will be received and entertained as guests for compensation and which opens its facilities to the public as a whole rather than limited accessibility to a well-defined private group. Ambassador Athletic Club v. Utah State Tax Commission, 27 Utah 2d 377, 496 P.2d 583.

The legal encyclopedia, Am Jur 2d, specifically 40 Am Jur 2d, "Hotels, Motels, Etc.," §2, defines hotel similarly, but also adds the definition of a hotel as a place where all who come are received as guests without any previous agreement as to the duration of their stay or as to the terms of their entertainment, citing decisions from a number of jurisdictions including Holstein v. Phillips & Sims, 146 N.C. 366 (1907), which involved the question whether or not the plaintiff was a guest at an inn or a boarder at a boarding house for the purpose of determining the defendant's liability for plaintiff's stolen property.

Another North Carolina case, State v. Campbell, 223 N.C. 828 (1944), held that a "roadhouse" license and tax statute was applicable to establishments where transient lodgings might be had by tourists and travelers.

40 Am Jur 2d, "Hotels, Motels, Etc.", §3, contains a discussion of decisions from other jurisdictions and states that the proprietor of a hotel must make a public profession to receive indiscriminately all transients who apply for accommodations, although it is not essential that the place be maintained solely for the accommodation of transients. However, the furnishing of lodging accommodations at a place which is operated primarily for another purpose is not sufficient to constitute such a place as a hotel. It further states that the services offered, such as maid and linen service, and the facilities available, such as restaurants and meeting rooms, are determinative factors. Also important in determining the status of a place as a hotel are the existence of a lobby and registration book, the quantity and the nature of advertising, including the existence of a sign proclaiming the place to be a hotel, and whether or not the place paid the appropriate hotel license tax, although none of these factors by itself is sufficient.

With regard to definitions of a hotel in other North Carolina statutes, G.S. 105-61 defines hotel and motel as follows:

> "(b) Hotel as referred to in this section shall be given its general or customary meaning; that is, a building or group of buildings providing lodging and usually (but not necessarily) meals, entertainment, and various personal services for the public.
>
> "Motel as referred to in this section shall be given its general or customary meaning; that is, a building or group of buildings in which the rooms usually are directly accessible from an outdoor parking area and which are used primarily as lodgings for the public.
>
> "In addition to hotels and motels, there is included within the meaning of this section tourist courts, tourist homes and similar places -- including, but not limited to, tourist camps, semidetached apartments, resort lodgings and detached structures whenever the operator advertises in any manner for transient patronage, or solicits such

business. The principal test of liability is the use of such places for temporary abode by transient patrons. Such patrons are defined as staying for a short time, stopping for a brief period only, not permanent."

The above discussion of what constitutes a hotel clearly indicates that the question of the status of a place as a hotel is generally one of fact to be determined from the circumstances of the case. The distinctive features of a hotel, and therefore the most important factors to be considered in making a determination of status, are that it holds itself out indiscriminately to the public as receiving transient guests for compensation and furnishing them with lodgings. The quantity and nature of advertising, the existence of a lobby, a registration process, and a reservations clerk, restaurants and meeting rooms, the provision of maid and linen service, the physical proximity of the units to each other, and whether it is licensed under North Carolina law as a hotel, are all factors to be considered. Notwithstanding the contentions of Carolina Telephone to the contrary, the form of ownership or the fact that other parts of the place or entity are used for other purposes should not affect the status of the place or the portion of the place used for the accommodation of transients as a hotel.

When the above-described standards are applied to the units in question at Fairfield Harbour, it is clear that the 148 units owned under the Unit Ownership Act do constitute a hotel and therefore fall within the exemption and that the 139 units owned under the Time Share Act do not.

A. The 148 units owned under the Unit Ownership Act

When the standards discussed herein are applied to the evidence in this case, it is clear that the 148 guest rooms at Fairfield Harbour owned under the Unit Ownership Act, Chapter 47A of the General Statutes, which are described as Harbourside Villas, Harbourmaster Villas, and Waterwood Condominiums, and labeled N, M & K, on Fairfield Harbour's Late-filed Exhibit 1, do constitute a hotel and therefore fall within the exemption in G.S. 62-3(23)g. All of these units are available to the public as transient lodging at least 50 weeks a year. (Late Filed Exhibit of Fairfield Harbour.) The evidence presented at the hearing shows that Fairfield Harbour advertises the availability of the 148 hotel rooms in local newspapers, various national and regional newspapers, and in "Golf" magazine. It also shows that Fairfield Harbour follows a reservations process involving an 800 telephone number and confirmations, and has a checking-in area in a lobby with two or three room clerks, as well as other indicia of a hotel operation. Maid, linen and wake-up services are available, and there are two restaurants. (Tr. pp. 18-22.)

Also, the consequences of declaring these 148 guest rooms not to constitute a hotel must be considered. The evidence shows that they are operated as a hotel. Without telephone service from a PBX, wake-up service, room service, message service, as well as other services a guest expects to receive in a hotel, would not be available.

B. The 139 units owned under the Time Share Act

With respect to the 139 units owned under the Time Share Act, G.S. 93A-39 et seq., described as Waterwood Units, Harbourside, Sandcastle Village and

Sandcastle Cove and labeled G, L, P, H, W, and J, on Fairfield Harbour's Late-filed Exhibit 1, it is clear that when the above-described standards are applied, these time share units do not constitute a hotel or part of a hotel and therefore do not fall within the statutory exemption.

Fairfield Harbour presented no direct evidence at the hearing with regard to the use of the time share units. The direct evidence indicated there were 148 hotel rooms: "We have a total of 148 hotel rooms." (Tr. p. 19) In response to a question on cross-examination by counsel for the Public Staff, Fairfield's witness stated: "We have 148 hotel rooms that have regular hotel phones in them. Our time sharing units have hotel phones as well." (Tr. p. 40) On redirect, counsel for Fairfield Harbour asked his witness if the time share units were rented to transient guests and the witness responded, "Yes, sir. We do." (Tr. p. 44)

Page 2 of Fairfield Harbour's Late-filed Exhibit states that the time share units are part of the hotel and that they have been held out to the public as available for non-owner transient lodging over seventy percent of the time. A closer look at this Exhibit, however, indicates that the "non-owner transients" referred to in the exhibit are owners of other time share units, either at other entities owned by Fairfield Harbour or at entities operated by other companies, who are, in effect, trading their time for time at Fairfield Harbour through either the FAX Exchange or the RCI Exchange. As the Public Staff pointed out in its Brief, these units are not being held out to nor being made available to the "public," as that term has been defined by the North Carolina Supreme Court for purposes of determining utility status in Utilities Commission v. Carolina Telephone & Telegraph Co., 267 N.C. 257 (1966). There was no evidence that these time share units are held out to the public as a whole or to all who apply. The evidence is to the contrary: they have a limited accessibility to a well-defined private group, i.e., owners of other time share units.

On June 25, 1986, Fairfield Harbour filed an Addendum to its late-filed exhibit which attempted to clarify the use of the 139 time share units at Fairfield Harbour. In the Addendum was a table which showed a breakdown of use of the time share units for Fairfield Harbour in 1985 as follows:

Breakdown of Use of Time Share Units at Fairfield Harbour in 1985

| Use | | No. Unit/Weeks | Percent |
|---|---|---|---|
| Occupied by Owners* | | 2,016 | 29.2% |
| Available for Occupancy by Non-Owner transients** | | | |
| FAX Exchange | 870 | | |
| RCI Exchange | 843 | | |
| Available for hotel Guests | 3,121 | | |
| TOTAL: | | 4,834 | 70.1% |
| Hospitality (Used by Developer) | | 50 | 0.7% |
| TOTAL: | | 6,900 | 100.0% |

* None of the occupancy by owners is on a permanent or residential basis.

** FAX Exchange: The Unit owner makes the use of his/her unit for the week available for use by the owner of another unit in another hotel operated by Fairfield Communities, Inc.

* RCI Exchange: The Unit owner makes the use of his/her unit for the week available for use by the owner of another unit in another hotel operated by another hotel management company.

Fairfield Harbour stated that the table shows that the use under the exchange programs constituted "a small minority of the overall use of the units."

On July 11, 1985, the Public Staff filed a Response to the Addendum, which opposed Fairfield Harbour's use of the Addendum to the late-filed exhibit as a substitute for its failure to offer evidence on the time share units at the hearing in this proceeding. The Public Staff pointed out that even if the Addendum were accepted as evidence and treated as true, this did not change the Public Staff's objection to the inclusion of the time share units as a hotel. The Public Staff reiterated its position that the use of the time share units through the exchange program did not constitute use by the public. The Public Staff further pointed out that Fairfield Harbour's Addendum disclosed that the time share units were used as transient lodging by the public for 3,121 units/weeks, or only 45% of the time. The Public Staff continued: "Regardless of how the non-owner use of the time share is classified, the indisputable fact is that for 29% of the time the actual owner uses the unit."

While bona fide transient guests may stay in the time share units if a time share unit is available, such occupancy amounts to less than 50% of the usage as shown by the Company's Addendum and would be insufficient to raise the status of the time share units to that of a hotel. The furnishing of lodgings at a place operated primarily for another purpose has generally been held to be insufficient to render the place a hotel. 40 Am Jur 2d, "Hotels, Motels, Etc.", §3.

Accepting the Company's late-filed Exhibit and Addendum on the time share units as true, only a very broad interpretation of "hotel" would bring them within the statutory exemption. The necessity of narrowly construing the exemption created by G.S. 62-3(23)g compels their exclusion from hotel status. Time share units included on the FAX and RCI exchanges are not hotel rooms held out indiscriminately to the public as transient lodgings; and the owners of other time share units who trade their time at another resort in exchange for the same amount of time at Fairfield Harbour cannot be considered transient guests. They come for one week, two weeks, or whatever amount of time they have traded; receiving maid service, sharing a pool with the hotel guests, and eating in Fairfield's restaurants do not change their status. It will be difficult enough to deal with "hotels" that constitute only a portion of a company's facilities and are physically indistinguishable from other parts without stretching the definition to include entities operated as time share units. If telephone service is desired, arrangements for residential service with billed number screening could be made, with each owner billed for his proportionate share at the time he is billed for other services. If in the Legislature's judgment time share units should be allowed to receive telephone service through a privately owned switchboard service, then statutory changes that go far beyond treating "condominium hotels" as conventional hotels and involving major changes in policy concerning resale would be necessary.

II.

Fairfield Harbour should amend its agency agreements with the owners of the 148 condominium units to provide that if a condominium unit is withdrawn from the "hotel pool", the unit cannot be placed back into the "hotel pool" for rental purposes at a later date.

The Public Staff recommended that if the Commission found that any part of Fairfield Harbour's facilities were to qualify as a hotel within the meaning of G. S. 62-3(23)g, the agency agreement should optimally include the provision set forth immediately above, or a provision that no withdrawal should be allowed. The Public Staff stated:

> "The requirements and limits for the withdrawal of a unit from the hotel pool and any subsequent reinclusion must be set forth with great specificity. Because of CT&T's obligation to serve upon request and the capital outlay, as opposed to the expenses recovered through any connection charges, necessary for the installation of a residential line, which would be borne by CT&T's general body of ratepayer if the owner subsequently reincluded his unit in the hotel pool, the Public Staff suggests that strict limits are required. The optimum situation would either be that no withdrawal would be allowed or if a unit were once withdrawn, reinclusion would not be allowed. A situation where a unit could shift back and forth between the hotel pool and PBX service and private occupancy and residential service would not only be difficult to police, but would result in unrecovered costs to CT&T which would fall on the general body of ratepayers."

The Commission is of the opinion that the agency agreement between Fairfield Harbour and the 148 condominium owners should be modified in this manner as recommended by the Public Staff and that a copy of the agency agreement as so amended should be filed for comments thereon by the Public Staff and for subsequent approval by the Commission.

The Commission is further of the opinion that the recommendation of the Public Staff for "appropriate limits" to be placed in the agency agreement on the owners' use of their units should not be implemented. It appears from the statement of counsel for Fairfield Harbour at the March 24, 1986, oral argument that it is the policy of Fairfield Harbour to place such "appropriate limits" on the owners' use of their condominium units. Counsel specifically stated that the owners' use of their units was limited to two weeks at a reduced rate; after two weeks' use, owners had to pay the full rate. In view of counsel's representations on oral argument as to the policy of Fairfield Harbour on this matter, the Commission is of the opinion that the inclusion of the recommended language in the agency agreement is not necessary.

IT IS, THEREFORE, ORDERED as follows:

1. That the 148 condominium units at Fairfield Harbour owned under the Unit Ownership Act, Chapter 47A of the General Statutes, which are described as Harbourside Villas, Harbourmaster Villas, and Waterwood Condominiums, and labeled N, M, and K on Fairfield Harbour's Late-filed Exhibit 1 be, and the

same are hereby, declared a hotel and therefore within the exemption in G.S. 62-3(23)g.

2. That the 139 units owned under the Time Share Act, G.S. 93A-39, et seq., described as Waterwood Units, Harbourside, Sandcastle Village, and Sandcastle Cove, and labeled G, L, P, M, W, and J on Fairfield Harbour's Late-filed Exhibit 1, be, and the same are hereby, declared not to be a hotel under G.S. 62-3(23)g. Telephone service to these 139 time share units through the PBX of Fairfield Harbour should be terminated within 45 days after the date of this Order.

3. That, within 60 days of the date of this Order, Fairfield Harbour shall file for approval with the Commission, and serve upon the Public Staff and Carolina Telephone and Telegraph Company, a copy of the agency agreement with the owners of the 148 condominium owners, such copy showing an amendment to the agreement to the effect that if a unit available for rental were withdrawn from the hotel pool, such unit would not be allowed to be reincluded at a later date as a unit available for rental. The Public Staff and Carolina Telephone shall have 15 days after the service of such copy to file any comments thereto.

ISSUED BY ORDER OF THE COMMISSION.
This the 11th day of September, 1986.

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

DOCKET NO. P-100, SUB 83

COMMISSIONER TATE, CONCURRING: I concur in the Order of the Commission issued in this docket except as follows: I would grant the request of the Public Staff that "appropriate limits" be placed in the agency agreement on the owners' use of their 148 condominium units, such use to be no more than two weeks at the discounted rate. As the Commission's Order acknowledges, counsel for Fairfield Harbour stated at the March 24, 1986, oral argument that it is the policy of Fairfield Harbour to place such "appropriate limits" on the owners' use of their condominium units. Counsel for the Company continued: "That particular provision is not in the management rental agreement but it is a policy that is enforced and if the Commission so desires, we'd be happy to put it in there if it is a prerequisite to obtaining Commission approval." In view of the Company's willingness to have the two weeks' limit placed in the agency agreement, I am of the opinion that the request of the Public Staff should be granted.

DOCKET NO. P-100, SUB 84

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Issuance of Special Certificates for
Provision of Telephone Service by
Means of Customer-Owned Pay
Telephones

ORDER ESTABLISHING RULES,
REGULATIONS, RATES AND CHARGES
FOR THE PROVISION OF PUBLIC
TELEPHONE ACCESS SERVICE AND
ESTABLISHING CERTIFICATION
PROCEDURES FOR SUBSCRIBERS OF
PUBLIC TELEPHONE ACCESS SERVICE

HEARD IN: Commission Hearing Room 217, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on October 22, 1985, and December 16, 17, and 18, 1985

BEFORE: Commissioner Edward B. Hipp, Presiding; and Chairman Robert O. Wells and Commissioner J. A. Wright

APPEARANCES:

For Carolina Telephone and Telegraph Company:

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

For Southern Bell Telephone and Telegraph Company:

J. Billie Ray, Jr., General Attorney, Southern Bell Legal Department, 1012 Southern National Center, Charlotte, North Carolina 28230

and

J. Lloyd Nault, III, Solicitor, Southern Bell Legal Department, 4300 Southern Bell Center, Atlanta, Georgia 30375

For General Telephone Company of the South:

Joe W. Foster, Attorney, and Mary U. Musacchia, Attorney, Legal Department - General Telephone Company of the South, Post Office Box 1412, Durham, North Carolina

For Continental Telephone Company of North Carolina and Alltel Carolina, Inc.:

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

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 30309
and
Wade H. Hargrove, Tharrington, Smith & Hargrove, Attorneys at Law, 209 Fayetteville Street Mall, Raleigh, North Carolina 27602

For Central Telephone Company of North Carolina:

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For MCI Telecommunications, Inc.:

Charles Meeker, Sanford, Adams, McCullough & Beard, Attorneys at Law, 414 Fayetteville Street Mall, Raleigh, North Carolina 27602

For the National Association of Truck Stop Operators:

Alan J. Thiemann, General Counsel, National Association of Truck Stop Operators, 1199 North Fairfax Street, Suite 801, Alexandria, Virginia 22314

For Barber, Cantrell, Cantrell & Grow:

Judith St. Ledger-Roty, Pierson, Ball & Dowd, Attorneys at Law, 1200 18th Street, N.W., Washington, D. C. 20036

For the North Carolina Department of Justice:

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

For the Public Staff - North Carolina Utilities Commission:

Theodore C. Brown, Jr., 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: The Commission instituted this proceeding as a result of a bill ratified by the North Carolina General Assembly on July 10, 1985, which amended Chapter 62 of the Public Utilities Law of North Carolina to authorize the Commission to adopt procedures for the issuance of a special certificate to persons offering telephone service to the public by means of coin, coinless, or key-operated pay telephone instruments and further provided that this service may be in addition to or in competition with public telephone service offered by the certificated telephone companies. The legislature also stated that the access line for these phones must be obtained from the certificated telephone company and that the rates approved for this line shall be fully compensatory, reflect the business nature of the service, and shall be set on a measured usage rate basis where facilities are available and on a message rate basis otherwise. The new legislation requires the Commission to develop the rules to implement this service, to determine the extent to which these services shall be regulated, and, to the extent necessary to protect the public interest, to regulate the terms, conditions, and rates for such service and the terms and conditions for interconnection to the local exchange network.

On July 31, 1985, the Commission issued an Order in this docket scheduling a hearing to begin on October 22, 1985, requiring public notice and requiring the filing of tariffs.

Interventions were filed on behalf of the Public Staff, MCI Telecommunications Corp., National Association of Truck Stop Operators, Barber, Cantrell, Cantrell and Grow, and AT&T Communications of the Southern States.

On October 11, 1985, Intervenors National Association of Truck Stop Operators and Barber, Cantrell, Cantrell and Grow filed a motion in this proceeding whereby the Commission was requested to reschedule the hearing until such time as the discovery requests submitted to General Telephone Company of the Southeast (General), Carolina Telephone and Telegraph Company (Carolina), and Southern Bell Telephone and Telegraph Company (Southern Bell) would have been answered and until such time as any subsequent motions to compel more complete answers may be resolved.

General and Carolina filed objections to the motion.

On October 15, 1985, the motion was granted, and an Order was issued rescheduling the hearing to December 16, 1985, and setting a time for discovery. The Order also confirmed a public hearing for October 22, 1985, for the limited purpose of receiving any testimony from public witnesses who would desire to offer testimony in this docket.

At the public hearing held on October 22, 1985, Lonnie Knott of Wendell, North Carolina, a homeowner; Michael Smart of Charlotte, North Carolina, a vending company employee; Gene Horne, Sanford, North Carolina, with the Pantry Stores and North Carolina Association of Convenience Stores, testified as to their concerns and interest in pay phones.

On December 16, 1985, hearings resumed for the purpose of taking testimony from expert witnesses, and the following persons gave testimony: Raymond J. Brook, Manager of State Regulatory Matters, Alltel Service Corporation, Southern Region; Warren D. Hannah, Cost of Service Manager, Carolina Telephone and Telegraph Company; Clayton E. Rawn, Business Affairs Manager, Central Telephone Company of North Carolina; William H. Clingenpeel, Senior Financial Analyst, Contel Service Corporation, Continental Telephone Company of North Carolina; Alfred A. Banzer, Pricing and Tariffs Manager, General Telephone Company of the Southeast; Robert W. Fleming, Segment Manager - Rates, Southern Bell Telephone and Telegraph Company; Fred J. Kelsey, Operations Manager, Bethesda Research Institute, Ltd.; Jane Karas, Staff Manager, Public Communications, AT&T Communications; Ernest D. Brame, General Manager, Truck Stops of America; James Cantrell, President of Energy Management Group Ltd., Inc., Vice President of Standard Insulating Company, Inc., and President of Public Pay Phone, Inc.; and William J. Willis, Jr., Communications Engineer, Public Staff, Communications Division.

Based on all of the evidence in the record in this docket, the exhibits presented, and N.C.G.S. § 62-110 as amended by the 1985 General Assembly, the Commission makes the following

## FINDINGS OF FACT

1. The North Carolina Utilities Commission has jurisdiction pursuant to N.C.G.S. § 62-110, as amended by the 1985 General Assembly, when consistent with the public interest, to issue a special certificate to any person for the limited purpose of offering telephone service to the public by means of coin, coinless, or key-operated pay telephone instruments and to prescribe the rules, rates, and terms for such service and the terms and conditions for interconnection to the local exchange network.

2. The requirements applicable to the provision of private coin, coinless, and key-operated telephone instruments which are included on the Application for Special Certificate form, attached hereto as Appendix A, are just and reasonable.

3. The procedures adopted herein for the issuance of special certificates for the limited purpose of offering telephone service to the public by means of coin, coinless, or key-operated pay telephone instruments are reasonable and in the public interest.

4. The rates and regulations included in Appendix B, attached hereto, are just and reasonable for application to service furnished by the local exchange companies to Public Telephone Access Service (PTAS) subscribers and to the end-user of PTAS service.

5. The requirements for applicants for special certificates for provision of telephone service by means of customer-owned pay telephones as attached hereto in Appendix C shall be adopted as Chapter 13 of the Rules and Regulations of the North Carolina Utilities Commission.

## EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 1

The evidence supporting Finding of Fact No. 1 is found in N.C.G.S. § 62-110 as amended.

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

In making its conclusions as to the form and content of the special certificates, the Commission has reviewed the testimony of Alfred A. Banzer, General; Robert W. Fleming, Southern Bell; Warren D. Hannah, Carolina; and Public Staff witness William J. Willis, Jr. All of these witnesses either generally agreed to or did not take exception to the following process for certification.

The special certification form which will be available from the Chief Clerk of the Commission requires the applicant to list information concerning the name, address, and telephone number of the business. The certification form enumerates certain responsibilities which the subscriber must agree to abide by. Before the initial installation of customer-provided pay telephone equipment, the signed certification form must be approved by the Commission.

Processing within the Commission includes distribution by the Chief Clerk, review by the Public Staff and Commission Staff, return of conforming applications to the Chief Clerk for assignment of docket number, and return of a copy of the completed certificate to the applicant and the Public Staff. The effective date of conforming certificate applications should be 30 days from the date of receipt of the filing by the Chief Clerk. Nonconforming certificate applications will be returned to the applicant with an explanation of the reason for rejection.

Prior to the initial application for connection of PTAS Service, each PTAS subscriber must deliver to the appropriate local exchange company a copy of the completed certificate. Additionally, when the PTAS applicant seeks a connection from the local exchange company, the application must include the assigned docket number from the Commission and the specific location and the registration number of the telephone to be used at each location. The local exchange company will be charged with the responsibility of maintaining a record of each location of a PTAS telephone and the registration number of each telephone connected for each PTAS customer. This record shall be available to the Commission and the Public Staff upon request.

When an approved certificate is issued, the applicant may apply to the local exchange company for Public Telephone Access Service. The certificate will authorize the PTAS customer to provide service to the public anywhere and at any number of locations within the service areas of the regulated telephone companies in North Carolina in accordance with the PTAS tariff and the Commission Rules and Regulations and subject to the availability of the required local exchange company facilities.

The Commission concludes that Appendix A, attached hereto, is the appropriate form for applying for certification to be a provider of coin, coinless, or key-operated pay telephone service and that the foregoing process for certification is appropriate.

The Commission also concludes that, if a PTAS subscriber sells his public telephone instruments, the purchaser must file for a new certificate and notify the Commission that ownership of and responsibility for existing public telephones are being transferred.

## EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 4

In response to the Commission Order of July 31, 1985, in this docket, AllTel Carolina, Inc., (AllTel), Carolina, Central Telephone Company (Central), Continental Telephone Company of North Carolina (Continental), General, and Southern Bell each filed testimony and a proposed PTAS tariff. Citizens Telephone Company and North State Telephone Company each filed a statement of position and a proposed PTAS tariff. A number of other telephone companies concurred with the rules and regulations proposed by Carolina or Central. Barnardsville Telephone Company and Service Telephone Company requested that the Commission waive the filing requirements in this docket for both Companies. Further, each Company expressed its willingness to abide by any rules and regulations adopted by the Commission.

The tariff proposals submitted by each company, while differing to some extent from each another, generally included the following rules and regulations:

A. PTAS for customer-provided equipment (CPE) is an exchange line service provided for telecommunications use by the general public at locations accessible to the general public.

B. PTAS is provided subject to the condition that telephone messages (local and long-distance) placed from stations which are accessible to the public are completed over PTAS lines (or other public or semipublic lines). Where PTAS is furnished, any type or grade of business service offered regularly at that location may be furnished in addition, provided such business service is confined to locations solely for use by the particular establishment.

C. PTAS is provided on a usage rate basis where facilities permit, otherwise the service will be provided on a message rate basis. The message rate service will be converted to usage rate service as it becomes available at no cost to the subscriber.

D. Subscribers to PTAS are subject to the rates, rules, and regulations as specified for business individual access lines in each tariff unless otherwise stated in the PTAS section.

E. The service may not be suspended at a reduced rate.

F. Customer-provided public telephones may not be attached to other types of access lines. A subscriber must order a separate PTAS line for each customer-provied public telephone installed and will be billed the tariff rate for each line.

G. The subscriber shall be responsible for installation, maintenance, and operation of customer-provided pay telephones used in connection with this service.

H. Customer-provided pay telephones must be registered and connected to the company network in compliance with Part 68 of the FCC Rules and Regulations as well as the regulatory and certification requirements of the North Carolina Utilities Commission. Subscribers of PTAS must provide to the local exchange company the FCC registration number and specific location of each instrument to be connected and a copy of its certificate prior to PTAS for CPE being furnished.

I. Instruments connected to a PTAS line must be of a type which permits the following characteristics:

1. All PTAS instruments must allow access to the "Operator" at no charge;

2. All PTAS instruments must allow access to 911 Emergency Service where available and 800 service at no charge;

3. Coin-operated instruments must be equipped to return the coins to the caller in the case of an incomplete call;

4. All PTAS instruments must allow receipt of incoming calls at no charge; and

5. All telephones must be capable of completing local and long-distance calls.

J. The provision of the following information is required to be posted at each customer-owned pay telephone installation:

1. The appropriate emergency number (operator, 911);

2. The provision of clear operating instructions, ownership of the instrument and procedures for handling repair, refunds, and billing disputes; and

3. The telephone number of the PTAS line and the local address.

K. The PTAS subscriber is responsible for meeting all federal, state, and local requirements with respect to provision of customer-provided telephones for use by hearing impaired and handicapped persons.

L. The PTAS subscriber shall be responsible for payment of a maintenance of service charge as covered in Section 15 of the applicable telephone company tariff for each visit by the telephone company to the premises of the subscriber, where the service difficulty or trouble report results from the use of equipment or facilities provided by the subscriber.

M. The PTAS subscriber is responsible for abiding by all applicable telephone company tariffs. Failure to do so is grounds for immediate disconnection of service.

N. Customer-provided pay telephones must be installed in compliance with all accepted telecommunications industry standards and the current National Electrical Code and National Electrical Safety Code.

O. The PTAS subscriber is responsible for payment of all charges from the telephone company and interexchange carriers including charges for toll messages originating from or accepted at the paystation location.

P. The subscriber must furnish local directory assistance information at no charge.

Q. Proof of certification must be furnished to the telephone company by the subscriber of PTAS prior to PTAS being connected.

R. Where any customer-provided telephone is used and/or connected in violation of this tariff, the telephone company will promptly notify the customer in writing of the violation.

S. Failure of the subscriber to discontinue such use or correct the violation will result in the suspension of the customer's service until such time as the customer complies with the provisions of this tariff.

Many items from the preceding list of proposed rules and regulations were agreed to by virtually all of the parties and have been adopted for use herein. There were however several items in contention which warrant discussion. Those issues are as follows:

(1) the provision of PTAS on a measured or message rate basis, (2) the allowance of 800 service at no charge, (3) the provision of local and intraLATA directory assistance information at no charge, and (4) the requirement that all PTAS instruments must allow receipt of incoming calls at no charge.

N.C.G.S § 62-110 as amended states that "the Commission shall be authorized, consistent with the public interest, to adopt procedures for the issuance of a special certificate to any person for the limited purpose of offering telephone service to the public by means of coin, coinless, or key-operated pay telephone instruments." It further states that "... the rates approved by the Commission for this access line shall be fully compensatory, reflect the business nature of the service, and shall be set on a measured rate basis where facilities are available or on a message rate basis otherwise." (emphasis added)

Several local exchange companies proposed the application of an equivalent flat rate monthly charge in locations where facilities for measured or message rate service do not exist. It was Central's position that, in locations where measuring equipment was unavailable, the Company could save the capital investment required to provide peg counters for message rate service by using a monthly flat rate as a surrogate tariff rate. Witness Rawn of Central stated that only six of the Company's 44 central offices could provide measured service and no offices were equipped with peg counters from which message rate service could be provided.

The Commission is cognizant of the fact that additional investment may be required in order for some companies to conform to the mandates of N.C.G.S. § 62-110 as amended. Therefore, the Commission concludes that in those instances where a local exchange company cannot now offer PTAS service on either a measured rate basis or message rate basis in certain exchanges those companies may negotiate to offer PTAS service to applicants for such service based on an estimated number of messages for each location of such service. Such negotiated rates must then be filed with the Commission. When such companies are able to provide PTAS service on a measured or message rate basis, they must then file a revised tariff in conformance with the terms and conditions set forth herein regarding measured and message rate service.

The proposal that all instruments connected to a PTAS line must allow access to 800 service at no charge to the end user was opposed by Intervenors Barber, Cantrell, Cantrell and Grow and the National Association of Truck Stop Operators (NATSO).

Carolina witness Hannah explained that 800 service is referred to as In-WATS service and that the individual subscribing to In-WATS service, the called party, pays the telephone company and the carrier for the service. He commented that the service was generally expected to be available free of charge to anyone from any telephone. Additionally, witness Hannah testified that the proposal to compensate all subscribers which provide terminal equipment for calls made to an 800 number could get out of hand and should not be allowed.

Witness Willis of the Public Staff testified that free access to 800 numbers is presently allowed from both semipublic and public pay phones at no charge. He recommended that uniformity within the state be maintained by prohibiting charges to the calling party for 800 calls made from customer-owned coin-operated telephones.

The Intervenors argued that requiring free access to 800 service ignores the fact that private payphone providers would be universally required to make their equipment available without compensation for that use. Witness Brame of NATSO testified that the number of 800 calls placed from truck stops can be quite large which could create a substantial volume of traffic which would generate no revenue.

The Commission concludes that it is just and reasonable to allow PTAS subscribers to charge an amount equivalent to the charge for a local call for all 800 calls.

Another proposed requirement which was contested by various parties was the provision of local and intraLATA directory assistance information at no charge. Witness Cantrell, of Barber, Cantrell, Cantrell and Grow, requested that he have the flexibility to pass through the directory assistance charge to those users who choose not to use the telephone directory which he plans to provide. Witness Karas, of AT&T, testified that AT&T should not be charged for local or intraLATA directory assistance calls because it does not have the ability to pass along a local or intraLATA long-distance directory assistance charge to users of its public telephones. She also testified that "charges for local and intraLATA Directory Assistance -- if determined to be in the public interest for all public telephones -- should be billed directly to the caller by the local exchange company."

Public Staff witness Willis stated in his prefiled testimony that AT&T had made the same request for relief on May 6, 1985, in its Petition for Clarification of the coinless telephone section of the Commission's March 26, 1985, Order in Docket No. P-100, Sub 73. Witness Willis suggested that the Commission's conclusions in that Order are still valid and that directory assistance charges should apply to AT&T and other PTAS subscribers.

Regarding witness Cantrell's request that PTAS subscribers be allowed to charge end-users for directory assistances, witness Willis stated that N.C.G.S. § 62-110 as amended allowed the Commission to regulate the terms, conditions, and rates for customer-owned paystation service to the extent necessary to protect the public interest. It was witness Willis' opinion that the public interest could not be served unless directory assistance charges were applied identically in all paystation situations. Since charges do not apply for directory assistance requests made from paystations provided by local exchange companies, witness Willis recommended that charges for directory assistance requests from PTAS stations be prohibited. Witness Willis indicated that he was not opposed to revisiting the issue of allowing directory assistance charges to the end-user of pay telephones but felt that the issue should be argued at another time.

The Commission concludes that for the time being PTAS subscribers should pay for directory assistance charges in the same manner as business one-party access line subscribers and that the end-users of all classes of coin-operated and coinless paystations should be provided directory assistance at no charge. The Commission is not opposed to addressing the question of allowing directory assistance charges to be assessed on end-users of all classes of paystations in the future. This proceeding, however, is not the proper place to address the question.

The optional service features proposed by the various parties will be discussed subsequently herein. However, one proposed option which needs to be discussed is the provision of outward-only service.

Public Staff witness Willis suggested that the unconstrained use of the outward-only service option could jeopardize the adequacy of PTAS. He argued that this option, which would allow exclusion of inward calls, would deteriorate the value of traditional coin telephone service and could produce both inconvenient and dangerous situations, such as restricting return calls from being completed to a location from which an emergency had been reported. During cross-examination he indicated that the only approved tariff of this type on file was applicable to AT&T coinless pay stations.

Witness Karas, of AT&T, stated that AT&T places its public telephones in areas of high density interLATA calling for use by the general public to make, not receive, calls. She thought that, if stations were arranged to receive incoming calls, AT&T public telephones may be tied up unnecessarily and inconvenience others who need to use the telephones.

Several local exchange company witnesses stated that they thought that the decision to restrict inward calling should be left to the PTAS subscriber. Witness Willis, however, differed sharply with this position stating that it should be the Commission which makes decisions affecting the public interest and not each PTAS subscriber.

The Commission concludes that the option of "outward-only calling" could adversely affect the public interest and should not be allowed. The Commission is aware that there are currently public phones which allow outward-only calling. The Commission concludes that such phones may continue to provide outward-only service and, if any such phone currently providing outward-only service needs to be replaced, it may be replaced with another instrument equipped for outward-only service.

One requirement of N.C.G.S. § 62-110 as amended is that the Commission set the rates for PTAS at a level which is fully compensatory and reflects the business nature of the service. Given this guideline, the local exchange companies filed proposed tariffs which were generally similar to each other.

Southern Bell witness Fleming and General witness Banzer offered proposed rate structures which were designed to keep the effect on each company's net income level essentially neutral. The independent procedures and assumptions used by each company produced proposed rates for measured service which were quite similar. Both proposed a recurring monthly access line rate of .8 times the business one-party line rate plus usage charges of $.06 for the initial minute and $.02 for each additional minute of use. For message rate service Southern Bell recommended a rate of $.12 per message and General recommended a rate of $.10 per message.

Witness Fleming was asked during cross-examination about the procedure and assumptions which he had used in his analysis to derive his proposed rates. He indicated that his estimates could differ from actual occurrences and therefore could adversely affect the company's net income. On another matter, witness Fleming agreed that the sale of displaced equipment below net book costs could cause residential and business exchange rates to increase over time. When asked whether the risk of a firm entering into the paystation telephone business should be borne by the residential and business subscribers, the company, or the private pay phone providers, witness Fleming answered "... (the) people seeking to enter the market, the pay phone provider."

Witness Kelsey, appearing on behalf of intervenor Barber, Cantrell, Cantrell, and Grow, used a variety of techniques and sources of information to determine his recommended flat monthly access line charge of $15.40 per line and a rate of $.028 per message for message rate service. For measured service he proposed the same level of $15.40 per line for access and an on-peak rate of $.02 for the initial minute plus $.01 for each additional minute of use. Witness Kelsey recommended an off-peak rate of $.005 for the initial minute and a zero charge for each additional minute.

The Commission concludes that the risk of entering into public telephone paystation business should be borne by those wishing to enter the market and that the rate level for PTAS should be set accordingly.

The information necessary to develop PTAS rates which will assure net income neutrality is not readily available. The assumptions utilized by the various local exchange companies in developing their rate proposals resulted in similar rate levels which would tend to lend support to the various proposed rates. However, the Commission is not persuaded that the rates proposed by the various companies are appropriate for use herein. Two of the companies, Southern Bell and Carolina, proposed measured usage rates and message rates that are currently in effect in their tariffs. In Docket No. P-55, Sub 806, the Commission approved a measured rate of $.06 for the first minute and $.02 for each additional minute and a message rate of $.12 for Southern Bell. These are the same measured and message rates proposed by Southern Bell in this proceeding. In Docket No. P-7, Sub 679, the Commission approved a measured usage rate of $.03 per minute ($.04 in EAS exchanges). This is the rate which Carolina proposed for its PTAS tariff. In this docket, both Southern Bell and Carolina proposed a monthly access line rate equal to 80% of the business individual line flat rate. These proposals vary somewhat from the monthly flat rates in the local measured service tariffs. Carolina's measured service tariff specifically states that the monthly flat rate charge shall be 60% of the flat rate. Southern Bell's residential message rate service also provides for a flat monthly rate of 60% of the residence individual line flat rate.

Based on the evidence presented in this proceeding and based on existing tariffs of Southern Bell and Carolina, the Commission concludes that the monthly access line rate shall be 60% of the business individual line flat rate. Additionally, the Commission concludes that the PTAS measured usage rates shall be $.06 for the first minute of use and $.02 for each additional minute or fraction thereof. The Commission concludes also that the PTAS message rate shall be $.12 per message.

The local exchange companies proposed various optional service features in their PTAS tariffs. The Commission has previously discussed the outward-only service option. With regard to the various other screening and blocking options, the Commission concludes that the optional features, and the rates and charges for such features, as shown in Appendix B attached hereto are just and reasonable.

Distance sensitive rates were proposed by Carolina and Continental in areas with measuring capability. Continental proposed three different rating categories for usage based upon distance from the home exchange, and Carolina proposed two usage rates, one for calls terminating in the home exchange and another for calls terminating within extended area service exchanges.

Public Staff witness Willis indicated that under the existing approved tariffs for semipublic and public pay telephone service end-users are allowed to complete calls within the local and extended areas for a fixed charge. He expressed his opinion that it is more appropriate for each company to be compensated for the calling scope of a PTAS line on a nondistance sensitive basis.

The Commission concludes that it is appropriate for PTAS rates to be structured on a nondistance sensitive basis.

Time-of-day discounts were proposed by some of the local exchange companies while other companies expressed their opinion that time-of-day discounts are inappropriate for the PTAS tariff because the discount would probably not be passed to end-users and would therefore not have any effect on peak traffic loads. The Public Staff concurred with this reasoning and recommended that all proposed time-of-day discounts be disallowed.

The Commission concludes that time-of-day discounts are not suitable for PTAS and should not be incorporated into the companies' tariffs.

Several witnesses expressed their opinions concerning the levels of rates which the PTAS subscribers should be allowed to charge the end-users. Carolina witness Hannah, stated in his prefiled testimony ... "However, cognizant of the Legislature's recognition of the public interest aspects of this service, the Commission may want to consider limitations on the rates for local and long-distance intrastate service charged by providers of pay telephone service until the competitive nature of the market is evaluated."

Central witness Rawn remarked ... "Customer-owned coin operated telephone and customer-owned coinless operated telephone (COCOT) providers must be regulated to the degree that the end-user is not required to pay any more than is required by the local telephone company for local calls. For long distance calls a similar regulation is required to ensure price stability. The COCOT provider should be allowed to apply a surcharge provided it is clearly posted on the telephone."

Witness Banzer of General suggested for Commission consideration that imposing maximum pricing limits and/or minimum time restrictions on the service would be acceptable and would provide a degree of protection to the general public. In the area of toll witness Banzer suggested that the Commission establish a maximum rate at a level not to exceed a percentage over the toll rates of the interexchange carrier subscribed to by the pay telephone provider.

Southern Bell witness Fleming expressed the view that, whenever possible, market conditions should be allowed to determine end-user rates. He stated, however, that in instances where free market conditions do not exist, such as a major airport with no choice of vendors, the Commission may determine that additional regulations may be required.

Intervenor Cantrell indicated that he would like the option of having an initial charge for the first several minutes and an additional charge for any additional length of time the end-user is engaged in conversation. In some instances witness Cantrell said that he may wish to charge less than other companies for competitive reasons, and in other instances he may want to waive the charge to the end-user and collect the charge instead, through previous agreement, from the called party, such as a cab company.

Public Staff witness Willis quoted a portion of N.C.G.S. § 62-110 as amended which states ... "that the Commission shall determine the extent to which such service shall be regulated and, to the extent necessary to protect the public interest, regulate the terms, conditions, and rates for such service and the terms and conditions for interconnection to the local exchange network." Witness Willis used this quote as the basis of his comment that the public interest could not be served if either local or toll charges from CPE paystations are allowed to exceed the rates which have legally been found just and reasonable by the Commission. He recommended that paragraph 7.3.6 CHARGES TO PTAS END-USER of his proposed tariff read:

> The carriage and completion of a local message may not be charged to an end-user of Public Telephone Access Service at a rate which exceeds the approved local coin rate of the serving local exchange company. The rates applicable for carriage and completion of intrastate long-distance calls may not exceed the rates applicable to the PTAS subscriber by the underlying carrier for that type of a call plus a surcharge of 25 cents per call.

According to witness Willis the application of a $.25 surcharge for an intrastate long-distance call would seldom cause toll charges from a customer-owned coin telephone to exceed company-owned semipublic or public paystation rates due to the fact that the majority of calls made from the company-owned telephones require a credit card or an operator assistance charge.

Based on a careful review of the record concerning the appropriate level of charges to PTAS end users, the Commission concludes that the following rates and charges are just and reasonable:

> The carriage and completion of a local message may not be charged to an end-user of a Public Telephone Access Service at a rate which exceeds 25 cents per call. The rates applicable for carriage and

completion of intrastate interLATA long-distance calls may not exceed AT&T's MTS rate (including any applicable operator assist or person to person charges) plus 25 cents per call. The rates applicable for carriage and completion of intrastate intraLATA long-distance calls may not exceed the local exchange companies' MTS rates (including any applicable operator assist or person to person charges) plus 25 cents per call.

MCI and AT&T did not file specific tariff proposals but they did make certain recommendations regarding their positions as interexchange carriers.

MCI requested that the Commission issue an Order requiring that all pay telephones be capable of providing access in all feature groups to long-distance carriers certified to do business in North Carolina.

AT&T argued that it is appropriate to require the local exchange companies to provide public telephone access to all available interexchange carriers on a nondiscriminatory basis, but that no such requirement should be placed on public telephones owned by a single interexchange carrier.

After careful consideration, the Commission concludes that in a competitive environment payphones provided by interexchange carriers should not be required to provide access to all other interexchange carriers. The Commission concludes that all other providers of pay telephone service to the public must provide access to all available interexchange carriers on a nondiscriminatory basis.

In addition to its position concerning directory assistance charges, access to interexchange carriers and incoming call capability, AT&T stated the following concerns regarding its provision of public telephone service:

1. Local call charges for both measured and message rate service should not be applied for local operator handled calls from AT&T's public telephones.

2. The operator screening features desired by AT&T are available only where PTAS is provided on a measured basis.

3. AT&T believes that certificated interexchange carriers should not be required to obtain an additional certificate in order to provide public telephone service.

4. AT&T requested that the Commission allow the use of commercial credit cards in billing for calls on customer-owned public telephones.

5. AT&T requested that the Commission allow the Company to withdraw its current public telephone tariff provisions.

Regarding each of AT&T's concerns, the Commission concludes as follows:

1. The PTAS subscriber should not be required to pay either the measured rate or message rate charges for calls which are billed directly to the end user. The various screening options proposed by the local exchange companies should accommodate this requirement.

2. The local exchange companies should make available to all PTAS subscribers any and all screening features which are available in a given central office.

3. All persons, including interexchange carriers, wishing to provide payphone service to the public must be certificated according to the rules and regulations set forth elsewhere herein.

4. Commercial credit cards may be used for billing calls on customer .owned public telephones.

5. AT&T should withdraw its existing tariff provisions regarding coinless public telephones.

The Commission concludes that the tariff attached as Appendix A which has been modified in accordance with the Commission's previous conclusions is just and reasonable.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 5

The evidence supporting the requirements set forth in Appendix C, attached hereto, is found in the Evidence and Conclusions for Findings of Fact Nos. 2 and 3. The Commission concludes that Appendix C, attached hereto, should be adopted as Chapter 13 of the Rules and Regulations of the North Carolina Utilities Commission.

IT IS, THEREFORE, ORDERED as follows:

1. That the local exchange companies which have heretofore filed tariffs in this proceeding are hereby directed to refile tariffs in accordance with the guidelines set forth in this Order and included in Appendix B, attached hereto, within ten working days of the date of this Order.

2. That the Southern Bell tariff previously approved by the Commission for application to AT&T be deleted and replaced by the tariff filed in accordance with Ordering Paragraph 1 above for application to all PTAS subscribers including AT&T.

3. That those local exchange companies that have not filed tariffs or have not agreed to use the rates of some other company are not required to file tariffs at this time but are required to file promptly upon receipt of a request for service.

4. That the Public Staff and other intervenors may file written comments concerning the companies' tariffs within 10 working days of the date on which they are filed with the Commission.

5. That the rates and charges modified as concluded herein shall become effective upon the issuance of a further Order approving the tariffs filed pursuant to Ordering Paragraph 1 above.

6. That the form attached as Appendix A be adopted as the application form for certification and the requirements thereon be adopted as the basic

regulations governing provision of telephone service by means of customer-owned pay telephones.

7. That the requirements set forth in Appendix C, attached hereto, shall be adopted as Chapter 13 of the Rules and Regulations of the North Carolina Utilities Commission.

ISSUED BY ORDER OF THE COMMISSION.
This the 28th day of March 1986.

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

## APPENDIX A

### APPLICATION FOR SPECIAL CERTIFICATE FOR PERSONS OFFERING TELEPHONE SERVICE TO THE PUBLIC BY MEANS OF PRIVATE COIN, COINLESS, AND KEY-OPERATED PAY TELEPHONE INSTRUMENTS

DOCKET NO. P-______

NAME OF APPLICANT ______________________ DATE OF APPLICATION ____________

ADDRESS OF PRINCIPAL PLACE OF BUSINESS

STREET ______________________ BUSINESS TELEPHONE

______________________ (   ) ____________

CITY ______________________ OTHER TELEPHONE WHERE APPLICANT CAN BE REACHED

STATE __________ ZIP __________ (   ) ____________

As the subscriber to the Public Telephone Access Service, I certify that I have read and agree to abide by the following requirements:

1. The subscriber shall be responsible for the installation, maintenance, and operation of customer-provided pay telephones used in connection with this service.

2. Customer-provided pay telephones must be registered and connected to the telephone company network in compliance with Part 68 of the FCC Rules and Regulations as well as the regulatory and certification requirements of the North Carolina Utilities Commission. Subscribers of PTAS must notify the telephone company and provide the FCC registration number of each instrument to be connected.

3. The carriage and completion of a local message may not be charged to an end-user of a Public Telephone Access Service at a rate which exceeds 25 cents per call. The rates applicable for carriage and completion of intrastate interLATA long-distance calls may not exceed AT&T's MTS rate (including any applicable operator assist or person-to-person charges) plus 25 cents per call. The rates applicable for carriage and completion

of intrastate intraLATA long-distance calls may not exceed the local exchange companies' MTS rates (including any applicable operator assist or person to person charges) plus 25 cents per call.

4. Instruments connected to a Public Telephone Access Service line must be of a type which permits the following characteristics:

   a. All PTAS instruments must allow access to the "Operator" at no charge;

   b. All PTAS instruments must allow access to 911 Emergency Service where available at no charge;

   c. Coin-operated instruments must be equipped to return the coins to the caller in the case of an incomplete call;

   d. Coin-operated instruments must be equipped to accept nickels, dimes, and quarters;

   e. All new PTAS instruments must allow receipt of incoming calls at no charge; and

   f. All telephones must be capable of completing local and long-distance calls.

5. The following information is required to be posted at each customer-owned pay telephone installation;

   a. The appropriate emergency number (operator, 911);

   b. The provision of clear operating instructions, ownership of the instrument and procedures for handling repair, refunds, and billing disputes; and

   c. The telephone number of the PTAS line and the local address.

6. The PTAS subscriber is responsible for meeting all federal, state, and local requirements with respect to provisions of customer-provided telephones for use by hearing impaired and handicapped persons.

7. The PTAS subscriber shall be responsible for payment of a maintenance of service charge as covered in Section 15 of the applicable telephone company tariff for each visit by the telephone company to the premises of the subscriber, where the service difficulty or trouble report results from the use of equipment or facilities provided by the subscriber.

8. The PTAS subscriber is responsible for abiding by all applicable telephone company tariffs. Failure to do so is grounds for immediate disconnection of service.

Note: TO APPLY FOR SPECIAL CERTIFICATION, APPLICANT MUST FILE A FILING FEE OF $25.00 AND THE ORIGINAL AND 20 SIGNED COPIES OF THIS DOCUMENT WITH THE COMMISSION AT THE FOLLOWING ADDRESS:

CHIEF CLERK
NORTH CAROLINA UTILITIES COMMISSION
POST OFFICE BOX 29510
RALEIGH, NORTH CAROLINA 27626-0510

____________________ ________________________________________
Date Signature

________________________________________
Title

VERIFICATION

STATE OF __________________________ COUNTY OF __________________

The above-named ________________________, personally appeared before me this day and, being first duly sworn, says that the facts stated in the foregoing application and any exhibits, documents, and statements thereto attached are true as he verily believes.

WITNESS my hand and notorial seal, this ____ day of ______________, 19__.

____________________________ My Commission expires _______________
Notary Public

## APPENDIX B
## 7. COIN TELEPHONE SERVICE
## GENERAL SUBSCRIBER SERVICES TARIFF

EFFECTIVE:

### 7.3 PUBLIC TELEPHONE ACCESS SERVICE (PTAS)

#### 7.3.1 GENERAL

A. Public Telephone Access Service (PTAS) for customer-provided pay telephones is an exchange service line directly connected to the public network and provided at the request of the subscriber for telecommunications use by the general public at locations accessible to the general public. Extensions of the PTAS lines are not permitted.

B. PTAS lines are provided for use with both customer-provided noncoin-operated pay telephones and customer-provided coin-operated pay telephones.

C. PTAS is provided subject to the condition that telephone messages (local and long distance) placed from stations which are accessible to the public are completed over PTAS lines (or other public or semipublic lines). Where PTAS is furnished, any type or grade of business service offered regularly at that location may be furnished in addition, provided such business service is confined to locations solely for use by the particular establishment.

D. PTAS is provided on a usage rate basis where facilities permit; otherwise the service will be provided on a message rate basis. The message rate service will be converted to usage rate service as it becomes available at no cost to the subscriber.

E. The company will not be responsible for the operation, maintenance, coin refund or coin collection of any PTAS instrument it does not provide nor will company employees offer PTAS instructions for those instruments not provided by the company.

F. Subscribers to PTAS are subject to the rates, rules, and regulations as specified for Business Individual Access Lines in this tariff unless otherwise stated in this section.

G. This service may not be suspended at a reduced rate.

H. Listings in connection with PTAS are furnished under the same rates and regulations as other business services.

7.3.2 RESPONSIBILITY OF THE SUBSCRIBER

A. The subscriber shall be responsible for the installation, maintenance, and operation of customer-provided pay telephones used in connection with this service.

B. Customer-provided pay telephones must be registered and connected to the company network in compliance with Part 68 of the FCC Rules and Regulations as well as the regulatory and certification requirements of the North Carolina Utilities Commission. Subscribers of PTAS must provide to the local exchange company the FCC registration number and specific location of each instrument to be connected and a copy of its certificate prior to PTAS for CPE being furnished.

C. The carriage and completion of a local message may not be charged to an end-user of a Public Telephone Access Service at a rate which exceeds 25 cents per call. The rates applicable for carriage and completion of intrastate interLATA long-distance calls may not exceed AT&T's MTS rate (including any applicable operator assist or person-to-person charges) plus 25 cents per call. The rates applicable for carriage and completion of intrastate intraLATA long-distance calls may not exceed the local exchange companies' MTS rates (including any applicable operator assist or person-to-person charges) plus 25 cents per call.

D. Instruments connected to a Public Telephone Access Service line must be of a type which permits the following characteristics:

1. All PTAS instruments must allow access to the "Operator" at no charge;

2. All PTAS instruments must allow access to 911 Emergency Service where available at no charge;

3. Coin-operated instruments must be equipped to return the coins to the caller in the case of an incomplete call;

4. Coin-operated instruments must be equipped to accept nickels, dimes, and quarters;

5. All new PTAS instruments must allow receipt of incoming calls at no charge; and

6. All telephones must be capable of completing local and long-distance calls.

E. The following information is required to be posted at each customer-owned pay telephone installation:

1. The appropriate emergency number (operator, 911);

2. The provision of clear operating instructions, ownership of the instrument, and procedures for handling repair, refunds, and billing disputes; and

3. The telephone number of the PTAS line and the local address.

F. The PTAS subscriber is responsible for meeting all federal, state, and local requirements with respect to provisions of customer-provided telephones for use by hearing impaired and handicapped persons.

G. The PTAS subscriber shall be responsible for payment of a maintenance of service charge as covered in Section 15 of the applicable telephone company tariff for each visit by the company to the premises of the subscriber, where the service difficulty or trouble report results from the use of equipment or facilities provided by the subscriber.

H. The PTAS subscriber is responsible for abiding by all applicable telephone company tariffs. Failure to do so is grounds for immediate disconnection of service.

I. Customer-provided pay telephones must be installed in compliance with all accepted telecommunications industry standards and the current National Electrical Code and National Electrical Safety Code.

J. The PTAS subscriber is responsible for payment of all charges from the telephone company and interexchange carriers including charges for all toll messages originated from or accepted at the paystation locations.

K. The subscriber must furnish local directory assistance information at no charge.

L. Proof of certification must be furnished to the company by the subscriber of Public Telephone Access Service prior to the connection of PTAS.

7.3.3 VIOLATIONS OF REGULATIONS

A. Where any customer-provided telephone is used and/or connected in violation of this tariff, the company will promptly notify the customer in writing of the violation.

B. Failure of the subscriber to discontinue such use or correct the violation will result in the suspension of the customer's service until such time as the customer complies with the provisions of this tariff.

7.3.4 OPTIONAL SERVICE FEATURES

A. Central Office Blocking With Operator Screening - Central office blocking with operator screening is offered to provide a choice of restrictions at the subscriber's option. These options will be available where PTAS is provided on a usage rate service basis. Options are as follows:

1. Option 1 - Two-Way Service. No restrictions.

2. Option 2 - Two-Way Service. Provides screening information to the operator to prevent operator assisted sent-paid calls from being billed to the line. Further, third number and collect calls to PTAS are not allowed.

3. Option 3 - Two-Way Service. Provides central office blocking of seven digit local, 976, 1+DDD, and 1+900 calls. Provides screening information to the operator to prevent operator assisted sent-paid calls from being billed to the line. Further, third number and collect calls to PTAS are not allowed.

4. Option 4 - Two-Way Service. Provides central office blocking of 976, 1+DDD, and 1+900 calls. Provides screening information to the operator to prevent operator-assisted sent-paid calls from being billed to the line. Further, third number and collect calls to PTAS are not allowed.

B. Where PTAS is provided on a message rate service basis, third number and collect calls to PTAS are not allowed.

C. Where third number and collect calls billable to the line are not allowed, special central office equipment serving the originating caller's location is required to make this feature operable. Where such equipment is installed, call attempts which have been screened will not be completed. The operator will advise the calling party that alternative billing arrangements will have to be made before the call can be completed. Where such equipment is not installed, call attempts on a third number basis will be completed but will not be billed to the PTAS line pending investigation. All PTAS subscribers are advised that calls so completed will be thoroughly investigated as fraudulent calls. The party placing these calls will be expected to make full restitution and will be legally responsible for them. Call attempts on a collect basis which are accepted at the PTAS location will be billed to the PTAS line. Payment for these collect calls will be required.

7.3.5 RATES AND CHARGES

A. PTAS is provided on a usage rate basis where facilities permit; otherwise the service will be provided on a message rate basis.

1. Usage Rate Service

a. The following monthly rates are applicable to PTAS on a per line basis.

| | Monthly Rate |
|---|---|
| (1) Option 1<br>(a) Per Line | $----[1] |
| (2) Option 2<br>(a) Per Line | 2.00[2] |
| (3) Option 3<br>(a) Per Line | 4.00[2] |
| (4) Option 4<br>(a) Per Line | 3.00[2] |

Note 1: Monthly rate is 60% of the Business Individual Access Line rate.

Note 2: To the monthly rate shown, add an amount equivalent to 60% of the Business Individual Access Line rate.

b. No monthly usage allowance applies for PTAS.

c. The following usage charges apply for calls within the local calling area.

| | Initial Minute or Fraction Thereof | Additional Minute, Each or Fraction Thereof |
|---|---|---|
| (1) | $.06 | $.02 |

2. Message Rate Service

a. The following monthly rate is applicable for PTAS.

| | Monthly Rate |
|---|---|
| (1) Two-way, per line - Each | $1.00[3] |

Note 3: To the monthly rate shown, add an amount equivalent to 60% of the Business Individual Access Line rate.

b. The following message rate charges apply for calls within the local calling area.

| | Rate |
|---|---|
| (1) Local Message - Each | $.12 |

B. At the request of the subscriber, U-Touch Service may be provided as covered in Section 13 of this Tariff for Business Individual Line Service.

C. Service Charges as covered in Section 4 of this Tariff for Business Individual Line Service are applicable.

D. Switched Access Charges apply as specified in Sections E3 and E6 of the Access Service Tariff and are billable to the interexchange carrier.

E. Intrastate intraLATA long-distance charges apply on a per message basis based on toll rates (as provided in Section A18.3.1.H of this Tariff) plus the appropriate additive operator services charges (as provided in Section A18.3.1.H of this Tariff). Intrastate interLATA long-distance charges apply as specified in the intrastate tariffs of the underlying interLATA carrier. Local charges apply to the PTAS subscriber on a per message basis based on the applicable local usage rate charges (as provided in Section A7.3.5.A.1.c(1) of this Tariff) or local message rate charges (as provided in Section A7.3.5.A.2.b(1) of this Tariff) plus the appropriate additive operator services charges (as provided in Section A3.9 of this Tariff).

The subscriber to Public Telephone Access Service for CPE shall be responsible for the payment of outgoing local calls and long-distance intraLATA calls which are charged by the calling party to a commercial credit card.

NOTE: Each company should use it's terminology and tariff references as appropriate for this section.

7.3.6 CHARGES TO PTAS END-USER

The carriage and completion of a local message may not be charged to an end-user of a Public Telephone Access Service at a rate which exceeds 25 cents per call. The rates applicable for carriage and completion of intrastate interLATA long-distance calls may not exceed AT&T's MTS rate (including any applicable operator assist or person-to-person charges) plus 25 cents per call. The rates applicable for carriage and completion of intrastate intraLATA long-distance calls may not exceed the local exchange companies' MTS rates (including any applicable operator assist or person-to-person charges) plus 25 cents per call.

## APPENDIX C
## Chapter 13

### Requirements for Applicants for Special Certificates for Provision of Telephone Service by Means of Customer-Owned Pay Telephones

Rule R13-1. Requirements

(a) The subscriber shall be responsible for the installation, maintenance, and operation of customer-provided pay telephones used in connection with this service.

(b) Customer-provided pay telephones must be registered and connected to the telephone company network in compliance with Part 68 of the FCC Rules and Regulations as well as the regulatory and certification requirements of the North Carolina Utilities Commission. Subscribers of PTAS must notify the telephone company and provide the FCC registration number of each instrument to be connected.

(c) The carriage and completion of a local message may not be charged to an end-user of a Public Telephone Access Service at a rate which exceeds 25 cents per call. The rates applicable for carriage and completion of intrastate interLATA long-distance calls may not exceed AT&T's MTS rate (including any applicable operator assist or person-to-person charges) plus 25 cents per call. The rates applicable for carriage and completion of intrastate intraLATA long-distance calls may not exceed the local exchange companies' MTS rates (including any applicable operator assist or person-to-person charges) plus 25 cents' per call.

(d) Instruments connected to a Public Telephone Access Service line must be of a type which permits the following characteristics:

(1) All PTAS instruments must allow access to the "Operator" at no charge;

(2) All PTAS instruments must allow access to 911 Emergency Service where available at no charge;

(3) Coin-operated instruments must be equipped to return the coins to the caller in the case of an incomplete call;

(4) Coin-operated instruments must be equipped to accept nickels, dimes, and quarters;

(5) All new PTAS instruments must allow receipt of incoming calls at no charge; and

(6) All telephones must be capable of completing local and long-distance calls.

(e) The following information is required to be posted at each customer-owned pay telephone installation;

(1) The appropriate emergency number (operator, 911);

(2) The provision of clear operating instructions, ownership of the instrument, and procedures for handling repair, refunds, and billing disputes; and

(3) The telephone number of the PTAS line and the local address.

(f) The PTAS subscriber is responsible for meeting all federal, state, and local requirements with respect to provisions of customer-provided telephones for use by hearing impaired and handicapped persons.

(g) The PTAS subscriber shall be responsible for payment of a maintenance of service charge as covered in Section 15 of the applicable telephone company tariff for each visit by the telephone company to the premises of the subscriber, where the service difficulty or trouble report results from the use of equipment or facilities provided by the subscriber.

(h) The PTAS subscriber is responsible for abiding by all applicable telephone company tariffs. Failure to do so is grounds for immediate disconnection of service.

## DOCKET NO. P-100, SUB 86

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

| | | |
|---|---|---|
| In the Matter of | | |
| Investigation of Intrastate WATS and 800 Service | ) | |
| Rates and Charges of All Local Exchange Telephone | ) | ORDER ESTABLISHING WATS |
| Companies Under the Jurisdiction of the North | ) | AND 800 SERVICE RATES |
| Carolina Utilities Commission | ) | AND CHARGES |

HEARD IN: Commission Hearing Room, 217 Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on March 3, 4, 5, and 6, 1985.

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

APPEARANCES:

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

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For Carolina Utility Customers Association:

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For the Attorney General:

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For the Public Staff:

Theodore C. Brown and Michael L. Ball, Staff Attorneys, Public Staff, North Carolina Utilities Commission, P. O. Box 29520, Raleigh, North Carolina 27626-0520

BY THE COMMISSION: On October 28, 1985, in Docket No. P-140, Sub 9, AT&T-C Communications of the Southern States, Inc. (AT&T-C), asked for authority to adjust all of its intrastate interLATA rates and charges for Channel Services, WATS, 800 Service, and Long Distance Message Telephone Service (MTS) and to introduce a charge for verification and interrupt service for MTS customers. The proposed charges were designed to recover an alleged annual intrastate revenue shortfall of $10,403,000. As part of the filing, AT&T-C requested emergency interim rate relief of approximately $6,300,000.

On November 25, 1985, the Commission entered an Order in Docket No. P-140, Sub 9, declaring the application to be a general rate case under N.C.G.S. 62-137, suspending the proposed tariffs for interim and permanent relief, and scheduling an oral argument on the interim relief request. On December 6, 1985, the Commission issued an Order granting the interim rate relief, which by Order dated December 18, 1985, was affirmed to be in the form of an interim suspension of the $25.00 special access surcharge on WATS and 800 Service access lines.

On December 12, 1985, Southern Bell Telephone and Telegraph Company (Southern Bell) filed tariffs with an effective date of February 1, 1986, to adjust the Company's intrastate intraLATA rates and charges for WATS and 800 Service. Under the proposals of AT&T-C and Southern Bell, intraLATA and interLATA WATS and 800 Service would be tariffed and provided separately, rather than jointly under the uniform statewide tariffs heretofore in effect. By Order dated December 30, 1985, the Commission concluded that the request of AT&T-C for adjustments in its WATS and 800 Service rates should be separated from its general rate case and docketed in another proceeding; i.e., this Docket No. P-100, Sub 86, for consideration in conjunction with Southern Bell's proposed changes in intraLATA WATS and 800 Service. The Commission further concluded that all local exchange companies under the jurisdiction of the Commission should be made parties to this Docket. That Order suspended the rates and tariffs on WATS and 800 Service and set this docket for hearing on March 4, 1986, in the Commission Hearing Room, Dobbs Building, Raleigh, North Carolina. On January 21, 1986, the Commission issued an Order Requiring Public Notice of the hearings.

By Motions and Orders of varying date, all of which are matters of record, the following parties intervened: the Attorney General, the North Carolina Long Distance Association (NCLDA), Carolina Utility Customers Association (CUCA), MCI Telecommunications (MCI), First Union Corporation, and Telecommunications Systems, Inc. (TSI). In addition, the Public Staff's intervention was deemed recognized pursuant to statute.

On February 4, 1986, the NCLDA filed a motion to combine the hearings in the AT&T-C general rate case and in this docket. Various responses were filed to that motion, and on February 21, 1986, the Commission issued an Order denying the motion to combine the hearings for reasons stated therein.

On March 4, 1986, in the Commission Hearing Room, the matter came on for hearing as scheduled. David B. Denton, Southern Bell, testified concerning intraLATA WATS and 800 Service in North Carolina; B.A. Rudisill, Southern Bell, testified concerning settlements with independent companies; Robert Friedlander, AT&T-C, testified as to the pricing proposals for WATS and 800 Service and the proposed charges and impact; Joseph W. Wareham, Carolina Telephone and Telegraph, Inc. (Carolina Telephone), testified as to his company's position on the new proposed tariff; R. Chris Harris, Central Telephone Company, (Central Telephone) testified in opposition to the proposed Southern Bell tariff to restructure WATS and 800 Service; Scott Ross, MCI, testified in opposition to continuation of the WATS access surcharge exemption granted to AT&T-C; Ken Prohoniak, Continental Telecommunications, Inc., testified concerning his company's position as to the proposed Southern Bell tariff and the restructuring of the WATS and 800 Service; Alfred B. Banzer, General Telephone Company of the Southeast (General Telephone), gave his company's comments and position concerning the Southern Bell proposed tariff; Reginald Hill, Consultant, testified as to the impact of the proposed tariffs on his clients; Louis R. Hines, on behalf of Burlington Industries and Carolina Utility Customers Association, testified concerning CUCA's position on the restructuring of WATS and 800 Service and the impact of the new proposed tariffs on his company; Harry M. Venable, Celanese Fiber Operations, testified concerning the impact of the proposed tariffs on his company; Carl E. Spain, Fieldcrest Mills, Inc., testified as to the impact of the proposed tariffs on his company; Leo Wentzel, TelaMarketing Communications of the Piedmont and the North Carolina Long Distance Association, testified as to the impact on his company and on the NCLDA; George E. Mattingly, First Union and First Computer Service, Inc., testified as to how the new proposed tariffs would impact the banking industry and First Union Bank; and Hugh L. Gerringer, Public Staff, testified as to the Public Staff's review and analysis of the proposed tariffs of AT&T-C and Southern Bell and as to how the proposed tariffs would impact the public and presented the Public Staff's recommendations concerning WATS and 800 Service.

Based on all of the evidence in the record in this docket, the Commission makes the following:

## FINDINGS OF FACT

1. This matter is properly before the Commission, and the Commission has jurisdiction over the parties and the subject matter.

2. The Modified Final Judgment (MFJ) requires that the present statewide WATS and 800 Service offerings, provided jointly by AT&T-C and the LECs including Southern Bell, be separated so as not to involve the joint provision of service or pooling of revenues by AT&T-C and Southern Bell.

3. Splitting the current statewide WATS and 800 Service rate schedules into separate intraLATA and interLATA schedules will have varying impacts on customers with varying usage patterns.

4. Southern Bell's proposal on behalf of the local exchange companies (LECs) for intraLATA add-on WATS and 800 Service offerings and an intraLATA-only WATS offering would reduce by approximately $1.8 million the revenue to the LEC intraLATA toll pool that is currently produced by WATS and 800 Service.

5. AT&T-C's proposal for interLATA add-on WATS and 800 Service offerings would result in additional income of approximately $10 million to AT&T-C.

6. It is appropriate and in the public interest for the WATS and 800 service access line to be provided by the LECs directly to subscribers.

7. The elimination of the two access line minimum requirement and the reduction of the minimum average time requirement (MATR) from 60 to 30 seconds for interLATA and intraLATA 800 Service are appropriate and in the public interest.

8. Time of day discounts for intraLATA WATS and 800 Service should not be implemented at this time.

9. It is appropriate and in the public interest to discontinue the $25.00 special access surcharge on Dedicated Access Lines (DALs) for WATS and 800 Service.

10. It is appropriate and in the public interest that the splitting of the current statewide WATS and 800 Service offerings into intraLATA and interLATA offerings should be accomplished so as to minimize as much as absolutely possible the varying customer impacts that will necessarily result.

11. The rate schedules attached hereto as Appendix A are the appropriate rate schedules for implementation in this proceeding based on the findings of fact and conclusions set forth herein.

### EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 1

Finding of Fact No. 1 is based on the various filings in this docket and the record as a whole. It is jurisdictional in nature and uncontested.

### EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 2

Finding of Fact No. 2 is supported by the testimony of AT&T-C witness Friedlander and Public Staff witness Gerringer and is uncontested by any other witness. Further, the Commission concludes as a matter of law that the MFJ requires that the present statewide WATS and 800 Service offerings must be split into separate interLATA and intraLATA offerings. See U.S. v. AT&T-C, 552

F. Supp. 131 (D.D.C. 1982), aff'd per curiam sub nom. Maryland v. United States,, 459 U.S. 1229, 103 S.Ct. 1240 (1983).

## EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 3

This finding of fact is based on the testimony of Southern Bell witness Denton, AT&T-C witness Friedlander, and Public Staff Gerringer and is uncontested by any other witness. Public Staff witness Gerringer testified that under the AT&T-C and Southern Bell tariff proposals, some customers would receive decreases while the maximum expected customer impact would be in the range of a 90% increase. Witness Gerringer further testified that under the Public Staff's rate proposals, while some customers would see decreases in their bills, the maximum expected customer impact resulting from the Public Staff recommendations would be approximately a 29% increase for WATS and 36% increase for 800 Service.

## EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 4

The evidence supporting this finding of fact is found in the testimony of Southern Bell witness Denton. Witness Denton testified that the rate proposals of Southern Bell were generally designed to be revenue neutral; i.e., to realize the same level of revenues for the LEC intraLATA toll pool as it presently receives from WATS and 800 Service. However, witness Denton indicated that the 800 Service tariff proposal would, under current usage patterns, produce a revenue reduction of approximately $2.1 million to the pool, resulting from the elimination of the two access line minimum requirement and the reduction of the MATR from 60 to 30 seconds. The overall net reduction to the pool resulting from Southern Bell's proposals for both WATS and 800 Service would be approximately $1.8 million.

## EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 5

Evidence in support of this finding of fact is found in the testimony of AT&T-C witness Friedlander. Witness Friedlander testified that the approximately $10 million in positive income impact to AT&T-C resulting from the tariff proposal was a combination of increased revenues resulting from the higher rates and lowered costs (primarily reduced access expenses, resulting in part from repressed demand). Witness Friedlander testified that the Company's rate proposal was not based on any considerations of overall revenue requirement, but on the principle that the rates should cover the cost incurred in rendering the specific service. The costs asserted to be covered by the proposed rates included both access charges and AT&T-C network costs, which witness Friedlander declined to specify with exactness on the record on the grounds that the cost data was proprietary. Witness Friedlander further testified that, in contrast to other classes of service (such as MTS) where it was the Company's view that a rate was sufficiently cost-based if the revenues for the class of service as a whole covered the costs for the class of service as a whole, it was the Company's view that for WATS and 800 Service the revenues in each rate block should cover all the costs incurred in rendering service within that rate block.

## EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 6

Evidence to support this finding of fact is found throughout the record in this proceeding. AT&T-C witness Friedlander and Southern Bell witness Denton both proposed that the provision of the WATS and 800 service access line be shifted to the LECs. Public Staff witness Gerringer testified that the Public Staff did not oppose such a change. No strong opposition to the proposal was expressed. Under the new arrangement, rather than having the LECs provide the DAL to AT&T-C for $34/month and AT&T-C in turn provide it to the customers for $33/month and $35.95/month for 800 Service and WATS, respectively, the LECs will provide the DAL and bill the $33 and $35.95 DAL charges directly to the customer.

## EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 7

Evidence regarding Finding of Fact No. 7 is found in the testimony of AT&T-C witness Friedlander, Public Staff witness Gerringer, and all LEC witnesses. Both Southern Bell and AT&T-C proposed elimination of the two access line minimum requirement and the reduction of the MATR from 60 to 30 seconds for 800 Service. The Public Staff did not oppose these changes. The LEC witnesses expressed two concerns. First, they were concerned at the negative revenue impact associated with these changes. This concern will be addressed by the Commission. It is the Commission's conclusion that this revenue loss should be made up in the rate design. Second, concern was expressed as to whether the independent telephone companies can handle these changes as well as Southern Bell can. The Commission is concerned about this issue. Therefore, the Commission concludes that any independent telephone company which in view of the evidence in this case continues to anticipate difficulty in implementing these changes should, on or before January 12, 1987, file a report in this docket detailing the nature of such difficulties and setting forth a timetable within which the company anticipates that the difficulties will be resolved so as to allow implementation of these changes. The Commission will act as required upon the receipt of any such report.

## EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 8

Evidence as to Finding of Fact No. 8 is found primarily in the testimony of Southern Bell witness Denton and Public Staff witness Gerringer. Southern Bell proposed that time of day discounts be instituted for intraLATA WATS and 800 Service, and the Public Staff opposed such a change. The Public Staff argued that no cost savings or efficiencies associated with such a change had been demonstrated or quantified, and Southern Bell witness Denton agreed that he could not quantify how much, if any, usage would shift or new usage would be created by the proposal. Witness Denton argues, however, that it was justified based on evidence that indicated that in states where time of day discounts exist, a greater percentage of usage is in the off peak periods. The Public Staff's concern was that merely shifting usage without realizing corresponding efficiencies would simply cause revenue losses without compensating benefits. In view of the fact that the claimed benefits are not quantified or otherwise studied in detail, the Commission concludes that the adoption of the proposal is not warranted at this time.

## EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 9

Virtually all of the witnesses testified in some respect on whether the $25.00 special access surcharge paid by AT&T-C on the DALs used for WATS and 800 Service should be permanently eliminated or should continue to be paid by AT&T-C. The $25.00 special access surcharge was temporarily suspended as a form of interim rate relief for AT&T-C. In a later Order, the Commission reinstituted $1.68 of the special access surcharge on WATS and 800 service as the form of rate relief afforded AT&T-C pending resolution of the access charge proceedings. AT&T-C argued that, so long as it had to pay the surcharge, it should receive rates to cover it. CUCA argued that the surcharge should be permanently eliminated in this proceeding. The Public Staff and the LECs argued that it should not be abolished in this proceeding but should be reviewed only in the context of an access charge proceeding, where the impact on the LECs and larger access charge issues could be examined. The Commission concludes that the WATS and 800 special access surcharge of $25.00 should be eliminated at this time. Reimposition of the special access surcharge would serve to worsen the revenue to cost relationship for AT&T-C on its WATS and 800 services and therefore should not be reimplemented at this time. As discussed in this Order the Commission believes that some form of relief is justified for AT&T-C on its WATS and 800 service. Since these services are authorized for resale by other long distance carriers it seems reasonable that the revenue derived from these services should cover the cost of providing these services. It is the Commission's position that the tariffs approved herein do in the aggregate allow AT&T-C to cover its cost of WATS and 800 service. The modification to the access tariffs (exemption of the $25.00 surcharge on WATS and 800 service and reduction in the CCLC) along with elimination of the last two taper points will clearly serve to improve the revenue to cost relationship in all of the approved taper points.

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

Evidence regarding these findings of fact was presented by each of the witnesses involved in the case. The issues discussed in these finding of fact represent the most controversial in the proceeding. The Commission has previously concluded that the MFJ requires separating the current joint offering of WATS and 800 services by AT&T-C, the LECs, and Southern Bell. The Commission must now determine the just and reasonable rates for the separated service offerings. Southern Bell filed proposed rates for intraLATA WATS and 800 service. The rates proposed by Southern Bell were designed to be income neutral to the LECs. The LECs generally agreed that intraLATA WATS and 800 services should be restructured on an income neutral basis, but expressed concern that the 800 Service tariff proposals of Southern Bell with respect to the elimination of the two access line minimum requirement and the reduction of the MATR from 60 to 30 seconds would result in a revenue loss to the LECs' intraLATA toll pool. Chris Harris of Central Telephone expressed opposition to the Southern Bell tariff because of this revenue loss. Witness Harris indicated that the restructuring was premature and would be more appropriately undertaken in later generic proceedings. Joseph Wareham of Carolina Telephone Company also expressed concern with eliminating the two access line minimum requirement for 800 Service.

AT&T-C proposed substantial increases for its interLATA WATS and 800 Service. AT&T-C contended through witness Friedlander that the driving force behind its proposal was the Company's perceived need to base its WATS and 800 Service rates to cover the full costs of providing the service in each rate block or rate taper. Various witnesses expressed a different view of the requirements of cost-based pricing. In addition, the Public Staff through cross-examination questioned the validity of AT&T-C's cost figures, which AT&T-C largely maintained to be proprietary and which are therefore not fully in evidence.

In contrast to AT&T-C's position, the various consumer witnesses, as well as the Public Staff, emphasized the need to restructure these services in a way that would limit or minimize the resulting customer impact. The Public Staff further proposed an income neutral approach as the appropriate mechanism to limit the customer impacts. Witness Gerringer described the Public Staff's proposal as income neutral rather than revenue neutral in order to reflect the fact that both the DAL revenues and the DAL costs were being shifted from AT&T-C to the LECs, so while technically not revenue neutral, the proposal was neutral with respect to income for both AT&T-C and the LECs.

The LEC witnesses generally did not comment directly on AT&T-C's asserted cost justification but stated generally that in their view a rate did not have to cover all costs in all rate blocks in order to be cost-based; rather, in their view, a rate was cost-based if aggregate revenues for the class of service covered the aggregate costs. LEC witnesses further expressed some concern that increases of the magnitude of the AT&T-C proposals would have the effect of reducing LEC revenues by reducing the intraLATA WATS revenues through repression of total statewide WATS demand and by reducing access revenues as a result of repression of demand for interLATA WATS.

The Commission concludes that the intraLATA WATS and 800 service rates proposed by the Public Staff excluding the last two taper points (120 to 180 hours and over 180 hours) are just and reasonable and should be approved. The Commission recognizes that the approved rates will not be precisely income neutral since the last two taper points have been eliminated. However, any increased revenues accruing to the LECs will serve to offset access reductions approved in Docket No. P-100, Sub 65.

The Commission also concludes that the interLATA WATS and 800 service rates proposed for AT&T-C by the Public Staff excluding the last two taper points (120 to 180 hours and over 180 hours) are just and reasonable. Although the approved rates fall below that requested by AT&T-C, the Commission concludes that the approved rates will provide some relief to AT&T-C's revenue to cost relationship for WATS and 800 services. The Commission recognizes that the rates design proposed by the Public Staff was done so in an income neutral manner in contemplation of the access charge levels then in place. Modifications to the access charge levels have been approved by the Commission. The special access surcharge of $25 applicable to WATS and 800 service lines has been eliminated. The Commission has likewise ordered reductions in the Carrier Common Line Charge applicable to terminating access which will reduce AT&T-C's cost of providing these services. Thus AT&T-C has been accorded rate relief for these services. The Commission believes that the rate levels approved are at the very least adequate to allow AT&T-C to recover its aggregate cost of providing these services and serve to minimize the impact on customers using these services. The Commission believes it is necessary to eliminate the last two taper points in the Public Staff's proposed schedules to avoid disruptive customer usage pattern changes that may result from separating the joint offering. Additionally, with regard to the interLATA offerings for AT&T-C, these taper points reflect rates significantly below applicable access charges and are thus not reasonable.

Based upon the foregoing, the Commission adopts the WATS and 800 service rate design set forth in Appendix A, attached hereto.

IT IS, THEREFORE, ORDERED as follows:

1. That Southern Bell Telephone and Telegraph Company on behalf of the LECs shall file on or before Monday, January 12, 1987, tariffs incorporating the rates set forth in Appendix A attached hereto and a proposed customer notice to inform the WATS and 800 Service customers of the action taken herein.

2. That AT&T-C shall file a proposed customer notice and tariffs incorporating the rates set forth in Appendix A attached hereto in conjunction with the tariff filings required in a separate Order issued concurrently in Docket Nos. P-140, Sub 9, P-100, Sub 86, and P-100, Sub 65 on or before Monday, January 12, 1987.

3. That the tariffs filed in accordance herewith shall be consistent with the findings and conclusions herein.

4. That on or before January 12, 1987, any LEC that anticipates difficulties in implementing the decisions herein regarding 800 Service shall file for consideration with the Commission a report detailing those difficulties and setting forth a timetable within which the company anticipates that the difficulties will be resolved so as to allow implementation of this Order.

5. That the Public Staff and other parties may file written comments concerning the tariffs within five (5) working days of the date on which they are filed with the Commission.

6. That the tariffs shall become effective upon the issuance of a further Order by the Commission approving the tariffs and customer notice filed pursuant to ordering paragraph 1 above with an anticipated implementation date of April 1, 1987.

7. That any motions not previously ruled upon or granted are hereby denied.

ISSUED BY ORDER OF THE COMMISSION.
This the 23rd day of December 1986.

NORTH CAROLINA UTILITIES COMMISSION
Sandra J. Webster, Chief Clerk

(SEAL)

## APPENDIX A
## APPROVED RATES FOR WATS AND 800 SERVICE

| Usage Band | WATS Service | 800 Service |
|---|---|---|
| IntraLATA | | |
| 0.0 - 15.0 hours | $10.68/hr. | $12.71/hr. |
| 15.1 - 40.0 hours | 8.43/hr. | 9.99/hr. |
| 40.1 - 80.0 hours | 6.10/hr. | 7.26/hr. |
| Over 80 hours | 4.11/hr. | 4.89/hr. |
| Monthly Recurring | $35.95/mo. | $33.00/mo. |
| InterLATA | | |
| 0.0 - 15.0 hours | $11.89/hr. | $13.01/hr. |
| 15.1 - 40.0 hours | 9.39/hr. | 10.23/hr. |
| 40.1 - 80.0 hours | 6.79/hr. | 7.43/hr. |
| Over 80 hours | 4.57/hr. | 5.01/hr. |
| Monthly Recurring | --- | --- |

## DOCKET NO. P-100, SUB 87

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Investigation to Consider Whether to Authorize the Resale of IntraLATA Interexchange FX and Private Lines ) ORDER RULING ON NCLDA MOTION TO REQUIRE COMPLIANCE AND APPROVING NOTICE TO CUSTOMERS

BY THE COMMISSION: On February 21, 1986, the Commission issued an Order Scheduling Hearing in Docket No. P-100, Sub 87. In the February 21, 1986, Order, the Commission requested the local exchange companies (LECs) to meet in an attempt to form a consensus industry resale tariff applicable to interexchange foreign exchange (FX) and private lines service and to file testimony and proposed rates and tariffs regarding the resale of interexchange FX and private lines services. The LECs were also required to file proposed customer notices.

Pursuant to the February 21, 1986, Order, Southern Bell Telephone and Telegraph Company (Southern Bell) filed a Proposed Notice on April 10, 1986. On April 15, 1986, Southern Bell filed the testimony of Edgar L. Honeycutt which included proposed tariffs to accommodate the resale of foreign exchange and private line services. On April 15, 1986, General Telephone Company of the South filed the testimony of Alfred A. Banzer which concurs in the tariffs filed by Southern Bell. On April 16, 1986, Carolina Telephone and Telegraph Company filed its general concurrence with Southern Bell's proposed tariffs. Carolina Telephone and Telegraph Company does not concur with Southern Bell's proposal as to the exception of the Special Access Service surcharge to any special access line terminating at a resellers switch. On April 16, 1986, Barnardsville Telephone Company and Service Telephone Company filed a request that their filing requirements be waived and proposed a Notice to Customers. On April 17, 1986, Lexington Telephone Company filed its concurrence with Southern Bell's proposed tariffs. On April 18, 1986, Central Telephone Company filed its concurrence with Southern Bell's proposed tariffs, and on April 21, 1986, North State Telephone Company filed its concurrence.

The Commission has reviewed the proposed Notice to Customers filed by Southern Bell, Barnardsville Telephone Company, and Service Telephone Company. The Commission believes that the only parties directly affected by the proposed filings which require notice are the resellers and interexchange carriers certified to provide service in North Carolina or with certification cases pending. Therefore, the Commission concludes that a copy of this Order and the Notice to Customers attached hereto as Appendix A should be sent by the Chief Clerk of the Commission to each reseller and interexchange carrier certified to provide long distance service in North Carolina or with a certification docket pending.

On April 17, 1986, the North Carolina Long Distance Association (NCLDA) filed a Motion to Require Compliance in the aforereferenced docket. NCLDA requests that the Commission require Southern Bell and the other participating local exchange companies (LECs) to file tariffs in compliance with the Commission Order in this docket of February 21, 1986.

NCLDA asserts in its motion that the current FX and private line rates are either just and reasonable or they are not. If the rates are just and reasonable, then NCLDA recommends the services be made available for resale. If the rates are not just and reasonable, then NCLDA suggests that the rates need to be adjusted for all users. NCLDA objects to the fact that Southern Bell's proposed tariff revisions reference the interexchange access tariff for rates applicable to resellers rather than setting forth revised FX and private line provisions of the general subscriber tariff applicable to all subscribers. NCLDA opposes the fact that the proposed tariff provisions would apply different rates for resold FX and private line services than similar services sold to nonresale customers.

NCLDA requested the Commission to render the following remedies:

1. That the LECs be ordered to file a proposed tariff for resale of FX and private line services by no later than Friday, April 25, 1986.

2. That the LECs be required to supply supporting data to all parties which justifies any increase requested over current rates for the proposed resale rates.

3. That the prefiled testimony of the Public Staff and other intervenors be filed on Thursday, May 22, rather than May 15 to provide sufficient time after the filing of the tariffs to evaluate their merit and the supporting data.

On April 24, 1986, Southern Bell filed its response to NCLDA's Motion to Require Compliance. Southern Bell states in the response that its proposed tariffs and testimony do comply with the Commission Order of February 21, 1986. The rates proposed to be charged by Southern Bell are set forth in the access service portion of the tariff. Southern Bell's stated rationale for a proposed tariff referenced to the access tariff is that FX and private lines used by a reseller for resale purposes are the exact same service as FX and private lines used by any interexchange carrier. Thus Southern Bell asserts that the applicable charges should be the same.

On April 25, 1986, the Public Staff filed its Response to NCLDA Motion to Require Compliance. The Public Staff states in its response that the Southern Bell filing generally complies with the filing requirements set forth in the Commission Order of February 21, 1986. The Public Staff characterizes NCLDA's contentions as dealing with the merits of the proposed tariff revisions rather than the failure of the tariff to comply with the Commission Order. Thus the Public Staff asserts that the appropriate time and place for NCLDA's views to be addressed is during the hearing in the matter. The Public Staff views the subject matter of the case to be the establishment of rates for resold FX and private line service. Approval of NCLDA's motion would require expansion of the defined scope of the proceeding and would require notice of the proposed rate changes to all FX and private line customers. The Public Staff concludes that NCLDA's motion is without merit and should be denied in its entirety.

On April 28, 1986, NCLDA filed its Reply to the Response of Southern Bell to NCLDA's Motion to Require Compliance. The stated purpose for NCLDA's reply is to further clarify its position on the matter and reiterate the remedies which it seeks.

The Commission has carefully considered this matter and the merit of the positions expressed by each of the parties. The Commission believes that the NCLDA motion constitutes a request that the merits of the case be prejudged and therefore should be denied. NCLDA will be allowed to present its views on these issues during the hearing process in the case and the merits of such issues will be determined after appropriate evaluation of all of the evidence in the case. The Commission notes that NCLDA has undertaken extensive discovery in this docket seeking information and documents from Southern Bell and General Telephone Company for use in trying this case on the merits. The Commission believes that the LECs tariff proposals do comply with the filing requirements of the Commission. NCLDA's assertion that rates to all classes of customers must be the same, if accepted, would require notice of the proposed change to all FX and private line customers, and would present significant issues of whether general rate case treatment was required. More importantly, however, it would expand the scope of this proceeding beyond anything set forth on the face of the Commission's Order. In limiting the rate issue in this proceeding to the charges applicable to resold services, the Commission is acting pursuant to the authority granted by the General Assembly as reflected in the legislation giving the Commission discretion in the area of long distance competition. The Commission therefore denies NCLDA's motion. But the Commission will grant NCLDA's request for an extension of time to prefile testimony until May 22, 1986. This extension of time to prefile testimony will be granted to all intervenors in the case.

IT IS, THEREFORE, ORDERED as follows:

1. That the April 17, 1986, Motion to Require Compliance filed by the North Carolina Long Distance Association be, and is hereby, denied. Intervenors in the case will be allowed an extension of time to file testimony until May 22, 1986.

2. That a copy of this Order and the Notice to Customers attached hereto shall be distributed by the Chief Clerk of the Commission to each reseller and interexchange carrier certified to provide long distance service in North Carolina or with certification cases pending.

ISSUED BY ORDER OF THE COMMISSION.
This the 9th day of May 1986.

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

## APPENDIX A
## NOTICE OF HEARING
## DOCKET NO. P-100, SUB 87

## BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

NOTICE IS HEREBY GIVEN that the North Carolina Utilities Commission has instituted a proceeding to consider whether the resale of intraLATA interexchange foreign exchange service and private line service should be authorized and, if so, under what terms and conditions.

The hearing on this matter has been scheduled to begin Tuesday, June 3, 1986, at 9:30 a.m., in Commission Hearing Room 2115, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, said hearing to continue, as necessary, to conclusion.

The Commission has directed the local exchange telephone companies to file testimony and proposed rates and tariffs regarding the resale of intraLATA foreign exchange and private line service. Details regarding the proposed rates and charges are available from the local telephone company or at the North Carolina Utilities Commission, Chief Clerk's Office, where a copy of the proposals will be available for public review. The Commission may consider additional or alternative rate proposals which were not included in the original filings and may order rates which differ from those proposed by the companies.

Persons desiring to intervene in the matter as formal parties of record should file a motion under North Carolina Utilities Commission Rules R1-6 and R1-19. The testimony of intervenors shall be filed not later than Thursday, May 22, 1986.

Interventions should be addressed to the Chief Clerk, North Carolina Utilities Commission, P. O. Box 29510, Raleigh, North Carolina 27626-0510.

The Public Staff of the Utilities Commission, through its Executive Director, is authorized by statute to represent the using and consuming public in proceedings before the Commission. Statements to the Executive Director should be addressed to:

Mr. Robert P. Gruber, Executive Director, Public
Staff, P. O. Box 29520, Raleigh, North Carolina
27626-0520

The Attorney General is also authorized to represent the using and consuming public in proceedings before the Commission. Statements to the Attorney General should be addressed to:

The Honorable Lacy H. Thornburg, Attorney General, c/o Utilities
Division, North Carolina Department of Justice, P. O. Box 629,
Raleigh, North Carolina 27626-0629

ISSUED BY ORDER OF THE COMMISSION.
This the 9th day of May 1986.

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

DOCKET NO. P-100, SUB 87

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

| In the Matter of | | |
|---|---|---|
| Investigation to Consider Whether to<br>Authorize the Resale of IntraLATA<br>Interexchange FX and Private Lines | )<br>)<br>) | ORDER AUTHORIZING RESALE OF<br>INTRALATA INTEREXCHANGE FX-LIKE<br>AND PRIVATE LINE-LIKE SERVICES |

HEARD IN: Commission Hearing Room 217, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on June 3 and 4, 1986

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

APPEARANCES:

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

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

For Carolina Telephone and Telegraph Company:

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

For General Telephone Company of the South:

Franklin H. Deak, Attorney, General Telephone Company of the South, Post Office Box 1412, Durham, North Carolina 27702

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
and
Mark J. Prak, Tharrington, Smith & Hargrove, Attorneys at Law, 209 Fayetteville Street Mall, Raleigh, North Carolina 27601

For North Carolina Long Distance Association:

Walter E. Daniels, P.A., P. O. Box 13039, Research Triangle Park, North Carolina 27709
and
John R. Jordan, Jr., Jordan, Price, Wall, Gray & Jones, Attorneys at Law, Box 709, Raleigh, North Carolina 27602

For Carolina Utility Customers Association:

Thomas K. Austin, Fruitt & Austin, Attorneys at Law, 1042 Washington Street, Raleigh, North Carolina 27605

For MCI Telecommunications Corporation:

Charles C. Meeker, Sanford, Adams, McCullough & Beard, Attorneys at Law, 414 Fayetteville Street Mall, Raleigh, North Carolina 27602

For the Using and Consuming Public:

Theodore C. Brown, Jr., Staff Attorney, Public Staff - North Carolina Utilities Commission, P. O. Box 29520, Raleigh, North Carolina 27626-0520

BY THE COMMISSION: On December 19, 1985, the North Carolina Utilities Commission entered an Order in Docket No. P-100, Sub 72, entitled "Order Authorizing IntraLATA Resale Competition; and Approving IntraLATA Access Charges for Resellers." In that Order, the Commission found and concluded that a hearing or hearings should be held no earlier than May 1986, to consider the issue of intraLATA resale of interexchange foreign exchange (FX) and private line services and certain other issues related to the implementation of full intrastate long-distance competition. The Commission requested all interested parties to file comments on how best to proceed with hearings to address those issues.

The procedural comments were subsequently filed in Docket No. P-100, Sub 72, by the following parties: Southern Bell Telephone and Telegraph Company (Southern Bell); Carolina Telephone and Telegraph Company (Carolina Telephone Company or Carolina); General Telephone Company of the South (General or GTS); Continental Telephone Company of North Carolina (Continental); AT&T Communications of the Southern States, Inc. (AT&T-C); GTE Sprint Communications Corporations; MCI Telecommunications Corporations (MCI); Telecommunications Systems, Inc. (TSI); the North Carolina Long Distance Association (NCLDA); the Public Staff; and the Attorney General of North Carolina.

As a result of the comments, the Commission entered an Order in Docket No. P-100, Sub 87, dated February 21, 1986, scheduling a hearing to consider the resale of intraLATA interexchange FX and private lines and requiring the filing of tariffs and proposed customer notices.

On April 10, 1986, Southern Bell filed a Proposed Notice and on April 15, 1986, filed testimony and related tariffs. Testimony and statements of position were filed by a number of other local exchange companies generally concurring in Southern Bell's proposed tariffs.

On April 17, 1986, the North Carolina Long Distance Association filed Motion to Require Compliance in this docket requesting that the Commission require Southern Bell and other participating local exchange carriers (LECs) to file tariffs in compliance with the Commission Order of February 21, 1986. NCLDA objected to the fact that Southern Bell's proposed tariff revisions reference the interexchange access tariff for rates applicable to resellers rather than setting forth revised FX and private line provisions of the general subscriber tariff applicable to all subscribers. Southern Bell and the Public Staff filed responses to the NCLDA motion and NCLDA replied to Southern Bell's response.

By Order dated May 9, 1986, the Commission concluded that the proposed Southern Bell tariffs complied with the filing requirements of the Commission, limited the rate issue in this proceeding to the charges applicable to resold services, and required that notice be given only to resellers and interexchange carriers certified to provide service in North Carolina or with certification cases pending. In limiting the rate issue, the Commission noted that it was acting pursuant to the authority granted by the North Carolina General Assembly as reflected in the legislation giving the Commission discretion in the area of long-distance competition.

The following parties filed interventions in this proceeding which were allowed by Commission Orders: AT&T Communications of the Southern States, Inc.; North Carolina Long Distance Association; Telecommunications Systems, Inc.; MCI Telecommunications Corporation; and the Carolina Utility Customers Association, Inc. (C.U.C.A).

The matter came on for hearing on June 3, 1986, at 9:30 a.m. in the Commission Hearing Room, Dobbs Building, Raleigh, North Carolina. The first witness was Edgar L. Honeycutt, Jr., Staff Manager in the Headquarters Rates Organization of Southern Bell, who testified in support of Southern Bell's proposed tariffs. General presented Alfred A. Banzer, Pricing and Tariffs Manager for GTS, who generally concurred in Southern Bell's proposed intrastate tariffs. AT&T Communications presented the testimony of Robert A. Friedlander, District Manager in Marketing Plans Implementation, who supported the resale of intraLATA FX and private line services but had some criticism of Southern Bell's proposed tariffs. Hugh L. Gerringer, Jr., Engineer with the Public Staff Communications Division, testified in opposition to the resale of intraLATA FX and private line services. Nat Carpenter, Engineer with the Public Staff Communications Division, presented suggested modifications of Southern Bell's proposed tariffs, should they be approved. Ben Johnson, an economist and rate design expert, testified for the North Carolina Long Distance Association in support of the resale of intraLATA FX and private line services.

Based on the foregoing, the testimony of all the witnesses, the exhibits received into evidence at the hearing, and the entire record in this proceeding, the Commission now makes the following

FINDINGS OF FACT

1. The North Carolina Utilities Commission has jurisdiction pursuant to G.S. § 62-2, and G.S § 62-130 et seq., to hear and adjudicate this matter.

2. The LECs' present Access Service Tariff includes provisions for Feature Group A (FGA) and special access services which are functionally equivalent to the LECs' intraLATA FX and intraLATA interexchange private line services, respectively. These access services are available to all certified long-distance carriers.

3. Long-distance carriers currently make use of FGA and special access services in providing their services to the end-user.

4. The changes proposed by Southern Bell, and concurred in by many of the LECs through testimony or statements of position in this case, in the FX and private line sections of the Southern Bell tariff have the effect of requiring application of current tariff provisions for FGA and special access services when FX and private line services are offered for resale. This proposed service offering will be herein referred to as FX-like and private line-like services.

5. It is in the public interest to authorize the resale of intraLATA FX-like and intraLATA interexchange private line-like services.

6. The tariff changes proposed by Southern Bell and concurred in by many of the LECs are just and reasonable and should be implemented for the resale of intraLATA FX-like and private line-like services. The resale of these services by the LECs will not jeopardize reasonably affordable local service rates.

7. The compensation plan implemented in the February 22, 1985, Order to compensate the LECs for unauthorized intraLATA calling should not be applicable to resold FX-like and Private line-like services upon the effective date of approval of the tariffs filed pursuant to this Order.

8. Each LEC shall file tariffs pursuant to this Order to become effective upon issuance of a further Order by the Commission.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 1

The evidence supporting this finding of fact is found in the various Commission Orders which authorized this proceeding, the record as a whole, and applicable North Carolina public utility law found in Chapter 62 of the General Statues. This finding of fact is jurisdictional in nature and is uncontested.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 2 THROUGH 6

The evidence supporting these findings of fact is found in the testimony of Southern Bell witness Honeycutt, GTS witness Banzer, AT&T-C witness Friedlander, NCLDA witness Johnson, and Public Staff witnesses Gerringer and

Carpenter. In an Order entered in Docket No. P-100, Sub 72, on February 22, 1985, the North Carolina Utilities Commission authorized interLATA resale of message toll service (MTS) and WATS services. In that Order, the Commission stated that prior to allowing resale of foreign exchange service and private line services a more detailed analysis of such services and, possibly, restructuring of rates were required. In a November 25, 1985, Order on Reconsideration, the Commission requested all parties to file comments on the NCLDA's motion requesting the Commission to issue an Order scheduling hearings to address authorization of the resale of FX and private line services and the proper access charges for such services. The Commission subsequently scheduled hearings to begin June 3, 1986, to consider whether resale of intraLATA interexchange private line and FX service should be authorized and under what terms and conditions. The Commission also directed the LECs to conduct meetings prior to the hearings in an attempt to develop an industry resale tariff.

In response to the Commission Order of February 21, 1986, the LECs reached a basic consensus on an industry tariff for the resale of intraLATA interexchange private line and FX service. Southern Bell filed tariffs for the resale of intraLATA FX and private line services on April 15, 1986. Southern Bell witness Honeycutt testified as to the reasonableness of Southern Bell's tariff filing. Witness Honeycutt testified that Southern Bell has filed tariffs for the resale of intraLATA interexchange private line and FX services using the same rate structure and rates as facilities-based interexchange carriers pay for equivalent services. Southern Bell asserts that intraLATA foreign exchange service is functionally equivalent to switched access Feature Group A service and that private line services are functionally equivalent to special access services currently offered to and utilized by facilities-based interexchange carriers. Specifically, Southern Bell has proposed that resellers of intraLATA private line and like services be required to pay the special access rates found in Section E-7 of the North Carolina access tariff. Similarly, the Company has proposed that resellers of intraLATA foreign exchange service be required to pay the Feature Group A rates found in Sections E-6 and E-3 of the North Carolina access tariff. Witness Honeycutt contended that Southern Bell's proposal is appropriate and would result in the provision of functionally equivalent services to resellers and facilities-based interexchange carriers under the same rate structure and at the same rates. Southern Bell witness Honeycutt made the following statement regarding this matter

> "There is no difference in the type of service that the Local Exchange Company is providing to that carrier so, therefore, there should be no difference in the rate that carriers and resellers, since they are essentially one and the same, there is no difference in the rate they should pay."

Witness Honeycutt further contended that it is appropriate that resellers of these services pay the same rates as facilities-based interexchange carriers because resellers use identical LEC facilities to provide an MTS-like or toll service to their customers. GTS witness Banzer endorsed the proposed tariffs and described the similarities between the use of LEC facilities by resellers and interexchange carriers:

> "Allowing resale of FX and private line services is basically allowing a customer to lease these facilities from the telephone company and repackage the services for sale to end users. The repackaged services result in a cost savings to the end users and allow the reseller to project a profit. The end user is substituting one service for another and opting to subscribe to the service of the least cost. The most likely substituted service is basic Message Toll Service (MTS) which is billed on a usage rate basis. Providing FX service for resale utilizes the same facilities as MTS for switched access and, therefore, charging for switched access out of the Access Services Tariff is both fair and logical."

In support of its position, Southern Bell also cites the following excerpt from the Commission Order entered in Docket No. P-100, Sub 72, on February 22, 1985, as follows:

> "The NCLDA contended that to apply access charges to resellers, 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 'notwithstanding 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.'....[i]t 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." RE Competitive Intrastate Offerings of Long-Distance Telephone Service, 65 PUR 4th 55, at 68 (NCUC 1985).

Based on the above-quoted language, Southern Bell contends that the Commission has clearly rejected the argument that resellers are the same as ordinary business customers and should obtain long-distance facilities at the same rates as ordinary business customers. The reseller, unlike the ordinary business customer, is utilizing intraLATA foreign exchange and private line services to provide long-distance service to its customers for profit. Therefore, Southern Bell contends the reseller should be required to pay for these services under the same rate structure and rates as other providers of long-distance service.

In addition, Southern Bell contends its proposal to provide intraLATA foreign exchange service to resellers on a usage sensitive basis is consistent with pricing principles in a competitive telecommunications environment. Witness Honeycutt testified that a usage sensitive rate structure for intraLATA foreign exchange is appropriate because it more accurately reflects the use of the network. According to witness Honeycutt, intraLATA foreign exchange service is used by the reseller to provide a substitute for a usage sensitive toll service, and it should be priced in the same manner. Therefore, a usage sensitive rate structure provides the reseller with a mechanism to purchase these services in a manner that correlates with the amount of service actually used. General witness Banzer offered the following reasoning for a usage sensitive rate structure:

> "The current rate levels and structure for FX and private line services were developed prior to the advent of resale. As a result they were not designed to efficiently function in a resale environment...(I)n a flat rate environment, the network and associated rates for the services were designed considering average customer usage. The reseller, however, has incentive to fully utilize the facilities to their maximum. As a result, maximum usage would far exceed the design criteria of the network and would create additional incremental switching costs and ultimately contribute to rate increases for all customers using switched services. Utilizing the Access Services tariff, which is based on usage, assures that usage is paid for by those actually using the network."

Southern Bell further contends that resale of intraLATA FX and private line services from currently existing FX and private line tariffs is inappropriate. The current rate structure for FX service is a flat rate and was not, in Southern Bell's opinion, designed for the resale environment. In a resale environment, FX service is a direct substitute for usage sensitive intraLATA toll service; therefore, Southern Bell believes it is only appropriate that the rate for intraLATA FX service be usage sensitive also.

Southern Bell contends that a usage sensitive rate for FX service is necessitated by the significantly greater network usage of the reseller. In its development of surrogate usage in those end offices that do not have measurement capability, the FCC has approved higher surrogate usage to interexchange carriers and resellers (FGA-MTS service) than ordinary business customers (FGA-FX). Indeed, testimony was presented at hearings showing that a reseller can maintain high usage on these lines and service at acceptable blocking levels by increasing the number of trunks to carry the higher usage of resellers.

In addition, Southern Bell contends that the public interest will not be served by the resale of foreign exchange service under existing tariffs. Resale under existing tariffs will lead to increased revenue losses for the LECs. Historically, MTS and WATS have had greater levels of contribution than foreign exchange or private line services. Southern Bell contends that the LECs will experience a substantial revenue loss if resellers are permitted to substitute flat-rate foreign exchange service for MTS and WATS. Indeed, Southern Bell contends that the LECs will still experience some revenue loss if customers migrate to the proposed usage sensitive foreign exchange services, because the contribution under this pricing (FGA) is not as great as for MTS and WATS.

General also contends that, since the existing FX and private line rate levels and flat rate structure were developed before the advent of resale, these rates are unsuitable for resale. The established rates were based on average customer usage and were not designed to provide equitable compensation in a resale environment. General asserts that, if a reseller can buy these services at flat rates and aggregate usage of many customers on each facility, then the reseller has an incentive to use each facility to its maximum capacity. If such occurs, General believes maximum usage would exceed the design criteria of the network and would create additional incremental switching costs and ultimately contribute to rate increases for all customers using switched access.

Carolina Telephone Company reiterated the inappropriateness of applying the current rates for FX and private line service for resold services. Carolina states in its brief that the existing rates were established in a monopoly environment without any expectation that the services could later be aggregated and resold to the public. Carolina points out that even in the interstate market, flat rate FX service is not available. FX resellers are required to subscribe to FGA service in the interstate market.

Southern Bell refutes the evidence presented by NCLDA suggesting that foreign exchange rates already substantially exceed their costs, rendering further rate restructuring unnecessary. Specifically, NCLDA's Honeycutt Cross-Examination Exhibit 1 showed the relationship between the rate for the traffic sensitive elements of Feature Group A and the direct incremental cost for those elements. While incremental cost is the appropriate floor for any pricing decision, Southern Bell contends it should only be considered as the starting point. The intrastate rates for the traffic sensitive elements of Feature Group A are not totally based on incremental cost but essentially mirror the interstate traffic sensitive rate elements. The interstate rates are based on the jurisdictional separation procedures found in Part 67 of the FCC rules and the embedded investment and separated cost for all companies participating in the traffic sensitive pool. Further, these rates, like intraLATA toll rates, include contribution levels for the maintenance of affordable local exchange service. Therefore, Southern Bell maintains that NCLDA's comparison is misleading because the rates for the traffic sensitive elements of Feature Group A were based on other factors in addition to incremental cost. In the future, if FGA rates are changed, Southern Bell contends that the rate for resold foreign exchange service should also be changed.

Similarly, the LECs assert that resale of private line services under existing tariffs is inappropriate. According to witness Honeycutt, the current rate levels for all private line services do not recover resource cost. Witness Honeycutt asserts that the resale of services which do not cover their cost is not in the public interest and would result in revenue losses that would be to the detriment of the local exchange carriers and their local ratepayers.

Several of the parties take the position that Southern Bell's proposed tariffs are discriminatory and should be rejected. G. S. 62-140 provides that no public utility shall establish or maintain any unreasonable difference as to rates or services either as between localities or as between classes of service. The Commission has no power to authorize rates that result in unreasonable and unjust discrimination. State ex rel. Utilities Commission v. N.C. Textile Manufactures Association, Inc., 313 N.C. 215, 328 S.E. 2d 264 (1985); State ex rel. Utilities Commission v. Bird Oil, 302 N.C. 14, 273 S.E. 2d 232 (1981); State ex rel. Utilities Commission v. Nello L. Teer Company, 266 N.C. 366, 146 S.E. 2d 511 (1966).

A substantial difference in services or conditions must exist to justify a difference in rates. State ex rel. Utilities Commission v. Edminsten, 291 N.C. 424, 230 S.E. 2d 647, 650 (1976). There must be no unreasonable discrimination between those receiving the same kind and degree of service. State ex rel. Utilities Commission v. Mead Corporation, 288 N.C. 451, 78 S.E. 2d 290 (1953). In determining whether a difference in rates constitutes unreasonable discrimination, the court in Bird Oil determined that the following 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. Bird Oil Co., 273 S.E. 2d 232, 238 (1981). Other factors that are appropriate for consideration in determining whether differences in rates constitute unreasonable discrimination include "...competitive conditions, consumption characteristics of the several classes, and the value of service to each class...." State ex rel. Utilities Commission v. N.C. Textile Manufacturers, 328 S.E. 2d 264, 269.

Clearly, G. S. § 62-140 applies to discrimination between typical customers of a public utility, but Southern Bell contends the applicability of this statute to interconnections between competing public utilities is doubtful. Southern Bell asserts there are sufficient differences between the characteristics of ordinary business customers and resellers of intraLATA foreign exchange and private line services to justify a difference in rates even under the Bird Oil analysis. Testimony was presented during hearings by the LECs concerning the differences in operating conditions and consumption characteristics of ordinary business customers and resellers. Southern Bell contends that, because resellers are in the business of providing service to segments of the public for profit, it was only reasonable to expect greater usage than that from the ordinary business customer.

Southern Bell also presented testimony which was intended to show the difference in the manner of service between an end user customer and a reseller. The end user customer of intraLATA foreign exchange and private line services is typically a business customer that may subscribe to either service to satisfy its own internal communications requirements. A reseller, on the other hand, utilizes intraLATA foreign exchange and private line services to provide its customers with MTS-like toll services. Hence, Southern Bell contends there is a difference in the manner of services between a reseller and an ordinary business customer.

Further, while the incremental resource costs of rendering the services to an ordinary business customer and the reseller are similar, the local exchange companies assert that they incur the added cost of lost toll revenues from the resale of these lines. Therefore, if all costs associated with providing these services to resellers and business customers are considered, Southern Bell believes the cost of providing the services to the reseller and business customer are different and justify a rate differential.

In addition, in the regulation of utilities, Southern Bell contends the most frequently used criterion to justify difference in rates for functionally equivalent services is the value of service. The most common application of this principle is found in the difference in rates for residential and business customers. The LEC facilities used by residential and business customers are functionally equivalent and the cost of providing the line to the residential and business customer are essentially the same; however, regulatory agencies have routinely determined that it does not constitute unreasonable discrimination to charge different rates for these services even though they are functionally equivalent. A key factor that has justified the difference in rates is that the value of the line to the business and residential customer is not the same. For example, the business customer uses the line to promote its services or goods. In addition, the business customer passes on the cost of the line to its customers. The residential customer is without such alternatives.

Similarly, Southern Bell contends the value of intraLATA foreign exchange and private line services to a reseller is different than the value of such services to an ordinary business and residential customer. The reseller, unlike the typical customer, uses foreign exchange and private line services to provide MTS-like or toll service to its customers. The ordinary business customer uses these services for its own internal business needs. Southern Bell believes there are sufficient differences in the use of these services to justify a difference in rates under the Bird Oil test. The manner of service, quantity of use, value of service, and the cost to the LEC to provide the service differ between an ordinary business customer and a reseller according to witness Honeycutt. Southern Bell is of the opinion that these differences compel a difference in rates.

Finally, Southern Bell contends that the recent amendment of G.S. § 62-110 of the North Carolina Statutes permitting competition authorizes distinctions in the price of services provided to ordinary business customers and providers of long-distance service. Specifically, Southern Bell points to the language in G.S. § 62-110 which provides that "Notwithstanding 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 the public interest." In view of this language, Southern Bell contends that the applicability of G. S. § 62-140 to interconnections between public utilities for competitive long-distance services is clearly superseded. Southern Bell therefore believes the differences in rates between ordinary customers and resellers under the Company's proposal are consistent with other findings of the Commission regarding distinctions between resellers and business customers.

AT&T-C agreed to the need and customer demand for resale of interLATA and intraLATA private line and FX services. AT&T-C takes issue, however, with Southern Bell's tariff filing. Southern Bell proposes to charge FGA access to functionally equivalent FX service and special access charges to private line services. In contrast AT&T-C asserts FX and private line customers are allowed to purchase those services from the LECs FX and private line service tariffs at substantially different rates. It is AT&T-C's contention that Southern Bell's tariff proposal results in different prices for the same services depending upon the customer ordering the services. Thus AT&T-C contends that the Southern Bell filing is unjustly and unreasonably discriminatory. Rather than correcting the existing rate problems, the LEC proposal further exacerbates the situation according to AT&T-C witness Friedlander.

AT&T-C concedes that FX and FGA are identical services. However, AT&T-C takes issue with Southern Bell's proposal to charge its competitors one charge for the service and its customers an alternatively lower charge for the service.

AT&T-C has also suggested that Southern Bell's proposal is anticompetitive and places Southern Bell in an advantageous position in the intraLATA market. Specifically AT&T-C alleges that Southern Bell would be able to provide these services to customers at a lower cost and would therefore provide itself a competitive advantage over interexchange carriers and resellers.

AT&T-C contends there is no evidence in the record to support different rates for the identical services and that the Commission should deny approval of the LECs' proposal. It is AT&T-C's proposal that the Commission should require that intraLATA FX and private line services be repriced to all customers regardless of how those customers may use the service.

AT&T-C cites the Commission decision to defer ruling on its interLATA - Only WATS tariff as a reason for denying the LECs' proposal in this proceeding. AT&T-C advocates the offering of private line and special access services as well as FX and FGA offerings in one unified tariff offering for each offering with no restrictions on the service.

AT&T-C also opposes the Public Staff recommendation that the intraLATA FX and private line services not be allowed to be resold.

MCI also opposes the LECs' tariff proposal. MCI asserts that the LECs have proposed one rate proposal for end users and another alternative for interexchange carriers and resellers despite the functional equivalence of the service. MCI thus contends that the LEC proposal is anticompetitive and discriminatory. As a matter of policy MCI asserts that the rates and rate structure for a service should be the same regardless of who the customer is. It is MCI's contention that the LEC tariff proposal will frustrate competition and allow large or dominant utilities to benefit to the detriment of its competitors. MCI concludes that the LEC tariff proposal will restrain competition unnecessarily, create discrimination, adversely affect the LECs competitors, and harm the public interest.

NCLDA contends that resale of FX, FGA, and private line service is clearly in the public interest. It is NCLDA's position that resale of all transmission facilities for intraLATA calling will promote effective competition in North Carolina. Allowing resale of all intraLATA transmission facilities will greatly reduce barriers to entry, will increase the reality of competition in the intraLATA market, will permit resellers to create an efficient network, and will enable the public to reap the full benefits of competition. In order for the benefits of competition to reach the rural communities, NCLDA contends that a thriving resale market is critical. It is NCLDA's position that resale of FX, FGA, and private line services will not jeopardize reasonably affordable local service rates. In NCLDA's opinion, cost savings resulting from not offering cost inducing services, stimulated calling resulting in increased toll calling, plus payments by resellers to the LECs for use of facilities may result in increased overall net profits for the LECs.

It is also NCLDA's position that FGA service and FX service are not equivalent. NCLDA further contends the FGA should include LATAwide termination. Upon authorization of resale of intraLATA FX, FGA, and private line service, NCLDA asserts that the compensation plan should be eliminated.

NCLDA is also of the opinion that the LEC proposal to provide intraLATA FX and private line service at different rates for resold services and end users is illegal and discriminatory. NCLDA asserts that there is no justification or basis for charging different prices to different customers.

NCLDA contends provisions of the LEC tariff proposals violate Chapter 75 of the North Carolina General Statutes, the Sherman Antitrust Act, and the Robinson-Patman Act. NCLDA's view is that the LECs' proposal unfairly discriminates against resellers. It is NCLDA's position that the evidence in the record does not support the contention that resellers use FX and private lines more than other customers and, further, that usage is not a reasonable basis for the pricing differential. NCLDA asserts that the cost of providing the services to resellers and customers is identical. NCLDA does not agree that potential LEC loss of profits nor services being underpriced to other customers justify a differential in the pricing of the services to resellers.

NCLDA asserts that the proposed increases are substantial and would result in the LECs over collecting. It is NCLDA's further opinion that the LECs have not provided cost justification for the tariffs. The NCLDA thus concludes that the Commission should order the LECs to immediately allow the resale of FX and private line services at present rates. In addition NCLDA recommends the allowance of resale of all access services and the allowance of LATAwide termination for FGA.

The Public Staff opposes resale of intraLATA FX, private lines, and FGA services. It is the Public Staff's position that resale of intrastate intraLATA services other than WATS and MTS leased from the LECs will jeopardize reasonably affordable local service rates. Witness Gerringer contended that authorization of resale of FX, FGA, and private line service would result in loss of 4.72 cents per conversation minute for all intraLATA traffic not completed via intraLATA MTS and WATS facilities. Further, such authorization would, according to the Public Staff, enable resellers to obtain greater intraLATA market share resulting in lost revenues to the LECs. Witness Gerringer testified this loss of revenue would ultimately result in higher local rates. Thus the Public Staff recommends that resale of intraLATA FX, private lines, or like facilities remain unauthorized and the intraLATA compensation plan remain in effect for unauthorized calling. In the event resale of these services is allowed, witness Carpenter suggested revised tariff language.

C.U.C.A also filed comments in the matter. It is C.U.C.A's position that any rate restructuring approved in this docket should be restricted to resale services only. Since the notice of proposed rate changes was served upon certified and certification pending resellers and interexchange carriers only, C.U.C.A concludes that the rates and charges to other customers may not be legally changed.

The Commission is faced with a myriad of recommendations by the various parties in this proceeding ranging from the Public Staff's recommendation that resale of FX, private line, and like services not be permitted to NCLDA's recommendation to allow resale of these services at currently existing rates. This proceeding was established by the Commission to consider the appropriateness of resale of FX, private line, and like services and the applicable rates for such services if resale is permitted. The Commission believes that given the newly emerging competitive environment currently existing it is entirely reasonable in this proceeding to consider only the narrower issue of the propriety of resale of FX, private line, and like services and the applicable rates for such service rather than the broader issue of restructuring these rates for all customers. The Commission believes that the enabling legislation allowing for competitive offerings of long-distance service explicitly permits discretion in this area. Specifically, G.S. § 62-110 presently provides, in pertinent part, as follows:

> "Notwithstanding any other provision of law, the terms, conditions, rates and interconnections for long distance services offered on a competitive basis shall be regulated by the Commission in accordance with the public interest. In promulgating rules necessary to implement this provision, the Commission shall consider whether uniform and nonuniform application of such rules is consistent with the public interest. Provided further that the Commission shall consider whether the charges for the provision of interconnection should be uniform."

The Commission believes that permitting the resale of FX-like and private line-like services is a logical and necessary step to enhancing the competitive telecommunications market in North Carolina. In the Commission's opinion this decision to further competition will provide benefits to the using and consuming public of North Carolina and therefore is in the public interest. This decision will allow long-distance carriers to more efficiently plan their network and will be beneficial to users of their services.

Though some parties to the proceeding would argue that this decision will jeopardize reasonably affordable local service rates, since the additional compensation of 4.72¢ per conversation minute recovered by the LECs for unauthorized FX and private line calling will be lost, the Commission finds little merit in this argument. The Commission believes it is now reasonable to authorize resale of these facilities. Allowing these facilities to be resold at appropriate rates represents a workable solution and eliminates the necessity for policing certain of the carriers' activities. The Commission believes that the rates authorized will adequately compensate the LECs and will not jeopardize reasonably affordable local services rates. The compensation plan will continue in effect for intraLATA toll traffic carried over facilities other than resold LEC MTS, WATS 800 service, FX like, and private line-like services.

Undoubtedly the most controversial issue to be decided in this proceeding is the applicable rates for such service. The Commission has carefully considered the evidence presented and each respective party's position on this issue. In the Commission's opinion, approval of the LECs' tariff proposals as presented by Southern Bell is a reasonable first step to take. Ultimately the Commission believes that a single unified tariff for FX services and a unified tariff for private line services and like services may be a goal that has merit. However, such rate restructuring is outside the scope of the instant proceeding and would be inappropriate due to the manner in which the case was structured and the notice served.

Thus, the Commission will consider implementing unified tariffs at some future time. The forum for such consideration may be a LEC general rate case or a generic proceeding designed to consider the issue of restructuring these rates for all customers.

With regard to arguments by some parties that the LEC tariffs are anticompetitive and discriminatory, the Commission does not agree. Though the approved rates will result in carriers reselling these services paying a different rate than general subscribers to such services, the Commission believes that the usage characteristics of these groups justify the rate differential. The Commission relies heavily on the arguments contained in Southern Bell's brief relating to this issue. It is important to note that the tariffs approved represent the same rates and rate structure that facilities-based interexchange carriers pay for equivalent services. Since intraLATA FX service is functionally equivalent to switched access FGA and private line services are functionally equivalent to special access services currently offered to and utilized by facilities based carriers, the Commission concludes that the proposed tariffs are reasonable and appropriate.

The Commission thus finds that such rates are just, reasonable, and not unduly discriminatory. The revised tariff language proposals of the Public Staff are also approved. Specifically the Public Staff recommends the term "authorized resellers" in paragraph A9.1.1I, and B2.2.3A, and E7.4.2B.5 be changed to "certified long distance carriers." The Public Staff's second proposal is to insert the word "interexchange" in paragraph B2.2.3A immediately prior to "private line like services." The third proposed word change is to add the following statement to paragraph E7.4.2 B.2 on page 92:

> The determination of such usage is made based upon the arrangement at the subscriber's end of the channel.

The Commission finds each of these tariffs revisions appropriate.

NCLDA witness Johnson recommended that the current local termination restriction on FGA service be altered to allow for LATAwide termination of FGA. Witness Johnson argues that Feature Group (FGC) interconnection available only to AT&T-C includes LATAwide termination and thus that the local termination restriction for FGA is inappropriate. AT&T-C argues that LATAwide termination for AT&T-C is accomplished by establishing a point of presence (POP) in each end office within a LATA. The Commission finds it reasonable to maintain local termination for FGA. Though NCLDA contends that FGA purchased by AT&T-C includes LATAwide termination, the Commission notes that AT&T-C accomplishes LATAwide termination by purchasing FGC at each end office within the LATA. Carriers may likewise obtain LATAwide FGA termination by purchasing FGA from each end office within the LATA.

IT IS, THEREFORE, ORDERED as follows:

1. That each affected local exchange company regulated by this Commission shall file revised tariffs for the resale of intraLATA interexchange foreign exchange-like and private line-like services consistent with the Southern Bell proposed tariffs within 20 days from the date of this Order.

2. Parties to the proceeding shall have five working days thereafter to review the tariffs and file comments.

3. That the filed tariffs shall become effective upon issuance of a further Order by the Commission.

ISSUED BY ORDER OF THE COMMISSION.
This the 23rd day of December 1986.

NORTH CAROLINA UTILITIES COMMISSION
Sandra J. Webster, Chief Clerk

(SEAL)

DOCKET NO. P-100, SUB 90

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Deregulation of Inside Wiring ) ORDER ESTABLISHING
) DEREGULATION PROCEDURES

BY THE COMMISSION: In its Second Report and Order in CC Docket No. 79-105, the Federal Communications Commission (FCC) required that the installation and maintenance of inside wiring be deregulated effective January 1, 1987. In addition, the FCC prescribed accounting treatment and required the telephone companies effective January 1, 1987, to abandon claim of ownership to wiring that has been expensed to account 605-Repair of Station Equipment and to wiring recorded in account 232-Station Connections concurrent with reaching the point of full amortization.

Pursuant to these requirements, the Commission issued a Memorandum to all regulated local exchange telephone companies (LECs) on October 20, 1986, requiring those companies to furnish information relating to the provision of maintenance and installation of new and embedded inside wiring after deregulation and the associated rates and charges; the allocation of costs assigned to inside wiring; the associated changes in expenses, revenues, taxes, investments, and toll settlements and changes in existing rates; the proposed notices to the public explaining the changes and plans associated with inside wiring; and a proposed timetable for issuance of the notice. The Commission requested the parties to file the required information by November 19, 1986.

On December 15, 1986, at the Commission Conference, the Public Staff presented a summary of the LECs' responses to the Commission's Memorandum of October 20, 1986, and made specific recommendations as to how the Commission should handle the deregulation of inside wiring. Also on December 15, 1986, in response to the Public Staff's recommendations, the Commission heard additional comments from the Attorney General, Southern Bell Telephone and Telegraph Company (Southern Bell), Carolina Telephone and Telegraph Company (Carolina), Central Telephone Company (Central), Concord Telephone Company (Concord), ALLTEL Carolina, Inc. (ALLTEL), Sandhill Telephone Company (Sandhill), Continental Telephone Company (Continental), General Telephone Company of the Southeast (General), and Lexington Telephone Company (Lexington).

A discussion of the major issues considered by the Commission in the development of procedures for the deregulation of inside wiring follows:

TRANSITION PLAN

All of the companies which responded to the Commission's Memorandum plan to make maintenance and installation services available on a deregulated basis after January 1, 1987. The companies will offer their customers maintenance of simple wiring either on a monthly maintenance plan where the customer pays a monthly fee for the right of maintenance service whenever it is required without additional charge or on an as needed basis with charges for time and materials.

Generally, the companies have just now begun to inform subscribers of the upcoming changes. Southern Bell's first bill insert and ballot which was approved by the Commission in a letter dated November 17, 1986, will appear in their customers' December bills. Southern Bell and other companies believe that four or more mailings will be necessary to get a large portion of the subscribers to make a choice on whether or not they would like to subscribe to the monthly maintenance plan offered by the local telephone company.

In order to provide an opportunity for several bill inserts and direct mailings, many of the companies have proposed to use the first three months of 1987 as a transition period during which they will continue to provide monthly maintenance service to each subscriber unless that subscriber has responded negatively to an early monthly maintenance solicitation.

The Public Staff agreed with the companies that a transition period of at least three months is needed to give the customers a long enough time to make their decisions. The Commission agrees with the parties that the transition period should at a minimum be three months. During the months of January, February, and March 1987 the Commission finds it appropriate for all the Companies, except as noted hereafter, to mail out monthly notices of the changes in inside wiring and customer ballots and requires the Companies to continue to provide monthly maintenance service to each subscriber during the transition period unless the subscriber has responded to one of the early monthly ballots that he wants the monthly maintenance plan discontinued. Two of these notices may be by bill insert and at least one notice should be by direct mail. General stated at Commission Conference that a bill insert and direct mailing concerning this matter had already been sent to its customers, therefore, the Company proposed that it not be required to make but one more notification. The Commission finds that General should make only two additional mailings by bill inserts to its customers during the transition period rather than three as required for the rest of the companies.

## OPT-IN, OPT-OUT

Based upon the comments filed by the parties in this proceeding, there are basically two approaches taken by the Companies to the notification and sign-up process. The process proposed by the four largest companies and others is the opt-in approach, in which the local exchange company assumes that if no response to the monthly maintenance ballot is obtained from the subscriber during the transition period the subscriber does not want the deregulated maintenance service and the service is discontinued after that time. Thus, subscribers faced with an opt-in approach have to take affirmative action to remain in the program after the transition period.

Under the opt-out approach which has been proposed by Barnardsville Telephone Company (Barnardsville), Service Telephone Company (Service), Continental, and Lexington, it is assumed that the subscriber wants the monthly maintenance plan offered by the LEC on a permanent basis and in order to not be billed for the plan the subscriber has to respond to one of the ballots which he is sent by the LEC.

The opt-out approach has a potential legal problem in that the subscriber is billed for a deregulated service which he has not indicated he wanted. It is expected, however, that the opt-out approach will result in a larger percentage of potential subscribers remaining on the monthly maintenance plan. Barnardsville, Service, and North State Telephone Company (North State) have proposed, in conjunction with their opt-out approach, an initial period during which subscribers who indicate that they do not want the monthly maintenance plan will be credited for the full amount billed for the plan since the option became available, January 1, 1987.

The Public Staff recommends that the Commission allow the companies to use either the opt-in or opt-out approach with a transition period of at least 3 months during which the subscriber will be credited for the full amount billed for the maintenance plan if he indicates at any time prior to the end of that period that he does not want the LEC's monthly maintenance plan. The Public Staff believes that the Commission does not have the authority to make subscribers of a LEC liable for payment of a deregulated service. The Public Staff's recommendation is that the Commission allow the use of either plan at the LEC's risk rather than approving the use of either plan so that any legal problems resulting from the use of the opt-out approach would be between the subscribers and the LEC.

The Commission concludes from the parties' comments that the opt-in approach is the most appropriate procedure. Such procedure requires the customer of a LEC to return the maintenance of service ballot to the Company with the appropriate response if he intends to remain on the company's monthly plan; otherwise if he makes no response he is off the plan at the end of the transition period. The Commission believes it would be inappropriate to automatically continue a customer on the plan after the transition period unless there is specific indication from the customer that he has knowingly made such a choice.

In regard to the issue raised by some of the companies as to offering customer credits for the maintenance plan charge which is collected during the transition period until the time the Company is notified by the customer that he no longer wants the maintenance plan, the Public Staff recommended that the subscriber should be credited for the full amount billed for the maintenance plan if he indicates at any time prior to the end of the transition period that he does not want the LEC's monthly maintenance plan. At the December 15, 1986, Commission Conference Southern Bell argued that the Public Staff's proposal was unfair to the extent that the customer during the transition period is actually covered under the plan when and if a problem occurs until the Company is notified that the customer wants to discontinue the plan.

For those companies that have proposed no change in the customers' total bill (Barnardsville, Central, Continental, Service, and Southern Bell), the Commission agrees with Southern Bell that during the transition period the subscriber should not receive a credit for the monthly maintenance charge for any of the months in the transition period during which he has in fact been covered by the plan. However, for those companies proposing a net increase in the customer's bill (such as General's increase of 84 cents), the Commission finds that credit should be made to any customer's bill that discontinues the monthly maintenance plan. Such credit would be the difference between the nonregulated charge and the regulated maintenance charge (84 cents for General). Thus, a customer who declines the maintenance plan would incur the regulated cost estimate for the period in which he actually receives service (16 cents per month in General's case). The nonregulated charge would be discontinued prospectively for such a customer and the customer would experience a net reduction in his basic local rate thereafter (16 cents for General customers). Further in this regard, the Commission finds that it is appropriate to require the telephone companies to make this credit irrespective of whether the affected customer actually makes a specific request for the refund.

## NOTICE

The Public Staff has reviewed all of the companies' proposed notices and has concluded that all are deficient except for Southern Bell's which is the only one which has been previously approved by the Commission. During the December 15, 1986, Commission Conference, the Public Staff presented a summary of the deficiencies in the proposed notices and the parties present at Conference who objected to the Public Staff's proposed changes were Carolina and Central. The Commission has reviewed the Public Staff's recommendations and the arguments presented by Carolina and Central and concludes that the Public Staff's proposed changes in customer notices are appropriate as set out in Appendix A of this Order. The Commission recognizes that the Public Staff made no recommendation on Concord's notice to customers. Upon review, the Commission concludes that Concord's notice should also be revised as set forth in Appendix A attached hereto. The four companies: Ellerbe Telephone Company (Ellerbe), Pineville Telephone Company (Pineville), Randolph Telephone Company (Randolph), and Saluda Telephone Company (Saluda) who did not file a notice with the Commission should file their proposed notices within 10 days from the date of this Order. These four companies as well as Lexington and Citizens Telephone Company (Citizens) should file with the Commission their proposed deregulated inside wiring maintenance charge within 10 days from the date of this Order.

Since the Commission is adopting the opt-in approach as discussed previously, the Commission requires that all the telephone companies must include a customer notice and ballot as a bill insert and direct mailing during the transition period. The customer ballot must at the least contain the information on the attached sample ballot as set out in Appendix B.

BASIC RATE REDUCTION

The proposals to reduce basic rates to reflect the deregulation of inside wiring vary from Southern Bell's reduction of $.55 to Mebane's proposal of no reduction. The methods used to support the proposed reductions also vary widely among the companies.

The FCC has prescribed the use of a fully distributed cost methodology to separate regulated and deregulated expenses but has stopped short of saying how the fully distributed allocations are to be made. The allocation methodology is the subject of a pending FCC Docket. At this time, data for a fully distributed cost allocation is not available from many companies. Furthermore, the Public Staff stated at Commission Conference that even if the data were available, it would not have the resources to devote to a full audit of each company's cost study.

Southern Bell was the first company to file its plan and cost support for its $.55 reduction in basic rates. The Public Staff has reviewed the methodology used by Southern Bell and believes it to be basically sound. The $.55 reduction supported by Southern Bell's study approximates the $.50 unbundled maintenance rate which the Company has had on file in other states for some time.

The $.55 reduction actually would have been greater (approximately $.18 greater) if the expense reduction had not been offset by a revenue loss of several million dollars due to the move below the line of revenue from Southern Bell's Trouble Isolation Plan (TIP). No other company in North Carolina has a TIP and, consequently, no other company's regulated operations will experience a loss of those revenues. Other things being equal, the Public Staff concluded that this difference would tend to make the appropriate reduction for the other LECs greater than $.55.

In light of these considerations, the Public Staff believes that it is reasonable to assume that the other LECs' costs of maintaining inside wiring are analogous to Southern Bell's. Therefore, the Public Staff recommends that the Commission require a reduction in basic local rates of $.55 per month by all companies. The reduction would apply to all exchange access lines except those that terminate in key or PBX systems.

Every telephone company represented at the December 15, 1986, Commission Conference was in opposition to the Public Staff's recommendation in this regard. The Commission agrees with the opposition to the position of the Public Staff that it is both unreasonable and unfair to conclude that Southern Bell's $.55 rate reduction should be applied uniformly to all the other telephone companies without some other evidence than the fact that the Public Staff has audited Southern Bell's cost study and finds its methodology "to be basically sound". The Commission is very much aware of the time constraints under which the Public Staff has worked to come up with its recommendations and fully understands that there has not been time enough to look at all the companies' cost studies to determine the appropriateness of their individual proposed rate reductions. Therefore, the Commission finds at this time that the most appropriate procedure is to allow rate reductions to become effective on an interim basis subject to further investigation and subject to the filing of an appropriate undertaking to refund the difference between Southern Bell's rate reduction amount of $.55 and the companies' individual rate reductions as allowed herein and set out in Appendix C. The amount to be subject to the undertaking to refund will be subject to refund from January 1, 1987, forward until the time at which the Commission can adequately determine what is an appropriate rate reduction for each company. The Commission finds that under the circumstances the Public Staff and Attorney General should be given the next six months to perform individual company audits to more specifically determine what each individual company's rate reduction should be and how much should be refunded to the individual companies' subscribers. Citizens and Mebane Telephone Company (Mebane) filed studies to the effect that no reduction in the cost of service would be experienced by the companies as a result of the deregulation of inside wiring. ALLTEL proposed a reduction of $.04 per subscriber per month. North State filed for elimination of extension charges. The Commission finds each of these proposals unacceptable. The extremely low estimates of Citizens, Mebane, and ALLTEL seem unrealistic. North State's proposal will not necessarily spread the rate reduction to all subscribers and thus is not an equitable plan. Ellerbe, Pineville, Randolph, Lexington, and Saluda made no filings and thus have not submitted proposed cost reductions. The Commission is somewhat in a quandary as to the appropriate handling of this matter for these companies. The Commission concludes that the next lowest estimated cost reduction of $.11 per customer per month should be used on an interim basis for ALLTEL, Citizens, Ellerbe, Lexington, Mebane, and Randolph. Due to the low level of North State's, Pineville's, and Saluda's basic rates, an estimate of $.05 will be utilized for these companies. For all the remaining companies, the Commission accepts the individual companies' proposed rate reductions. The Commission's estimates and other company-specific proposed rates will be subject to later review by the Commission. The Commission finds that the rates set forth in Appendix C are appropriate for the Companies to use in making rate reductions to all exchange access lines.

The Commission requests that all companies (excluding Southern Bell) review their proposed cost studies for accuracy and file necessary revisions to those studies on or before January 31, 1987. Those companies which made no filings should attempt to make a filing or notify the Commission of their inability to do so with supporting justification on or before January 31, 1987.

## RATE ADJUSTMENTS FOR COMPLEX SYSTEMS

The FCC's order also applies to wiring behind regulated key and PBX systems. In order to reflect elimination of regulated maintenance of that wiring, the Public Staff recommends that two options be allowed:

1. Reduce all key and PBX extension station rates by $.10, or

2. Provide a monthly credit to customers of $.55 for each access line terminated in an embedded regulated key or PBX system and retain extension rates, if any, as they are.

The Commission finds either of these rate proposals acceptable for Southern Bell's complex systems.

## TROUBLE LOCATING CHARGE (TLC)

All companies currently have a trouble locating charge (also called maintenance service charge) which applies when a trouble is caused by customer-owned facilities or equipment. Up to this time, the "facilities or equipment" could refer only to customer-owned telephones, key or PBX systems. With the deregulation of inside wiring, the existing language would also require application of the TLC to troubles caused by inside wiring. One company, Southern Bell, has proposed to treat this troubleshooting function as a deregulated service and to remove it from the Company's tariff. Southern Bell argues that the TLC is applicable only when a customer's deregulated equipment or wiring causes a problem and that the work function should be classified in accordance with what causes the work to be done. rather than the type of work that is actually performed. All other companies, as far as the Public Staff could determine, consider the function as a regulated service unless they perform deregulated work inside the premises. According to the Public Staff, those companies plan to charge the costs below the line whenever deregulated work is done inside the customers' premises.

The prospective circumstances in which these two points of view do not coincide are as follows: a repairperson is dispatched and the cause of the trouble is determined to be deregulated inside wiring or deregulated equipment; the subscriber is not a monthly maintenance plan subscriber or a trouble isolation plan (TIP) subscriber; and the subscriber does not elect to have the LEC do the repair work on a time and materials basis. In these circumstances, no deregulated work is actually performed since troubleshooting the line to insure that the line is in good working order is an operation required by the LEC's responsibility under the statutes to provide adequate service. Since no deregulated work is done, it is the opinion of the Public Staff that the costs and revenue for that function should be considered regulated. The Commission agrees.

Additionally, in these circumstances the customer is not a customer of the deregulated LEC but is instead relying upon himself or others to provide maintenance and repair. Therefore, the Public Staff does not believe that the customer should be subject to any charge by the telephone company.

However, the Public Staff stated that if there is a TLC, it should remain in the regulated tariffs and the work functions in the circumstances described should be considered regulated.

According to the Public Staff, the application of the TLC to troubles caused by newly deregulated inside wiring is unreasonable and existing tariffs should be modified to eliminate that application. There are several reasons given by the Public Staff in support of its conclusion. First, in many cases wiring inside the home or small business is still hard-wired to the protector, thus, making it difficult and possibly unsafe for the subscriber to test this portion of his service himself. There are also substantial educational problems to overcome since subscribers have been instructed for many years not to connect facilities to or tamper with the protector. Second, application of a TLC for the premises visit and troubleshooting work done by the telephone company's repairperson in response to a trouble report gives, in the opinion of the Public Staff, the telephone company a decided advantage in getting the repair business. If the subscriber is liable for a TLC which covers the telephone company's cost of getting a repairperson to the premises, the additional cost of unregulated repairs by the telephone company will be much lower than a competitive vendor who must reflect travel and other costs in his charges for unregulated repair work. The Public Staff believes that this anti-competitive effect will also occur when the TLC is applied by the telephone company for a trouble caused by customer-provided equipment. The telephone company has, according to the Public Staff, an obvious advantage over other maintenance providers by being on the premises in response to the trouble call. In the Public Staff's opinion, the application of a charge for a trouble traced to customer-provided equipment adds an economic incentive for the customer to use the telephone company for repair.

This anti-competitive aspect of the TLC, in the opinion of the Public Staff, tends to diminish the number of entrants into the unregulated repair market and conflicts sharply with the FCC's intent to establish a competitive market for inside wiring and installation service. Therefore, the Public Staff believes the TLC should be eliminated.

During the December 15, 1986, Commission Conference Southern Bell, Carolina, Central, and General stated that they believed it to be unfair to eliminate the TLC charge as they felt they would be forced to find the problem for free and then the customer could go to another vendor for service repair work or do it himself. Such a practice would mean that the telephone companies basic rates would have to eventually be increased for all customers to cover these additional expenses. The Commission agrees with the companies that the TLC charge should be continued as presently approved and that the applicable charges should be considered regulated.

## TECHNICAL STANDARDS

Since 1980 the majority of the LECs have revised their tariffs to allow the connection of customer-owned inside wiring. Incorporated in the tariffs of those companies is a reference to a set of Technical Standards and Installation Guidelines (Standards) which are currently on file with the Commission. The Standards were filed with the Commission because heretofore the maintenance of inside wiring, including customer-provided inside wiring, was a responsibility of the regulated operations of the LECs. The Standards applicable to inside wiring were intended as a control on the regulated expense of maintaining customer-provided wiring. With deregulation of inside wiring maintenance, the only interest the regulated operations of the LECs would have in requiring standards for customer provided premises wiring is the avoidance of harm to the network.

In 1984 the FCC addressed the question of potential harm to the network by revising Part 68 of its Rules and Regulations to incorporate minimum standards for customer provision of simple inside wiring. These rules effectively supplant the Standards which are on file with the Commission as far as minimum requirements for connection to the network.

Therefore, the Standards now on file with the Commission may only be used by the LECs as a qualification requirement for their deregulated maintenance programs. Because of this deregulated nature of the Standards, the Public Staff believes that the Standards should no longer be kept on file by the Commission or referenced in the tariffs. The Commission agrees.

## OTHER PROPOSALS

Concord and North State proposed changes in other services. These changes are not necessitated by the deregulation of inside wiring and should, in the opinion of the Public Staff, not be made at this time. The Commission agrees.

Concord proposed to increase its paystation rate from $.20 to $.25, to implement a late payment charge, to increase its returned check charge, and to increase its regulated service connection charges.

North State proposed to increase its paystation rate from $.10 to $.25 to offset the loss of extension station line revenue and to cover a five-year network interface conversion program and certain expenses which should be considered part of its deregulated operations.

The Commission finds that the proposals made by Concord and North State for rate increases involve separate issues which are not related to the deregulation of inside wiring and are not appropriate for consideration in this proceeding and should therefore be denied without prejudice.

IT IS, THEREFORE, ORDERED as follows:

1. That the proposed notices filed by the LECs shall be revised in accordance with the approved revisions set forth in Appendix A attached hereto and shall be filed with the Commission within 10 days from the date of this Order.

2. That Ellerbe Telephone Company, Pineville Telephone Company, Randolph Telephone Company, and Saluda Telephone Company are hereby required to file proposed customer notices within 10 days from the date of this Order. The Public Staff and Attorney General will be allowed to file comments on these proposed notices within five days after the filing of said notices.

3. That all the telephone companies are hereby required to include ballots with the mailing of their customer notices. The ballots should all contain at least as much information as is shown in the sample ballot set forth in Appendix B and shall be filed with the Commission within 10 days from the date of this Order.

4. That, except as modified herein, the proposed plan filed in this docket by Southern Bell Telephone and Telegraph Company is hereby approved effective January 1, 1987.

5. That the rate reductions set forth in Appendix C attached hereto are hereby allowed to become effective January 1, 1987, subject to further investigation and refund. Each LEC, except Southern Bell Telephone and Telegraph Company, shall file an appropriate undertaking to refund in conformity with the provisions of this Order for review and approval by the Commission no later than Friday, January 9, 1987.

6. That all the telephone companies excluding Southern Bell Telephone and Telegraph Company are hereby required to review their proposed cost studies for accuracy and file necessary revisions to those studies on or before January 31, 1987. Those companies which made no filings of cost studies should attempt to

make a filing or notify the Commission of their inability to do so with supporting justification on or before January 31, 1987.

7. That the Chief Clerk shall mail a copy of this Order to all of the local exchange telephone companies in North Carolina.

ISSUED BY ORDER OF THE COMMISSION.
This the 23rd day of December 1986.

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

## APPENDIX A
## APPROVED REVISIONS IN PROPOSED NOTICES

| Company | Notice Revisions |
|---|---|
| Alltel | Notes 1, 3, 5, & 7 |
| Barnardsville | Notes 1, 4, 6, & 7 |
| Carolina | Notes 5 & 7 |
| Central | Notes 1, 4, 6, & 7 |
| Citizens | Notes 2, 3, 6, & 7 |
| Concord | Notes 1, 2, 3, 4, 6, & 7 |
| Continental | Notes 1, 3, 4, 6, & 7 |
| General | Notes 1, 2, 3, 5, & 7 |
| Heins | Notes 1, 3, 5, & 7 |
| Lexington | Notes 1, 2, 5, 6, & 7 |
| Mebane Home | Notes 1, 3, 4, 5, 6, & 7 |
| North State | Notes 1, 2, 4, 5, 6, & 7 |
| Sandhill | Notes 1, 3, 5, & 7 |
| Service | Notes 1, 4, 6, & 7 |

Note 1: Notice should be revised to state that monthly plan charges are not subject to regulation.

Note 2: Notice should not address ownership of inside wiring

Note 3: Notice needs to be revised to state the credit customers will receive.

Note 4: Notice should clearly state balloting options and differentiate between plans for simple and complex wiring where applicable.

Note 5: Notice should state the right of customer to perform maintenance himself.

Note 6: Notice needs to define what inside wiring is.

Note 7: Notices should be scheduled at least once per month for three months, and the last notice should be identified as such in bold letters with an explanation of the consequences for unanswered ballots.

## APPENDIX B
## IMPORTANT NOTICE WHICH AFFECTS YOUR TELEPHONE SERVICE

On January 1, 1987, charges for telephone wiring and jacks repairs in your home or business will no longer be government - regulated. Please read the following options. Mark your choice and return this page with your phone bill. If you do not make a choice by the end of ________, 1987, your monthly maintenance plan will be automatically terminated.

________ Company continues maintaining your inside telephone wiring and jacks and you continue to pay _____ cents/month for this service.

_______ Company discontinues monthly repair plan and you will obtain any future necessary repairs to your inside telephone wiring from a vendor of your choice or do it yourself. Inside wiring current charges are ______ per hour.

Circle Your Answer: Yes, continue. No, Discontinue.

Read the enclosed bill insert for more details and make your choice. If you still have questions, call toll-free ____________________

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If you have already responded, you do not need to contact us again.

## APPENDIX C

| Telephone Company | Approved Rate Reduction On Monthly Bill |
|---|---|
| ALLTEL | $ .11 |
| Barnardsville | .25 |
| Carolina | .18 |
| Central | .43 |
| Citizens | .11 |
| Concord | .19 |
| Continental | .35 |
| Ellerbe | .11 |
| General | .16 |
| Heins | .12 |
| Lexington | .11 |
| Mebane Home | .11 |
| North State | .05 |
| Pineville | .05 |
| Randolph | .11 |
| Saluda | .05 |
| Sandhill | .11 |
| Service | .21 |
| Southern Bell | .55 |

DOCKET NO. SP-47

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

| In the Matter of | |
|---|---|
| Application of Hope Mills Power Company, Inc. For a Certificate of Public Convenience and Necessity Pursuant to G.S. 62-110.1(a) for Construction of an Electricity Generating Facility to be Located in the Town of Hope Mills, Cumberland County, North Carolina | ORDER GRANTING CONDITIONAL CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY PURSUANT TO G.S. 62-110.1 |

HEARD IN: Commission Hearing Room, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on February 4, 1986.

BEFORE: Commissioner Edward B. Hipp, presiding, Chairman Robert O. Wells and Commissioner Julius A. Wright.

APPEARANCES:

For the Applicant:

H. Mac Tyson, II, 214 Dick Street, Fayetteville, North Carolina.

For the Public Staff:

Michael L. Ball, Staff Attorney, North Carolina Utilities Commission, Post Office Box 29520, Raleigh, North Carolina.

BY THE COMMISSION: On September 11, 1985, Hope Mills Power Company, Inc., (Applicant) filed an application with the Commission seeking a certificate of public convenience and necessity pursuant to G.S. 62-110.1(a) for construction of an electricity generating facility to be located in the town of Hope Mills in Cumberland County. On September 13, 1985, the Commission issued an Order requiring Hope Mills to publish notice of the application for four successive weeks in a local newspaper. That Order further provided that if a complaint was received within 10 days after the last date of publication of the notice, the Commission would schedule a public hearing on the application.

On December 4, 1985, Hope Mills filed an affidavit of publication indicating that the notice required by the Commission had been published in the Fayetteville Observer on October 18 and 25 and November 1 and 8, 1985. Complaints with respect to the application were filed with the Commission by Steve Reed of the Division of Water Resources of the North Carolina Department of Natural Resources and Community Development (NRCD) and by Don Baker of the North Carolina Wildlife Resources Commission on October 29, 1985. On that same date, comments, which might or might not be interpreted as complaints, were filed by Steve McEvoy of the Land Resources Division, Land Quality Section of NRCD, by Ric Hazard of the Parks and Recreation Division of NRCD, and by David Brook, Deputy State Historic Preservation Officer of the Division of Archives and History of the Department of Cultural Resources.

On January 9, 1986, the Commission issued an Order Scheduling Hearing, which scheduled a hearing on the application for February 4, 1986', and required the Applicant to publish notice of the hearing.

The matter came on for hearing as scheduled. The Applicant was present and represented by counsel. The Public Staff appeared through counsel, and its intervention was deemed .recognized pursuant to statute.

The Applicant presented the direct and rebuttal testimony of Mr. Charles Mierek, its President. The Public Staff presented the testimony of Mr. William T. 'Ray; Mr. William L. Flournoy, Chief of the Environmental Assessment Section in the Office of Planning and Assessment of NRCD; Mr. Allen Street Lee, acting Dam Safety Engineer with the Division of Land Resources of NRCD; Mr. W. Donald Baker, Coordinator of the Habitat Conservation Program with the North Carolina Wildlife Resources Commission; and Mr. Steven E. Reed, Aquatic Ecologist and Environmental Supervisor with the Division of Water Resources of NRCD.

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

## FINDINGS OF FACT

1. The Applicant Hope Mills Power Company, Inc., is a North Carolina corporation. Charles Mierek is the founder and the President of the Applicant.

2. The Applicant seeks a certificate of public convenience and necessity pursuant to G.S. 62-110.1 to construct a hydroelectric generating facility at the existing dam on Hope Mills Lake on Little Rockfish Creek in the town of Hope Mills, North Carolina. The Applicant has leased the dam site and related water rights from the owner, the town of Hope Mills.

3. The Hope Mills project will be developed in two stages. Stage I will consist of the rehabilitation of the existing structures and turbine (including rehabilitation of the intake structure, the concrete flume, the turbine and the tailrace), the construction of a powerhouse next to the turbine to house the generator and controls, and the construction of a separate substation next to the powerhouse to step up the voltage. Stage II will consist of the construction of a second intake structure where Little Rockfish Creek leaves the lake and construction of a second powerhouse on Little Rockfish Creek between the lake and the tailrace of Stage I. The 700-foot stretch of Little Rockfish Creek between the lake and the tailrace of Stage I will be dewatered approximately 75% of the time between completion of Stage I and Stage II. Completion of Stage II will return water to this stretch of the creek.

4. Applicant asserts that Stage I is not subject to the jurisdiction of FERC and that he will file no proceedings with FERC as to Stage I. Applicant will file an application with FERC for approval of Stage II, but he has not done so yet.

5. Witnesses Moore, Baker, and Reed raised concerns as to the fluctuations in the level of the lake, the dewatering of the 700-foot stretch of Little Rockfish Creek between completion of Stages I and II, the effect of the project on the stream flow of Little Rockfish Creek downstream of the project, and measures to limit the impingement and entrainment of fish.

6. The lease agreement between the town and the Applicant sets restrictions on the permissible fluctuations in the level of Hope Mills Lake.

7. The Commission does not find the impact to Little Rockfish Creek between completion of Stages I and II to be of such magnitude as to justify intervention by the Commission that would delay the construction of the project. However, the Commission finds that good faith efforts should be made to restore Little Rockfish Creek to its present condition upon completion of Stage II and that Stage II should be completed by the Applicant without unreasonable delay.

8. A certificate of public convenience and necessity should be granted for the construction of Stage I and II of the Hope Mills Project conditioned upon the Applicant making genuine, good faith efforts to comply with the recommendations of NRCD in an effort to restore the condition of Little Rockfish Creek to its present condition after completion of Stage II.

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

The support for findings of fact 1 and 2 is in the application filed in this proceeding and the testimony of witness Mierek. The findings are jurisdictional and uncontested.

## EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 3 AND 4

The evidence for findings of fact 3 and 4 is found in the testimony of witness Mierek. Witness Mierek testified that the project would be developed in two stages and he described what each stage would encompass. He testified that it would be cheaper and it would be his preference to do all work at once, but that the second phase would require a license from FERC that would take one or two years to obtain. By then, certain tax credits that are now available may have been eliminated, and the project cannot be built without those tax credits. Therefore, Mierek decided to develop the project in two stages. He testified that the second phase will increase the generating capacity somewhat but the increased revenue would probably not justify the cost of Stage II. He testified that Stage II would be added to maintain water in the 700-foot stretch of creek that would be dewatered much of the time by the operation of Stage I alone. Witness Mierek asserted that Stage I was not subject to the jurisdiction of FERC. The Commission feels that the jurisdiction or nonjurisdiction of FERC is not a matter for consideration here.

## EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT 5, 6, 7, AND 8

The evidence in support of these findings of fact is found in the testimony of witness Mierek and witnesses Flournoy, Moore, Baker, and Reed.

Initially, we note that the Applicant asserts that the Commission is without jurisdiction to consider the complaints of the witnesses presented by the Public Staff since the complaints deal with environmental impacts of the project. Applicant relies upon In re Duke Power Company, 37 N.C. App 138 (1978). In that case, the Court of Appeals stated, "Environmental concerns are generally left to other regulatory agencies, except as they affect the cost or efficiency of the proposed generating facility." Id. at 141. That language must be interpreted in light of the fact that the Court's opinion affirmed an Order of the Utilities Commission that issued a certificate of public convenience and necessity conditioned upon the facility receiving approval from those agencies that are equipped to deal with environmental protection. This Commission has followed this same approach in granting certificates to other small power producers under PURPA. See the Deep River Hydro, Inc., Order of May 10, 1985, and the Carolina Cogeneration Company, Inc., Order of March 6, 1985. The Commission finds that it has jurisdiction to consider complaints raising environmental concerns and, where appropriate, to place operating conditions on certificates granted pursuant to G.S. 62-110.1. In this connection, we note that environmental concerns such as those raised in this proceeding are routinely raised in proceedings before FERC by the filing of comments by NRCD personnel. FERC has a more streamlined procedure for incorporating conditions into its certificates, and NRCD raises its concerns before FERC, rather than before this Commission, whenever the FERC procedure is available. It is because the Applicant does not intend to file any proceeding before FERC with respect to Stage I that NRCD has presented its concerns in this proceeding.

We now turn to the substance of the complaints raised. Witness Moore was concerned with the effect that fluctuations in the level of Hope Mills Lake might have on the Gordon Butler Nature Preserve, a small nature preserve on the shore of the lake. The preserve includes a representative cross section of the natural communities of the Sandhills and outer coastal plain regions, including a rare shrub, white wickie or kalmia cuneata. In this connection, the Commission notes that the lake itself is owned by the town of Hope Mills and that the lease agreement between the Town and the Applicant imposes restrictions upon permissible fluctuations in the lake and requires Town approval for deviations from the set limits.

Witnesses Baker and Reed raised concerns as to the dewatering of the 700-foot stretch of Little Rockfish Creek between the Stage I and II, the effect of the project on the stream flow of Little Rockfish Creek downstream of the project, and measures to limit the impingement or entrainment of fish. Witness Mierek testified that the 700-foot stretch of creek would be dewatered approximately 75% of the time between the completion of Stages I and II, but that following completion of Stage II he proposed to establish a minimum flow of approximately 34 cfs in this area. Witness Reed testified that he could not determine without a study whether 34 cfs would be an appropriate figure.

The Commission has given special credence and full consideration to the testimony of the witnesses presented by the Public Staff. However, the Commission must balance their testimony against many other considerations--such as the public interest in hydroelectric power, the need for additional sources of generation of electricity and the public policies expressed in PURPA. All of these considerations must be weighed in order to determine the public convenience and necessity with respect to the present proposal. In this connection, we note that we are not dealing here with a pristine creek in a wilderness. We are dealing with a site that has already been significantly impacted by the hand of man. This hydroelectric facility has been in operation in the past. There is testimony that a previous owner operated the facility in such a way as to create drastic fluctuations in the level of the lake and the stream flow. Still, it appears that the wildlife in the area has either survived or reestablished itself to the point that Little Rockfish Creek is now considered one of the better fishing spots in the county. The Commission concludes that the impact on Little Rockfish Creek between completion of Stages I and II is not of such magnitude as to justify intervention by the Commission that would delay construction of the project and perhaps completely deprive the Applicant and the Town of reasonable use of this source of hydroelectric power. We do believe however that steps should be taken in order to restore the flow of Little Rockfish Creek to its present condition following the completion of Stage II and that the Applicant should undertake to complete Stage II without unreasonable delay.

With respect to the issue of impingement or entrainment of fish, witness Baker stated that there was a state standard of one inch bar spacing with a half foot per second flow through the spacing and that the racks that the Applicant intends to use do not meet that standard. He testified that "we will accept any procedure that the Applicant proposes that will tend to reduce or minimize impingement and entrainment . . . we will approve or we will consider and perhaps modify and accept anything that the Applicant proposes to us that we find acceptable." He further testified that he would approve any proposal that would work and that "if there is a chance that it would work we would classify it as experimental and approve it on that basis, provided we have the authority to go in and test it to see if it works." Baker stated that this was a relatively new business and that he was still looking for answers. Witness Mierek proposes to use the same type of racks in use at one of his projects in South Carolina. The racks meet the South Carolina standard, but he admitted that they do not meet the North Carolina standard. He testified that more stringent measures would be expensive and might make the project only marginally profitable. In light of the testimony summarized above, the Commission concludes that it should not require as a condition of this certificate that the project meet the one inch bar spacing and half foot per second flow standard. Should the Wildlife Resources Commission choose to inspect the proposed racks as an experiment, the Commission will retain jurisdiction to receive comments from the parties as to the efficacy of the racks and to consider the issue again.

IT IS, THEREFORE, ORDERED

1. That a certificate of public convenience and necessity should be, and the same hereby is, granted to the Applicant for construction of Stages I and II of the Hope Mills #1 Project as set forth in the application filed in this proceeding on September 11, 1985, subject to the conditions set forth hereinafter;

2. That the certificate granted herein shall be conditioned upon the Applicant making genuine good faith efforts to comply with the recommendations of the Division of Water Resources of NRCD and the Wildlife Resources Commission as to the performance of required studies and as to operating conditions of the project with respect to matters of minimum stream flow and peaking operation so as to restore Little Rockfish Creek to its present condition following completion of Stage II, which stage should be completed without unreasonable delay; and

3. That following completion of Stage II, the Division of Water Resources of NRCD and the Wildlife Resources Commission may file reports with the Commission, to which the Applicant may file comments, with respect to the

efforts of the Applicant to comply with the conditions of his certificate as set forth hereinabove and, if the Wildlife Resources Commission chooses to inspect the proposed racks as an experiment, it may address the efficacy of the racks in its report.

ISSUED BY ORDER OF THE COMMISSION.
This the 18th day of April 1986.

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

DOCKET NO. EC-51, SUB 11

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

| In the Matter of<br>David L. Carter and Mary Jacobs,<br>Complainants<br><br>vs.<br><br>Lumbee River Electric Membership Corporation,<br>Respondent | )<br>)<br>)<br>)<br>)<br>)<br>)<br>) | RECOMMENDED ORDER<br>DISMISSING COMPLAINTS |
|---|---|---|

HEARD IN: Commission Hearing Room 202, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on July 12, 1985

BEFORE: Hearing Examiner Wilson B. Partin, Jr.

APPEARANCES:

For the Complainants:

Kay B. House, Staff Attorney, Lumbee River Legal Services, Inc., Post Office Drawer 939, Pembroke, North Carolina 28372
For: David L. Carter and Mary Jacobs

For the Respondent:

Geoffrey E. Gledhill and Jane de Lissovoy, Coleman, Bernholz, Dickerson, Bernholz, Gledhill and Hargrave, Attorneys at Law, 110 North Charton Street, Hillsborough, North Carolina 27231 For: Lumbee River Electric Membership Corporation

BY THE COMMISSION: This matter is before the Commission on complaint of the complainants David L. Carter and Mary Jacobs filed on March 18, 1985; the complainants also asked for a temporary restraining order.

On March 20, 1985, the Commission issued an Order serving the complaint upon Lumbee River Electric Membership Corporation ("Lumbee River EMC" or "respondent cooperative") and granting the motion for restraining order.

On April 11, 1985, the respondent cooperative filed a motion for extension of time to file an answer, which was granted by the Commission.

On April 22, 1985, the respondent cooperative filed a motion for relief from the temporary restraining order and also filed its answer to the complaint.

On May 9, 1985, the answer to the complaint and the motion for relief was served upon the complainants by Commission Order.

On May 20, 1985, the complainants' reply to the answer of the respondents was filed with the Commission.

On June 4, 1985, the Commission issued Order Scheduling Hearing in this docket for July 12, 1985, at the offices of the Commission. The Order also modified the restraining order which was issued previously in this docket.

The matter came on for hearing as scheduled in Raleigh on July 12, 1985. David L. Carter and Lumbee River EMC were present and represented by counsel.

Complainants offered the testimony of complainant David L. Carter, a customer-member of Lumbee River EMC, and Randal Jones, Office Manager of Lumbee River EMC.

Respondent offered the testimony of Larry Jacobs, Manager of Financial and Support Services at Lumbee River EMC, and Ronnie Hunt, General Manager of Lumbee River EMC.

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 respondent, Lumbee River Electric Membership Corporation, is an electric membership corporation organized pursuant to Chapter 117, Article 2, of the General Statutes of North Carolina.

2. The complainant David L. Carter is a member of the respondent cooperative and was a member at the time the complaint was filed.

3. The complainant Mary Jacobs was not a member of the respondent cooperative at the time the complaint was filed. Mary Jacobs became a member of the respondent on July 11, 1985. Mary Jacobs compromised and settled, by written agreement with respondent, the outstanding account balance with respondent which was the basis of her claim against respondent in this action.

4. Section 9.02 of the respondent's bylaws provides that "by dealing with the cooperative" its members acknowledge that the terms and provisions of the respondent's bylaws constitute a contract between the respondent and its members, and that both the respondent and the member are bound by that contract as fully as if each member individually had signed a separate instrument containing such terms and provisions.

5. Section 1.02 of the respondent's bylaws provides that an applicant for membership in the respondent cooperative agrees to be bound by and to comply with all rules, regulations, and rate schedules established by the respondent cooperative.

6. Section 1.08 of the respondent's bylaws provides that each member of the respondent cooperative shall pay for electric service furnished to the member by the cooperative in accordance with the rules, regulations and rate schedules established by the cooperative, and that each member shall also pay all other amounts owed to the cooperative as and when they become due and payable.

7. Section 2.05 of the respondent's bylaws provides that termination of a person's membership in the respondent cooperative does not release that person from any debts or other obligations remaining due the cooperative.

8. Section 1.02 of the respondent's bylaws provides that a former member of the respondent cooperative may become a member again by paying a new membership fee and any outstanding account plus accrued interest.

9. It is the respondent's practice and procedure to ask an applicant for membership in the respondent cooperative whether the applicant previously has been a member of the cooperative. If the response is affirmative, the cooperative reviews its records to determine whether the applicant owes an outstanding indebtedness to the cooperative pursuant to the prior membership. This determination is made either at the time the application is received or subsequent to that time, depending upon the personnel available to receive and process applications for membership at the time application is made. If an outstanding indebtedness is discovered, the applicant is requested either to pay the entire amount outstanding or to arrange to pay the amount as a condition of membership in the respondent cooperative. The respondent requires an applicant to pay all outstanding indebtedness without regard to the year in which the indebtedness was incurred or the year in which the former membership was terminated.

10. It is the respondent's practice and procedure to request that a current member pay any outstanding indebtedness remaining unpaid from that member's former membership in the respondent cooperative whenever the respondent discovers the outstanding indebtedness. The respondent notifies the member by letter of the outstanding indebtedness. If the member does not respond to the letter, the respondent then charges the outstanding indebtedness to the member's current account. The respondent requires payment of the outstanding indebtedness, and it is a term and condition of membership in the respondent cooperative that a member pay the outstanding indebtedness without regard to the time at which the indebtedness was incurred or the date on which the former membership was terminated. In the event a member is unable to pay the entire outstanding indebtedness in one payment, the respondent cooperative permits the member to make arrangements to pay the indebtedness.

11. The only instance in which the respondent cooperative requires an applicant or member to pay a discovered outstanding indebtedness in full before the cooperative will provide electric service is where there is proof that the applicant or member obtained or was involved in the obtaining of electric service from the respondent cooperative fraudulently.

12. The respondent's practice and procedure as described in findings of fact numbered 9, 10, and 11 above are rules and regulations of the respondent cooperative in accordance with the cooperative's bylaws.

13. The complainant David L. Carter was a member of the respondent cooperative from January 1975 to September or October 1975. At the time Mr. Carter's membership terminated in 1975 he owed an outstanding indebtedness to the cooperative in the amount of $353.23.

14. The complainant David L. Carter again became a member of the respondent in 1982. Two years after Mr. Carter became a member in the

respondent cooperative his current account was charged with the sum of $353.23. Mr. Carter was informed by the respondent cooperative that the charge was for electric service provided to Mr. Carter pursuant to his former membership in the cooperative and for which Mr. Carter had not paid.

15. The complainant David L. Carter continues to owe an outstanding indebtedness to the respondent cooperative in the amount of $353.23, which indebtedness was incurred by Mr. Carter pursuant to his former membership in the respondent cooperative from January 1975 to September or October 1975.

16. The respondent cooperative has notified the complainant David L. Carter that his electric service will be terminated and his membership in the cooperative terminated if he does not pay, or make arrangements to pay, the outstanding indebtedness incurred by him pursuant to his former membership.

## CONCLUSIONS

### I.

The complainant Mary Jacobs lacks standing to maintain this action before the Commission.

The evidence at the hearing disclosed that the complainant Jacobs was not a member of the respondent cooperative at the time the complaint was filed. The complainant Jacobs became a member of the respondent on July 11, 1985. The complainant Jacobs compromised and settled, by written agreement with the respondent, the outstanding account balance with respondent which was the basis of her claim against respondent in this proceeding.

The complaint of Mary Jacobs should therefore be dismissed.

### II.

The Commission does not have jurisdiction to hear and determine the complaint of David Carter in this proceeding, and therefore the complaint of Mr. Carter should be dismissed.

The Commission derives its authority from the Public Utilities Act of 1963, N.C.G.S. Chapter 62. As an administrative agency created by statute, the Commission has no regulatory authority except such as is conferred upon it by Chapter 62 of the General Statutes. Utilities Commission v. National Merchandising Corp., 288 N.C. 715 (1975); Utilities Commission v. Atlantic Coast Line Railroad Co., 268 N.C. 242 (1966). Pursuant to G.S. 62-30, 62-32, and 62-130, the Commission has general power and authority to supervise, control, and regulate the public utilities of the State with respect to rates and service. Electric membership cooperatives are not expressly provided for in these statutes. G.S. 62-3(23)(d) provides that the term "public utility" does not include an electric membership corporation unless otherwise expressly provided for in G.S. Chapter 62.

The Complainant David Carter asks the Commission to enjoin Lumbee River EMC from terminating electric service to him specifically, and to all members of Lumbee River EMC generally, where such members have not paid for electric service furnished to them by the cooperative and the cooperative is barred by the statute of limitations from collecting the sums owed in a civil action filed in a court of law. Mr. Carter principally relies upon G.S. 62-42 in contending that the Commission has jurisdiction to hear and determine the complaint. G.S. 62-42 provides in relevant part:

> "(a) Whenever the Commission, after notice and hearing had upon its own motion or upon complaint, finds:
>
> "(1) That the service of any public utility is inadequate, insufficient or unreasonably discriminatory, or
>
> "(2) That persons are not served who may reasonably be served, or
>
> "(3) That additions, extensions, repairs or improvements to, or changes in, the existing plant, equipment, apparatus, facilities or other physical property of any public utility, of any two or more public utilities ought reasonably to be made, or
>
> "(4) That it is reasonable and proper that new structures should be erected to promote the security or convenience or safety of its patrons, employees and the public, or
>
> "(5) That any other act is necessary to secure reasonably adequate service or facilities and reasonably and adequately to serve the public convenience and necessity.
>
> "The Commission shall enter and serve an order directing that such additions, extensions, repairs, improvements, or additional services or changes shall be made or affected [sic] within a reasonable time prescribed in the order.
>
> . . . . . . . . . . .
>
> "(c) For the purpose of this section, "public utility" shall include any electric membership corporation operating within this State." (emphasis added)

G. S. 62-3(27) defines "service" as follows:

> "'Service' means any service furnished by a public utility, including any commodity furnished as a part of such service and any ancillary service or facility used in connection with such service."

Although electric membership corporations are "expressly provided" for in G.S. 62-42, the Examiner is of the opinion, and so concludes, that the respondent's collection and termination procedures challenged by the Complainant do not come within the statutory definition of "service" and are thus outside the scope of the statute. G. S. 62-42 by its terms primarily pertains or relates to a geographic or a level (quality) of service standard; the statute is concerned with the physical acts necessary to provide a utility commodity such as gas, water, or electricity. The statute is captioned:

"Compelling efficient service, extensions of services and facilities, additions and improvements." Upon making the findings required by the statute, the Commission is authorized to enter an order "directing that such additions, extensions, repairs, improvements, or additional services or changes shall be made . . . ." To adopt the construction urged upon the Commission by the Complainant would result in a strained and unwarranted application of the statute to the matters raised in the complaint.

There is a statute which expressly relates to the rules and regulations of an electric membership cooperative with respect to its members. That statute is G.S. 117-16, which authorizes electric membership cooperatives to promulgate terms and conditions of membership. G.S. 117-16 provides in relevant part:

> "The corporate purpose of each corporation formed hereunder shall be to render service to its members only, and no person shall become or remain a member unless such person. . . shall have complied with the terms and conditions in respect to membership contained in the bylaws of such corporation: Provided, that such terms and conditions of membership shall be reasonable; and provided further, that no bona fide applicant for membership, who is able and willing to satisfy and abide by all such terms and conditions of membership, shall be denied arbitrarily, or capriciously, or without good cause."

The provisions of G.S. 117-16 have not been made subject to the jurisdiction of the Commission. Therefore the Commission lacks authority to determine whether the terms and conditions of membership in the respondent cooperative are reasonable or whether membership has been denied arbitrarily, or capriciously, or without good cause.

The bylaws provisions which Mr. Carter challenges fall within the statutory definition of "rate." "Rate," as defined in G.S. 62-3(24), not only means compensation collected by a public utility for service, but also includes "any rules, regulations, practices or contracts affecting any such compensation, charge, fare, tariff, schedule, toll, rental or classification." Under G. S. 62-130, the Commission has authority to "make, fix, establish or allow just and reasonble rates for all public utilities subject to its jurisdiction." Electric membership corporations are not expressly included in the term "public utilities" for purposes of this section. Thus, by operation of G.S. 62-3(23)(d), the Commission has no authority to regulate the rules and bylaws of the respondent which pertain to the collection of its past due accounts.

An examination of the rules and regulations of the Commission, enacted pursuant to G.S. 62-72, reinforces the respondent's contention that the Commission has no jurisdiction to determine the reasonableness of its collection practices. Chapter 8 of the Commission's rules and regulations applies to public utilities engaged in the business of furnishing electricity for domestic, commercial or industrial consumers within the State of North Carolina. Rule R8-1. Electric membership corporations organized under Chapter 117 of the General Statutes are explicitly excluded from Chapter 8 of the Commission's rules and regulations. Rule R8-2. Thus, the Commission's rules regarding discontinuance of service for violation of a utility's rules and regulations under Rule R8-20 do not apply to electric membership corporations.

Likewise R8-22, which permits a utility to decline to serve a customer or prospective customer until he or she has complied with the rules and regulations of the utility furnishing the service, provided such rules and regulations have been approved by the Commission, does not apply to electric membership corporations.'

IT IS, THEREFORE, ORDERED that the complaints be, and the same are hereby, dismissed.

ISSUED BY ORDER OF THE COMMISSION.
This the 9th day of July 1986.

NORTH CAROLINA UTILITIES COMMISSION
Sandra J. Webster, Chief Clerk

(SEAL)

DOCKET NO. EC-51, SUB 11

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
David L. Carter and Mary Jacobs, )
Complainants )
) FINAL ORDER
vs. )
)
Lumbee River Electric Membership )
Corporation, )
Respondent )

HEARD IN: Commission Hearing Room, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on Monday, September 8, 1986, at 11:00 a.m.

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

APPEARANCES:

For the Complainant:

Kay B. House, Staff Attorney, Lumbee River Legal Services, Inc., Post Office Drawer 939, Pembroke, North Carolina 28372
For: David L. Carter

For the Respondent:

Geoffrey E. Gledhill, Coleman, Bernholz, Dickerson, Bernholz, Gledhill and Hargrave, Attorneys at Law, 110 North Charton Street, Hillsborough, North Carolina 27231
For: Lumbee River Electric Membership Corporation

BY THE COMMISSION: On July 9, 1986, Hearing Examiner Wilson B. Partin, Jr., issued his Recommended Order Dismissing Complaints in this proceeding. That Recommended Order dismissed the complaint of Complainant Mary Jacobs based on lack of standing and a subsequent settlement of her complaint; the Recommended Order dismissed the complaint of Complainant David L. Carter for lack of jurisdiction by the Commission to hear his complaint. On July 24, 1986, Complainant Carter, by and through his attorney, filed Exceptions to Recommended Order Dismissing Complaints. Complainant Carter requested oral argument before the Commission.

By Orders of the Commission, an oral argument was scheduled for the time and place indicated above for the purpose of considering the exceptions filed by Complainant Carter. The matter came on for oral argument as scheduled. Both Complainant Carter and the Respondent were represented by counsel, and both offered oral argument.

Based upon a careful consideration of the Recommended Order Dismissing Complaints entered in this docket on July 9, 1986, the exceptions filed by Complainant Carter on July 24, 1986, the oral argument offered by the parties to this proceeding, and the entire record in this case, the Commission is of the opinion, finds and concludes that the findings of fact and conclusions set forth in the Recommended Order are fully supported by the record and the applicable law and should be adopted and affirmed by the Commission.

The Recommended Order concludes that the Commission does not have jurisdiction to hear and determine the complaint of Mr. Carter. The Recommended Order considers Mr. Carter's reliance upon G.S. 62-42 as grounds for jurisdiction and concludes that the Respondent's collection and termination procedures challenged by Mr. Carter in this proceeding do not come within the scope of the statute. The Hearing Examiner asserts, "G.S. 62-42 by its terms primarily pertains or relates to a geographic or a level (quality) of service standard; the statute is concerned with the physical acts necessary to provide a utility commodity such as gas, water, or electricity." The Commission agrees. As additional support for this conclusion, the Commission notes that G.S. 62-42 was amended in 1965 to make it applicable to electric membership corporations as well as to public utilities under G.S. 62-3(23). This amendment was enacted by the same legislation (Session Laws 1965, c. 287) that enacted the statutes dealing with territorial assignment of service areas to electric suppliers throughout the state. The Commission believes that this history lends additional support to the conclusion that G.S. 62-42 primarily relates to a geographic standard or to the physical facilities necessary to provide adequate and sufficient service.

The Recommended Order recognizes that there is a statute, G.S. 117-16, which relates to the rules and regulations of electric membership corporations and which provides that the terms and conditions for membership in an electric membership corporation "shall be reasonable." This statute is not a part of the Public Utilities Act over which this Commission has jurisdiction, and we find nothing in G.S., Chapter 62 which grants this Commission jurisdiction to interpret and enforce this standard on the fact situation before us in this case. Mr. Carter may present his claim under G.S. 117-16 to the General Court of Justice.

IT IS, THEREFORE, ORDERED that the exceptions filed in this docket by Complainant Carter on July 24, 1986, should be, and the same hereby are, overruled and denied and that the Recommended Order Dismissing Complaints issued in this proceeding on July 9, 1986, should be, and the same hereby is, affirmed and adopted as the Final Order of the Commission.

ISSUED BY ORDER OF THE COMMISSION.
This the 18th day of September 1986.

NORTH CAROLINA UTILITIES COMMISSION
Sandra J. Webster, Chief Clerk

(SEAL)

DOCKET NO. E-13, SUB 75

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Mr. L. E. Lucas, Post Office Box 537, )
Wildwood, Florida, )
Complainant ) RECOMMENDED ORDER
) DENYING COMPLAINT
v. )
)
Nantahala Power and Light Company, )
Respondent )

HEARD IN: Swain County Administration and Courthouse Building, Bryson City, North Carolina, on October 16, 1985

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

APPEARANCES:

For the Respondent:

Edward S. Finley, Jr., Hunton & Williams, Post Office Box 109, Raleigh, North Carolina 27602

For the Using and Consuming Public:

James D. Little, Staff Attorney, Public Staff-North Carolina Utilities Commission, Post Office Box 29520, Raleigh, North Carolina 27626-0520

PARTIN, HEARING EXAMINER: On September 4, 1984, Lester E. Lucas filed a Complaint against Nantahala Power and Light Company ("Nantahala", "Company", or "Respondent"). By Order dated September 12, 1984, the Commission served the Complaint on Nantahala for a response. On October 4, 1984, Nantahala filed its Answer and Motion to Dismiss the Complaint. By Order of October 18, 1984, the Commission served the Answer on the Complainant, Mr. Lucas, and requested him to file a response to the Answer. On November 4, 1984, the Commission received a Response from Mr. Lucas in which the Complainant stated that the Respondent's

Answer was unsatisfactory, and requested a hearing on the Complaint. On January 15, 1985, the Public Staff filed with the Commission a Notice of Intervention pursuant to N.C. Gen. Stat. 62-15(d), and served a First Data Request on Nantahala. Nantahala filed its Response to this Request on February 26, 1985. By Orders of July 26, August 1, and September 12, 1985, the Commission scheduled the hearing on the matter to take place at 11:00 a.m. in the Superior Courtroom, Swain County Administration and Courthouse Building, Bryson City, North Carolina, on October 16, 1985. The matter was heard at the above time and place, and both parties were present. Mr. Lucas offered his testimony, the testimony of Dorothea Petrie, and exhibits in support of his Complaint. Nantahala offered the testimony of Jim Thomas, Nantahala's area manager for the Bryson City, Swain County area; Jim Clouse, staff assistant for customer services; and N. Edward Tucker, Jr., Executive Vice President of the Respondent.

Upon consideration of the testimony and the exhibits presented at the hearing and the entire record in this matter, the Hearing Examiner now makes the following:

## FINDINGS OF FACT

1. The Complainant, Mr. Lucas, resides in Wildwood, Florida, and maintains a cottage in the Sawmill Creek area of Swain County, North Carolina. Mr. Lucas is a customer of Nantahala.

2. The Respondent, Nantahala, is a North Carolina corporation that has been duly franchised by this Commission to operate as a public utility to provide electric power to customers residing in its North Carolina service areas and is subject to the jurisdiction of the Commission.

3. Mr. Lucas purchased his North Carolina property, approximately 1.66 acres in the Good Life Acres development, on July 16, 1975. Mr. Lucas built a cottage on the property about 1979 and visited the property periodically both during construction of the cottage and the period subsequent to its completion.

4. In early 1977 the Complainant was contacted by J. F. Merkel, who was building a house to the west of the Lucas property, as to the possibility of Mr. Lucas' granting the Respondent an easement across his property to serve Mr. Merkel's property. Jim Thomas, the area manager of Nantahala, sent Mr. Lucas a sketch indicating that the easement would cross the Lucas property. Mr. Lucas rejected this initial approach by letter dated March 18, 1977. Mr. Lucas suggested that Nantahala's line be placed along the main road to the Merkel property.

5. By a letter and sketch dated April 15, 1977, Jim Thomas responded to Mr. Lucas' letter, suggesting that the line to the Merkel property be placed between an existing pole near the southeast corner of the Lucas property and a new pole to be placed approximately 300 feet from the existing pole, at the northeast corner of the Lucas property and at the head of the road that provides access to the Lucas property, so that the power line would follow the general line of the road. The letter stated that it would be necessary to cut a few trees. Mr. Thomas requested that Mr. Lucas sign an attached easement deed if he found the proposal acceptable.

6. As requested in the Thomas letter of April 15, 1977, Mr. Lucas and his wife executed the Deed of Easement attached to the Thomas letter. The easement gave Nantahala an easement for an electric distribution line, along with

> "all rights and privileges necessary to the construction, use and maintenance of said line, including the right to go upon said property for purposes of constructing and maintaining said line, and the right at all times to cut trees and other obstructions upon [the] property of [the] parties of the first part which may endanger the safe use thereof."

Mr. Lucas sought no clarification of the terms of the letter or the proposed easement., Mr. Lucas signed the Deed under seal on April 19, 1977.

7. Between April and August 1977 the Respondent placed its line across the Lucas property in accordance with the sketch included with the Thomas letter of April 15 and the easement executed on April 19. This placement involved the cutting of some trees on the Lucas property. Mr. Lucas visited his property in the late summer of 1977, saw the placement of the line on his property, and made no objection thereto.

8. In the summer of 1984, Stewart's Tree Trimming crew, a contractor of the Respondent, cleared certain trees and vegetation growing within the easement pursuant to Nantahala's Deed of Easement and the Company's reclearing policy. During this clearing some six or seven trees along the eastern line of the Lucas property, including several white pine trees, were cut from a group of such trees growing near the southeast corner of the Lucas property.

9. In response to Mr. Lucas' complaints, Company representatives examined the Lucas property and determined that the reclearing had been done properly and in accordance with the Company's easement and its reclearing policy.

10. Nantahala has developed over the years a policy relating to the clearing and reclearing of vegetation on its easements throughout its service areas.

## CONCLUSIONS

### I.

The Commission has jurisdiction to hear and determine this Complaint.

During the course of the hearing Nantahala made motions at appropriate times to dismiss the complaint for lack of subject matter jurisdiction by the Commission. The Examiner recognizes that in some matters affecting the easement of a public utility it may not have jurisdiction. The Examiner is of the opinion, however, that the Commission has jurisdiction to hear and determine the complaint of Mr. Lucas in this docket and that the motion of Nantahala should be denied.

G.S. 62-73 authorizes the Commission to hear complaints against public utilities upon "petition or complaint in writing. . . that any rate, service, classification, rule, regulation or practice is unjust and unreasonable."

G. S. 62-42 provides in part as follows:

> "Sec. 62-42. Compelling efficient service, extensions of services and facilities, additions and improvements. --(a) Whenever the Commission, after notice and hearing had upon its own motion or on complaint finds:
>
> . . . . .
>
> "(3) That additions, extensions, repairs or improvements to, or changes in, the existing plant, equipment, apparatus, facilities or other physical property of any public utility, of any two or more public utilities ought reasonable to be made, or
>
> "(4) That it is reasonable and proper that new structures should be erected to promote the security or convenience or safety of its patrons, employees, and the public, or
>
> "(5) That any other act is necessary to secure reasonably adequate service or facilities and reasonably and adequately to serve the public convenience and necessity.
>
> "The Commission shall enter and serve an order directing that such additions, extensions, repairs, improvements, or additional services or changes shall be made or affected within a reasonable time prescribed in the order. This section shall not apply to terminal or terminal facilities of motor carriers of property."

In Kirkman v. Duke Power Company, Docket No. E-7, Sub 152, 64 N.C.U.C. Report 89 (February 1, 1974), the Complainant Kirkman complained about the siting of a transmission line across his property and the adverse effect that such siting would have on his property. In deciding that the Commission had jurisdiction to hear the Complaint, the Commission concluded:

> "The nature of this complaint is that the defendant, Duke Power Company, has acted or proposed to act in an unreasonable and arbitrary manner in the construction of an electric transmission line, the purpose of which is to provide electric service to individual citizens and the public in general in North Carolina, and the relief sought is an order to alter the plans of Duke Power Company for the construction of said line and to require that the proposed transmission line be constructed in a different manner and particularly in a different place. This is the proper forum for consideration of such a complaint."

The Complainant in this case seeks the relocation of the line in question and further seeks a modification in the Company's reclearing policy as it pertains to the easement on his property. The Complainant takes issue with the alleged unreasonableness of Nantahala's policy relating to the maintenance and use of its easement, particularly the Company's policy of cutting trees and vegetation within the 40 foot right-of-way. Pursuant to the authorities cited above, the Commission has jurisdiction to hear the matters raised in the complaint.

II.

The Deed of Easement held by the Respondent was not procured improperly.

The Complainant's assertion of impropriety in the obtaining of the easement was based upon the letter and sketch sent to the Complainant by Jim Thomas. (Tr. p. 16) The sketch (Lucas Public Staff Exhibit No. 5) shows only two circles connected by the disputed line. Mr. Lucas testified that he understood the two circles on the sketch to represent two power poles. (Tr. at 35.) The sketch also showed that the road bordering the Lucas property was not straight. Mr. Lucas testified that he knew the road was not straight. (Tr. pp. 35, 36).

The sketch included by Mr. Thomas in his letter of April 15, 1977, clearly showed that the line would run between two poles situated at about each corner where the Lucas property line meets the road adjoining the eastern side of the Lucas property. The boundary between the road and the Lucas property is not straight, and the sketch of Mr. Thomas so indicates. Obviously, any line between two such poles would cross the woodlands on the Lucas property if the road did not run in a straight line. Mr. Thomas' letter stated:

> "We will try to follow the road right-of-way and property lines as much as possible but it will be necessary to cut a few trees on your property."

The Hearing Examiner notes that Mr. Lucas saw the exact course of the line after its installation in 1977 but expressed no objection to it. Mr. Lucas also testified that he did not see that any cutting had been done. Mr. Thomas testified that there had been some cutting during the initial placement of the line. Mr. Lucas' apparent failure to complain of the course of the line or even to notice the initial cutting in 1977 suggests that his quarrel is with the extent of the reclearing in 1984, not the Respondent's procurement of the easement. The Hearing Examiner finds no grounds for the Complainant's contention that he was misled by the company. As his letter of March 18, 1977, to Mr. Merkel shows, Mr. Lucas was aware of the impact that an easement across his property would have. In the absence of fraud or misrepresentation any prior negotiations between the Complainant and Nantahala would merge into the terms of the easement.

Since Nantahala did not gain improperly the Deed of Easement from Mr. Lucas, and the Deed cannot be viewed as subject to a limitation that the line follow the exact course of the road, there is no basis for granting Mr. Lucas' request, as set forth in his complaint and in his proposed Order, that the Respondent be required either to remove the line from his property or to add another pole to make the line conform to the road. To order either action at Company expense when the Company was acting within its rights under the Deed of Easement would be to burden unfairly the Company's other customers. The Company repeatedly has expressed its willingness to make those alterations to the line for which Mr. Lucas is willing to pay.

## III.

The clearing undertaken by the Respondent in 1984 was within the terms of its Deed of Easement and its general policy on reclearing and was proper and reasonable.

Mr. Lucas testified as to what he saw when he visited the property after the cutting complained of in 1984:

> "Well, it looked to me like complete distruction (sic). It just hurt me because to me it looked like my property had been ruined because this is the entrance to my property. This is what everyone sees when they go through. My deck, before this cutting was done, you couldn't see the road itself coming up to my place. You could hear cars coming but until they got to the top you couldn't tell who it was. Now you can see almost to the bottom."(Tr. p. 20)

The Examiner can understand the dismay of Mr. Lucas when he viewed the property after the clearing in 1984. The Examiner is of the opinion, however, that the clearing undertaken by Nantahala was within the terms of its Deed of Easement, which was signed by the Complainant, and the Company's general policy on reclearing. Under the terms of the Deed of Easement, Nantahala was granted

> "all rights and privileges necessary to the construction, use and maintenance of said line, including the right to go upon said property for purposes of constructing and maintaining said line, and the right at all times to cut trees and other obstructions upon [the] property of [the] parties of the first part which may endanger the safe use thereof." (Lucas Public Staff Exhibit No. 6)

This language, which is common to utility easements, gives Nantahala the right to do that which in its discretion is necessary to construct and maintain the line. While such discretion cannot be unlimited, it has not been exceeded in this case. Mr. Lucas' land was recleared in accordance with the Respondent's policy on reclearing. Mr. Tucker, the Executive Vice-President of the Company, testified at length about the reclearing policy of the Company and the reasons for such policy. Some of his testimony is presented in Conclusion No. IV below. For example, Mr. Tucker discussed the mountainous terrain of Nantahala's service area and the impact that such terrain had on the clearing and reclearing policy of the Company. Mr. Tucker stated that the Company cuts its right-of-ways forty feet wide for distribution lines. He testified:

> "Q. All right. Now you mentioned the 40 foot right-of-way. What consideration went into the determination to use 40 feet?
>
> "A. Well, the problem that we have is within our service area; it's very mountainous, very high vegetation area. A lot of heavy tree growth. It's also -- several of our lines go alongside of hills. All these things create first a problem with trees on the hills in hitting lines, problems with getting to the lines to reclear and an enormous amount of time to reclear because of the inaccessibility. The width is there to minimize the reclearing activity and maintain reliable service. In other words, it allows us more time before the trees go back into the lines; therefore,

> shorting out and causing outages. It allows more time before that occurs without having to go back in and do more cutting work." (Tr. p. 90).

He further stated that the general policy of the Company is to cut trees, to cut "as close to the ground as you practically can. I think we say maybe four inches." (Tr. pg. 91)

The Company offered into evidence a written memorandum setting forth the Company's clearing and reclearing policy. (Respondent's Exhibit No. 2). The memorandum states in relevant part:

> "RECLEARING
> The right-of-way crews shall cut, trim and clear and any and all trees, bushes, brush and sprouts to within four (4) inches of the ground surface growing and being on and within the boundaries of the electric power line right-of-way of the owner, and cut all the trees or tree branches overhanging into and within said right-of-way and to move all brush or timber at least 16 feet distance away from all wood power line poles located and installed on said right-of-way and shall not leave or allow any brush or timber on any fence, in any stream, ditch, road or road ditch."

As discussed below in Conclusion IV, the Company's reclearing policy is reasonable and consistent with the Respondent's responsibility as an electric public utility in its franchise service area.

IV.

The Company's present policy on reclearing its right-of-ways is proper and reasonable and should not be altered as requested by the Complainant.

In his proposed Order the Complainant recommended that the Commission implement the following ordering paragraphs:

> "Nantahala Power and Light Company is hereby ordered to move the electric line on the eastern border of Mr. L. E. Lucas' property so as to immediately parallel the entrance road. This is to be done at no expense to Mr. Lucas and is to be accomplished within ninety days after Nantahala has complied with the following action which Nantahala is required to accomplish within forty-five days of the date of this order.
>
> "1. Draw an accurate map of Mr. Lucas' property including the eastern road; included in the map should be an accurate rendering of the location of the existing roads, home, electric lines, poles, and guy wires, and an engineer approved rendering of where the lines, poles, and guy wires are proposed to be relocated immediately beside and parallel to the eastern road.
>
> "2. Prepare a proposed maintenance agreement between the Company and Mr. Lucas setting forth a reasonable future maintenance policy for the easement on Mr. Lucas' property, notwithstanding any purported Company policies. This policy should allow Mr. Lucas

flexibility and latitude in the use and enjoyment of the land subject to the easement and should be sufficiently specific so as to prohibit the kind and extent of cutting that occurred in 1984.

"3. Consult and reach agreement with the Public Staff Attorney James D. Little acting on behalf of Mr. Lucas as to decretal paragraphs '1' and '2' above prior to implementation.

"4. File the agreed to map and maintenance agreement with the Commission."

Some idea of what Mr. Lucas would consider "a resonable future maintenance policy" for the easement on his property may be gleaned from his Complaint and testimony. For example, the Complainant asked in his Complaint that the Respondent change to a yearly reclearing cycle and be required to cut back on the extent of the reclearing undertaken each time. According to the testimony of Company witness Tucker, the Company is currently reclearing its right-of-ways on about a seven-year cycle and is aiming for a five-year cycle. (Tr. p. 89) Under a five- or seven-year reclearing cycle it becomes necessary to cut back far enough away from the line to keep tree limbs from growing over the lines during the intervening years. Cutting the foliage to twenty feet from the line is a reasonable means of doing so. Similarly, cutting the foliage down to the ground becomes necessary for protection of the line in an area where the foliage may grow at a rate of two to three feet a year. Even on its current seven-year reclearing schedule, Nantahala pays some $14,000 each week to contract trimming and reclearing crews, and supports an additional four such crews on its own. If the Company were required to change to a yearly reclearing cycle, the number of required crews, and the resulting cost to be borne by the ratepayers, would increase severalfold.

The geography of Nantahala's service area plays a role in dictating the extent of Nanthala's reclearing policy. Most of Nantahala's lines run along hillsides for at least part of their length, and twenty-foot clearances may be necessary to keep hillside trees away from the line. The severe ice storms in western North Carolina also dictate that trees and tree limbs be kept far enough from the line to minimize outages suffered during such storms. As was testified to by Company witness Tucker, even the Company's policy of clearing forty-foot right-of-ways has not eliminated completely the outages caused by such storms. (Tr. p. 94)

The Complainant also asked that the Respondent be required to give him at least two weeks' notice of reclearing so that he could be present. The Examiner concludes, however, that the Company's policy of notifying only those landowners who are home immediately before reclearing is reasonable. According to Mr. Tucker, company and contract crews are sent out to clear entire line systems, and their exact progress along each line is too uncertain to allow for much advance notification of the exact date when they will be clearing on any one customer's property. (Tr. p. 92) Conversely, ending the Company's practice of sending the crews out to progressively clear a certain section of line, and requiring them instead to go to each property when the customer is at the property, would greatly add to the delay and costs of clearing, especially in view of the number of owners, such as Mr. Lucas, who reside out of the state for much of the year.

Finally, the Complainant's demand that Nantahala remove all cut brush and trees from the easement across his property should be denied. The Respondent's policy of clearing cut timber and brush from an easement only when the easement is within a city or across a lawn or cultivated field is reasonable. Much of Nantahala's service area is rural. To clear all the easements no matter how rural would be unduly expensive, while failure to clear easements in cities or across lawns or cultivated fields would be disruptive for the customers and in some cases might subject the Company to liability.

V.

The Company should file an updated written statement of its clearing and reclearing policies.

In the hearing, the Company offered testimony on its clearing and reclearing policies. Company witness Tucker offered into evidence a written statement of the Company's reclearing policies which had evolved over the years. Mr. Tucker testified that some of the company's reclearing policies are not necessarily in writing. (Tr. p. 100).

The Commission is of the opinion that the Company should file with the Commission an updated statement in writing of its reclearing policies. The Company should also continue its practice of providing a copy of this policy to all of its right-of-way and reclearing crews, including those crews hired as a subcontractor.

IT IS, THEREFORE, ORDERED as follows:

1. That the formal Complaint filed in this docket by Lester E. Lucas against Nantahala Power and Light Company be, and the same is hereby, denied.

2. That within 30 days from the effective date of this Order the Company shall file with the Commission an updated copy of its clearing and reclearing policy. A copy shall also be sent to the Public Staff at the same time.

3. That this docket remain open.

ISSUED BY ORDER OF THE COMMISSION.
This the 8th day of July 1986.

NORTH CAROLINA UTILITIES COMMISSION
Sandra J. Webster, Chief Clerk

(SEAL)

DOCKET NO. E-2, SUB 481
(REMANDED)

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Application by Carolina Power & Light Company ) ORDER ON
for Authority to Adjust and Increase its Electric ) REMAND
Rates and Charges )

HEARD IN: Commission Hearing Room 2063, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on Tuesday, August 5, 1986

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

APPEARANCES:

For Carolina Power & Light Company:

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, and Paul L. Lassiter, Staff Attorney, Public Staff, Post Office Box 29520, Raleigh, North Carolina 27626-0520
For: The Using and Consuming Public

BY THE COMMISSION: On November 20, 1984, the North Carolina Utilities Commission entered an Order in this docket whereby Carolina Power & Light Company (CP&L) was granted authority to increase its rates and charges by approximately $64.3 million on an annual basis. However, the rate increase granted to CP&L had been reduced by approximately $2.4 million in order to effectively refund $2.4 million from a deferred account to the Company's ratepayers that CP&L had overcollected in fuel costs since its 1983 general rate case in Docket No. E-2, Sub 461. Finding of fact number 11 set forth in the Commission Order of November 20, 1984, provided as follows:

> "11. The deferred fuel account established in CP&L's last general rate case should be closed out as of September 21, 1984, and the balance of the account at that time of approximately $2,560,418 reduced by $173,000 as agreed upon by the parties should be effectively refunded to CP&L's ratepayers by reducing the rate increase found fair herein."

On December 18, 1984, the Attorney General filed exceptions and notice of appeal to the North Carolina Supreme Court. On January 7, 1985, CP&L filed notice of cross-appeal and exceptions.

On April 2, 1984, the Supreme Court entered an opinion both affirming and reversing in part the Commission Order dated November 20, 1984. State ex rel. Utilities Commission v. Thornburg, 316 N.C. 238, ____ S.E. 2d ____ (1986).

Specifically, the Court held that (1) the Commission did not err by including $663,167,000 of construction work in progress (CWIP) in CP&L's rate base; (2) the Commission did not err in calculating CP&L's fuel costs; and (3) the Commission did not err in ordering a refund of the deferred fuel account, but did err by ordering a deduction from CP&L's annual rate increase in the amount of the refund. The case was remanded to the Commission for further proceedings not inconsistent with the opinion of the Supreme Court.

In its opinion, the Supreme Court specifically stated as follows with respect to that portion of the Commission Order found to be in error:

> "CP&L's final argument centers on the Commission's directive that it refund to its customers the funds in the deferred fuel account which the Commission ordered the company to establish in its 1983 general rate case, Docket No. E-2, Sub 461. In that case, the utility was ordered to place any fuel cost over-collections in the special account. In other words, the account would include the amount by which allowable fuel costs exceeded actual fuel costs. The Commission was to review the company's actual fuel costs in the next general rate case or in a proceeding pursuant to N.C.G.S. § 62-133.2 and require the company to refund any over-collection to the customers. However, if CP&L under-recovered its fuel costs, it would not be permitted to recover the under-collection.
>
> "At the time of the hearing, the deferred fuel account reflected over-collections of approximately $2,566,418. Approximately $173,000 of the account had been effectively refunded to the ratepayers through certain adjustments to operating and maintenance expenses, leaving a net account of $2,387,000. In order to effectuate a refund of the funds in this account, the Commission reduced the company's annual rate increase by $2,387,000.
>
> "CP&L initially contends that the 'one-way true-up' established in the 1983 rate case is arbitrary and capricious and openly discriminates against the company, as it requires the company to refund any over-collections while requiring it to absorb any under-collections. CP&L contends that basic fairness and the mandate in NC.G.S. § 62-133(a) that rates shall be fair to both the utility and the customer require that either the rates be fixed or that any 'true-up' run both ways.
>
> "We find it unnecessary to decide this question. By its order in this case, the Commission closed out the deferred fuel account established in the 1983 general rate case. The account had a positive balance--in other words, the company had over-collected its fuel costs. This amount was ordered refunded. There was no actual under-collection, and since the account was closed, there can be no future under-collections. The question of whether a two-way true-up should have been established is therefore moot.
>
> "The company is correct, however, when it argues that the Commission erred by refunding the over-collections by deducting the amount of the deferred fuel account from CP&L's annual rate increase. This would, in effect, require the company to pay the refund annually

> for as long as the rates fixed in this case remain in effect. The Commission should have provided for a lump-sum refund (i.e., one-time rate reduction) or a rate reduction over a period of time. We therefore remand the case to the Commission with instructions that it take appropriate measures to correct this situation." Id. at 258-259.

On the basis of the opinion and instructions of the Supreme Court regarding this case on remand, the Commission concluded that it was appropriate to request CP&L to propose for comment a plan, including appropriate procedures and methodology, detailing how the Company would propose that this matter should be handled on remand. Accordingly, the Commission entered an Order in this docket on May 12, 1986, requiring CP&L to file a proposed plan and allowing all parties an opportunity to file written comments regarding such proposed plan.

On May 21, 1986, CP&L filed its proposed plan, including appropriate procedures and methodology, in conformity with the provisions of the Order dated May 12, 1986. The plan was presented in the form of testimony and exhibits of David R. Nevil, Manager - Rate Development and Administration in the Rates and Service Practices Department for CP&L.

No comments were filed by the parties with respect to CP&L's proposed plan regarding the deferred account refund.

On June 12, 1986, the Commission entered an Order in this docket scheduling a hearing on remand regarding CP&L's proposed plan.

Upon call of the matter for hearing at the appointed time and place, CP&L and the Public Staff were present and represented by counsel. CP&L presented the testimony and exhibits of David R. Nevil. The Public Staff offered the affidavit of William E. Carter, Jr., Director of Accounting for the Public Staff.

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

## FINDINGS OF FACT

1. Carolina Power & Light Company is 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 duly organized and existing under the laws of the State of North Carolina and is subject to the jurisdiction of this Commission.

3. On November 20, 1984, the Commission entered an Order in Docket No. E-2, Sub 481, entitled "Final Order Granting Partial Increase in Rates and Charges and Requiring Refunds." By that Order, the Commission found that the deferred fuel account established in Docket No. E-2, Sub 461, should be closed out as of September 21, 1984, and that the balance of the account at that time of approximately $2,560,418 reduced by $173,000 should be effectively refunded

to ratepayers by utilizing that amount to reduce the gross revenue increase allowed by the Commission in the Sub 481 general rate case.

4. The rates approved by the Commission in Docket No. E-2, Sub 481, will cause CP&L to refund approximately $5,387,483 to the Company's North Carolina retail ratepayers through September 18, 1986, resulting in an overrefund of approximately $2,827,065 ($5,387,483 - $2,560,418). CP&L should be allowed to implement an increment rider of 0.013 cents per kilowatt-hour (excluding gross receipts tax) for the purpose of collecting this overrefund. This "Order Correction Rider" should be effective for a fixed 12-month time period.

5. The base rates approved by the Commission in Docket No. E-2, Sub 481, should also be increased by 0.012 cents per kilowatt-hour (excluding gross receipts tax) in order to prospectively prevent an ongoing refund.

6. The appropriate level of North Carolina retail kilowatt-hour sales for use in this proceeding is 21,787,971,640, which is the level of sales approved by the Commission in Docket No. E-2, Sub 518, the Company's current fuel adjustment proceeding.

WHEREUPON, the Commission reaches the following

## CONCLUSIONS

The Commission concludes on remand that CP&L's rates should be modified in conformity with the findings of fact set forth above effective for service rendered on and after the date of this Order. The "Order Correction Rider" in the amount of 0.013 cents per kilowatt-hour (excluding gross receipts tax) shall be effective for a fixed 12-month period of time for service rendered through September 17, 1987. The Company shall further increase its rates by 0.012 cents per kilowatt-hour (excluding gross receipts tax) in order to prospectively prevent an ongoing refund. The Commission has calculated these amounts based upon the level of kilowatt-hour sales recommended by the Public Staff in the affidavit of William E. Carter, Jr. The Commission has adopted such level of kilowatt-hour sales for the reasons set forth by Mr. Carter in his affidavit.

The Commission concludes on remand that these rate revisions and modifications comply fully with the mandate of the North Carolina Supreme Court in State ex rel. Utilities Commission v. Thornburg, Id.

IT IS, THEREFORE, ORDERED as follows:

1. That CP&L shall file revised tariffs in conformity with the provisions of this Order and the Order Approving Decrease in Rates and Charges issued on this same date in Docket No. E-2, Sub 518, not later than Friday, September 26, 1986. Said tariffs shall be effective for service rendered on and after the date of this Order.

2. That CP&L shall give notice of the rate revisions approved herein by bill inserts as provided in the Commission's Order Approving Decrease in Rates and Charges of this same date in Docket No. E-2, Sub 518.

ISSUED BY ORDER OF THE COMMISSION.
This the 18th day of September 1986.

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

DOCKET NO. E-2, SUB 518

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Application by Carolina Power & Light Company )
For Authority to Adjust and Increase its ) ORDER APPROVING
Electric Rates and Charges Pursuant to ) DECREASE IN RATES
N.C.G.S. § 62-133.2 ) AND CHARGES

HEARD IN: Commission Hearing Room 2063, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on August 5, 1986.

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

APPEARANCES:

For the Applicant:

Robert W. Kaylor, Associate General Counsel, Carolina Power &
Light Company, Post Office Box 1551, Raleigh, North Carolina 27602
For: Carolina Power & Light Company

For the Public Staff:

Paul L. Lassiter, Staff Attorney, and 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 Other Intervenors:

Ralph McDonald, Bailey, Dixon, Wooten, McDonald, Fountain &
Walker, Post Office Box 12865, Raleigh, North Carolina 27605-2865
For: Carolina Industrial Group for Fair Utility Rates

BY THE COMMISSION: On May 21, 1986, Carolina Power & Light Company (CP&L or the Company) filed an Application for decrease in rates based solely on the cost of fuel in accordance with the provisions of G.S. § 62-133.2 and Rule R8-54 of the Commission's Rules and Regulations. The requested decrease as updated during the hearing was in the amount of 0.173¢/kWh, including gross receipts tax, and was based on a historic 12-month test period ending March 31, 1986, as adjusted.

By Order issued June 9, 1986 the Commission scheduled a hearing in the fuel charge adjustment proceeding for Tuesday, August 5, 1986.

On June 22, 1986 CP&L filed a motion requesting that this decrease in rates based on the use of an experience modification factor (EMF) be termed provisional pending outcome of the Public Staff's appeal of the use of an EMF in Docket No. E-2, Sub 503.

On July 25, 1986 Carolina Industrial Group for Fair Utility Rates (CIGFUR II) petitioned to intervene, and its intervention was allowed by Order issued July 30, 1986.

The case in chief came on for hearing at the scheduled time and place. CP&L presented the testimony and exhibits of the following witnesses:

1. Larry L. Yarger, Manager - Fossil Fuel in the Fuel Department;

2. Ronnie M. Coats, Assistant to the Group Executive, Fossil Generation and Power Transmission Group; and

3. David R. Nevil, Manager - Rate Development and Administration in the Rates and Service Practices Department.

The Public Staff presented the .testimony and exhibits of Thomas S. Lam, Engineer in the Electric Division of the Public Staff.

CIGFUR II presented in affidavit form the testimony and exhibits of Nicholas Phillips, Jr., a consultant in the field of public utility regulation with Drazen-Brubaker & Associates, Inc.

All parties to the proceeding were provided an opportunity to file briefs and proposed orders with the Commission. These were required to be filed on or before September 5, 1986.

In addition to the evidence adduced at the hearing, the Commission has taken judicial notice of its Orders in Docket Nos. E-2, Sub 481 and Sub 503, the most recent CP&L general rate and fuel proceedings, North Carolina Power's fuel proceeding (Docket No. E-22, Sub 281), Duke Power Company's fuel proceeding (Docket No. E-7, Sub 410) and the Commission's recent revision of the fuel proceeding rules (Docket No. E-100, Sub 47).

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, 1986, normalized and adjusted for certain changes through June 30, 1986.

2. The Company's fuel purchasing practices and power purchasing practices were reasonable and prudent during the test period.

3. The operation of the Company's base load nuclear and fossil plants was reasonable and prudent during the test period.

4. The adjustment of 752,811,505 kWh on a total Company basis as proposed by CP&L for customer growth and weather is reasonable and appropriate for use in this proceeding. The appropriate level of North Carolina retail kilowatt-hour sales for use in this proceeding is 21,787,971,640.

5. The system nuclear capacity factor experienced by CP&L during the test period was 54.6 percent. Use of a normalized generation mix using the average of CP&L's system lifetime nuclear capacity factors by unit at the end of June 1986 and the latest 10-year industry average data for boiling water (BWR) and pressurized water (PWR) reactors from the North American Electric Reliability Council's Equipment Availability Report would also result in a system nuclear capacity factor of 54.6 percent. The reasonable and representative system nuclear capacity factor which is appropriate for normalization purposes in this proceeding is 54.6 percent.

6. The use of June 1986 burned fuel costs as proposed by the Public Staff is reasonable and appropriate for this proceeding.

7. A preliminary fuel cost of 1.578¢/kWh (excluding gross receipts tax) which represents a reasonable fuel cost of $343,814,192 for North Carolina retail service is appropriate for use in this proceeding. This results in a primary fuel cost decrement of 0.004¢/kWh (excluding gross receipts tax) when compared to the base fuel cost of 1.582¢/kWh established in the Company's last general rate case, Docket No. E-2, Sub 481.

8. To the preliminary fuel cost should be added an experience modification factor (EMF) decrement of 0.046¢/kWh (excluding gross receipts tax) which reflects 100 percent of the difference between CP&L's actual 12-month (July 1985 to June 1986) level of reasonable and prudently incurred costs for fuel and purchased power and the fuel-related revenues, exclusive of the EMF-related revenues collected as a result of the Commission's Order in Docket No. E-2, Sub 503. The 0.046¢/kWh EMF rider decrement will remain in effect from September 18, 1986 to September 17, 1987.

9. The primary fuel cost rider and the experience modification factor rider should be applied uniformly to the kWh charges in all North Carolina rate schedules.

10. As a result of the Public Staff's appeal of the EMF in CP&L's previous G.S. § 62-133.2 proceeding, Docket No. E-2, Sub 503, the EMF decrement approved herein shall be provisional, pending the outcome of the appeal.

## EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 1

The evidence for this finding 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 testimony of Company witness Nevil, Public Staff witness Lam, and CIGFUR witness Phillips.

## EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 2

The evidence concerning fuel purchasing practices and power purchasing practices is found in the testimony of Company witnesses Yarger and Nevil.

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. Witness Yarger testified that with the recent drop in oil prices, and its impact upon coal transportation rates, the Company could realize a 2 percent savings in its annual fossil fuel cost. No evidence was offered in opposition to Witness Yarger's testimony.

Company witness Nevil testified that the Company's power purchasing practices during the period were reasonable. No evidence was offered in opposition to this testimony. 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 shown 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.

## EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 3, 4, 5, 6, AND 7

Company witnesses Nevil and Coats, Public Staff witness Lam, and CIGFUR witness Phillips provided testimony and evidence in this proceeding pertaining to the issues discussed in these findings of fact.

The Company's test year in this proceeding was the 12 months ending March 31, 1986. The Company made the necessary normalization adjustments for customer growth and weather normalization in accordance with Rule R8-54. The Company's proposed preliminary fuel cost of 1.620¢/kWh was calculated utilizing the burned cost of fuel in the last month of the test year (March 1986) and normalized nuclear generation based on the Company's system lifetime average nuclear capacity factor of 52.4 percent as of March 31, 1986.

The Public Staff recommended a preliminary fuel cost of 1.555¢/kWh based on normalization of the generation mix with nuclear generation based on 10-year industry average capacity factors and June burned fuel prices. Witness Lam testified that CP&L's test-year nuclear performance was less than should be expected and that his normalization methodology was consistent with the Public Staff's position in Docket Nos. E-2, Sub 481 and Sub 503. Witness Lam also calculated a preliminary fuel factor of 1.597¢/kWh using CP&L's lifetime average nuclear capacity factors as of June 1986 but did not recommend this factor to the Commission.

The Company's normalization adjustments for customer growth and weather normalization were not challenged by the intervenors and were adopted by Public Staff witness Lam in his fuel factor calculations. The Commission finds that the Company's calculations for such adjustments are correct and adopts them for use in this proceeding.

The methodology of using a ratio employed by both the Company and the Public Staff in computing their fuel factors, exclusive of the nuclear capacity factors, is identical to the methodology used by the Commission in Docket No. E-2, Sub 503 and is appropriate for use here.

The only differences between the Company and the Public Staff in the calculation of the preliminary fuel cost relate to the appropriate level of nuclear generation and the unit fuel prices to use in this proceeding.

The Company used its system lifetime average nuclear capacity factor as of March 31, 1986 of 52.4 percent for development of the preliminary fuel factor. Witness Nevil testified that he was following the method adopted by the Commission in the Sub 503 case and described by the Commission in its Order of January 14, 1986, reopening Docket No. E-100, Sub 47, to establish a system nuclear capacity factor in this proceeding. CP&L takes the position that if normalization is to be used, it should be coupled with the use of an EMF and it is only appropriate when test-period fuel costs are abnormal.

Public Staff witness Lam utilized a nuclear capacity factor of 58.2 percent which was calculated using the methodology recommended by the Public Staff in Docket Nos. E-2, Sub 481 and Sub 503. This normalization methodology uses the latest information available from the North American Electric Reliability Council for nuclear reactors to calculate a capacity factor. In this case the report covered the 10-year period 1975-1984.

CIGFUR witness Phillips testified by affidavit that the Commission should use caution if historical lifetime capacity factors are chosen in setting a fuel factor for prospective purposes.

Company witness Coats testified that the overall system nuclear capacity factor for the test period was 54.6 percent. Witness Coats also testified that the total nuclear capacity factor for the month of July was 93 percent, and that for the 12-month period from September 1986 through August 1987, the Company is projecting a total system capacity factor of 57 percent.

The Commission is aware that the generation mix used in deriving a fuel factor is very important and that the amount of nuclear generation is the most important component of that mix. Testimony in past cases has shown the fuel costs of nuclear power to be approximately 1/2¢ per kilowatt hour compared to fuel costs of 2¢/kWh from coal generation and 10¢/kWh from internal combustion (IC) turbines. The amount of generation that is priced out at each of these cost levels determines, to a great extent, the utilities' fuel cost. The level of nuclear generation heavily influences the levels of coal, IC, purchases, and sales in the generation mix because nuclear generation is normally used to generate electricity in preference to other more costly generating sources.

CIGFUR witness Phillips did not propose a normalization scheme but instead criticized the use of historic lifetime factors because they are not representative of reasonable plant performance. Witness Phillips indicated that the Company would profit from the use of lifetime capacity factors because actual nuclear operations could exceed the normalized target. However, the

Commission is confident that combining normalization of nuclear generation with the use of an EMF protects ratepayers when fuel cost overcollections occur.

In the Commission's Order in Docket No. E-100, Sub 47, dated August 14, 1986, the Commission stated that, when normalization of nuclear capacity factors is found to be appropriate, an equally weighted average of actual lifetime nuclear operating experience by unit and the latest North American Electric Reliability Council's Equipment Availability Report would provide a reasonable system capacity factor for nuclear normalization purposes. This treatment gives equal weight to the positions of the Company and Public Staff and is appropriate for use in this proceeding. This calculation produces a system nuclear capacity factor of 54.6 percent through June 30, 1986, which is identical to the system nuclear capacity factor actually experienced by the Company in the test period.

The Company used unit fuel prices based on burned fuel prices during the last month of the test year in developing its fuel cost. The Public Staff used burned fuel prices as of June 1986, the most recent month for which data was available at the time of its filing.

The Commission concludes that the unit burned fuel prices as of the month of June 1986, as proposed by the Public Staff are proper for use in this proceeding. Such prices represent the most current burned fuel prices available at the close of the hearing and are the most reflective of prices the Company is likely to incur during the period the rates approved herein are to remain in effect.

The Commission concludes that the proper level of normalized nuclear generation for use in this proceeding is equivalent to the Company's actual test year system nuclear capacity factor of 54.6 percent. The reasonableness of this normalized nuclear capacity factor is exemplified by the fact that the average of the Company's system lifetime nuclear capacity factors by unit and the latest 10-year industry data from the North American Electric Reliability Council's Equipment Availability Report also results in a system nuclear capacity factor of 54.6 percent. This normalized figure is the same as the Company's actual system nuclear capacity factor for the test period. The system lifetime nuclear capacity factors by unit were calculated through June of 1986. The data for such calculations were taken from the Company's Power Plant Performance Reports filed monthly with the Commission. The Commission hereby takes judicial notice of such reports. These reports are filed pursuant to Commission Rule R8-53. The Commission has also determined that the unit fuel prices based on burned prices during June 1986 as proposed by the Public Staff are appropriate for use in this proceeding. Based on the evidence cited and discussed herein, the Commission concludes that the appropriate preliminary fuel cost for use in this proceeding is 1.578¢/kWh as shown in the following calculations:

| Source | MWhs | $/MWh | Fuel Cost - $ |
|---|---|---|---|
| Purchases - Cogen./SEPA | 413,739 | -- | -- |
| Purchases - Other | 243,004 | 20.00 | 4,860,080 |
| Hydro | 722,343 | -- | -- |
| Nuclear | 10,746,113 | 5.08 | 54,590,254 |
| Coal | 26,658,297 | 19.29 | 514,238,549 |
| IC | 2,199 | 97.53 | 214,468 |
| Sales | (474,221) | 17.32 | (8,213,508) |
| Total Adjusted | 38,311,474 | | $565,689,843 |
| Less: | | | |
| Power Agency Nuclear | | | 6,637,025 |
| Power Agency Coal | | | 27,162,093 |
| Mayo Buyback | | | (7,069,495) |
| Total Cost | | | $538,960,220 |
| kWh Sales | | | 34,146,342,348 |
| Preliminary Fuel Cost (cents/kWh) | | | 1.578 |
| Base Fuel Cost (E-2, Sub 481) | | | 1.582 |
| Primary Fuel Cost Rider (¢/kWh, excluding gross receipts tax) | | | (0.004) |

## EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 8

Company witness Nevil, CIGFUR witness Phillips, and Public Staff witness Lam provided testimony and evidence in this proceeding concerning the EMF. Witness Phillips opposed the use of an EMF. The Public Staff has proposed development of an EMF decrement rider of 0.083¢/kWh (excluding gross receipts tax) based upon the use of the 12-month period, July 1985 through June 1986. During that 12-month period, CP&L experienced an overcollection of $20,007,739, based on a comparison of revenues associated with both the preliminary fuel factor and the EMF from CP&L's last fuel proceeding (Docket No. E-2, Sub 503), to actual fuel expenses for the period.

The Public Staff has proposed an EMF in this case even though it has appealed CP&L's Docket No. E-2, Sub 503 (in which the Commission ordered an incremental fuel adjustment rider including an EMF) contending that G.S. § 62-133.2 does not authorize the Commission to adopt an EMF. The Commission has also approved use of an EMF in North Carolina Power Docket No. E-22, Sub 281 and Duke Power Company Docket No. E-7, Sub 410. In the North Carolina Power and Duke cases, in which the Commission ordered decrement riders, the Public Staff also proposed use of an EMF. The Public Staff has not appealed either of these decisions.

The fundamental difference between the Company and Public Staff in this proceeding relates to the inclusion by the Public Staff of the revenues associated with the EMF from CP&L's last G.S. § 62-133.2 fuel proceeding (Docket No. E-2, Sub 503) in the calculation of the EMF for this case. In Sub 503 this Commission approved an EMF increment rider of 0.068¢/kWh. The Public Staff included revenues associated with this 0.068¢ factor in calculating its overrecovery for use in the EMF in this case. Company witness Nevil testified that he had calculated an EMF in this case using fuel revenues exclusive of the revenue from the 0.068¢ EMF from Sub 503.

By excluding revenues associated with the EMF from Sub 503, CP&L proposed an EMF decrement in this docket of 0.042¢/kWh based on a revenue overcollection of $10,069,395. This compares to the Public Staff's EMF of 0.083¢/kWh which, as noted, is based on a revenue overcollection of $20,007,739. As stated by Company witness Nevil, inclusion of the revenues associated with the Sub 503 EMF would result in the Company refunding monies it was permitted to collect as a result of a prior undercollection which was the basis of the calculation of the prior EMF.

The Public Staff's proposed EMF would refund the revenues associated with the Sub 503 EMF without taking into account the undercollection of expenses that produced the Sub 503 EMF. Such a result would negate the intended purpose of the EMF and serve only to perpetuate the mismatch and exacerbate the variations between fuel revenues and expenses. As clearly demonstrated by CP&L's cross-examination exhibits of Public Staff witness Lam, the Public Staff method results in the EMF dollars representing an undercollection in one period swinging back to a corresponding overcollection in the next. These large fluctuations of overcollections and undercollections do not produce the uniformity of rates from period to period that the EMF, if correctly utilized, can achieve.

Use of CP&L's proposed EMF method allows the EMF dollars to be collected or refunded in a much shorter time frame, thereby providing more uniform rates. Therefore, the Commission concludes that an EMF decrement rider independent of the preliminary fuel cost should be approved in this proceeding. The Company's EMF decrement of 0.042¢/kWh was based on 90 percent of the difference between actual 12-month (July 1985 to June 1986) level of reasonable and prudently incurred costs for fuel and purchased power and the fuel-related revenues actually collected, exclusive of the EMF-related revenues from Docket No. E-2, Sub 503. For this proceeding, the Commission approves the Company's proposed EMF methodology with one exception. In the Commission's recent Order Revising Rules and Procedures in Docket No. E-100, Sub 47, a 100 percent overcollection or undercollection coefficient has been incorporated for the EMF. Accordingly, the Commission concludes that it is appropriate to incorporate the 100 percent EMF coefficient for this proceeding. This results in an EMF decrement rider of 0.046¢/kWh.

The primary fuel cost rider decrement of 0.004¢/kWh will remain in effect and will be subject to review in CP&L's 1987 fuel charge adjustment proceeding or an intervening general rate case, whichever occurs first. This factor will be provisional until fixed by the EMF in the next G.S. § 62-133.2 proceeding. Because the EMF calculation is based on a 12-month test period and annual kWh levels, it will operate as intended only if it is in effect for 12 months. Therefore, the EMF in this proceeding, to be identified as Rider 59.1, will have a fixed life of 12 months from the effective date of this Order. CP&L's current EMF, included in Rider 59A, will terminate as of the date of this Order.

Consistent with the Commission's recent Order in Docket No. E-100, Sub 47, CP&L shall maintain an account which traces the difference between actual reasonable and prudently incurred fuel costs and fuel-related revenues realized under the fuel cost component of rates in effect. Such accounting requirement is effective as of July 1, 1986.

The Commission in its Order of August 14, 1986, issued in Docket No. E-100, Sub 47, among other provisions established test periods for each electric utility which are uniform over time. The test period so established for CP&L is the 12-month period ending March 31. The Commission believes, in order for its recently revised fuel charge adjustments practices and procedures to function most efficiently, effectively, and fairly, that it is necessary for the EMF to be based upon the same 12-month period utilized as the test year for purposes of the fuel adjustment proceeding. Therefore, the Commission concludes that CP&L in all future filings (except the Company's next filing) pursuant to G.S. 62-133.2 and Commission Rule R8-55 should be required to base its calculation of the EMF on the 12-month period ending March 31. The Company's next fuel adjustment application should base the EMF calculation on the 9-month period beginning July 1, 1986, and ending March 31, 1987. The Commission is cognizant of the fact that this synchronization requirement will have an initial and one time effect of basing the EMF on a 9-month rather than a 12-month period. The Commission considers such an effect to be reasonable, necessary and proper.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 9

Company witness Nevil and CIGFUR witness Phillips presented testimony concerning uniformity of application of the fuel clause decrement to all rates schedules on a uniform basis.

Witness Nevil proposed the use of two riders to properly reflect the change in fuel cost. Rider 59(b) provided for an increment of 0.038¢/kWh (excluding gross receipts tax) to reflect the increased fuel cost from the Docket No. E-2, Sub 481 rates. Rider 59.1 is a decrement to rates of 0.042¢/kWh (excluding gross receipts tax) representing the new EMF the Company is proposing in this proceeding. Witness Nevil testified that this factor should be in effect for 12 months to properly reflect the refund entitled to the customers. Both riders would be applied uniformly to all rate schedules. The net effect of the two riders would be a decrement to rates established in Docket No. E-2, Sub 481 of 0.004¢/kWh.

CIGFUR witness Phillips advocated a uniform adjustment to all rate schedules and cited the Commission's language in the Docket No. E-2, Sub 503 Order.

The Commission agrees with both parties that a uniform increment or decrement to all rate schedules is proper in this proceeding. The Commission agrees with the Company that the proper way to reflect the change in fuel cost is with the use of two riders. Since the Commission determined that the preliminary fuel cost should be 1.578¢/kWh, the decrement for Rider 59(b) should be 0.004¢/kWh (plus gross receipts tax) instead of the .038¢/kWh increment proposed by the Company. In addition, Rider 59.1 should provide for a decrement of .046¢/kWh (plus gross receipts tax) instead of the 0.042¢/kWh decrement proposed by the Company, effective for service rendered from September 18, 1986 through September 17, 1987.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 10

On July 22, 1986 CP&L filed a motion requesting that its proposed decrease in rates based on the use of the EMF be termed provisional pending outcome of the Public Staff's appeal of the use of an EMF in Docket No. E-2, Sub 503. The Public Staff did not reply in writing to the motion but replied on the record at the hearing that the Commission probably had the authority to set rates on a provisional basis, while urging the Commission to use provisional rates with caution.

The Sub 503 EMF was an increment to the preliminary fuel factor whereas the EMF in this docket is a decrement, or refund, to customers as a result of an overcollection of fuel-related revenues. CP&L is concerned that if the EMF as approved in Sub 503 is held invalid by the appellate courts, it will be required to refund to customers the amounts collected. Since the appellate court decision regarding Sub 503 may occur after all or part of the EMF refund from this docket has been completed, CP&L might find itself in the position of having to refund collections associated with the Sub 503 EMF, but not having a mechanism to recover the refund from this docket which was based on the same EMF methodology. We agree that the possibility of such a chain of events would be fundamentally unfair to CP&L. Accordingly, the EMF contained in Rider 59.1 should be declared provisional, to become final at the conclusion of the appellate process in Docket No. E-2, Sub 503.

IT IS, THEREFORE, ORDERED as follows:

1. That, effective for service rendered on and after the date of this Order, CP&L shall adjust the base fuel component in its North Carolina retail rates by an amount equal to a 0.004¢/kWh decrement, plus gross receipts tax, from the base fuel component approved in Docket No. E-2, Sub 481; and further, that CP&L shall adjust the base fuel component established herein by a 0.046¢/kWh decrement, plus gross receipts tax, representing the EMF, said EMF portion to remain in effect for a 12-month period beginning September 18, 1986.

2. That the preliminary fuel cost of 1.578¢/kWh shall be provisional, to become final after the next EMF is set in CP&L's next G.S. § 62-133.2 proceeding; and that the EMF in this case shall be provisional in nature, pending the outcome of the Public Staff's appeal of Docket No. E-2, Sub 503.

3. That CP&L shall follow deferred accounting with respect to 100 percent of the difference between reasonable and prudently incurred fuel costs, including the fuel component of purchased power, and fuel-related revenues realized under rates in effect. Such accounting requirement is effective as of July 1, 1986.

4. That CP&L in all future filings pursuant to G.S. 62-133.2 and Commission Rule R8-55 (except the next filing) shall base its calculation of the EMF on the 12-month period ending March 31.

5. That not later than Friday, September 26, 1986, CP&L shall file with the Commission five copies of rate schedules and applicable fuel cost riders designed to include the 0.004¢/kWh fuel factor decrement and the 0.046¢/kWh decrement rider set forth in Decretal Paragraph No. 1 above as well as the 0.012¢/kWh base fuel increment and the 0.013¢/kWh increment rider set forth in the Commission's Order on Remand in Docket No. E-2, Sub 481 (Remanded) issued on this same date.

6. That CP&L shall give notice of the rate decrease approved herein and of the rate revisions approved by the Order on Remand of this same date in Docket No. E-2, Sub 481 (Remanded). 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. 5 above.

7. That the Customer Notice attached hereon as Appendix A is hereby approved and is the appropriate notice to include as an insert in the Company's next billing statements mailed to customers.

ISSUED BY ORDER OF THE COMMISSION.
This the 18th day of September 1986.

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

APPENDIX A
DOCKET NO. E-2, SUB 481
DOCKET NO. E-2, SUB 518

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Applications by Carolina Power & Light )
Company for Authority to Adjust Its ) NOTICE TO CUSTOMERS
Electric Rates and Charges ) OF RATE REDUCTION

NOTICE IS HEREBY GIVEN that the North Carolina Utilities Commission entered two Orders on September 18, 1986, dealing with the fuel related charges of Carolina Power & Light Company. The two Orders, taken together, produce a net rate reduction in the rates and charges paid by the retail customers of CP&L. The rate reduction will be in effect as of September 18, 1986.

In Docket No. E-2, Sub 481, the Supreme Court remanded the last CP&L general rate case to the Commission for further action consistent with the Supreme Court opinion. In Docket No. E-2, Sub 518, the Commission reviewed CP&L's fuel expenses during the 12-month test period ending March 31, 1986, and ordered a rate decrease based on the actual changes experienced by CP&L with respect to its reasonable cost of fuel and the fuel component of purchased power during the test period.

The Commission's Orders will result in a net rate reduction of approximately $2.00 per month for a typical residential customer using 1,000 kWh per month.

ISSUED BY ORDER OF THE COMMISSION.
This the 18 day of September 1986.

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

DOCKET NO. E-7, SUB 408

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Application by Duke Power Company ) ORDER GRANTING PARTIAL
for Authority to Adjust and Increase ) RATE INCREASE
Its Electric Rates and Charges )

HEARD IN: Main Courtroom, McDowell County Courthouse, Marion, North Carolina, on August 11, 1986, and September 29, 1986

First Baptist Church, Fellowship Hall, Charlotte, North Carolina on August 12, 1986, and September 30, 1986

Council Chambers, City Hall, Winston-Salem, North Carolina, on August 13, 1986, and September 29, 1986

Courtroom 2A, Guilford County Courthouse, Greensboro, North Carolina, on August 14, 1986, and September 30, 1986

Council Chambers, City Hall, City Hall Plaza, Durham, North Carolina, on September 3, 1986, and October 1, 1986

Commission Hearing Room 2115, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, from September 3, 1986, through September 23, 1986

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

APPEARANCES:

For Duke Power Company:

Steve C. Griffith, Jr., Senior Vice President and General Counsel, George W. Ferguson, Jr., Vice President and Deputy General Counsel, and Ronald L. Gibson, Assistant General Counsel, Duke Power Company, Post Office Box 33189, Charlotte, North Carolina 28242

and

Clarence W. Walker and Myles E. Standish, Kennedy Covington Lobdell & Hickman, Attprneys at Law, 3300 NCNB Plaza, Charlotte, North Carolina 28280

For the Public Staff:

James D. Little and David T. Drooz, 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:

Jo Anne Sanford, Special Deputy Attorney General, and Karen E. Long, Assistant Attorney General, North Carolina Department of Justice, Post Office Box 629, Raleigh, North Carolina 27602-0629
For: The Using and Consuming Public

For the Carolina Utility Customers Association, Inc.:

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

For the City of Durham:

William I. Thornton, Jr., City Attorney, and Carolyn D. Johnson, Assistant City Attorney, City of Durham, 101 City Hall Plaza, Durham, North Carolina 27701

For the North Carolina Industrial Energy Consumers:

Joseph W. Eason, Moore, Van Allen, Allen & Thigpen, Attorneys at Law, Post Office Box 26507, Raleigh, North Carolina 27611
and
William A. Chesnutt, McNees, Wallace & Nurick, Attorneys at Law, Post Office Box 1166, Harrisburg, Pennsylvania 17108-1166

For Himself (As a Customer of Duke Power Company):

Wells Eddleman, pro se, 812 Yancey Street, Durham, North Carolina 27701

BY THE COMMISSION: On March 27, 1986, Duke Power Company (Applicant, Company, or Duke) filed an application with the North Carolina Utilities Commission (Commission) seeking authority to adjust and increase electric rates and charges for retail customers served by the Company in North Carolina. The application seeks -rates that produce approximately $289,316,000 of additional annual revenues from the Company's North Carolina retail operations when applied to a test period consisting of the 12 months ended December 31, 1985, an approximate 14.7% 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 April 26, 1986.

The principal reasons set forth in the application necessitating the requested increase in rates were: (1) the inclusion in rate base of the Company's 12.5% ownership interest in Unit 2 of the Catawba Nuclear Station as plant in service on a pro forma basis; (2) the expenditures for purchased capacity and energy from the joint owners of Catawba as required by the agreements for sale and interchange of portions of Catawba to certain of the Company's wholesale customers; (3) an inclusion in rate base of additional facilities at the Oconee Nuclear Station; and (4) increased operating and maintenance expenses.

The Company's application included a motion whereby the Commission was requested to enter an Order authorizing deferral accounting of costs and fuel savings related to Catawba Unit 2 during the period between commercial operation of Unit 2 and the date the Commission enters a final Order in this docket, net of fuel savings during precommercial operation of that unit. The Commission previously authorized similar deferral of operating costs and fuel savings for McGuire Unit 2 in Docket No. E-7, Sub 373, and for Catawba Unit 1 in Docket No. E-7, Sub 391. The Public Staff recommended that the Commission allow the Company's motion for deferral accounting in this docket. The Commission entered an Order on April 22, 1986, which allowed the motion for deferral accounting, provided instructions to the Company for maintaining the deferral accounts and provided that each party to the proceeding would be allowed to present evidence as to the appropriate level of expenses and fuel savings and the appropriate amortization and ratemaking treatment to be accorded these deferred items.

On April 14, 1986, the Commission entered an Order pursuant to G.S. 62-137 declaring the Company's application to be a general rate case, suspending the Company's proposed rates for a period of up to 270 days from the proposed effective date pursuant to G.S. 62-134, establishing the test period, scheduling public hearings, requiring the Company to give public notice of its application and the scheduled hearings, and requiring intervenors or other parties having an interest in the proceeding to file interventions, motions or protests in accordance with applicable Commission rules and regulations.

On March 28, 1986, the North Carolina Industrial Energy Consumers (NCIEC) filed its Petition to Intervene, which was allowed by Commission Order dated April 7, 1986.

On April 9, 1986, Wells Eddleman filed a pro se Petition to Intervene, which was allowed by Commission Order dated April 24, 1986.

On April 10, 1986, the Attorney General filed Notice of Intervention in this docket pursuant to G.S. 62-20 on behalf of the using and consuming public.

On May 12, 1986, the City of Durham filed its Petition to Intervene, which was allowed by Commission Order dated May 14, 1986.

On July 10, 1986, the Carolina Utility Customers Association, Inc. (CUCA), filed its Petition to Intervene and Protest, which was allowed by Commission Order dated July 15, 1986. CUCA also filed a Motion for Compliance Rate Design Hearings with its intervention. The Commission deferred action on the motion at the time the intervention was allowed. The motion requested the Commission to conduct public hearings between the time the final Order is entered in this docket and the time rates become effective in order to determine whether the rates filed by Duke comply with the Commission's final Order. This motion was denied by the Commission as announced during the hearing on September 8, 1986, and subsequently by Order dated September 19, 1986, after the motion was renewed by the Attorney General.

An Order scheduling a prehearing conference for Wednesday, August 27, 1986, was entered by the Commission on August 13, 1986. The prehearing conference was` held as scheduled before Sammy R. Kirby, Commission Hearing Examiner. Based upon statements and stipulations which were offered and made by counsel during the prehearing conference and based upon statements made by telephone to the Hearing Examiner by Wells Eddleman, who had intervened but did not appear at the prehearing conference, the Commission entered a Prehearing Order on August 28, 1986, for the purpose of establishing basic procedures for the hearing.

Prior to and during the course of the hearings, various other motions were made and Orders were entered relating thereto, all of which are matters of record. Additionally, pursuant to various Commission Orders or requests, also of record, various parties were directed or permitted to file and serve certain late-filed exhibits, either during or subsequent to the hearings held in this matter.

Public hearings were held as scheduled by the Commission for the specific purpose of receiving testimony from public witnesses. The following persons appeared and testified during the period August 11 through October 1, 1986:

Marion: Jim Bright, Charles K. Rivard, Earl Thompson, William G. Lapsley, Alexander Erwin, Ray Marlowe, Margaret Hyder, Theodore Parker, John Washburn, Jr., John Scarlett, Eunice Scarlett, Ted Stuart, Tommy Hartsoe, Robert J. Harmening, Carrie Jane McGarey, Emily Streetman, Jeff Joyce, Bob Walker, Glenn Deal, Jr., Allen Caldwell, Coyte Wike, Virginia Hawkins, Alvin Sturdivant, Robert Warlick, John Hendrick, Web Smalling, and Robert Harmening.

Charlotte: Betty Lafone, Tom Conrad, Royce Bemis, Johannes Rief, Wayne Cooper, Linda Beatty, William J. Veeder, Ken Pruitt, Allen Thompson, Shirley Cooke, Najla Nave, Catherine Ransom, Evelyn Bullard, Barbara Moore, Caroline Myers, Frederick W. Buchta, Charles A. Hunter, W. F. Owens, Joel McConnell, Doug Carrigan, Terry Orell, Charles Glover, John R. Hoffman, Frank Martin, Judy Vaughan, Paul Reavis, Jason Randall, James Maxwell, Evelyn Bullard, Cleola McAdams, Clifton Surratt, Edna Browning, John Romodan, J. R. Young, Annie Hood, Glady Hampton Sims, Ricky Hall, Mildred Taylor, Melvin Whitley, Clarence Williams, Charles Hargro, Hazeline Grier, Paul Reavis, James Pagoota, Victoria Morrison, and Homer Meyers.

Durham: Jeffrey Downin, Mark Henry, Jack Chandler, Brian Bunch, Kani Hurow, Beth Johnston, Julie Simons, Jimmy Harris, Alan Rimer, McKibben Lane, Jim Gibson, Dr. Dannie Moffie, Tom Wilson, Minerva Kenyon, Judd Barrett, Dan Deacon, Lorisa Seibel, Merle Johnson, Carrie Stacy, Laura Drey, Curtis W. Vaughn, Edith Hudson, and Carol Anderson.

Winston-Salem: Selwyn H. Matthews, Jim English, George M. Hayes, Larry E. Long, Noble King, J. D. Sadler, Avery Watson, Rick Wesley, George Groce, John Talmage, Jack M. White, Dennis Farlow, Joyce Rubin, L. B. Chappell, Dr. Essie Hayes, W. F. Owens, Mazie Woodruff, and Sophia Brown.

Greensboro: Chuck McLachlan, Vic Permar, Mike Aiden, David Mitchell, Marvin Ragle, Mitch House, Jack Morton, Peyton Hudson, Claude Thayer, Lu Williams, Max Gordan, and Steve Hyde.

The case in chief came on for hearing on September 3, 1986. Duke Power Company offered the testimony and exhibits of the following witnesses: William S. Lee, Chairman of the Board and Chief Executive Officer, testified generally as to the Company's need for the proposed rate increase, the commercial operation of Unit 2 of the Catawba Nuclear Station and the need for the additional generating capacity, the benefits from the Catawba Sale Agreements, the Plant Modernization Program (PMP), the Company's financial condition and capital requirements, and its operating efficiency; Dr. Charles E. Olson, an economist and President of Olson & Company, Inc., Washington, D. C., testified as to the fair rate of return on equity capital required for Duke Power Company; William R. Stimart, Duke's Vice President, Regulatory Affairs, testified as to the Company's rate base and the results of its operations in the historical test year after pro forma adjustments; and Donald H. Denton, Jr., Duke's Senior Vice President, Marketing and Rates, testified with respect to jurisdictional cost allocation, the proposed rates, and rate design.

The Public Staff offered the testimony and exhibits of the following witnesses: George T. Sessoms, Director of the Economic Research Division, testified as to the Company's capital structure, cost of capital and rate of return; Richard J. Durham, Engineer with the Electric Division, testified with respect to customer growth; Michael W. Burnette, Engineer with the Electric Division, testified on coal inventory; Benjamin R. Turner, Jr., Rate Engineer with the Electric Division, testified on cost-of-service allocation methodology and rate design; Thomas S. Lam, Engineer with the Electric Division, testified as to fuel costs; Jane Rankin, Staff Accountant with the Accounting Division, testified with respect to working capital; and Michael C. Maness, Supervisor of the Electric Section of the Accounting Division, testified as to the Public Staff's recommended accounting adjustments relating to the Catawba Sale Agreements; Elise Cox, Assistant Director of the Accounting Division, testified with respect to the Public Staff's overall recommended accounting adjustments; Dr. Michael D. Yokell, President of Energy and Resource Consultants, Inc., of Boulder, Colorado, and Kenneth R. Van Howe, Vice President of the S. M. Stoller Corporation of Boulder, Colorado, testified with respect to the joint study performed by their respective firms of Duke's PMP program and whether the addition of Catawba Unit 2 represents excess capacity.

The Attorney General offered the testimony of James H. Drzemiecki and Dr. John W. Wilson, both of J. W. Wilson & Associates, Inc., of Washington, D. C. Mr. Drzemiecki testified with respect to whether Duke has excess capacity and with respect to customer growth, fuel inventory, and the fuel factor. Dr. Wilson testified with respect to the Company's test year expenses and rate base, the proposed exclusion of Catawba Unit 2 costs, rate of return, and other accounting adjustments.

Intervenor CUCA offered the testimony of Nicholas Phillips, Jr., of Drazen-Brubaker & Associates, Inc., St. Louis, Missouri. Mr. Phillips testified as to cost allocation methodology and the design of electric rates. In addition, CUCA offered the testimony of Jack Entwistle, Senior Engineering Associate with Celanese Fibers Operations; Russ Bowman, Corporate Engineering Manager of Home Curtain Corporation; Robert A. Vogler, Director of Utilities for R. J. Reynolds Tobacco Company; Charles Kovach, Kings Mountain Plant Manager for the Eaton Corporation; Harry LeGette of Glen Raven Mills; James Leonard of Burlington Industries; Jimmy F. Plyler, Corporate Energy Coordinator for Fieldcrest Cannon; and Jack R. Poteet, Plant Manager for Great Lakes Carbon Corporation, concerning the possible impact of the requested rate increase on the textile and other industries.

Intervenor NCIEC offered the testimony of Brian R. Barber, Stephen J. Baron, and Randall J. Falkenberg of Kennedy & Associates, Atlanta, Georgia, and James H. Butz. Mr. Barber testified on cost allocation and rate design; Mr.

Baron testified on cost of service, revenue allocation, and rate design; Mr. Falkenberg testified with regard to fuel recovery procedures; and Mr. Butz testified on behalf of Air Products in support of modifications to Duke's interruptible rate schedule.

Intervenor Wells Eddleman's filed testimony was copied into the record on the last day of the hearings. Mr. Eddleman's testimony primarily related to challenges of Dr. Yokell's study.

The Company offered rebuttal testimony of the following witnesses after the Intervenors presented their evidence: Dr. Edward W. Erickson, Professor of Economics at North Carolina State University, testified with respect to Dr. Wilson's cost of capital study; Dr. Robert M. Spann of ICF, Incorporated, of Washington, D. C., testified with respect to Mr. Drzemiecki's application of the EPRI Over/Under reserve margin model and excess capacity; Richard La Capra of La Capra Associates of Boston, Massachusetts, testified with respect to the Public Staff's proposed cost allocation methodology; and William R. Stimart offered rebuttal testimony on certain rate base and accounting adjustments proposed by the Public Staff witnesses and Attorney General witness Wilson.

All parties (except Wells Eddleman) signed a Stipulation at the prehearing conference that certain evidence admitted in the Company's last general rate case, Docket No. E-7, Sub 391, should be admitted in this case without objection insofar as the evidence related to the following subjects: the sale of the Catawba Nuclear Station; annualization of post-in-service date deferred taxes related to McGuire Unit 2 and Catawba Unit 1; and assignment of a revenue lag to the investment tax credit expense component of the lead-lag study. The purpose of this Stipulation was to eliminate time-consuming cross-examination on issues previously raised and decided. The testimony and exhibits described in the Stipulation were admitted into evidence in this proceeding and are considered a part of the record for all purposes.

On September 23, 1986, the Public Staff filed a motion whereby the Commission was requested to specify in this Order the elements and/or components embodied in the rate of return on common equity allowed in this case. On September 24, 1986, the Attorney General filed a motion joining in the Public Staff's request for specific findings regarding the allowed common equity return.

On October 1, 1986, Duke filed a response in opposition to the motions of the Public Staff and Attorney General requesting specific findings regarding the allowed rate of return on common equity.

The motions requesting specific findings regarding the allowed return on common equity filed by the Public Staff and the Attorney General are hereby decided as hereinafter provided in the discussion set forth in conjunction with the evidence and conclusions for finding of fact number 16. In ruling upon these motions, the Commission observes that such motions seek to require the Commission to make findings which none of the expert witnesses in this case could or would make. What the Public Staff and the Attorney General are seeking are the specific, individual components which make up the Commission's final determination. Dr. Olson testified repeatedly that the determination of a reasonable rate of return was, in the end, a matter of judgment. This judgment is not readily capable of being separated into individual components.

Even the testimony of both Mr. Sessoms and Dr. Wilson supports this conclusion. Mr. Sessoms' studies showed dividend yields ranging from 5.7% to 6.4% and an estimate of growth rates ranging from 5.8% to 6.5%. This resulted in a range of 11.5% to 12.9%. From this range, he concluded that Duke's required rate of return on common equity was 12.2%. Mr. Sessoms did not specify what specific dividend rate or growth rate he was utilizing in making this determination or what weight he gave to his different methodologies. It is obvious from his testimony that the 12.2% recommendation was not a result of adding any specific components but was rather the result of his judgment after looking at all of the evidence. Similarly, Dr. Wilson's studies showed a reasonable rate of return on common equity ranging from 10% to 11.5%. Dr. Wilson made no specific findings in his testimony as to why an 11% figure was ultimately chosen. The obvious answer, however, is that Dr. Wilson chose 11% based upon his judgment after conducting several different exercises, none of which yielded or summed exactly to 11%.

On October 10, 1986, the Commission entered an Order in this docket entitled "Order Requiring Data" whereby Duke was required to provide certain data as detailed in an appendix attached to that Order. The data requested by the Commission required Duke to perform certain ministerial computations consistent with the parameters specified and detailed in the appendix. The Public Staff was requested to check the computations and data to be filed by Duke and to advise the Commission and all parties of the results of the Public Staff's investigation as to the accuracy of such computations.

On October 14, 1986, CUCA filed a motion in response and opposition to the "Order Requiring Data" entered by the Commission. CUCA's motion was entitled "Objection and Motion to Strike and Reopen Hearings and Record." By this motion, the Commission was requested "prior to the entry of any final order in the above-captioned proceeding, to either strike any material filed by Duke Power Company in response to the Order or, in the alternative, and also prior to the entry of any final order in the above-captioned proceedings, to reopen the hearings and record in the above-captioned proceedings to afford Carolina Utility Customers Association, Inc., and all parties to the above-captioned proceeding an opportunity to cross-examine those persons responsible for the compilation and development of the requested data and to produce evidence with respect to the requested data and its bearing on the substantive issues of law and fact arising in the record."

On October 14, 1986, Duke filed the data requested by the Commission in the "Order Requiring Data."

On October 16, 1986, the Public Staff filed its response to the "Order Requiring Data." In its response, the Public Staff stated that it had reviewed the calculations provided by Duke in the Company's response to the "Order Requiring Data" and that those calculations appear accurate.

On October 20, 1986, the Attorney General filed an objection and motion to strike whereby the Commission was requested to strike the "Order Requiring Data" entered in this docket on October 10, 1986.

On October 20, 1986, CUCA filed certain comments with respect to the data filed by Duke in response to the "Order Requiring Data."

On October 22, 1986, Duke filed a response in opposition to the objections and motions to strike filed by CUCA and the Attorney General.

By separate Order of this date, the Commission has denied the motions to strike and the motion to reopen this hearing. That Order is incorporated by reference herein.

On October 20, 1986, the Attorney General filed a Motion for an Investigation into Turbine Generator Problems at Catawba 2. The Attorney General asked the Commission to undertake an investigation of the September 1, 1986, outage at Catawba Unit 2. The Attorney General asserts that the outage is relevant to the determination of whether the Catawba Unit 2 is used and useful.

On October 22, 1986, Duke filed its response in opposition to the Attorney General's motion. Duke asserts that the Commission is informed as to the problems at Unit 2, and no investigation is necessary, that the unit is being repaired and will be returned to service, and that the outage does not justify excluding the unit from rate base.

The Commission has issued a separate Order of this date ruling on the Attorney General's motion.

Based on the foregoing, the verified application, the testimony and exhibits received into evidence at the hearings, and the entire record in this proceeding, the Commission now makes the following

## FINDINGS OF FACT

1. Duke is engaged in the business of developing, generating, transmitting, distributing, and selling electric power and energy to the general public within a broad area of central and western North Carolina, with its principal office and place of business in Charlotte, North Carolina.

2. Duke is a public utility corporation organized and existing under the laws of the State of North Carolina and is subject to the jurisdiction of this Commission. Duke is lawfully before the Commission based upon the Company's 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 twelve-month period ended December 31, 1985, 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 initially sought an increase in its rates and charges to its North Carolina retail customers of approximately $289,316,000, which would produce jurisdictional revenues of $2,263,401,000 based upon a test year ending December 31, 1985. Revenues under the present rates, according to Duke, were $1,974,085,000, thereby necessitating an increase of $289,316,000. During the hearing, the Company lowered its requested

increase to $236,455,000 primarily because of a decrease in the cost of capital since filing the application.

6. Duke's contracts to sell a major portion of the Catawba Nuclear Station to North Carolina Municipal Power Agency No. 1 (NCMPA), Piedmont Municipal Power Agency (PMPA), North Carolina Electric Membership Corporation (NCEMC) and Saluda River Electric Cooperative, Inc. (Saluda River or SREC) (hereinafter collectively referred to as 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 Duke's North Carolina retail customers being lower than the cost of electricity would have been if Duke had itself financed the plant.

7. The generation from Catawba Unit 2, comprising both the Company's ownership interest and the purchased capacity, is needed to enable Duke to meet the load on its system and does not represent excess generating capacity. Catawba Unit 2 was constructed at reasonable cost and is a cost effective addition to Duke's generating capability. Catawba Unit 2 should be included in rate base as utility property used and useful in rendering electric service to the public. Duke's Plant Modernization Program is reasonable and prudent in view of the age and condition of the units.

8. 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.

9. A base fuel component of 1.1665¢/kWh excluding gross receipts tax and including nuclear fuel disposal cost is appropriate for this proceeding, reflecting a reasonable total fuel cost of $391,267,000 for North Carolina retail service. Nuclear fuel disposal cost is a proper component of the cost of fuel and should be reflected in the established fuel factor. The nuclear capacity factors of 62% for the Oconee and McGuire stations and Catawba Unit 1 and 60% for Catawba Unit 2, which have been utilized in each finding of fact which deals with revenues and expenses affected by nuclear capacity factors, are reasonable and appropriate for this proceeding.

10. The appropriate working capital allowance for fuel inventory for North Carolina retail service is $56,284,000, consisting of $53,788,000 for coal inventory and $2,496,000 for fuel oil inventory.

11. The reasonable allowance for total working capital for Duke's North Carolina retail operations is $218,204,000.

12. Duke's reasonable original cost rate base used and useful in providing service to the public within the State of North Carolina is $3,374,100,000, consisting of electric plant in service of $5,464,227,000 and allowance for working capital of $218,204,000, reduced by accumulated

depreciation of $1,808,119,000, accumulated deferred income taxes of $485,506,000, and operating reserves of $14,706,000.

13. The appropriate gross revenues for Duke for the test year, under present rates and after accounting and pro forma adjustments, are $1,978,379,000.

14. The reasonable level of test year operating revenue deductions for Duke after normalized and pro forma adjustments is $1,675,312,000, including $254,270,000 purchased power costs.

15. The capital structure for the Company which is reasonable and proper for use in the proceeding is as follows:

| Item | Percent |
|---|---|
| Long-term debt | 42.9% |
| Preferred stock | 10.8% |
| Common equity | 46.3% |
| Total | 100.0% |

16. The fair rate of return that Duke should have the opportunity to earn on its North Carolina net investment for retail operations is 10.92%, which requires additional annual revenues for North Carolina retail customers of $133,080,000, based upon the adjusted level of operations in the test year, 12 months ended December 31, 1985. This rate of return on Duke's total net investment yields a fair rate of return on Duke's original cost common equity of approximately 13.4%. 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 8.91% and 8.27%, respectively.

17. Based upon the foregoing, Duke should be authorized to increase its annual level of gross revenues under present rates by $133,080,000. The annual revenue requirement approved herein is $2,111,459,000, which will allow Duke a reasonable opportunity to earn the rate of return on its rate base which the Commission has found just and reasonable. The revenue requirement approved herein is based upon the original cost of Duke's property used and useful in providing service to its North Carolina retail customers and its reasonable test year operating revenues and expenses as previously set forth in these findings of fact.

18. Since rates of return by customer class are not equal to the overall North Carolina retail rate of return, a reasonable goal is to adjust rates in this proceeding so that customer class rates make substantial movement toward equalizing class rates of return.

19. An allowance for a revenue adjustment of roughly $33,000,000 due primarily to the migration of industrial customers to the OPT rate schedule should be approved in this proceeding.

20. The rate design proposed by Duke is just, reasonable, and appropriate for use in this case, except as modified herein. The cost of service and rate of return differences between the various classes of service which will result from the rate designs adopted by the Commission in this case do not constitute unreasonable differences between classes of service nor do they result in rates which are unreasonably preferential or prejudicial among and within classes of service.

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 Orders scheduling hearings, 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. 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 this matter leads the Commission to conclude that the quality of electric service being provided by Duke to retail customers in North Carolina 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 in the range of 13.5% to 14.0%, as compared to a range of 14.6% to 15.1% in his prefiled testimony. Duke revised its request to seek a 14.0% return on equity, instead of the 14.9% requested in the application filed on March 27, 1986. Mr. Stimart testified that adjusting the cost of service figures set forth in the Company's application to reflect the 14.0% return on equity and adjusting the Company's capital structure and embedded cost of debt and preferred stock to June 30, 1986, actual levels as recommended by Dr. Olson, results in a revenue requirement reduction of $37,472,000.

The Company has also reduced capital costs by retiring high cost debt and preferred stock through certain refundings. Since the application was filed, the Company has reduced its embedded cost of long-term debt from 9.47% to 8.91%, and the embedded cost of its preferred stock from 8.75% to 8.27%, which results in a reduction of $10,247,000 in the annual revenue requirement. Adjusting the Company's requested increase in revenue for the net effect of both of these reductions, as well as other revisions described in more detail below, results in a revised requested increase of $236,455,000.

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 and Public Staff witness Maness in this case and in the testimony of Company witnesses Lee, Stimart, Horwood, and Grigg; Public Staff witness

Hoard; and Attorney General witness Wilson in the Company's last general rate case, Docket No. E-7, Sub 391, which was admitted into evidence in this case pursuant to the Stipulation entered into at the prehearing conference. The testimony from the last general rate case was summarized in the Commission's September 17, 1985, Order in that case and will not be summarized again herein.

Effect of Catawba Sale Agreements on System Average Costs

Mr. Lee testified in his direct testimony in this case that Duke's North Carolina revenue requirements for Catawba Unit 2 would have been $263 million if Duke had financed Catawba, whereas the unlevelized revenue requirement in this proceeding is $197 million, and that the difference in these figures is wholly a result of the sales of the Catawba Nuclear Station. The evidence presented in Docket No. E-7, Sub 391, which has been admitted into evidence in this case, fully supports the benefits of the sales to Duke's North Carolina retail customers. That evidence was extensively discussed in the Commission Order in that case and the Commission adopts by reference pages 15 to 27 of that Order (the discussion of Evidence and Conclusions for Finding of Fact No. 8 of that Order). In that discussion, the Commission summarized its findings on this issue as follows:

> 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 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.

No evidence has been presented in this case which leads the Commission to any contrary or different findings in this regard. All of the evidence which supports the above conclusions applied equally to Catawba Unit 2. Therefore, the Commission readopts these findings in this case in reference to the entire Catawba Station.

NCMPA Amendments

Public Staff witness Maness recommended that the Commission disallow the cost of the November 12, 1982, amendments to the contracts with the North Carolina Municipal Power Agency (NCMPA). Although Mr. Maness states in his prefiled testimony that the Commission should disallow these costs regardless of the Commission's decision in Docket No. E-7, Sub 391, on cross-examination Mr. Maness admitted that all of the reasons set forth in his testimony supporting the adjustment were fully set forth by the Public Staff in that earlier case. Indeed, as Mr. Maness states in his prefiled testimony, "Neither the facts and circumstances surrounding this area nor the Company's treatment of these costs has changed in this case."

Because the evidence has not changed in this case, the Commission does not feel that it is necessary to repeat in detail its findings in Docket No. E-7, Sub 391. The Commission adopts by reference pages 19 to 25 of its Order in that case (the relevant portion of the discussion of Finding of Fact No. 8) which deal with the amended NCMPA contracts. The Commission will only summarize its conclusions in that regard here.

The Commission finds that Duke was required to offer NCMPA the terms of the PMPA contracts. It is unimportant whether Duke was required to offer the terms in 1982 or in 1984; it is important only that Duke was required at some point in time to offer the terms of the PMPA contract to NCMPA, and that Duke's decision to offer the terms at the time it did was reasonable and prudent and designed to lower costs overall to Duke's North Carolina retail customers; and the Commission so finds.

The Commission also finds that it is appropriate to give effect to the most favored nation clause in the setting of Duke's rates. The most favored nation clause is an integral part of the Catawba Sale Agreements. As the Commission has previously concluded and as the North Carolina Supreme Court has upheld, it would be inappropriate to isolate one provision of the contracts. The contracts must either be accepted or rejected in their entirety. Because the contracts as a whole are beneficial to Duke's North Carolina retail customers, the costs as well as the benefits should be reflected in Duke's rates.

Because the Commission rejects the adjustment proposed by the Public Staff in relation to the November 1982 NCMPA amendment, the Commission also rejects all of the related cost of service and accounting adjustments proposed by the Public Staff based upon the NCMPA disallowance.

## A/B Factor

Public Staff witness Maness proposed an adjustment in Duke's jurisdictional allocation which would have the effect of allocating greater costs to PMPA than the cost PMPA is actually being required to pay for supplemental power under the Catawba Sale Agreements. Mr. Maness testified that the portions of the Buyers' requirements not satisfied by their retained capacities are provided for the most part by supplemental power purchased under the provisions of their Interconnection Agreements. The Interconnection Agreements provide that the costs of supplemental capacity are allocated to the Buyers on a peak demand basis. Mr. Maness stated that this contractual allocation method is more favorable to NCEMC and SREC, and less favorable to NCMPA and PMPA, than the FERC allocation methodology they were all subject to when buying under wholesale rates prior to the contracts becoming effective. The A/B factor is a factor applied to each Buyer's price of supplemental capacity which mitigates this relative favorableness and unfavorableness by increasing the price charged to NCEMC and SREC, and decreasing the price charged to NCMPA and PMPA. Mr. Maness testified that the increase in charges to NCEMC and SREC is completely offset by the decrease to NCMPA. However, Mr. Maness stated, there is no offset to the decrease in the amount charged to PMPA. According to Mr. Maness, it is this unrecovered cost from PMPA which the Company is attempting to allocate to the remainder of its jurisdictional customers, including North Carolina retail. According to Mr. Maness, the Company allocation results in a cost to the ratepayer offsetting part of the benefits of the Catawba sale.

Witness Stimart testified that the methodology by which costs are allocated to the Catawba buyers was a critical element in the negotiation of the Catawba Sale Agreements. He stated that this contract provision, as well as all other contract provisions, affected the economic feasibility of the municipalities' and cooperatives' purchase of Catawba and that it would be inappropriate to look at this one provision of the contracts in isolation of the provisions which provide benefits to Duke's North Carolina retail customers.

The A/B factor is an element of the Catawba Sale Agreements which was neither quantified nor brought to our attention before the present case. The North Carolina retail revenue effect of the A/B factor is approximately $3,000,000.

The Catawba Sale Agreements are long and complicated contracts which evolved from negotiation of myriad complex bargains. Each party attempted to obtain the best possible deal and worked out trade-offs of benefits and detriments. The Public Staff argues that Duke should be recovering a greater amount from PMPA for supplemental power. It is likely, however, that if Duke had required PMPA to pay more for supplemental power, PMPA would have demanded some other benefit in return. The Commission cannot know how each balance was struck by the parties. To reform this one isolated provision of the Agreements would be unfair.

Furthermore, the Commission examined the benefits of the Sale Agreements in detail in the Company's last general rate case. The Commission concluded that the Sale Agreements were prudent, and that they will result in benefits to the North Carolina retail ratepayers which outweigh their costs to the ratepayers. Those conclusions remain valid after the cost of the A/B factor is considered. The Commission will therefore reject the Public Staff proposed adjustment and allow ratemaking treatment of the A/B factor.

The Commission's rejection of the Public Staff position on the A/B factor should not be read too broadly. The Commission has previously said that the Sale Agreements must be viewed as a whole and either accepted and rejected in their entirety. The Commission has in the past refused to isolate any one part of the Agreements for separate evaluation. The Commission does not reject those positions now. However, those statements were made in the context of weighing the respective costs and benefits of the Agreements as to the North Carolina retail ratepayers. Further, those statements were made on the basis of the Agreements as they and their costs had been presented and explained to the Commission in Docket Nos. E-7, Subs 373 and 391. There may be costs implicit in the Agreements which have not yet been presented to the Commission. Additionally, over the term of the Agreements, it may be necessary for Duke to negotiate matters of interpretation or negotiate modifications, any of which may involve additional costs to the ratepayers. The Company should not assume that such additional future costs will be passed on to the ratepayers automatically on the basis of the Commission's prior conclusions that the

Agreements should be viewed as a whole and that their overall benefits to the ratepayers outweigh their costs. Any such additional costs will be subject to the Commission's review and evaluation on a case-by-case basis.

## EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 7

The evidence related to this finding of fact is found in the testimony of Duke witness Lee, Attorney General witness Drzemiecki, Public Staff witnesses Yokell and Van Howe, and Duke rebuttal witnesses Spann and Stimart.

Mr. Lee testified that the Catawba Station was brought into service at a cost well below that of other nuclear units beginning operation in the same time period and below the cost of some coal-fired units coming into service this year. He testified that the cost of the Catawba Station has been reduced from the estimated $1700/kW presented in Docket No. E-7, Sub 391, to $1586/kW, and that the cost for Catawba Unit 2 is $1482/kW. Mr. Lee testified that the average cost of nuclear units being brought into service between June 1984 and June 1986 was over $2700/kW.

Mr. Lee stated that Catawba Unit 2 has a generating capacity of 1145 MW, and that it began commercial operation on August 19, 1986. Mr. Lee testified that Unit 2 is vital to the Company's ability to continue to provide adequate and reliable electric service at present and in the future. The Company's forecasts indicate an increase in summer peak demand of about 2.3% per year over the next 10 years. The Company's generating capability without Unit 2 is 14,843 MW. The Company's forecasted median territorial peak for winter 1986/87 is 12,350 MW. The addition of Catawba Unit 2 to the Company's generating capability for the winter 1986/87 peak results in a reserve margin of 29.5% on paper. Mr. Lee indicated that on January 28, 1986, the Duke system load reached a peak of 12,586 MW, or 236 MW higher than the forecasted peak for the winter of 1986/87. The peak experienced in the summer of 1986 was 121 MW higher than the forecasted peak for the winter of 1986/87. The Company's on-paper reserve margin at the time of the January 28, 1986, peak was 17.9%. If Catawba Unit 2 had been available at that time, the reserve margin on paper would have been 27%. Mr. Lee testified that these reserve margins, based on both forecasted and actual peaks, are reasonable and are necessary for the reliable operation of the Duke system.

Mr. Lee indicated that this level of reserves was necessary because planned outages for refuelings and maintenance of the Company's seven large nuclear units mean that there will nearly always be at least one nuclear unit out of service. In addition, unscheduled outages occur unavoidably at both nuclear and coal-fired plants. Mr. Lee illustrated the effect of outages on reserves and the need for Catawba Unit 2 by describing as follows the Company's situation in meeting the system load during this past summer. During July the Company broke all-time summer peak demands four times in the space of 10 days and had to meet these demands with one or more nuclear units out of service. The Company experienced a peak demand of 12,471 MW on the system at 3:00 p.m. on July 21, 1986. On that date the Company had 2457 MW out of service, including McGuire Unit 1 for refueling and forced outages or reductions at other units. Further, the Company was unable to utilize its hydroelectric facilities because lakes were dangerously low and there was a need to save water because of the lack of rain in the area during the summer. The Company was purchasing 988 MW from the only neighboring utility which had any electricity to sell. Catawba Unit 2 was not in commercial operation at that time and therefore was not officially available, but it was being tested and was operating at 514 MW. This production from Unit 2 provided additional capacity to enable the Company to meet the summer load on July 21 and at other times during the summer. In summary, Mr. Lee testified that Catawba Unit 2 is needed on the Duke system to meet the electric demand requirements of Duke's customers.

Mr. Lee also testified as to the current status of the Company's Plant Modernization Program (PMP), formerly known as the Extended Cold Shutdown Program. In March 1984 the Company began removing from service 12 small coal-fired units ranging in age from 27 to 43 years. Their total capacity was 997 MW. The Company initially placed them in a protected shutdown status while plant evaluations and upgrade and reliability studies were performed to determine precisely the work that needed to be done. Mr. Lee indicated that during 1986 the Company was well on the way to modernizing these units and extending their lives. The Company completed the major work on Dan River Unit 2 and returned it to service in January 1986. Dan River Unit 3 was placed in the PMP program as Dan River 2 was returned to service. The Company estimated that the overall cost of refurbishing the PMP units will be in the $200 to $300/kw range. Mr. Lee testified that when compared to the cost of new capacity, the refurbishment of PMP units is very cost effective. Mr. Lee testified that refurbishment of the PMP units has an additional benefit to Duke and its ratepayers: the Duke coal-fired capacity is aging, and the Company is learning a great deal in the PMP refurbishment effort which will help maintain the aging coal-fired system.

On. cross-examination by the Attorney General, Mr. Lee acknowledged a significant disparity between the equivalent availability factors (a performance measure which reflects a unit's readiness to generate if called upon) and the capacity factors (a performance measure which reflects a unit's actual generation within a certain period) for a number of Duke's large coal-fired units for the 12 months ended June 30, 1986. He acknowledged that this disparity indicates that these units could have produced more energy than they were called upon to produce. He testified that they were not called upon for more energy because they were not needed due to the baseload generation of Duke's. nuclear units. Mr. Lee also acknowledged that many of Duke's forecasted capacity factors for its coal units for 1986-90 are low; however, he testified that these low forecasts are desirable since coal-fired generation is more expensive than nuclear generation and the coal-fired units are intermediate capacity units.

Attorney General witness Drzemiecki described the various analyses that must be performed to determine whether excess capacity exists on the Duke system. He said that the issue of excess capacity should be examined from a broader economic perspective, rather than the traditional definition of reserve margin minimums; that examination of the energy needs of the system must also be undertaken since baseload capacity is usually justified based on fuel savings; that a comprehensive examination of the costs of both capacity and energy is necessary which requires an analysis of the load patterns throughout the year, the resource mix, and the operating practices of the utility; that the analysis required to determine the adequacy of the existing capacity to meet peak load and reserve requirements is a comparison of seasonal peak demands, historic or forecasted, to firm plant capacity and firm capacity purchases available; and finally, that the analysis necessary to determine the adequacy of existing resources to meet the system energy loads is a comparison of energy loads, historic or forecasted, with existing energy resource capability and firm energy purchases available.

After describing the analyses necessary to determine whether excess capacity exists, Mr. Drzemiecki described the analysis he performed. Mr. Drzemiecki stated that he "examined the pertinent capability and operating statistics for each individual generating unit on the Duke system for 1985" and that he tabulated the average annual capacity factors for coal units through 1990. He concluded that the coal units' capacity factors do not exceed 50% even without the addition of Catawba Unit 2 and that the coal units' capacity factors generally fall below 50% with Catawba Unit 2; only the Belews Creek coal-fired unit has a capacity factor above 50% and only the Marshall Steam Station has a capacity factor above 40% with Catawba Unit 2. Mr. Drzemiecki concluded from his analysis that during 1985 no baseload coal unit had a capacity factor which exceeded 60%; that the average capacity factor for all Duke's baseload coal units was less than 50% in 1985; and that the capacity factor of Duke's peaking units was 1% or less in 1985.

Next, Mr. Drzemiecki recalculated Duke's 1986-90 seasonal peak load and capacity position based on Duke's median forecast to reflect existing resources including and excluding Catawba Unit 2. This is presented in his Exhibits JD-1 and JD-2. Mr. Drzemiecki stated that he used an 18%-24% planning reserve margin from a study attached to his testimony as Exhibit JD-3. Mr. Drzemiecki stated that the study says that 18%-31% is a reasonable reserve margin but that 20%-24% is .ideal. This study (Exhibit JD-3) was performed by Duke in 1981. The study is based on the Electric Power Research Institute (EPRI) Over/Under Model to determine the appropriate range of reserve margins for the Duke system. Mr. Drzemiecki stated that he adopted the Duke study and that he does not disagree with the conclusions of the study. Mr. Drzemiecki's Exhibits JD-1 and JD-2 were derived using data from the EPRI Over/Under Model study. Exhibit JD-1 shows reserve margins with Catawba Unit 2 added to system capacity ranging from 37.8% in 1986 to 31.0% in 1990. Exhibit JD-2 shows reserve margins without Catawba Unit 2, which range from 27.9% in 1986 to 21.8% in 1990. Mr. Drzemiecki's recommendations were based on the analysis shown on his Exhibit JD-2. In the summer of 1988, Duke's reserve margin would be 23.6% without Catawba 2. Mr. Drzemiecki said that at this point 100 MW of capacity would be needed, which would bring Duke's reserves back to 24%. During the summer of 1990 Duke's reserves would fall to 21.8%, at which point Mr. Drzemiecki proposed the addition of 300 MW of ,peaking capacity. Mr. Drzemiecki proposed that the costs associated with this hypothetical expansion plan, 100 MW in 1988 and 300 MW in 1990, be substituted in today's rates in place of Catawba Unit 2.

Witness Drzemiecki concluded that Catawba Unit 2 is not needed by Duke in the foreseeable future; that the proposed addition of Unit 2 in test year rates is an attempt to pass through to customers the costs associated with excessive baseload generating capacity; that his analysis of Duke's capacity and energy needs based on Duke's assumptions indicates that Catawba 2 cannot be justified based on the energy cost savings expected from the unit; that the addition of Catawba 2 will displace the generation from highly efficient coal units which will result in annual capacity factors below 40% for these coal units over the next five years; and that his examination of Duke's system peak requirements suggests that the addition of capacity is not necessary until the summer of 1990 based on Duke's own reserve criteria. Mr. Drzemiecki recommended that the Company be permitted to increase its revenue requirement at this time to reflect only an increase of 300 MW of peaking capacity priced at the cost of adding peaking capacity, rather than at the actual baseload cost of Catawba. Mr. Drzemiecki stated that this is all that can be justified because it is the capacity that would be needed in 1990. Mr. Drzemiecki testified that his recommendations are consistent with sound regulatory policy; i.e., that excessive costs should be disallowed, and that regulatory authorities should exercise market-like discipline on utilities to assure that ratepayers are protected from excessive costs.

The Company contended through cross-examination that Mr. Drzemiecki incorrectly utilized the Over/Under study in two ways. First, Mr. Drzemiecki stated that the ideal reserve margin is 20%-24% while the study concluded that the optimum reserve goal for the Duke system is 24% and "that the total cost to the consumer will not be adversely affected by a reserve goal between 18.5% and 31.5%." Second, Mr. Drzemiecki subtracted the estimated interruptible load from the peak load in arriving at the load used in his reserve margin calculation. Mr. Drzemiecki stated on cross-examination that he did not know how interruptible load was treated in the model and that he did not know whether interruptible load had already been factored into the determination of the reserve margin range. Mr. Drzemiecki agreed during cross-examination that if the model had already factored in interruptible load, it would not be appropriate to subtract interruptible load from peak load as he did on his Exhibits JD-1 and JD-2. Mr. Drzemiecki acknowledged that recalculating his exhibits for this subtraction of interruptible load from peak load and excluding Catawba Unit 2 from Duke's summer 1986 capacity (since it was not in commercial operation) would bring each of the reserve margins on his Exhibit JD-1 within the reasonable reserve margin range produced by the EPRI Over/Under study and that recalculating Drzemiecki Exhibit JD-2 would show Duke having deficient reserves as early as summer of 1987.

Duke presented the rebuttal testimony of Dr. Robert Spann. Dr. Spann testified that Mr. Drzemiecki misapplied the interruptible load in utilizing the EPRI Over/Under Model study to determine Duke's reserve margin. Dr. Spann testified that the Duke study using the Over/Under Model had already determined the appropriate range of reserve margins for Duke based on the amount of interruptible load on the Duke system and that to subtract the interruptible load, as Mr. Drzemiecki did, would constitute a double subtraction of interruptible load. Dr. Spann also testified that Mr. Drzemiecki's analysis of capacity factors for coal units says nothing about whether Duke has or does not have excess baseload capacity. Any utility will have three types of capacity: baseload, which operates at 60%-70% capacity factors; intermediate, which generally operates at 30%-50% capacity factors; and peaking capacity, which operates at 10%-20% capacity factors and sometimes less. Dr. Spann testified that the fact that Duke's coal units, except for Belews Creek, operate at capacity factors of 50% or less only says that these units operate as intermediate units. He testified that the fact that these units are technically capable of operating at 60%-70% capacity factors and may have operated at those capacity factors at other times says nothing about whether Duke has too much or too little baseload capacity. The nature of varying utility loads is such that some units will always operate as intermediate units and others will always operate as peaking units.

Dr. Spann testified that Duke does not have excess capacity with the addition of Catawba Unit 2 and that Duke's current and projected reserve margins are reasonable. He testified that not only are Duke's reserve margins well within the range as established by the study performed using the EPRI Over/Under Model, but Duke's reserve margins are lower than the national average reserve margins of all utilities and are lower than the average reserve margins in most regions of the country in the near term. Dr. Spann based these opinions on a comparison of Duke's reserve margins to the reserve margins in the 10 regional reliability councils for the years 1986-89 and to the reserve margins projected by the U. S. Department of Energy Information Agency for the period 1985-95.

The Public Staff presented witnesses Yokell and Van Howe, who conducted an economic and technical evaluation of Duke's PMP program to determine whether this program had the effect of masking what would otherwise be excess capacity resulting from Catawba 2.

Mr. Van Howe, of the S. M. Stoller Corporation, and a team of consultants visited all of the stations in the PMP with the exception of Cliffside and assembled documentation on the status of the individual units in the PMP. In addition, they analyzed the data for the 12 PMP units in the General Availability Data System (GADS) of the North American Electric Reliability Council. Analysis of these data provided detailed information on the causes for historical deratings and shutdowns at the PMP units and further insight into the condition of the individual PMP units. Analysis of these data, combined with the planned upgrade work at each unit and the knowledge of the historical performance of other units of similar size, vintage, and design, were used to estimate the equivalent unplanned outage rate of the PMP units prior to and subsequent to their upgrading. Alternative scenarios for the timing of the PMP were developed for use in the economic analysis performed by Dr. Yokell of Energy and Resource Consultants, Inc. (ERC).

Based on the Stoller analysis, Mr. Van Howe arrived at the following conclusions concerning the PMP:

> 1. Although the individual PMP units are in need of repair and upgrade, the condition of the units would not preclude any of them from being operable, albeit at reduced reliability and, in some cases, with additional restrictions on maximum output or limited start-stop cycles prior to completion of the upgrade work.
>
> 2. If, in late 1982/early 1983, Duke Power Company had initiated an aggressive program to upgrade these twelve PMP units, it would have been possible to have the upgrade work critical to reliable operation for Dan River 3, Riverbend 6, and Riverbend 7 completed in 1985 (408 MW); Allen 1 and Buck 5 completed in 1986 (278 MW); Buck 3, Buck 4, Cliffside 3, and Cliffside 4 in 1987 (230 MW); Allen 2, Cliffside 1, and Cliffside 2 in 1988 (226 MW). In order to achieve this aggressive program, additional costs would have

to be incurred due to the need to perform the work on a two-shift basis using a significant amount of contract labor. The additional costs would amount to approximately $22 million.

3. The repairs and upgrades contained in Duke's PMP appear, in general, to be reasonable based upon the current condition of the units. There is greater uncertainty in the repairs and upgrades required on units for which a detailed upgrade study has yet to be performed (PMP units at Buck, Riverbend, and Cliffside). The assumption in the Duke program that all 19 suspect turbine and generator rotors will require replacement at a cost of $72 million is a worst case situation. Some of the rotors have not been inspected by boresonic tests and may be in good condition. Even with unfavorable boresonic tests, they may be repairable by overboring or bottle-boring. In the case of some of the smaller nonreheat units (particularly Buck 4 ,and Cliffside 1 and 2), the cost of rotor replacement may be prohibitive in relation to the value of the units, and if the rotors cannot be repaired, it may be preferable to retire the units or to operate them with a frequent inspection cycle with limitations on the number of start-stop cycles prior to reinspection.

Dr. Yokell stated that he was asked to make an analysis as to whether excess capacity exists on Duke's system, taking into consideration the Stoller work on the PMP. Dr. Yokell described the concept of excess capacity upon which his analysis was based: Reserve margins are a physical concept, and thus the measures of excess capacity used in the past were physical measures. However, Dr. Yokell stated that excess capacity is an economic, rather than a physical, concept. Dr. Yokell stated that the mission of regulated utilities is to provide reliable electric service to all current and future customers at the minimum possible cost, including a fair return on invested capital. He contended that the key, then, in deciding whether a utility has excess capacity is determining the appropriate level of reliability. Dr. Yokell stated that the simple standard by which utility commissions have judged reliability of an electric utility system for many years has been minimum reserve margin; that is, the difference between the utility's installed capacity and its annual peak load, divided by its annual peak load. While reserve margins are simple to understand and do provide useful information about an electric utility system, Dr. Yokell stated that this information by itself is not typically sufficient to decide whether the utility has excess capacity, unless the reserve margins are extraordinarily high. He said that even if the utility's reserve margins were so high that the utility clearly had excess capacity it would not be possible to quantify the amount of excess capacity using only reserve margin information. He testified that this is so for three reasons: First, the reserve margin is based only on the utility's annual peak, whereas reliability is a concern all year long. Second, reliability depends on the number, type, and condition of the utility's generating facilities, as well as its total installed capacity. Third, and most important, reserve margins only measure the benefits of added capacity (increases in reliability) and not the costs associated with these benefits.

In making its evaluation, ERC made a series of computations using the results of the PROMOD production costing model as executed by Duke personnel, in conjunction with ERC's own revenue requirements model. These computations were made using several alternative sets of assumptions, which were obtained from the Stoller Corporation, concerning the life extension program. To examine whether Catawba 2 represents excess capacity, Dr. Yokell developed a "base" case which was Duke's present plan with Catawba 2 going into service in September 1986 and the PMP proceeding as planned by Duke. His alternatives to the base case included commercial operation dates of Catawba 2 in 1988 and 1990. These alternatives were examined using both Duke's PMP and an accelerated schedule for the PMP. Detailed inputs for each scenario were developed. These detailed inputs included the operating conditions and repair status of various plants. The scenarios were then run through Duke's PROMOD model to determine fuel and other variable operating and maintenance costs. Capital and additional operating costs for each scenario were then determined using ERC's revenue requirements model. In addition, models were developed to determine the demand charges associated with Catawba 2 buybacks. The system variable and Catawba 2 fixed costs were then combined with one another in a spreadsheet model to develop the total present value costs of each alternative. Dr. Yokell testified that the alternative with the least present value cost is the economically preferred alternative. The least cost alternative was then compared with Duke's plan to examine the excess capacity issue.

Dr. Yokell's analysis took into account the sale of 87.5% of Catawba 2, capital additions to Catawba 2, the PMP plant costs, the sale-leaseback costs, fuel costs, operation and maintenance costs, nuclear unit equivalent availability, and the value of energy not served (during periods of outages) for residential, industrial, and commercial customers. The analysis did not evaluate alternatives to Duke's nuclear capacity such as coal-fired baseload capacity, gas turbines, additional energy conservation initiatives, or any mix of supply options; however, Dr. Yokell testified that of the alternatives that could have been examined, those that he did examine were the most realistic and plausible alternatives for the Duke system.

Dr. Yokell concluded that if Duke's PMP is assumed as a given, 1986 is probably an appropriate and cost effective in-service date for Catawba 2. He said that this conclusion is certainly correct if Duke's own demand forecast is assumed to be correct. He testified that the present value of revenue requirements would increase substantially if the in-service date for Catawba 2 were slipped. If, instead of taking Duke's PMP as a given, one assumes that the PMP were accelerated, it may very well have been uneconomic for Duke to keep Catawba's schedule for operation in 1986. He testified that the results are not clear in this instance because whether one uses the Duke load forecast or the Public Staff load forecast is important since the outcomes of each are different. Dr. Yokell's final conclusion on this point was that Duke's present plan, under which Catawba 2 is put into commercial operation in September 1986 and the present PMP is followed, is as reasonable a course of action as any that they evaluated. With respect to the reserve margins, Dr. Yokell concluded that, while Duke's reserve margins appear high, the analysis performed by ERC and the Stoller Corporation indicates that these reserve margins are more appropriate than any other reserve margins examined and are cost effective for the Duke ratepayers. He testified as follows:

1. In our judgment, ratepayers would not have been better off had Duke decided to accelerate the Plant Modernization Program and delay the commercial operation date of Catawba 2.

2. Of the various capacity expansion plans that were examined, Duke's present plan is probably the most cost-effective plan for ratepayers. This is true in spite of the fact that Duke's present plan will result in substantial reserve margins when Catawba 2 comes on-line in September 1986.

Witness Eddleman presented testimony contending that the ERC report was faulty because it did not investigate improved energy efficiency, coal-fired power plants, other sources of energy, or increased load management or conservation programs. In addition, he cited as errors (1) a failure to properly assess whether Catawba has excess capacity, (2) adding a value of unserved energy and setting the value of nonserved energy at a level that Mr. Eddleman believes is too high, (3) assuming a set of energy and fuel prices to be valid over the entire life of the power plant, and (4) use of Duke's and the Public Staff's load forecasts which Mr. Eddleman contends have been consistently erroneous, particularly at long range.

The Commission has carefully reviewed the evidence presented on the need for Catawba Unit 2 and, based on the evidence, rejects the recommendations presented by the Attorney General. Attorney General witness Drzemiecki's Exhibits JD-1 and JD-2 were based on calculations that included a double subtraction of the interruptible load. The practical import of witness Drzemiecki's recommendations is that Duke's older .coal-fired units could operate as baseload capacity with high capacity factors. However, as Dr. Spann testified, when units that were originally built to be baseload capacity age and newer units with lower fuel costs are added to a system, it is common for the older units to get bumped from baseload to intermediate load status. This is what is happening on the Duke system now. The Commission's conclusion is further supported by the testimony of Public Staff witnesses Yokell and Van Howe. Their studies lead to the conclusion that Duke's present capacity expansion plan is probably the most cost effective plan for ratepayers of those studied and that this is true in spite of the fact that Duke's present plan results in substantial reserve margins at the present time. Whenever any large generating unit is brought into service, reserve margins will be higher than before; however, this does not establish a case of excess capacity. The Commission finds that Dr. Yokell's methodology for determining excess capacity is a meaningful and appropriate approach. The Commission agrees with Dr. Yokell's conclusion that Duke's present capacity expansion plan, including the PMP, is appropriate and cost beneficial to ratepayers and that there is no excess capacity on Duke's system at this time. The Commission rejects the Attorney General's proposed exclusion of the cost of Catawba Unit 2 from cost of service treatment as excess capacity.

The Commission concludes that Catawba Unit 2 is properly includable in rate base as utility property used and useful in rendering electric service to the public. The Commission makes this conclusion notwithstanding the fact that the unit was out of service for repairs at the time of the hearings. The evidence on this point was as follows: Duke witness Lee testified that Catawba Unit 2 began preoperational testing following completion of fuel loading on March 1, 1986; that the unit began commercial operation on August 19, 1986; that it generated 540 million kWh prior to commercial operation; that it helped Duke meet its peak demand during the summer of 1986; and that the unit generated 350 million kWh from the time of commercial operation until September 1, 1986. Mr. Lee testified that the unit was shut down on

September 1, 1986, due to a short circuit in the electric generator and that Duke was assessing the problem. He did not have an estimate of the length of the outage when he testified. Duke witness Stimart stated during his rebuttal testimony that, pursuant to the Catawba Agreements, Unit 2 had been declared in commercial operation after it had operated 100 hours at full capacity; that the unit's generator stator had sustained considerable damage when the unit failed on September 1; and that the unit could be returned to service in approximately 90 days by using a replacement generator stator available from the manufacturer.

In fixing utility rates, the Commission must first ascertain the reasonable original cost of the utility's property "used and useful...in the service rendered to the public within this State..." G.S. 62-133(b)(1). When new plant is completed and put in service, the cost of the plant is added to rate base. The evidence in this case tends to show that Catawba Unit 2 was put in service, was declared in commercial operation on August 19, 1986, and in fact rendered service. The fact that the unit was subsequently shut down for repairs does not deny the "used and useful" status of the unit. The unit is being repaired and will return to service. It is not uncommon for electric generating plants to experience outages for maintenance and repairs. The electric public utilities in the State regularly file reports with the Commission on the outages experienced by their generating units. Unscheduled outages for repairs provide no basis for denial of rate base treatment of plant in service.

## EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 8

The evidence for this finding of fact is contained in the testimony of Company witnesses Denton and La Capra, Public Staff witness Turner, NCIEC witness Baron and CUCA witness Phillips.

The Company provides retail service in two states, service under the Catawba Sale Agreements and conventional wholesale service. For this reason, it is necessary to allocate the cost of service both among jurisdictions and among customer classes within each jurisdiction. In all of Duke'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. This method is also used by the South Carolina jurisdiction and under the Catawba Sale Agreements.

Company witness Denton testified that demand related production and transmission items were allocated using demand factors based on demand for electricity that each jurisdictional rate class places on the production and transmission system during the time of the summer peak. He also contended that, while Duke has summer and winter peaks that currently are in balance, the summer peak is the natural and dominant one and that Duke's forecast shows that this situation will continue. Mr. Denton further testified that the Company has historically promoted winter sales which has resulted in relatively balanced summer and winter peaks.

NCIEC witness Baron also recommended the summer CP methodology for cost allocations. Witness Baron concluded that the Company plans its generation to meet a dominant summer peak and that Duke's entire load management program reflects the cost allocation concepts associated with the summer CP.

CUCA witness Phillips also recommended use of the summer CP. He contended that a methodology which classifies all production plant investment as demand related is appropriate because consumers take for granted the fact that a utility will meet all demands placed on the system.

Public Staff witness Turner testified in support of a Summer/ Winter Peak and Average methodology (SWPA). Witness Turner's recommendation of a peak and average methodology was based upon the position that the need for additional generation capacity was governed by peak demand growth as well as by average demand requirements and that it was logical to use both of these factors in the cost allocation process. He also contended that the winter peak is as significant as the summer peak in determining system loads.

Company witness La Capra testified in rebuttal that the summer peak is Duke's dominant and natural peak, and he contended that use of the Summer CP methodology has served in the past to balance the Company's summer and winter peaks.

After carefully reviewing all of the evidence, the Commission concludes that it is appropriate to continue use of the Summer CP method for allocating costs in this proceeding. The use of the Summer CP has been an issue in a number of Duke's general rate cases. In each of those cases, the Commission has decided that use of the Summer CP was appropriate. No compelling evidence has been introduced in this case which would cause the Commission to change that opinion.

## EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 9

Company witness Stimart, Public Staff witness Lam, Attorney General witness Drzemiecki, and NCIEC witness Falkenburg presented testimony and exhibits regarding the fuel component to be included in base rates in this proceeding. NCIEC witness Falkenburg did not recommend a fuel factor. Instead, his testimony was directed to the fuel cost recovery procedure under G.S. 62-133.2. Witness Falkenburg recommended modifications in the new fuel cost recovery procedures as follows: (1) use of a 100% experience modification factor; (2) nuclear capacity factors should be estimated using the greater of the life of the unit average or the national average for similar vintage units; and (3) a limited incentive/penalty feature should be built into the fuel clause. The Commission has given adequate consideration to all the matters raised by Mr. Falkenburg and has issued a final Order on August 14, 1986, in Docket No. E-100, Sub 47, setting forth the procedures for fuel cost adjustment proceedings under G. S. 62-133.2.

In his prefiled testimony, Mr. Stimart recommended that the Commission adopt a fuel factor of 1.1046¢ per kWh. The basic assumptions included in this factor were as follows: (1) Oconee Units 1, 2 and 3, McGuire Units 1 and 2 and Catawba Unit 1 would operate at a 62% capacity factor, and Catawba 2 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 1.815¢, (6) nuclear fuel expenses per kWh of .545¢ per kWh; and (7) pro forma adjustments for Catawba interconnection fuel costs priced in accordance with the Catawba agreements. On rebuttal, Mr. Stimart updated his testimony for fuel prices for the July 1986 burned cost and revised the customer growth adjustment contained in his prefiled testimony, resulting in a recommended fuel expense factor of 1.1036¢/kWh, excluding nuclear fuel disposal costs and gross receipts tax.

Public Staff witness Lam's revised testimony recommended a fuel factor of 1.0878¢/kWh which was updated in the Public Staff's revised exhibits to 1.1119¢/kWh based on the July 1986 burned cost of fossil fuels. Mr. Lam's basic generation and fuel cost assumptions were as follows: (1) acceptance of Duke's prefiled nuclear capacity factors based on an examination of the 10-year average capacity factor for PWR's as reported in the NERC's Equipment Availability Report 1975-1984; (2) acceptance of Duke's historical median conventional hydro generation computed in accordance with the Company's Power System Statement; (3) 10-year average pumped storage; (4) two-year average (1984-1985) oil and gas generation; (5) price levels of fossil fuels burned in July 31, 1986, with nuclear price levels reflecting the cost of present or scheduled refuelings; (6) Catawba interconnection agreement using data supplied by Public Staff witness Maness which excluded the NCMPA renegotiation; and (7) remaining fossil and purchase transactions prorated according to actual test period generation levels.

Attorney General witness Drzemiecki recommended a fuel factor of 1.1032¢/kWh. Mr. Drzemiecki made the following changes in Duke's fuel calculations: (1) utilized nuclear capacity factors of 70% for the Oconee and McGuire units; (2) utilized a cost of coal of 1.76¢/kWh, which he testified was the average cost of coal generation as of May 1986 for the most recent 12 months; and (3) removal of Catawba 2 from Duke's generation mix in accordance with his conclusion that Catawba was excess capacity. Mr. Drzemiecki testified that his basis for using the 70% nuclear capacity factor was that since January 1983 Duke had been able to maintain its nuclear capacity factor at that level for an extended period and that Duke had used levels approaching or exceeding 70% in projecting fuel expenses from 1987 forward.

Company witness Stimart testified that the 62% nuclear capacity factor utilized by the Company is based upon a composite of the national average capacity factor and the Company's experienced capacity factor. Witness Stimart calculated Catawba Unit 2 generation at a 60% capacity factor as its expected level of generation during the first year of operation. The Public Staff concurred in the use of a 62% capacity factor for all units except Catawba 2, which would be 60%.

The Commission rejects the 70% nuclear capacity factor witness Drzemiecki used in making his fuel cost determination. 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 capacity factors in this proceeding based upon national average capacity factors and the Company's own total experience 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. Mr. Lam, under cross-examination by the Attorney General, indicated that the present method was working well as indicated by the Company's test year fuel revenues being only $1.7 million higher than its test year fuel expenses, or a difference of less than .5%. On rebuttal, Mr.Stimart stated that as of the end of August 1986 Duke was undercollecting its fuel expenses so far for 1986.

Both the Company and the Public Staff have recognized the changing coal market by reflecting the July 1986 burned cost in their recommended fuel factor. The Company and the Public Staff agreed on the price of fossil and nuclear fuel to be used in determining the fuel factor. Based on the evidence of record the Commission concludes that the latest available cost is the appropriate price to be used for coal, which is 1.801¢/kWh, for oil and gas 5.728¢/kWh; and for nuclear fuel 0.554¢/kWh.

There is very little difference in the line loss/Company use (4,600,544 MWH) proposed by the Company and that used by the Public Staff (4,372,193 MWH). There being no significant evidence to the contrary and consistent with the decision in Docket No. E-7, Sub 391, the Commission concludes that the methodology proposed by the Public Staff on this matter is appropriate. The Public Staff and the Company agree on intersystem sales of 565,320 MWH and the Commission will use that figure in determining the fuel factor.

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 1,863,800 MWH.

On rebuttal, witness Stimart testified that his principal disagreement with the Public Staff's methodology for computing fuel expenses was the manner in which the generation mix was normalized. Witness Stimart asserted that the Public Staff's calculation of pumped storage generation and interchange power understated the impact of those items.

In calculating net pumped storage energy, Public Staff witness Lam used the 10-year average. Witness Stimart's rebuttal testimony was that the 10-year average numbers are not representative of the current level of net generation derived from pumped storage at Jocassee, because the average annual net generation from Jocassee over the first nine years of operation was 557,000 MWH while the average for the last three years has been 1,066,000 MWH. The Commission concurs that a marked change in the level of pumped storage generation has taken place and will therefore use Duke's proposed level of 294,655 MWH of net pumped storage energy in calculating fuel expense.

As noted hereinabove, Public Staff witness Lam proposed to base the Company's oil and gas generation on a two-year average while the Company used the test year level. Based on the entire record and the operating experience concerning this component of the Company's generation mix and consistent with the Commission's decision in Docket No. E-7, Sub 391, the Commission concludes that the Public Staff's recommendation concerning this matter is appropriate.

Similarly, the Commission concludes that Public Staff witness Lam's methodology to prorate remaining fossil and purchase transactions in accordance with test-period generation ratios, after taking into account the generation components directly normalized, is consistent with the Commission's decision in Docket No. E-7, Sub 391, and is appropriate for use in establishing the Company's fair and reasonable generation mix in this proceeding.

The Company and the Public Staff also disagree on the appropriate level of the Catawba interconnect contract and purchases to be included in determining the Company's pro forma generation mix. Consistent with the Commission's decision in Docket No. E-7, Sub 391, and treatment of the Catawba contracts, the Commission rejects the Public Staff's contentions and concludes that the amount of 9,801,340 MWH as used by the Company is appropriate for use in this proceeding.

All intervenors have excluded nuclear fuel disposal costs in determining their recommended fuel factors. The Company is now required to pay the Department of Energy (DOE) 1 mill per kWh for disposal costs related to net nuclear generation. On rebuttal, witness Stimart testified that these costs should be included in determining the fuel factor because such costs are now totally variable with the level of nuclear generation.

The Commission concludes that nuclear fuel disposal costs are readily identifiable, vary directly with nuclear generation levels, and should be included in determining the fuel factor. If nuclear fuel disposal costs are included in the fuel factor, any mismatch would be corrected in fuel charge adjustment proceedings under G. S. 62-133.2 pursuant to the procedures established in Docket No. E-100, Sub 47. Therefore, the Commission concludes that it is reasonable and appropriate to include nuclear fuel disposal costs in the fuel factor as proposed by the Company.

The Commission further notes that Public Staff witness Cox recommended that Duke should be required to refund to ratepayers the difference between the amount of nuclear fuel disposal costs based on gross generation which have been collected in rates and the amount of such costs or fees for which Duke has actually been liable to DOE based on net generation for the period April 7, 1983, through December 31, 1985. On rebuttal, witness Stimart testified that since the Company's last general rate case, Duke's level of realized nuclear generation exceeded what was estimated in that case and, therefore, the level of Duke's nuclear fuel disposal costs actually exceeds the amount included in base rates. In other words, witness Stimart stated that although Duke paid these costs on the basis of net rather than gross generation, with the higher nuclear generation levels, the total amount of fees actually paid by the Company has exceeded the amount collected in rates. The Commission agrees with the Company's position; therefore, a refund would not be appropriate in this case based upon all of the evidence and should not be required. The inclusion of nuclear fuel disposal costs in the base fuel factor approved in this proceeding will allow the Commission to prospectively correct for any future mismatches of such costs in fuel charge adjustment proceedings held pursuant to G.S. 62-133.2.

Based upon the foregoing considerations, the Commission concludes that the appropriate fuel factor for use in this case is 1.1665¢/kWh, excluding gross receipts tax and including nuclear fuel disposal costs. The total nuclear fuel disposal cost for the Duke system is $37,836,000, consisting of $28,034,000 ($16,306,000 for N. C. retail) related to the Oconee and McGuire Stations and Duke's ownership interest in Catawba, and $9,802,000 ($5,701,000 for N. C. retail) related to Catawba purchased power. The calculation of this factor is shown as follows:

## Duke Power Company
## Calculation of Adjusted Fuel Expense Factor
## Twelve Months Ended December 31, 1985
## (000's)

| Line | | Pro forma | -----Fuel | Costs----- |
|---|---|---|---|---|
| No. | Description | MWH | ¢/kWh | Amount |
| | | (Col. 1) | (Col. 2) | (Col. 3) |
| 1 | Coal | 23,113,227 | 1.801 | $416,269 |
| 2 | Oil & Gas | 6,975 | 5.728 | 400 |
| 3 | Light-off | - | | 5,686 |
| 4 | Total fossil | 23,120,202 | | 422,355 |
| 5 | Nuclear (Excl. NFDC) (1) | 28,033,862 | 0.554 | 155,308 |
| 6 | Total fossil and nuclear | 51,154,064 | | 577,663 |
| 7 | Conventional hydro | 1,863,800 | | 0 |
| 8 | Net pumped storage | (294,655) | | 0 |
| 9 | Total hydro | 1,569,145 | | 0 |
| 10 | Total system generation | 52,723,209 | | 577,663 |
| | Purchased power & net interchange: | | | |
| 11 | Purchased power - long-term contracts | 393,239 | | 5,166 |
| 12 | Purchased power - short-term | 87,786 | | 1,815 |
| 13 | Interchange In | 162,818 | | 3,711 |
| 14 | Interchange Out | (488,433) | | (8,352) |
| 15 | Catawba Interconnect Purchases | 9,801,340 | | 65,299 |
| 16 | Total interchange | 9,956,750 | | 67,639 |
| 17 | Total generation and interchange | 62,679,959 | | 645,302 |
| 18 | Less: Intersystem sales | 565,320 | | 11,553 |
| 19 | Line loss | 3,974,909 | | |
| 20 | Company use | 565,671 | | |
| 21 | System MWH sales and fuel cost (excl. intersystem) | 57,574,059 | | 633,749 |
| 22 | Fuel expense factor per kWh | | | 1.1008¢ |
| 23 | Fuel expense factor per kWh including nuclear fuel disposal costs | | | 1.1665¢ |

(1) Represents Oconee, McGuire and Duke's 12.5% ownership in Catawba 1 & 2

As discussed herein, the Commission has adopted the Company's weather and customer growth adjustments. Based on the foregoing, the Commission concludes that the North Carolina retail MWH sales to be used in setting rates in this proceeding is 33,179,149 MWH. The Commission therefore concludes that the fair and reasonable level of fuel used in generation is $391,267,000.

| | | |
|---|---|---|
| 33,179,149 MWH x 1.1665¢/kWh | = | $387,035,000 |
| N.C. retail line loss differential * | | 4,232,000 |
| | | $391,267,000 |

* Consists of $4,024,000 line loss differential per the jurisdictional study and $208,000 of additional line loss to reflect the inclusion of nuclear fuel disposal cost in the determination of the fuel factor.

On July 29, 1986, the Commission entered an Order in Docket No. E-7, Sub 410, which was a fuel charge adjustment proceeding for the Company held pursuant to G. S. 62-133.2. The Commission concluded that the Company's fuel factor should be reduced by an experience modification factor (EMF) decrement of .0046¢/kWh, based on the test period (calendar year 1985) fuel recovery experienced by the Company. The Commission ordered a rate reduction in the amount of .0046¢/kWh, representing the EMF portion of the reduction, which should remain in effect for 12 months from the date of the Order. The Commission in this case is approving a fuel factor of 1.1665¢/kWh. However, the .0046¢/kWh decrement shall continue to remain in effect through July 1987 as provided by the Commission Order in Docket No. E-7, Sub 410.

Attorney General witness Drzemiecki contended that changes should be made in the fuel recovery procedures because Duke was overrecovering its fuel expenses. Public Staff witness Lam testified that since the Commission entered its Order in Docket No. E-7, Sub 391, Duke's last general rate case, the Company had overcollected its fuel cost by $22,751,859 as of June 30, 1986. On cross-examination Mr. Lam indicated that figure would be reduced because of hot weather in July 1986 and the fact that some of Duke's nuclear units were out of service during the summer. Mr. Lam further testified that in calendar year 1985 (the test year) there was only a slight mismatch in Duke's fuel expenses and revenues, with an overcollection of only $1.7 million. The Commission concludes that the fuel cost recovery mechanism now in place will, over time, prevent overcollections and undercollections and will allow Duke and the other electric utilities in this State an opportunity to recover their reasonable and actual prudently incurred fuel costs.

## EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 10

The evidence relating to the appropriate level of fuel inventory was presented by Company witness Stimart, Public Staff witness Burnette, and Attorney General witness Drzemiecki. In its amended filing, Duke included $70,610,000 for coal inventory and $2,496,000 for fuel oil inventory in the Company's working capital allowance. The Public Staff included $55,647,000 in its working capital allowance for coal inventory and $2,595,000 for fuel oil inventory. The Attorney General included $35,697,000 for coal inventory and $1,733,000 for fuel oil inventory.

The Company's application sought $3,252,000 for fuel oil inventory. The Company has revised this item down to $2,496,000, based on the July 1986 oil inventory price. The Public Staff also proposes the same amount for oil inventory, when corrected for allocation differences. The Attorney General proposes a fuel oil inventory of $1,733,000 using the same number of gallons as the Company and the Public Staff, but using the price for oil purchased in May 1986. The July price for oil is the more appropriate figure to use, because it is more recent. Therefore, the Commission concludes that $2,496,000 represents the proper allowance for fuel oil inventory in this proceeding.

The Company proposes a $121,400,000 working capital allowance on a total system basis for coal inventory, or $70,610,000 for the North Carolina retail jurisdiction. Company witness Stimart testified that this proposed level of working capital for coal inventory is based on a recommended 42-day supply at a full load burn rate of 60,000 tons per day, for a total inventory of 2,500,000 tons. Witness Stimart indicated that coal inventory must be determined in light of the changing role of the Company's coal generating capacity resulting from the addition of new nuclear generating capacity. Company witness Stimart described coal inventory as insurance in the event of unexpected outages of nuclear units and stated that the Company seeks enough coal to operate its coal-fired stations at a full load burn rate for 42 days in the event of unexpected outages.

Public Staff witness Burnette recommended $91,996,000 on a system basis and $55,647,000 on a jurisdictional basis. Witness Burnette's recommendation is based on a 1,894,480-ton inventory, based on an average daily burn of 23,681 tons per day and an 80-day supply. Mr. Burnette calculated his average daily burn utilizing the same coal generation data used by Public Staff witness Lam to calculate fuel costs, plus the historical fossil heat rate and heat value of the coal.

Attorney General witness Drzemiecki recommended $61,589,000 coal inventory on a system basis and $35,697,000 on a jurisdictional basis. Witness Drzemiecki's recommendation is based on a 1,260,000-ton inventory. Witness Drzemiecki reduced the Company's proposed coal inventory to reflect lower coal-fired generation which would result under the nuclear capacity factors utilized in his fuel factor recommendation. The Commission has rejected the capacity factors proposed by witness Drzemiecki in setting a fuel factor in this case and accordingly will reject witness Drzemiecki's coal inventory recommendation.

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 Evidence and Conclusions for Finding of Fact No. 9, the Commission concludes that a working capital allowance of $53,788,000 for coal inventory and $2,496,000 for fuel oil inventory is appropriate for use in this proceeding.

## EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 11

The evidence pertaining to the proper total working capital allowance was presented by Company witness Stimart, Attorney General witnesses Wilson and Drzemiecki, and Public Staff witnesses Rankin and Carter (through the stipulation of the parties as previously described). 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)

| | Company | Public Staff | Attorney General | |
|---|---|---|---|---|
| Materials and supplies inventory: | | | | |
| Coal | $ 70,610 | $ 55,647 | $ 35,697 | |
| Oil | 2,496 | 2,595 | 1,733 | |
| Other | 73,274 | 71,090 | 73,004 | |
| Subtotal Materials & Supplies | 146,380 | 129,332 | 110,434 | |
| Required bank balances | 1,708 | 1,728 | 1,703 | |
| Investor funds advanced for operations | 109,020 | 71,177 | 50,743 | |
| Customer deposits | (6,409) | (6,409) | (6,409) | |
| Miscellaneous deferred debits and credits | 5,350 | 5,460 | 5,327 | |
| Bond reacquisition premiums | 18,723 | 18,941 | 18,662 | * |
| Total working capital allowance | $274,772 | $220,229 | $180,460 | * |
| Difference | | $(54,543) | $(94,312) | |

* Note: In preparing the Attorney General's per book cost of service study, Mr. Drzemiecki included per book bond reacquisition premiums with accumulated deferred income taxes and reserves. In this Order, the Commission has reclassified $4,070,000 from accumulated deferred income taxes and reserves to bond reacquisition premiums in order to provide a clearer comparison between the parties. Total rate base has not been changed.

The Company proposes a total working capital allowance of $274,772,000; the Public Staff proposes $220,229,000; and the Attorney General proposes $180,460,000. The appropriate level of working capital for coal and fuel oil inventory has been established in finding of fact number 10.

In addition to the fuel inventory differences, the basic areas of disagreement between the Company, the Public Staff, and the Attorney General relate to nonfuel materials and supplies and investor funds advanced for operations. The specific areas of disagreement and the amounts included are set forth below:

Working Capital Allowance
(000's)

| | Company | Public Staff | Attorney General |
|---|---|---|---|
| Total proposed working capital allowance | $274,772 | $220,229 | $180,460 |
| Difference | | $(54,543) | $(94,312) |

Analysis of Differences

| | Public Staff | Attorney General |
|---|---|---|
| 1. Fuel Inventory | $(19,925) | $(35,545) |
| 2. Difference in allocation factors | 6,800 | (407) |
| 3. Reduction of materials and supplies by accounts payable related to construction | (2,917) | -- |
| 4. Adjustments to investor funds advanced for operations: | | |
| a. Assignment of revenue lag to ITC | (1,621) | (1,621) |
| b. Assignment of revenue lag to abandonment loss amortization | (3,343) | (3,293) |
| c. Assignment of lag to banked vacation, incentive benefit program, and employee stock purchase plan | (2,027) | -- |
| d. Assignment of lag to interest and preferred dividends | (32,017) | (33,385) |
| e. Assignment of lag to common stock dividends | -- | (20,061) |
| f. Reclassification of nuclear fuel expense | 355 | -- |
| g. Adjustment to income tax expense for error correction on contra AFUDC | 152 | -- |
| Total difference | $(54,543) | $(94,312) |

The Public Staff's proposals to change cost allocation methodologies and to disallow the costs associated with the 1982 NCMPA amendments as presented by Stipulation of the parties impact the working capital allowance. The Commission has again rejected the Public Staff's position on the 1982 NCMPA amendments elsewhere in this Order and has also rejected the Public Staff's recommended use of a different cost allocation methodology. Therefore, the Public Staff's related adjustments to working capital based on different allocation factors must be rejected.

The Attorney General has filed a jurisdictional cost of service study based on the Attorney General's position that Catawba Unit 2 should be excluded from cost of service. This jurisdictional study changes allocation factors which affect working capital. The Commission has rejected the Attorney General's position with respect to the inclusion of the costs associated with

Catawba Unit 2 in cost of service and must therefore reject the changed allocation factors and not reflect their input in any adjustments to working capital.

The Public Staff proposes a reduction in the working capital allowance of $2,917,000 related to materials and supplies inventory. Public Staff witness Rankin testified that the Company included in rate base the cost of its inventory of nonfuel materials and supplies as of December 31, 1985, and that this inventory includes items which are used at the construction projects and in day-to-day operations. Witness Rankin states that inclusion of the entire inventory in rate base treats the total amount as if it were financed by capital supplied entirely by investors, but that a portion of the cost is in the form of accounts payable and accordingly is not financed by investors. Witness Rankin proposes that these accounts payable be removed from rate base to assure that, ratepayers do not pay a return on supplies financed by noninvestors.

Witness Stimart testified that this adjustment is improper, since the underlying basis for the adjustment is the assumption that this inventory is financed on an ongoing basis by accounts payable. Further, witness Stimart asserted that this adjustment is arbitrary since there is no direct identification in the Company's records of the dollar portion of accounts payable that is being excluded.

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. 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.

To the extent that these payables exist, they are a source of cost-free capital to the Company. Cost-free capital in the form of accounts payable should be deducted from rate base in order to relieve ratepayers from the unfair burden of paying a return on capital which the creditors have supplied to the Company at no cost to the investors. The Commission concludes that accounts payable related to construction materials and supplies should be treated in a like manner, as they have been treated by the Commission in previous Duke Power general rate cases (Docket Nos. E-7, Subs 289, 314, 338, and 391).

The Company, the Public Staff, and the Attorney General are in agreement as to the appropriate level of required bank balances, customer deposits, miscellaneous deferred debits and credits, and bond reacquisition premiums with the exception of the appropriate allocation factors to be used. The appropriate allocation factors to be used have been determined previously in this Order. Therefore, the Commission concludes that the Company's figures for required bank balances, customer deposits, miscellaneous deferred debits and credits and bond reacquisition premiums are appropriate for use in this proceeding.

The remaining areas of disagreement among the parties involve the proper level of investor funds advanced for operations. The Public Staff and Attorney

General assign a revenue lag to investment tax credits (ITC), which would reduce the allowance for working capital by $1,621,000. The Public Staff took the same position in the last case and has appealed the Commission's decision not to seek rulings related to this treatment from the Internal Revenue Service. The Public Staff has preserved its legal position in this case.

Duke witness Stimart testified in this case, as he did in Docket No. E-7, Sub 391, that these proposed adjustments violate IRS regulations which require that ITC be treated the same as common equity for rate base purposes.

The testimony of Public Staff witness Carter and his 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, were introduced in the last case and are also in evidence in this case. (See Stipulation of Parties)

Attorney General witness Wilson testified that there is no cash working capital requirement related to investment tax credits but that Duke's methodology of assigning zero lag days to investment tax credit expense improperly produces a cash working capital allowance. Dr. Wilson further testified that no provision of the tax code requires that an investment tax credit related addition be made to rate base nor, specifically, is there any legal requirement that zero lag days be assigned to investment tax credits in a lead-lag study. Therefore, the calculation of rate base should, pursuant to the tax code, avoid any rate base reduction for investment tax credits, while at the same time not making any additions to rate base for nonexistent working capital requirements. In short, Dr. Wilson contended that investment tax credits should have a zero effect on 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 §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 also some support in the IRS 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 common equity is treated. This, at best, poses a 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 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 its ratepayers.

The Public Staff and Attorney General propose adjustments to working capital related to amortization of four abandoned projects; i.e., the Cherokee and Perkins Nuclear Stations, Western Fuel, and Peter White coal mine. Public Staff witness Rankin testified that she applied the revenue lag to the per books amortization amounts related to each of the four abandoned projects and applied the revenue lag to the per books deferred taxes related to each of the abandonments. Ms. Rankin testified that the Company's assignment of zero lead to the amortized amounts improperly allows the Company to earn a return on a portion of the abandonment losses, contrary to this Commission's Order in Docket No. E-7, Sub 358, by including working capital related to these losses in rate base. The adjustments proposed by the Public Staff and Attorney General would reduce working capital by $3,343,000 and $3,293,000, respectively.

Ms. Rankin also testified that the basis of her position is the Commission's policy, expressed by Order entered in Docket No. E-2, Sub 461, that no adjustment should be made which would have the effect of allowing a company to earn a return on the unamortized balance of such abandoned project investments. Ms. Rankin noted that her recommendation is consistent with the Commission's lead-lag treatment of this item in the most recent general rate case for Carolina Power & Light Company (Docket No. E-2, Sub 481), and in Duke's last general rate case (Docket No. E-7, Sub 391).

The Company takes the position that, although the Commission in Docket No. E-7, Sub 358, provided that no return should be allowed on the unamortized balance of abandonment losses, it provided that Duke could recover the actual amounts of the abandonment costs in rates as service was rendered.

The Commission does not dispute the fact that there may be working capital requirements associated with the amortization of abandoned projects; however, the issue to be decided is not whether such requirements exist, but whether or not ratepayers should be required to finance those requirements.

In Docket No. E-2, Sub 461, the Commission clearly stated its current policy related to returns on abandonment losses. In that Order, the Commission stated, in pertinent 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).

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 clear intent of the Commission in pursuing this policy is simply to allow the Company to recover its abandonment losses over a given number of years by including the annual amortization in rates, while disallowing any return on the unrecovered investment.

The next adjustment to working capital involves Banked Vacation, the Incentive Benefit Program, and Employee Stock Purchase Plan. Public Staff witness Rankin proposes to assign a 182.5-day lag to the costs of the Banked Vacation and Incentive Benefit Program since they are paid at the end of the year and a 15.21-day lag to the employee Stock Purchase Plan, which is paid monthly. This Public Staff adjustment reduces working capital by a total of $2,027,000.

Public Staff witness Rankin testified that the 182.5-day lag is appropriate for the first two items due to the fact that the Company accrues these expenses and recovers them from ratepayers throughout the year but only expends the funds so collected after the end of the year. Ms. Rankin's testimony indicates that the same situation is true of the Stock Purchase Savings Plan, except that the expenditure of funds occurs at the end of each month.

The Company takes the position that it should assign zero lag to these benefits since the Company is entitled to recover these costs as service is rendered.

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 ratepayers until the time they are actually disbursed. The Company is able to earn a return from investment of these ratepayer-supplied funds during that period, and 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 ratepayers for operations should flow to ratepayers, not to 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 182.5 lag days to Banked Vacation and Incentive Benefits and 15.21 lag days to the Stock Purchase Savings Plan 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 Rankin testified that she applied lags of 89.12 days and 45.63 days, respectively, which reduces the working capital allowance by $32,017,000. Public Staff witness Rankin testified that she made this change 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 ratepayers and the time that they are paid to the holders of debt and preferred stock. During this period, witness Rankin testified, the Company has the use of these funds, thus reducing the amount of working capital which otherwise would have to be obtained from other sources. Ms. Rankin further testified that the Company's position incorrectly asserts that these costs are paid at the same time that they are incurred. Dr. Wilson proposes a similar adjustment which would reduce the working capital allowance by $33,385,000.

Company witness Stimart testified that these items are assigned zero lead 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 lead 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 debt holders and preferred stockholders. Accordingly, the Commission concludes that the assignment of 89.12 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 lag to common stock dividends and to net income for common stockholders, which reduces working capital by $20,061,000. The Company's position on this adjustment is that the common stock dividend and net income should receive a zero lead. Witness Stimart testified that the investor is entitled to a return as service is provided. The investor can choose to reinvest these earnings in the Company at that time or have dividends paid out. It would be inappropriate to reduce rate base for the investor's return which is paid out in dividends quarterly since those funds represent capital invested in the business prior to the time the dividend is paid.

The Commission concludes, consistent with prior rulings, that zero lead days should be applied to common stock dividends since it is like any other investor-supplied capital and is entitled to a return. Therefore, the Attorney General's proposed adjustment is not appropriate and is hereby rejected.

The other two adjustments proposed by the Public Staff are identified as "reclassification of nuclear fuel expense" and "adjustment to income tax expense for error correction on contra AFUDC allocation." These adjustments involve refinements in the cost of service in the lead-lag study. The Commission concludes that the cost of service used in the lead lag study for setting rates in this proceeding should be adjusted for these items.

The Public Staff excluded from the Company's cost of service in the lead-lag study payments made for Three Mile Island. This item has been removed by the Company in determining the appropriate level of operating revenue deductions but was not removed from the lead-lag study. Consistent with the Commission's decision in Docket No. E-7, Sub 391, to exclude Three Mile Island payments from the Company's cost of service, the Commission concludes that the Public Staff adjustment is proper.

The Commission concludes that the appropriate level of investor funds advanced for operations to be included in working capital is $72,191,000.

In summary, the Commission finds the appropriate allowance for working capital for use in the proceeding is $218,204,000, as set forth in more detail in the chart below.

Working Capital Allowance
(000's)

| | |
|---|---|
| Materials and supplies inventory: | |
| Coal | $ 53,788 |
| Oil | 2,496 |
| Other | 70,357 |
| Subtotal materials & supplies | 126,641 |
| | |
| Required bank balances | 1,708 |
| Investor funds advanced for operations | 72,191 |
| Customer deposits | (6,409) |
| Miscellaneous deferred debits and credits | 5,350 |
| Bond reacquisition premiums | 18,723 |
| Total working capital allowance | $218,204 |

## EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 12

The evidence pertaining to Duke's reasonable original cost rate base was presented by Company witness Stimart, Public Staff witness Cox, and Attorney General witnesses Wilson and Drzemiecki. Witness Drzemiecki proposed adjustments to rate base consistent with the Attorney General's position that Catawba Unit 2 is excess capacity and should be excluded from rate base. The Commission has rejected this position and, therefore, rejects the related rate base adjustments. 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 | $5,485,735 | $5,534,824 | $5,252,384 |
| Accumulated depreciation and amortization | (1,808,979) | (1,835,674) | (1,795,498) |
| Construction work in progress | 0 | 0 | 0 |
| Allowance for working capital | 274,772 | 220,229 | 180,460 * |
| Accumulated deferred income taxes | (485,506) | (492,931) | (483,730)* |
| Operating reserves | (14,706) | (14,876) | (14,657)* |
| Total orig. cost rate base | $3,451,316 | $3,411,572 | $3,138,959 |
| Total difference | | $ (39,744) | $ (312,357) |

* Note: In preparing the Attorney General's per book cost of service study, witness Drzemiecki included per book bond reacquisition premiums with accumulated deferred income taxes and reserves. In this Order, the Commission has reclassified $4,070,000 from accumulated deferred income taxes and reserves to bond reacquisition premiums in order to provide a clearer comparison between the parties. Total rate base has not been changed.

The Company proposes a total original cost rate base of $3,451,316,000. The Public Staff proposes a reduction in original cost rate base of $39,744,000, and the Attorney General proposes a reduction of $312,357,000. The Commission now will discuss each component of rate base and the adjustments proposed by the parties.

### Electric Plant in Service

The Company proposes electric plant in service of $5,485,735,000. The Public Staff proposes to increase electric plant in service by $49,089,000, while the Attorney General proposes to reduce electric plant in service by $233,351,000. The chart below summarizes the differences between the Company, the Public Staff, and the Attorney General with respect to electric plant in service:

| | (000's)<br>Company | Public<br>Staff | Attorney<br>General |
|---|---|---|---|
| Electric Plant in Service | $5,485,735 | $5,534,824 | $5,252,384 |
| Difference | | $ 49,089 | $ (233,351) |

Analysis of Differences

| | | |
|---|---|---|
| 1. Difference in allocation factors | $ 70,597 | $ (17,087) |
| 2. Oconee radwaste Facility: | | |
| a. Disallowance of volume reduction system | (21,508) | |
| b. Disallowance of entire facility | | (80,949) |
| 3. Disallowance of Catawba Unit 2 | | (135,315) |
| Total Difference | $ 49,089 | $ (233,351) |

Item 1 reflects the amount related to the difference in allocation factors associated with the Public Staff's and Attorney General's cost-of-service studies. The Commission has rejected these proposed cost-of-service studies, and therefore rejects the related adjustments to electric plant in service.

Item 2 relates to the Company's proposal to include the Oconee radwaste facility in rate base. When the Company filed its application, the radwaste facility was scheduled to begin operation this fall. The Public Staff and Attorney General opposed including the facility in rate base, contending that it would not be used and useful by the close of hearings.

When the Public Staff filed its testimony, the projected in-service date of the Oconee radwaste facility was November 1, 1986. Public Staff witness Cox initially removed the entire investment for this facility from rate base because it was under construction and did not meet the criteria of being used and useful. At the hearing, the Company reduced the amount of investment to $135,000,000 on a total system basis because the in-service date of one of the transfer systems was delayed until 1987.

The radwaste facility was designed to provide Duke with the capability of radioactive waste disposal at Oconee and will provide the capability to reduce the physical volume of radioactive wastes produced at the plant. However, Duke is still in the process of testing some of the facility's systems and is awaiting the approval of the NRC before the incinerator and the volume reduction system become operational.

Company witness Lee testified that as of the hearing date approximately 80 percent of the Oconee radwaste facility was operational and that 20 percent of the plant associated with the volume reduction system and the incinerator required NRC licensing before it could become operational. However, Company witness Stimart stated that the requested amount of $135,000,000 includes the volume reduction system and the incinerator. Witness Stimart stated that the incinerator can be used for nonradioactive material, but he did not state whether Duke would in fact have a use for it to do that. Additionally, Mr. Stimart testified that the volume reduction system had been used only from the standpoint of testing. Witness Stimart testified that he was not aware of any other component of the Oconee radwaste facility that is not operational at the close of the hearing other than the incinerator and the solid waste reduction system. At the close of the hearing, the Company did not notify the Commission that it had received the requested license for the volume reduction system and incinerator. In its update, the Public Staff excluded from plant in service only an amount for the incinerator and the volume reduction system.

Based on the evidence presented, the volume reduction system which includes the incinerator was not operational for radioactive waste at the end of the hearing. Therefore, the Commission concludes that the portion of the Oconee radwaste facility associated with the volume reduction system and incinerator cannot be considered property used and useful in providing electric service pursuant to G.S. 62-133 and is not properly includable in plant in service in this case. The Commission finds that the Public Staff's adjustment to decrease plant in service by $21,508,000 to reflect the removal of a portion of the Oconee facility is appropriate.

Additionally, the Public Staff requested during the hearing that Duke provide the Public Staff with a copy of its NRC license to operate the incinerator when it is issued. Copies of reports submitted to the NRC concerning radwaste processing at Oconee were also requested. Company witness Stimart agreed to furnish these documents. Therefore, the Commission finds that the requested reports should be filed with the Commission when they become available.

In summary, based on the Commission's findings above, the Commission computes Duke's reasonable level of electric plant in service for use herein to be $5,464,227,000.

Accumulated Depreciation and Amortization

The Company proposes to reduce electric plant in service by $1,808,979,000 in accumulated depreciation and amortization. The Public Staff and Attorney General propose different amounts which are related to differences in allocation factors, the Attorney General's proposed exclusion of Catawba Unit 2, exclusions related to the Oconee radwaste facility and a reconciliation for updates made by the Company which were not reflected in the Attorney General's exhibits. The chart below summarizes the differences between the Company, the Public Staff, and the Attorney General with respect to accumulated depreciation:

| (000's) | Company | Public Staff | Attorney General |
|---|---|---|---|
| Accumulated depreciation and amortization | $(1,808,979) | $(1,835,674) | $(1,795,498) |
| Difference | | $ (26,695) | $ 13,481 |

Analysis of Differences

| | Public Staff | Attorney General |
|---|---|---|
| 1. Difference in allocation factors | $ (27,555) | $ 5,452 |
| 2. Disallowance of Catawba Unit 2 | | 5,084 |
| 3. Issues related to Oconee radwaste fac.: | | |
| a. Disallowance of volume reduction system | 860 | |
| b. Disallowance of entire facility | | 3,238 |
| 4. Adjustment made by Company and not addressed by Attorney General - Nuclear fuel disposal cost adjustment | | (293) |
| Total difference | $ (26,695) | $ 13,481 |

The Commission rejects the adjustments reflected in Items 1, 2, and 3b and accepts the adjustment in Item 3a for the reasons previously set forth elsewhere in this Order.

The only item not previously addressed in the discussion of Electric Plant in Service is Item 4. In the Finding of Fact No. 9 relating to fuel expense, the Commission concluded that the rates should be set using nuclear fuel disposal costs calculated on net nuclear generation, instead of gross nuclear generation. Accordingly, a corresponding adjustment to rate base is required to remove nuclear fuel disposal costs already accrued on the difference between gross and net nuclear generation, but not paid. This adjustment to rate base was initially proposed by the Public Staff and subsequently adopted by the Company. The Attorney General did not address this issue. The Commission concludes that this adjustment is appropriate.

Based on the foregoing, the Commission concludes that the appropriate level of accumulated depreciation and amortization for use in this proceeding is $1,808,119,000.

Accumulated Deferred Income Taxes

The Company proposes accumulated deferred income taxes of $485,506,000. The Public Staff proposes adjustments which would increase deferred income taxes by $7,425,000, and the Attorney General proposes adjustments which would decrease deferred income taxes by $1,776,000. The differences between the proposals of the Company, the Public Staff, and the Attorney General are set forth in the chart below:

| (000's) | Company | Public Staff | Attorney General |
|---|---|---|---|
| Accumulated Deferred Income Taxes | $(485,506) | $(492,931) | $(483,730) |
| Difference | | $ (7,425) | $ 1,776 |

Analysis of Differences

| | Public Staff | Attorney General |
|---|---|---|
| 1. Difference in allocation factors | $ (5,608) | $ 1,632 |
| 2. Deduction from rate base for deferred taxes beyond the test year - Catawba Unit 1 | (1,817) | - |
| 3. Adjustment made by Company and not picked up by Attorney General - nuclear fuel disposal cost | - | 144 |
| Total difference | $ (7,425) | $ 1,776 |

Items 1 and 3 are related to allocation factors and a reconciliation based on updates by the Company and must be rejected for the reasons stated previously.

Additionally, the Public Staff proposes to annualize the post-in-service date deferred income taxes related to Catawba Unit 1 investment (Item 2). This same issue was addressed in Duke's last two general rate cases, Docket Nos. E-7, Subs 373 and 391. In those cases, the Commission agreed with the Company that this adjustment was inappropriate. The related IRS regulations have not changed since those cases.

The Internal Revenue Code provides that tax normalization must be made in compliance with requirements contained in the Code; otherwise, the Company could be in jeopardy of losing benefits associated with accelerated depreciation. Therefore, if this adjustment is allowed, there is a risk of a loss of 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 over time of receiving the benefits of all deferred taxes.

The Commission agrees with the views and concerns expressed by the Company, and consistent with our ruling in Docket Nos. E-7, Subs 373 and 391, the Commission rejects this Public Staff adjustment.

The Commission concludes that these adjustments to deferred income taxes should not be accepted and that the appropriate amount of accumulated deferred income taxes is $485,506,000 as proposed by the Company.

Operating Reserves

The Company proposes operating reserves of $14,706,000. The Public Staff and Attorney General propose adjustments which would change operating reserves by $170,000 and ($49,000), respectively. The differences between the proposals of the Company, the Public Staff, and the Attorney General are summarized on the chart below:

(000's)

| | Company | Public Staff | Attorney General |
|---|---|---|---|
| Operating Reserves | $ (14,706) | $ (14,876) | $ (14,657) |
| Difference | | $ (170) | $ 49 |

Analysis of Differences

| | | |
|---|---|---|
| 1. Difference in allocation factors | $ (170) | $ 49 |
| Total difference | $ (170) | $ 49 |

Item 1 reflects the difference in allocation factors which has been rejected for the reasons previously stated. The Commission does not accept the positions of the Public Staff and Attorney General and therefore rejects the related adjustment to operating reserves.

The Commission concludes that the appropriate amount of operating reserves for use in this proceeding is $14,706,000.

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 $3,374,100,000, calculated as follows:

Original Cost Rate Base
(000's)

| | |
|---|---|
| Electric plant in service | $ 5,464,227 |
| Accumulated depreciation and amortization | (1,808,119) |
| Construction work in progress | 0 |
| Allowance for working capital | 218,204 |
| Accumulated deferred income taxes | (485,506) |
| Operating reserves | (14,706) |
| Total | $ 3,374,100 |

## EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 13

The evidence pertaining to the appropriate level of test year gross revenue was presented by Company witness Stimart, Public Staff witnesses Maness, Durham, and Cox, and Attorney General witnesses Drzemiecki and Wilson. The Company proposed test year revenue of $1,978,455,000. The Public Staff proposed to increase this amount by $5,395,000, and the Attorney General proposed a decrease of $12,094,000. The chart below summarizes the differences between the parties:

|  | (000's)<br>Company | Public<br>Staff | Attorney<br>General |
|---|---|---|---|
| Electric Operating Revenue | $1,978,455 | $1,983,850 | $1,966,361 |
| Difference |  | $ 5,395 | $ (12,094) |

Analysis of Differences

|  | Public Staff | Attorney General |
|---|---|---|
| 1. Differences in allocation factors | $ 324 | $ (14) |
| 2. Disallowance of Catawba Unit 2 |  |  |
| a. Disallowance of operating costs | - | (3,332) |
| b. Replacement with peaking capacity | - | (6,676) |
| c. Disallowance of PMPA gain | - | (2,110) |
| 3. Change in customer growth | 5,200 | 38 |
| 4. Reduction in return on common equity from 14.0% to 12.3% and change in capital structure | (129) | - |
| Total difference | $ 5,395 | $ (12,094) |

Items 1 and 2 relate to different allocation factors and disallowance of Catawba Unit 2. The Commission has rejected the positions of the Public Staff and Attorney General which give rise to these issues and therefore rejects the related accounting adjustments.

In item 3, 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 in its initial filing of $12,169,000 based on 186,598,828 additional kWh sales due to customer growth. Public Staff witness Durham recommended a revenue adjustment of $21,739,032 based on 336,268,996 additional kWh sales, and the Attorney General witness Drzemiecki recommended a revenue adjustment of $16,452,738, based on 253,307,190 additional kWh sales. In its updated filing, the Company amended its customer growth adjustment to show an increase in revenues of $16,539,309 based on 255,298,021 additional kWh sales. The Company, the Public Staff, and the Attorney General have developed a customer level which is used to adjust revenues to an annualized level and used regression analysis to predict the end-of-the-test period number of customers.

Witness Stimart testified that the results using regression analysis will be distorted by abnormalities in the number of monthly bills, which is the proxy used for the number of customers. For example, initial and final bills generated in one month may represent only one equivalent customer, one old customer for a portion of the month and a new customer on the same premises for the remainder of the month, even though two bills would be reported. If the customer moves from one location to another location on the Company's system, there might be three bills for the same customer, a normal bill and a final bill for the old location, and possibly an initial bill for the new location, depending on the billing cycle. The same kind of increase in the number of bills, but not customers, results when seasonal or second homes are opened or closed, when college students begin and end the academic year, and when bills are rerouted for meter reading purposes. Witness Stimart further testified that in November 1985, over 12,000 residential "reroute" bills were generated, which was approximately 3,000 higher than any other month during the year and approximately 9,000 higher than the average for the year.

In this case, the Public Staff has used a 48-month regression with the introduction of second and third degree polynominal equations. The Company's initial filing in this case was based on a linear regression using four years of billing data. The Public Staff's results were based on the same four years of data but were regressed mostly with polynomial equations. The Company's amended customer growth adjustment was based on a linear regression using three years of billing data.

The customer growth adjustment is an estimate since the actual number of additional customers cannot be determined. In Docket No. E-7, Sub 391, the Commission generally utilized a three-year linear regression. The same methodology employed by the Company in its amended filing was utilized in the Company's fuel proceeding in Docket No. E-7, Sub 410. The Commission has concluded that it is reasonable to continue to use the three-year linear regression and therefore approves the Company's amended filing of 255,298,021 additional kWh sales related to customer growth. Therefore, the appropriate level of test year MWH sales for use in this proceeding is 33,179,149, as proposed by the Company.

Item 4 is an adjustment to revenues that results from the Public Staff's recommended return on common equity of 12.3% and the Public Staff's proposed capital structure. The return on equity and capital structure approved by the Commission in this case must be used to calculate the appropriate level of operating fees to be received from the Catawba Purchasers under the Catawba contracts. Since the return on equity and capital structure approved herein is different from that proposed by either party, the Commission must use that return and capital structure to calculate the appropriate fees level. Therefore, the Commission concludes that the proper adjustment to the Company's end-of-period revenues for the effects of the change in return on equity and capital structure in the calculation of Catawba fees is $76,000.

Based on all the foregoing, the Commission concludes that the fair and reasonable end-of-period revenues to be used in setting rates in the proceeding is $1,978,379.

## EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 14

The evidence pertaining to the level of test year operating revenue deductions was presented by Company witness Stimart, Public Staff witnesses Cox, Lam, and Durham, and Attorney General witnesses Wilson and Drzemiecki. The Company proposed total operating revenue deductions of $1,707,808,000. The Public Staff's adjustments would lower revenue deductions to $1,652,734,000, and the Attorney General's adjustments would lower revenue deductions to $1,579,185,000. The differences between the Company, the Public Staff, and the Attorney General are summarized below:

Operating Revenue Deductions
(000's)

| | Company | Public Staff | Attorney General |
|---|---|---|---|
| O&M Expenses | | | |
| Fuel used in electric generation | $ 392,196 | $ 390,076 | $ 391,131 |
| Purchased power and net interchange | 281,182 | 200,465 | 157,162 |
| Wages, benefits, materials, etc. | 476,284 | 479,230 | 466,165 * |
| Depreciation and amortization | 263,464 | 238,324 | 177,217 |
| General taxes | 111,939 | 112,602 | 110,184 |
| Interest on customer deposits | 523 | 523 | 523 |
| Income taxes | 195,824 | 245,249 | 290,257 |
| Amortization of ITC | (13,604) | (13,735) | (13,454) |
| Total operating revenue deductions | $1,707,808 | $1,652,734 | $1,579,185 |

* Note: The Company and the Public Staff included the payroll taxes associated with the post test year wage update ($459,000) in "Wages, benefits, materials, etc." The Attorney General included the payroll taxes associated with the post test year wage update in "General taxes." For this comparison, the Attorney General's payroll tax expense figure associated with the post test year wage update has been moved from "General taxes" to "Wages, benefits, materials, etc." This reclassification causes no change in the Attorney General's proposed Electric Operating Income.

The Commission has considered the positions of each party on the various issues which impact operating revenue deductions. Many of the proposed adjustments relate to positions which have been considered and rejected by the Commission; for example, the Public Staff's presentation of its position on the Catawba Sale Agreements, the Attorney General's proposal to disallow Catawba Unit 2, and differences in allocation factors. Having rejected these proposals, the Commission must necessarily reject the related accounting adjustments to operating revenue deductions. In the discussion below analyzing the differences between the parties, the Commission will not repeat rulings with respect to these adjustments. The remaining differences not related to proposals already rejected will be discussed.

O&M Expenses

The three categories of O&M expenses are fuel, purchased power and net interchange, and other O&M expenses; i.e., wages, benefits, and materials. The Commission will discuss each area separately. The differences between the Company, the Public Staff and the Attorney General with respect to fuel used in electric generation are summarized below:

(000's)

| | Company | Public Staff | Attorney General |
|---|---|---|---|
| Fuel Used in Electric Generation | $392,196 | $390,076 | $391,131 |
| Difference | | $ (2,120) | $ (1,065) |

Analysis of Differences

| | | |
|---|---|---|
| 1. Allocation difference: line loss differential | | |
| a. Line loss differential as filed | $ (724) | -- |
| b. Line loss differential on NFDC | (208) | $ (208) |
| 2. Fuel price variances: | | |
| a. Coal | -- | (5,913) |
| b. RJR cogeneration | -- | (2,977) |
| 3. Generation variances: | | |
| a. Pumped hydro | (1,015) | -- |
| b. Nuclear capacity factors. | -- | (27,236) |
| c. Oil & Gas | (156) | -- |
| d. Proration | (174) | -- |
| 4. Catawba 2 Disallowance | -- | 34,104 |
| 5. NCMPA Disallowance | 3,830 | -- |
| 6. Line Loss Percentage difference | (723) | -- |
| 7. Customer Growth Difference | 1,599 | (322) |
| 8. Classification of Catawba Purchased NFDC as purchased power instead of fuel | (4,549) | -- |
| 9. Updating made by Company and not addressed by Attorney General | | |
| a. Nuclear price change | -- | 1,317 |
| b. Deletion of Amortization of Gas Pipeline | -- | 58 |
| c. Oil and Gas price change | -- | 112 |
| Total difference | $ (2,120) | $ (1,065) |

Each proposed adjustment to fuel is related to a position or contention that has been considered by the Commission and rejected. Having considered the positions and proposed adjustments of the parties, the Commission concludes that $391,267,000 is the appropriate level of fuel expense for use in this proceeding. Derivation of this amount has previously been discussed in conjunction with finding of fact number 9 and the evidence and conclusions set forth in support thereof.

The differences between the Company and the Public Staff and Attorney General with respect to purchased power expense are summarized below:

(000's)

| | Company | Public Staff | Attorney General |
|---|---|---|---|
| Purchased Power and Net Interchange | $281,182 | $200,465 | $ 157,162 |
| Difference | | $(80,717) | $(124,020) |

Analysis of Differences

| | | |
|---|---|---|
| 1. Allocation differences | $ 8,148 | $ (791) |
| 2. Reduction in required overall rate of return | | |
| a. Reduction in return on common equity from 14.0% to 12.3% | (15,930) | -- |
| b. Reduction in common equity component of capital structure from 46.49% to 45.0% | (578) | -- |
| 3. Levelization of purchased capacity O&M | (21,506) | -- |
| 4. Issues on appeal from last rate case (Excluding levelization of purchased capacity O&M and allocation difference due to proposed disallowance of NCMPA renegotiation) | (55,400) | -- |
| 5. Disallowance of Catawba Unit 2 | -- | (133,541) |
| 6. Adjustments made by Company and not addressed by Attorney General | | |
| a. Annualization of RJR contract | -- | (2,218) |
| b. Transfer of fuel component of purchased power to fuel expense | -- | 8,078 |
| c. Updating of Catawba Unit 1 purchased power costs | -- | 4,452 |
| 7. Difference due to Company's inclusion of NFDC with fuel | 4,549 | -- |
| Total difference | $(80,717) | $(124,020) |

Items 1, 4, and 5 are adjustments associated with positions of the parties which have not been accepted by the Commission, and Item 6 is a reconciliation adjustment. Item 2 reflects the difference related to the Public Staff's recommended return on common equity and proposed reduction of the common equity component of the Company's capital structure. The Public Staff's proposed return on equity and capital structure affects certain calculations in deriving purchased capacity and energy costs related to the buybacks under the Catawba contracts and also impact the levelized amount of these costs. Since the Commission has adopted both a return on equity and capital structure that were not used by any party in the purchased power calculations denoted herein, the Commission must determine the proper level of purchased power based on these items approved elsewhere in this Order.

In his Rebuttal Exhibit B, Company witness Stimart increased the amount paid to the Catawba Purchasers for purchased energy due to a change in the return on unamortized nuclear fuel investment included in the purchased energy rate. Mr. Stimart increased the rate of return by .09% to reflect the inclusion of a return on unamortized bond reacquisition premiums proposed by the Company for rate base inclusion in this proceeding. The Company presented no evidence to support this adjustment which was made for the first time in Mr. Stimart's rebuttal testimony. The Commission concludes that this increase of .09% to the purchased energy portion of the Catawba buybacks is not a known change and therefore should be rejected.

Item 3 reflects the Public Staff's proposal to include the operating and maintenance expenses component of the Catawba capacity buyback in the levelization of the purchased capacity costs.

Public Staff witness Maness testified that in addition to the levelization of reasonable purchased capacity capital costs recommended by the Company, he proposed a levelization of the reasonable demand O&M component of purchased capacity costs. Witness Maness testified that levelization of these costs would make it possible to avoid either or both of the following two events: (1) frequent proceedings to reduce the revenue requirement as the demand-related O&M costs decline over time due to the continuing decline in the amount of Catawba power bought back, and (2) the overcollection of these costs by the Company if no rate proceedings take place due to the above-mentioned decline.

Public Staff witness Maness testified that the levelization of demand O&M would not impair Duke because, through the return accrued on the costs deferred under levelization, the Company will be made whole for all of these costs. Witness Maness further testified that under his recommendation, the deferred costs would equal the difference between the costs actually incurred and the levelized amount recovered, so that the Company would recover all of the costs included in the levelization plan. Witness Maness also testified that the levels of actually incurred costs would be subject to Commission review as to their reasonableness, even though a levelization plan had been previously approved.

Company witness Stimart testified that although the Company has historically underestimated the demand O&M cost component of purchased capacity, the Company would not object to a levelization plan which would assure that the Company would not underrecover its costs. Witness Stimart stated that the Company's only concern is the increased magnitude of the deferred costs which would build up due to the additional levelization.

Based upon all of the evidence presented in this proceeding, the Commission concludes that the levelization of the demand O&M component of purchased capacity costs should be approved. Levelization will compensate for the known decreases in capacity purchases in the coming years due to the contractual reduction in the buybacks, and will protect ratepayers from overpaying while protecting the Company from undercollecting the costs being levelized. All of these benefits will be realized without the frequent rate proceedings which could otherwise be necessary in order to provide them.

The Commission therefore concludes that the Company's revenue requirement in this proceeding due to Catawba purchased capacity costs should be calculated by use of a levelization plan which includes the levelization of the demand O&M component, as well as the capital costs of Catawba purchased capacity, as approved in Duke's last general rate case. The levelization should extend over the life of the contracts with the Catawba Purchasers. The difference between the levelized cost and the Company's actual Catawba purchased capacity payments should be placed in a deferred account and should accrue carrying costs at the Company's existing AFUDC rates. Said carrying costs should be compounded at the end of each calendar year after the date of this Order.

Item 7 represents the Public Staff's inclusion of nuclear fuel disposal costs related to energy purchased under the Catawba agreements. This item is reflected in the Company's calculation of fuel expense. Therefore, this adjustment is not appropriate here.

Based on all the foregoing, the Commission concludes that the appropriate level of purchased power and net interchange for use in this proceeding is $254,270,000.

The difference between the Company, the Public Staff, and the Attorney General with respect to other O&M expenses (wages, benefits, and materials, etc.) is summarized below:

(000's)

| | Company | Public Staff | Attorney General |
|---|---|---|---|
| Wages, Benefits, Materials, Etc. | $476,284 | $479,230 | $466,165 |
| Difference | | $ 2,946 | $(10,119) |

Analysis of Differences

| | | |
|---|---|---|
| 1. Differences in allocation factors | $ 9,791 | $ (1,548) |
| 2. Disallowance of Catawba 2 | -- | 2,506 |
| 3. Disallowance of increase in NRC fees | -- | (3,862) |
| 4. Disallowance of residual post-test year inflation | (3,658) | (3,658) |
| 5. Disallowance of portion of officers' salaries | (73) | -- |
| 6. Disallowance of costs considered by Public Staff to be lobbying expense | (57) | -- |
| 7. Utilization of different method in calculating nonfuel O&M expense increases occurring in the test period other than for inflation and wage increases | (3,920) | (3,759) |
| 8. Increase in nonfuel O&M for weather normalization | 863 | -- |
| 9. Updating by Company not addressed by Attorney General: decrease in credit line fees | -- | 202 |
| Total difference | $ 2,946 | $(10,119) |

Items 1 and 2 are adjustments based on the parties' positions on cost allocation and disallowance of Catawba Unit 2, which have been rejected. The related adjustments to O&M expense must be rejected.

Item 3 reflects the Attorney General's initial proposed disallowance of an increase in licensing fees for nuclear units levied by the Nuclear Regulatory Commission (NRC). At the time witness Stimart initially testified, the NRC was considering a revision of its rules which would have increased the required existing licensing fees from about $500,000 to almost $7 million per year. Both the Public Staff and the Attorney General initially opposed inclusion of these increased fees in operating expenses in this case because the matter was still pending before the NRC. However, Company witness Stimart testified on rebuttal that the NRC had in fact adopted a new rule which increased the licensing fees beginning in October 1986. In its final filing, the Public Staff withdrew its objection to this item in view of the NRC's final adoption of the change in fees. By proposed Order, the Attorney General also revised his position. The Attorney General noted that on September 22, 1986, the NRC did indeed vote to promulgate user fees on nuclear power plant licensees in the amount of $950,000 per license, rather than the annual fee of approximately $1,000,000 proposed initially.

The NRC has adopted this revision of its rules. Specifically, the NRC has amended 10 CFR by adopting a new Part 171 entitled "Annual Fee for Power Reactor Operating Licenses." The new regulations set forth in 10 CFR Part 171 provide that each person licensed to operate a nuclear reactor shall be required to pay an annual fee for each such power reactor for which the person holds an operating license. The annual fee for each nuclear reactor licensed to operate as of October 1, 1986, is $950,000. The new annual fee will not alter the existing fee schedule under 10 CFR Part 170, which is a change from the 10 CFR Part 171 rule initially proposed by the NRC. This means that all fees currently collected under 10 CFR Part 170 will continue to be collected. See Federal Register, Vol. 51, No. 181, pp. 33224 - 33231. The evidence in this case indicates that existing NRC licensing fees paid by Duke during the test year amounted to $500,000. The Commission assumes that Duke will continue to be required to pay the existing licensing fees in the amount of $500,000 and that the licensing fee of $950,000 per nuclear reactor specified in 10 CFR Part 171 will be paid in addition to such existing fees. Therefore, an increase in the licensing fees for each of the Company's nuclear units is a known increase in the cost of service which should be reflected in rates. Accordingly, the Commission concludes that the level of NRC fees included by both the Company and the Public Staff, after correcting for allocation factor differences, is appropriate for adoption in this proceeding.

In their proposed Orders, the Public Staff and Attorney General stated that the increase in NRC fees is effective October 1986 but that such increase is subject to appeal in the courts. Since Duke will have to pay the increase in NRC fees, the Commission will allow such expense in the cost of service on a provisional rate basis subject to a refund to ratepayers in the event that the NRC fee increase is ultimately determined to be unconstitutional, illegal, or otherwise invalid. Absent this treatment, if Duke or any other utilities are successful in a legal challenge, Duke would receive a refund or credit from the NRC which the Commission could possibly not require the Company to pass on to its North Carolina retail ratepayers due to the prohibition against prospective ratemaking to refund expected past expense which did not materialize. See State ex rel. Utilities Commission v. Edmisten, 291 N.C. 451, 232 S.E. 2d 184 (1977).

Item 4 reflects the ,adjustment by the Public Staff and Attorney General to exclude the residual amount of the Company's attrition adjustment to reflect annual inflation. Witness Stimart identified known cost increases that the Company has experienced since the application was filed in his supplemental testimony. These cost increases were subtracted from the provision for attrition contained in the application, which left a residual amount of $3,658,000. Company witness Stimart testified that inclusion of this residual amount in the cost of service is necessary to provide for the impact of attrition occurring between the end of the test year and the time new rates go into effect.

Public Staff witness Cox recommended that the residual amount of $3,658,000 should be excluded from operating revenue deductions since there are no specific items of cost supporting the amount. The Commission concludes that the position of the Public Staff and Attorney General on this matter is appropriate and consistent with our decision in Docket No. E-7, Sub 391, the Company's last general rate case proceeding.

Item 5 relates to an adjustment made by the Public Staff in the amount of $73,000. In making this adjustment, the Public Staff excludes 13% of the test year officers' salaries charged by the Company to North Carolina retail ratepayers for the Company's Chief Executive Office, Chief Operating Officer, and three Executive Vice Presidents. Since deferred compensation for these officers is already charged "below-the-line," the net effect is that of charging 50% of such officers' total 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. Therefore, the Commission concludes that the Company's shareholders should bear 50% of the overall compensation of those officers whose functions are closely linked with meeting the demands of the common shareholders. This adjustment is consistent with the decision of the Commission in Docket No. E-7, Sub 391.

Item 6 concerns an adjustment of $57,000 to eliminate employee salary and other employee expenses related to John Hicks, a registered lobbyist who is also responsible for the Company's Governmental Affairs and Corporate Communications Department.

Consistent with the previous decision of the Commission in Docket No. E-7, Sub 391, regarding lobbying activities, the Commission concludes that the appropriate ratemaking amount for this item is $28,000. 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.

Item 7 reflects the difference between the proposed adjustments for cost increases, excluding inflation and wage and salary increases made by the Company, the Public Staff, and the Attorney General, using different methods. The Company calculated an expense growth factor using a simple average of the growth in kWh sales, employees and customers. This factor was applied to total O&M, excluding Catawba O&M, fuel, and purchased power. The Public Staff calculated an equivalent value by including the net change in employee salaries resulting from new hires and terminations and increasing other O&M costs for costs related to additional kWh sales and billings for their proposed customer growth adjustment.

Public Staff witness Cox recommended an adjustment for employee growth to reflect changes in wages and benefits due to growth in employees during the test year. This adjustment 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 $1,033,000.

Public Staff witness Durham explained that his customer growth expense adjustment consists of two parts: an adjustment to energy-related expenses and an adjustment to customer-related expenses. The energy-related expense factor used in the Public Staff's adjustment is .1588¢/kWh. Witness Durham's calculation utilizes the Company's energy-related expenses that are not included in the calculation of the fuel component, plus an allowance for administrative and general expenses.

The Public Staff also proposed an adjustment of $1,043,418 pertaining to customer-related expenses. Public Staff witness Durham calculated the expense of $4.465 per billing by utilizing the Company's cost for the operation and maintenance of meters, customer installations, and customer services. An allowance for administrative and general expenses is also included in the customer-related expense factor. This factor, when multiplied by the billing adjustment for customer growth of 233,675, results in a nonfuel expense adjustment of $1,043,418, as proposed by the Public Staff.

The nonfuel O&M expense adjustment offered by Attorney General witness Wilson differed only slightly from that recommended by the Public Staff. Both the Public Staff and the Attorney General utilized the methodology previously approved by the Commission.

The Commission has carefully considered the nonfuel O&M expense adjustments offered by the parties and concludes that the Public Staff's methodology is appropriate and consistent with the Commission decision in Docket No. E-7, Sub 391.

Item 8 is an adjustment to nonfuel O&M expenses proposed by the Public Staff for increases in kWh sales for the weather adjustment. The Company proposed and the Public Staff accepted an adjustment to revenue in order to normalize test year kWh sales for weather. Since the Commission has accepted the Public Staff's methodology for test year increases other than inflation and wage and salaries (Item 7), this adjustment is also found to be proper and consistent. Therefore, the Commission adopts the Public Staff's proposed adjustment to nonfuel O&M expense for weather normalization.

Item 9 relates to an adjustment to credit line fees proposed by the Public Staff in its original filing and accepted by the Company in its amended filing, but not addressed by the Attorney General. There being no evidence of record to the contrary, the Commission concludes that the adjustment to credit line fees made by both the Public Staff and the Company is appropriate.

The Commission concludes that the appropriate level of other O&M expense for use in this proceeding is $469,301,000.

## Depreciation and Amortization

The Company proposes depreciation and amortization expense of $263,464,000. The Public Staff and Attorney General would reduce this amount by $25,140,000 and $86,247,000, respectively. The differences between the Company, the Public Staff, and the Attorney General are summarized below:

(000's)

| | Company | Public Staff | Attorney General |
|---|---|---|---|
| Depreciation and Amortization | $263,464 | $238,324 | $177,217 |
| Difference | | $(25,140) | $(86,247) |

Analysis of Differences

| | Public Staff | Attorney General |
|---|---|---|
| 1. Differences in allocation factors | $ 2,776 | $ (455) |
| 2. Issues on appeal from Sub 391 | | |
| a. Catawba 1 deferred costs | (2,266) | -- |
| b. Catawba 2 deferred costs | (392) | -- |
| c. Abandonment losses | | (42,097) |
| d. NCMPA disallowance - impact on Catawba 2 deferred costs | (2,327) | -- |
| 3. Three-year Levelization of Catawba 2 deferred costs | (21,943) | -- |
| 4. Issues pertaining to Oconee radwaste facility | | |
| a. Disallowance of volume reduction system | (860) | -- |
| b. Disallowance of entire facility | -- | (3,238) |
| 5. Disallowance of Catawba Unit 2 | | |
| a. Disallowance of deferred costs | -- | (35,373) |
| b. Disallowance of operating costs | -- | (5,084) |
| 6. Difference in rate of return - impact on levelization of Catawba 2 deferred costs | (128) | -- |
| Total difference | $(25,140) | $(86,247) |

Items 1, 2, and 5 are adjustments relating to positions of the Public Staff and Attorney General which have previously been rejected by the Commission.

Item 2(c) involves an adjustment proposed by Attorney General witness Wilson to disallow and discontinue for ratemaking purposes the amortization which the Commission has previously allowed for the Company's Cherokee and Perkins Nuclear Stations. The Commission notes that this same issue was raised by the Attorney General in Docket No. E-7, Sub 391, Duke's last general rate case. In that case, the Commission rejected such adjustment and set forth the following statements in support of such ratemaking decision:

> "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."

The decision of the Commission regarding this matter in Docket No. E-7, Sub 391, is presently on appeal to the North Carolina Supreme Court. The Commission hereby reaffirms the decision to allow amortization of abandonment losses related to the Cherokee and Perkins Nuclear Stations in the cost of service and again rejects the adjustment proposed by the Attorney General for the same reasons quoted above.

Since the Commission has accepted the Public Staff's adjustment to remove a portion of the Oconee radwaste facility from electric plant-in-service, the Commission concludes that the related adjustment to depreciation of $860,000 is appropriate.

Since the Commission has adopted a return on equity and capital structure different from that proposed by the parties in computing Catawba 1 and Catawba 2 levelized deferred costs, the Commission must use these approved items in calculating the appropriate levelization amounts.

Item 3 pertains to the Public Staff's proposal to amortize Catawba Unit 2 deferred costs over three years. Catawba Unit 2 began commercial operation on August 19, 1986. By Order dated April 22, 1986, the Commission authorized the Company to defer the costs and fuel savings related to Catawba Unit 2 during the period between commercial operation and the date the Commission issues an Order in this docket, net of fuel savings from precommercial operation. The Order of the Commission entered on April 22, 1986, 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.

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 12 months.

Public Staff witness Maness recommended that the Company should be allowed to recover its reasonable level of deferred costs over a three-year period on a levelized basis, with a return calculated at the Public Staff's recommended overall net-of-tax rate of return. Witness Maness testified that a three-year amortization period is appropriate due to the fact that this is the last large generating plant which the Company plans to put on line for several years, that these costs are nonrecurring, and that his recommendation would mitigate the effects of rate shock upon North Carolina retail ratepayers. Witness Maness also noted that his recommendation is consistent with the Commission's treatment of Catawba Unit 1 deferred costs in Docket No. E-7, Sub 391.

The Commission concludes that the Company's Catawba Unit 2 deferred costs should be recovered on a levelized basis over a three-year period, with carrying charges calculated based upon the Commission-allowed net-of-tax rate of return. The Commission believes that this treatment will provide a fair and reasonable recovery for these large, nonrecurring costs related to the last large generating unit expected to be placed into service for several years by the Company.

Based on the foregoing, the Commission concludes that the appropriate level of depreciation and amortization expense for use in this proceeding is $240,437,000.

The Commission is concerned about Duke's provision for future decommissioning costs. In light of this concern, the Commission concludes that the Company should file in its next general rate case a detailed plan demonstrating the Company's projected decommissioning costs and recovery thereof.

General Taxes

The Company proposes $111,939,000 as the appropriate level of general taxes. The Public Staff proposes $112,602,000, and the Attorney General proposes $110,184,000. The differences between the Company, the Public Staff, and the Attorney General are summarized below:

| (000's) | Company | Public Staff | Attorney General |
|---|---|---|---|
| General Taxes | $111,939 | $112,602 | $110,184 |
| Difference | | $ 663 | $ (1,755) |

Analysis of Differences

| | | Public Staff | Attorney General |
|---|---|---|---|
| 1. Differences in allocation factors | | $ 726 | $ (201) |
| 2. Issues pertaining to Oconee radwaste facility | | | |
| a. Disallowance of volume reduction system | | (230) | -- |
| b. Disallowance of entire facility | | -- | (866) |
| 3. Disallowance of Catawba Unit 2 | | | |
| a. Disallowance of operating costs | | -- | (474) |
| b. Replacement with peaking capacity | | -- | (215) |
| 4. Change in customer growth | | 167 | 1 |
| Total difference | | $ 663 | $ (1,755) |

Each of these proposed adjustments relates to contentions which have been considered and rejected by the Commission, except for the Public Staff's proposed adjustment to the Oconee radwaste facility, which has been accepted elsewhere in this Order. Therefore, the Commission concludes that the appropriate level of general taxes for use in this proceeding is $111,709,000.

Public Staff witness Cox testified that Duke has adjusted its North Carolina property taxes based on the North Carolina Department of Revenue's position on the assessed value of the Company's North Carolina property. Witness Cox testified that the Company, however, has expensed on its books and remitted to the State an amount for property taxes based on the Company's proposed assessed value of its North Carolina property, an amount that is lower than the North Carolina Department of Revenue's assessed value. Ms. Cox recommended that Duke should be required to place the potential excess property taxes collected in a deferred account on which the balance with interest should be flowed back to ratepayers if the property tax issue is ultimately determined in Duke's favor. Witness Stimart testified that the Company would agree to refunding the excess property taxes. Therefore, the Commission finds that the Company should place the potential excess property taxes collected in a deferred account subject to refund if Duke wins the property tax assessment issue.

Income Taxes

The Company proposes income taxes of $195,824,000. The Public Staff proposes $245,249,000, and the Attorney General proposes $290,257,000.

The differences between the income tax expense supported by each of the parties generally relate to their different levels of taxable income resulting from their respective adjustments to end-of-period revenues, operating revenue deductions, and capital structure. In computing income tax expense to be used in determining the Company's fair and reasonable cost of service, the

Commission must use the end-of-period revenues, operating revenue deductions, and capital structure found to be proper elsewhere in this Order.

Another factor causing the income tax expense of the parties to differ is their respective treatment of the unamortized portion of the job development investment tax credit (JDITC).

The Attorney General and the Public Staff propose to consider the imputed interest related to the unamortized JDITC in the income tax calculation, while the Company excluded such consideration.

On May 26, 1986, the Internal Revenue Service modified its Regulation 1.46-6 to specifically allow interest synchronization in the calculation of income taxes for ratemaking purposes. The Company recommended that the Commission treat the accumulated deferred investment tax credits in the same manner as they had been treated by the Commission in the past.

The Commission concludes based on all the evidence presented, that it is appropriate to recognize interest synchronization in determining the proper level of cost of service. The treatment accorded by the Public Staff and Attorney General is allowed by the Code and Regulation 1.46-6 after the revision of May 26, 1986. This finding is consistent with the Commission's obligation to fix rates as low as constitutionally possible. The Commission has recently adopted this same ratemaking treatment in general rate cases decided for General Telephone Company of the South (Docket No. P-19, Sub 207) and North Carolina Natural Gas Corporation (Docket No. G-21, Sub 255).

Based on the foregoing, the Commission concludes that the appropriate level of income taxes as an operating revenue deduction for use in this proceeding is $221,369,000.

The federal income tax expense included in the cost of service in this case has been calculated based upon the Internal Revenue Code as it presently exists. The Commission takes judicial notice of the fact, however, that Congress has recently enacted the Tax Reform Act of 1986, a wide-ranging tax reform law which will, upon implementation, significantly reduce the federal tax rate of most, if not all, investor-owned public utilities (including Duke Power Company) engaged in providing public utility services in North Carolina. This reduced federal tax rate, when effectuated, will have an immediate and favorable impact on the cost of providing public utility services to consumers in North Carolina. President Reagan signed the Tax Reform Act of 1986 into law on October 22, 1986.

By Order dated October 23, 1986, the Commission initiated a generic investigation in Docket No. M-100, Sub 113, to examine and quantify the benefits to be derived by the regulated utilities arising from the Tax Reform Act of 1986. To this end, the Commission concludes that it is reasonable and appropriate to approve the federal income tax component allowed in the cost of service in this case on a provisional rate basis effective January 1, 1987. Therefore, Duke shall bill and collect the federal income tax expense component of the rates and charges approved in this proceeding on a provisional rate basis pending further investigation and disposition of this matter, with accompanying deferred accounting for the amount of reduced federal taxes. Specifically, effective January 1, 1987, Duke is hereby directed to place in a deferred account the difference between revenues billed under the rates approved in this proceeding, including provisional components thereof, and revenues that would have been billed had the Commission in determining the attendant cost of service in this case based the federal income tax component thereof on the Internal Revenue Code as amended by the Tax Reform Act of 1986, assuming all other parameters entering into the cost of service equation are held constant.

Amortization of ITC

The chart set forth below shows the level of amortization of ITC proposed by the Company and the Public Staff and Attorney General:

(000's)

| | Company | Public Staff | Attorney General |
|---|---|---|---|
| Amortization of Investment Tax Credit | $ (13,604) | $ (13,735) | $ (13,454) |
| Difference | | $ (131) | $ 150 |

Analysis of Differences

| | | |
|---|---|---|
| 1. Differences in allocation factors | $ (171) | -- |
| 2. Issues pertaining to Oconee radwaste facility | | |
| a. Disallowance of volume reduction system | 40 | -- |
| b. Elimination of entire facility | -- | $ 150 |
| Total difference | $ (131) | $ 150 |

Each of the proposed adjustments relates to a contention or position that has been considered and decided by the Commission. Therefore, consistent with these decisions elsewhere herein, the Commission concludes that the appropriate level of ITC amortization for use in this proceeding is $13,564,000.

Based on the entire record in this proceeding, the Commission concludes that the appropriate level of operating revenue deductions for use in this proceeding under present rates is $1,675,312,000, calculated as follows:

Operating Revenue Deductions
(000's)

| | |
|---|---|
| O&M Expenses | |
| Fuel used in electric generation | $ 391,267 |
| Purchased power and net interchange | 254,270 |
| Other O&M expenses | 469,301 |
| Depreciation and amortization | 240,437 |
| General Taxes | 111,709 |
| Interest on customer deposits | 523 |
| Income taxes | 221,369 |
| Amortization of ITC | (13,564) |
| Total Operating Revenue Deductions | $1,675,312 |

## EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 15

The evidence relating to this finding of fact is presented in the testimony and exhibits of Company witnesses Lee, Olson, and Stimart, Public Staff witness Sessoms, and Attorney General witness Wilson. The following chart summarizes the positions of the parties regarding the appropriate capital structure for use in this proceeding.

| | Duke | Public Staff | Attorney General |
|---|---|---|---|
| Long-term debt | 42.76% | 44.0% | 46.66% |
| Preferred stock | 10.75% | 11.0% | 11.17% |
| Common equity | 46.49% | 45.0% | 42.17% |
| Total | 100.00% | 100.00% | 100.00% |

In its application, the Company utilized its actual per book capital structure as of December 31, 1985, consisting of 46.18% common equity, 10.97% preferred stock, and 42.85% long-term debt. In his rebuttal testimony, witness Stimart recommended that the Commission use the Company's actual capital structure as of June 30, 1986, which consisted of 46.49% common equity, 10.75% preferred stock, and 42.76% long-term debt. On cross-examination, witness Stimart testified that as of July 31, 1986, the Company had a common equity ratio of 46.3%.

Both Mr. Stimart and Dr. Olson testified that it was appropriate to update the Company's capital structure as of the most recent date because the Company's capital structure continued to be reasonable. Dr. Olson testified that the Company's capital structure should be set so that the Company could maintain between 45% and 50% common equity. Dr. Olson further stated that this is particularly important now because the tax reform act will result in Duke's fixed charge coverage ratio being reduced, which will increase the risk of Duke's bondholders. Mr. Stimart testified that the updated common equity component was at the low end of the range recommended by Standard and Poor's financial criteria for AA companies. Mr. Lee also testified that Standard and Poor's (S&P) had recommended a minimum common equity ratio of at least 50% for AA rated utilities.

Dr. Wilson recommended a 42.17% common equity ratio, an 11.17% preferred stock ratio, and a 46.66% long-term debt ratio. Dr. Wilson adjusted Duke's capital structure by removing the equity as originally filed which is invested in Mill-Power Supply Company, Church Street Capital Corporation, Crescent Land and Timber, and Eastover Mining Company on the basis that these subsidiaries were nonutility and nonregulated enterprises. Dr. Wilson testified that the affiliated enterprises in which Duke has made an equity investment should, at a minimum, stand on their own feet. That is, they should produce an equity return for Duke, and Duke's electric utility ratepayers should not be forced to subsidize these enterprises by also including Duke's equity investments in them in the electric utility capital structure. Dr. Wilson also testified that from an end-result perspective, the adjusted capital structure resulting from his procedure was a reasonable one for an electric utility. On cross-examination, Dr. Wilson stated that the Company could be holding funds in Church Street Capital Corporation for its future electric utility needs and that similar funds may have been held directly by the Company at the time of the Company's last rate case. In his rebuttal testimony, witness Stimart stated that Church Street Capital Corporation was formed for the purpose of making intermediate term investments to maximize earnings capability pending use of the funds in the Company's utility operations. These were the same types of investments included in Duke's capital structure in Docket No. E-7, Sub 391. The only difference in this case is that the funds are being held by a subsidiary. The Commission agrees with Mr. Stimart and rejects Dr. Wilson's testimony on this point.

Public Staff witness Sessoms first examined the actual capital structure which was requested by the Company. Several considerations caused him to conclude that the actual capital structure of Duke was too conservative for ratemaking purposes. First, he compared the capital structure of Duke to the electric utility industry and also to the publicly traded and double-A rated electric utilities. These comparisons showed Duke's capital structure contained a higher percentage of common equity than the average, median, or composite common equity ratio of the industry and that the capital structure of Duke was conservative even in relation to the average capital structure of the double-A rated electrics which are publicly traded. Second, he considered the S&P published financial benchmarks for debt leverage and concluded that Duke could be leveraged further and still be within an acceptable level for a double-A rating. Third, he noted that Duke's own current Financial Forecast projected Duke's common equity ratio to become 50% in 1988. After these considerations, witness Sessoms concluded that Duke's capital structure was too conservative for ratemaking purposes.

Witness Sessoms recommended a hypothetical capital structure consisting of 45.0% common equity, 11.0% preferred stock, and 44.0% long-term debt. He stated that this capital structure was still conservative in relation to the industry and would allow the Company to be within the financial benchmarks for debt leverage (39%-46%) recommended by S&P for a double-A rating. Furthermore, he pointed out that adoption of this capital structure for ratemaking purposes would deter the Company from further increasing the equity component to even higher levels as forecasted. Considering the fact that his hypothetical capital structure was within the range recommended by witness Olson and considering the revenue requirements to ratepayers which would be caused by the excessively conservative capital structure requested by Duke, it was the opinion of Mr. Sessoms that his hypothetical capital structure would be fair to both the Company and its ratepayers.

Mr. Sessoms admitted on cross-examination and in his Exhibit GTS-2, however, that the common equity percentage maintained by the Company is virtually identical to the average common equity ratios of all AA electric utilities and also very near the average of the comparable companies which Mr. Sessoms observed in his analysis leading to his final recommended rate of return for the Company.

The Commission concludes that the Company's actual capital structure and common equity ratio as of July 31, 1986, are within the zone of reasonableness and are appropriate for use in this case. In this regard, the Commission takes judicial notice of the monthly financial statement filed with the Commission by Duke on September 8, 1986, which indicates that the Company's actual capital structure as of July 31, 1986, consisted of 46.3% common equity, 10.8% preferred stock, and 42.9% long-term debt. This capital structure is based upon the most recent data available at the time of the hearing in this case. The actual capital structure of the Company is the capital structure by which investors generally assess the financial risk of the Company. The Commission finds that no party has presented any compelling evidence which would show that Duke's capital structure is unreasonable at this time. All that has been alleged is that the Company's actual capital structure is too conservative. Although for ratemaking purposes the Commission is in fact concerned with the Company's ever-increasing common equity ratio, the Commission notes that the recommendations of both Mr. Sessoms and Dr. Wilson would reduce Duke's common equity ratio below that which was approved in Duke's last general rate case; i.e., 45.52%. The evidence in this case does not support such a reduction. Mr. Lee, Dr. Olson, and Mr. Stimart all testified that S&P is increasing rather than decreasing the requirements for AA utilities and Dr. Olson testified that the tax reform act will have the effect of reducing Duke's fixed charge coverage ratio. The evidence in this case supports an increase rather than a decrease in Duke's common equity ratio. Accordingly, the Commission finds and concludes that the reasonable and appropriate capital structure for Duke in this proceeding is the Company's actual capital structure as of July 31, 1986, as follows:

| | |
|---|---|
| Long-term debt | 42.9% |
| Preferred stock | 10.8% |
| Common equity | 46.3% |
| Total | 100.0% |

Nothwithstanding the fact that the Company's actual capital structure as of July 31, 1986, has been adopted for purposes of this case, the Commission is genuinely concerned, for ratemaking purposes, with the continuing upward trend in the common equity component of Duke's capital structure. For instance, Duke's Financial Forecast (March 1986) projects that the common equity component of the Company's capital structure will increase to 50% by 1988, with a reduction in the long-term debt ratio to 40%. The Commission believes that it is appropriate to place Duke on notice that the Company's actual capital structure will be closely scrutinized and examined for ratemaking purposes in future general rate cases. Such case-by-case analysis may ultimately cause the Commission to conclude that the Company's capital structure has in fact become too conservative and equity thick for ratemaking purposes, so that it would then be appropriate to base the Company's rates on a hypothetical capital structure. Therefore, Duke is hereby placed on notice that future increases in the Company's common equity ratio will be closely examined for ratemaking reasonableness and appropriateness on a case-by-case basis. The Company should not proceed on the assumption that our use of the actual capital structure in this case will serve as a precedent to ensure use of the actual capital structure for ratemaking purposes in future general rate cases.

## EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 16

The evidence for this finding of fact is contained in the direct testimony of Company witness Olson, Public Staff witness Sessoms, and Attorney General witness Wilson and in 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 8.27%.

Both the Company and the Public Staff used Duke's embedded long-term debt cost of 8.91%. Dr. Wilson used a cost of long-term debt of 8.87%. There was no explanation given by Dr. Wilson for his use of the 8.87% figure. Therefore, the Commission will utilize the embedded cost of long-term debt of 8.91% recommended by both Duke and the Public Staff.

In his prefiled testimony, Company witness Olson recommended a return on common equity of 14.5% to 15%. This testimony was filed on March 27, 1986. Dr. Olson updated his testimony at the time of hearing. He testified that due to changes in the capital markets occurring from the date he prefiled his testimony, he currently was recommending a rate of return for Duke of 13.5% to 14%. He testified that he had advised the Company to utilize the figure of 14% due to current economic conditions and the performance of the Company's management. Dr. Olson's approach for determining Duke's cost of common equity was based on the discounted cash flow (DCF) methodology for Duke and was checked using a risk premium study and a discounted cash flow study of comparable electric utilities. Dr. Olson's DCF methodology showed a dividend yield of 5.9% based on a dividend rate of $2.68 and an average of the high and low market prices of the Company's common stock since March 1, 1986. Dr. Olson also determined that investors expect a future growth rate of 6% to 6.5%. He stated that his estimate of the investors' expected growth rate had increased from the time of his prefiled testimony because Duke's stock price had risen substantially since the filing of his prefiled testimony while long-term interest rates had gone up, and he concluded that the only explanation for this is an increase in growth expectation. Dr. Olson's opinion was that growth expectations were enhanced because of the prospect of increased competition, a weakened dollar, falling short-term interest rates, and takeover speculation. This growth rate of 6.0% to 6.5% may, according to Dr. Olson, understate investor expectations. When the yield and investors' expected growth rate are combined, the result is an investor return requirement of 11.9% to 12.4% which Dr. Olson then factored upward to 12.9% to 13.4% to reflect appropriate financing costs and market conditions. Dr. Olson checked this determination with an interest premium study. His interest premium study showed that the average risk premium for bonds during the period 1974-79 was 4.75%. Dr. Olson stated that this premium was the most appropriate for use in this case because AA rated utilities are currently selling in the same interest range they sold in during the period 1974-79. Dr. Olson testified that studies have shown that when bond yields go down the premium required by an investor of common equity tends to increase. Therefore, recent bond premium studies based upon AA bond yields of 12.5%, as used by Dr. Olson in his prefiled testimony, are no longer appropriate. This risk premium study, when factored upward for market to book considerations, resulted in a return of 14.85%. Finally, Dr. Olson's updated DCF of comparable companies study showed an investor return requirement of 13.5% to 14%.

Dr. Olson testified that the reason it is necessary to make an adjustment for Duke's cost of capital to allow for financing costs in down markets is that a utility should be able to issue common stock with net proceeds of at least 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 when the utility is not financing would be unfair to existing shareholders and would make it more difficult for the utility to attract new capital on reasonable terms when the utility needed to issue common stock because investors at that time would anticipate that the regulators would again reduce the rate of return as soon as it perceived that the utility no longer needed to attract capital. This would cause shareholders to lose trust in the regulator which would cause investors to require a higher rate of return.

Witness Sessoms recommended that the allowed return for Duke on common equity be set at 12.3%. To determine the cost of common equity, he relied upon the results of a DCF study of Duke and the results of a group of companies which exhibit risk measures similar to those which Duke exhibits. The results of the DCF study for Duke indicated an investor return requirement of 11.5%-12.3%, based upon a dividend yield of 5.7%-6.1% and an expected growth rate of 5.8%-6.2%. The results of the DCF study of the comparable group indicated an investor return requirement of 12.0%-12.9%, based upon a dividend yield of 6.0%-6.4% and an expected growth rate of 6.0%-6.5%. From these ranges, witness Sessoms concluded that the investor return requirement for Duke common equity is 12.2%. Based on the known and actual financing costs attributable to the issuance of new common equity shares over the years 1976-1985, witness Sessoms calculated a weighted average selling expense factor of .1%. Adding the .1% factor to the investor return requirement of 12.2%, Mr. Sessoms' cost of equity recommendation equalled 12.3%.

Dr. Wilson recommended a rate of return for common equity for Duke of 11%. Dr. Wilson based his conclusion as to the fair rate of return on equity primarily on the DCF model, which employs a regression and correlation analysis of the historical growth rates of 79 electric utilities, including Duke, to derive his estimate of investor growth expectations. Dr. Wilson derived a current dividend yield of 6.5% based upon market prices over a six-month period and the current dividend rate. Using his correlation and regression analysis, he examined 30 historical growth rates in relation to the dividend yields of the 79 utilities (10 each in dividends, earnings, and book value) and concluded that the "single best growth rate" to use as a proxy for investor long-term dividend growth expectations is the eight-year growth in book value and that the best combination indicator is the eight-year growth in book value combined with the one-year dividend growth. He also examined the results of all 30 growth rates, weighted by their respective correlation coefficients. Based upon this data, he derived an expected investor growth rate of 3.5% to 5.0%.

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. Wilson in Docket No. E-7, Sub 391, and by Dr. Caroline Smith in Docket Nos. E-7, Sub 373 and Sub 358. Dr. Erickson testified that he had replicated Dr. Wilson's results using his own data for the 79 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 391, Sub 373, and Sub 358; that Dr. Wilson ignores a statistically significant risk variable produced by his model; that what Dr. Wilson calls E without differentiation is in fact two different numbers; that the statistical manipulations upon which Dr. Wilson bases his estimate of Duke's cost of equity capital are essentially equivalent to a random numbers generator; 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 capital. 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 the Company is of great importance and must be made with great care because whatever return is allowed will have an immediate impact on the Company, its stockholders, and its customers. In the final analysis, the determination of a fair rate of return must be made by this Commission, using its own impartial judgment and guided by the testimony of expert witnesses and other evidence of record. Whatever return is allowed must balance the interests of the ratepayers and investors and meet the test set forth in G.S. 62-133(b)(4):

> "...to enable the public utility by sound management to produce a fair return for its shareholders, considering changing economic conditions and other factors, as they then exist, to maintain its facilities and services in accordance with the reasonable requirements of its customers in the territory covered by its franchise, and to compete in the market for capital funds on terms which are reasonable and which are fair to its customers and to its existing investors."

The return allowed must not burden ratepayers any more than is necessary for the utility to continue to provide adequate service. The North Carolina Supreme Court has stated that the history of G.S. 62-133(b):

> "...supports the inference that the Legislature intended for the Commission to fix rates as low as may be reasonably consistent with the requirements of the Due Process Clause of the Fourteenth Amendment to the Constitution of the

United States ...." State ex rel. Utilities Commission v. Duke Power Co., 285 N.C. 377, 388, 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.

The Commission notes that each of the witnesses in this proceeding relied principally, if not exclusively, on the DCF methodology in deriving an estimate of Duke's cost of equity capital. Nevertheless, the foregoing discussion indicates considerable differences between the Company, the Public Staff, and the Attorney General in the results obtained concerning the cost of equity to Duke. The rates of return on common equity recommended by the parties range from a low of 11% recommended by Dr. Wilson to a high of 14% recommended by Dr. Olson. The DCF methodology looks to the past to determine market prices and to the future to estimate the growth in dividends. Yet the market prices of most stocks have fluctuated wildly in past months. The Dow Jones gained 38.38 points on September 4, 1986, and lost 86.61 points on September 11, 1986. Therefore, it is easy to understand that the market prices used in the DCF model can also vary widely. Likewise, any estimate of future dividend growth can be affected by a dismal or rosy view of the future. Low inflation and low interest rates are favorable factors while the sizeable federal budget deficit, the large balance of trade deficit and sluggish GNP growth are alarming. Economists differ widely in their analysis of which of these factors will most determine dividend growth.

It is generally agreed that the determination of the fair and reasonable rate of return is a matter of informed judgment and that the discounted cash flow method is no more than a guide or channel to aid such judgment. In the final analysis, the judgment must be made by the Commission. In State ex rel. Utilities Commission v. General Telephone Company of the Southeast, 281 N.C. 318, 370-71, 189 S.E.2d 705 (1972), the North Carolina Supreme Court said:

> "The apparent precision with which experts, both for the utility and the protestants, compute a fair return is somewhat illusory. The habitual bickering and theorizing of such witnesses over the relative merits of methods of computing cost of equity capital, such as the earnings-to-price ratio or the discounted cash flow, lends a false appearance of certainty to the ultimate decision which is for the Commission."

See also State ex rel. Utilities Commission v. Duke Power Company, 305 N.C. 1, 23, 287 S.E.2d 786 (1982) ("the determination of what constitutes a fair rate of return requires the exercise of subjective judgment by the Commission...").

The DCF derives the rate of return from investors' total required return, computed as the sum of the current dividend yield and investors' expected growth in dividends and other cash returns (e.g., capital gains) from the stock in the future. Stock market prices are therefore a key determinant of the DCF rate of return. The question is whether a precipitous rise in the market price (and accompanying drop in dividend yield) should prompt a corresponding decrease in the rate of return.

Stock market prices respond to a variety of stimuli, and the stock market has recently been more volatile and sensitive than usual. In recent months, utility stock price movements have tended to be particularly volatile. From a low of $38 per share in February 1986, Duke's stock moved to a high of $52 per share in August 1986, an increase of more than 37%. It is obvious that a change of this magnitude does not mirror a corresponding change in the cost of capital, especially when long-term bond yields in the same period changed very little, if at all. The yield on recently issued long-term AA electric utility bonds on February 28, 1986, when Duke filed this rate case, was 9.35%, and at the close of the hearings on September 24, 1986, it was 9.35%. (The Wall Street Journal, March 3, 1986, p. 26; September 25, 1986, p. 49). When the mechanical application of arithmetic models produces results which do not comport with experience and common sense, the judgment of the Commission becomes paramount. The record contains substantial evidence to aid the Commission in this regard. It appears that the precipitous price rise in Duke's (and other utilities') stock in the spring and summer of 1986 may have resulted, at least in part, from takeover speculation. As Dr. Olson testified, there was a "fever that's out there in the market as far as mergers and acquisitions and the discussions about electric utilities being candidates...." Mr. Sessoms confirmed this interest in mergers and acquisitions on cross-examination. In fact, Sessoms Cross-Examination Exhibit 5 (an article from The Wall Street Journal) specifically identifies Duke as one of the candidates of takeover speculation. Mr. Sessoms concurred that a person buying Duke stock in anticipation of a possible takeover bid would expect a capital gains element of growth in addition to growth in dividends.

In this regard it is interesting to consider the price movements in Duke's stock since the high of $52 in August. On September 12, the price was down to $43; and on September 24, when the hearings in this case closed, it was at $45 5/8. A strict adherence to the mathemetical application of the DCF could be interpreted to suggest that the cost of capital has begun to increase. Market prices are only one of many factors which should bear on the Commission's final judgment as to the fair rate of return.

The Commission finds that the reasonable rate of return for Duke to be allowed on its common equity is 13.4%. Combining this with the appropriate capital structure and cost of debt heretofore determined yields an overall just and reasonable rate of return of 10.92% to be applied to the Company's original cost rate base. Such a rate of return will enable Duke by sound management to produce a fair return for its stockholders, to maintain facilities and services in accordance with the reasonable requirements of its customers, and to compete in the market for capital funds on terms which are reasonable and fair to the Company's customers and existing investors.

The authorized rate of return on common equity of 13.4% 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 September 1985, when Duke was allowed a rate of return on common equity of 14.9%. Furthermore, current interest rates are stable and Duke's stock has generally traded above book value for at least the last 18 months. The cost of financing is clearly lower than it has been in several years. The Company is a financially healthy utility with a AA bond rating. The 13.4% 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 2 and the Company's associated purchased power expenses (including levelization) in the cost of service. The Commission further notes that Duke's current power plant construction program is essentially finished and that the Company presently has approximately $400 million of cash invested in short-term investments. Duke's level of risk has also been lessened by the Commission's recent adoption in Docket No. E-100, Sub 47, and application in Docket No. E-7, Sub 410, of an experience modification factor (EMF) or true-up type mechanism in fuel adjustment proceedings which will henceforth allow the Company to collect 100% of its actual reasonable and prudently incurred fuel costs. The Commission also recognizes that the levelization adjustments approved in this proceeding related to the Catawba Nuclear Station will require the Company to defer collection of significant revenues. These factors certainly affect the reasonable rate of return which the Company should be allowed in this proceeding. The rate of return on common equity allowed by the Commission also includes an adjustment to allow for reasonable stock or issuance financing costs for the reasons generally stated by witnesses Olson and Sessoms in this case.

Furthermore, and in support of a rate of return higher than those recommended by the Public Staff and the Attorney General, Erickson Exhibit 14 shows that in five decisions rendered by other state utility commissions in electric utility rate cases throughout the nation between May and July of 1986, the allowed rates of return on common equity ranged between 14.25% and 14.75%, and averaged 14.47%. The Commission recognizes that Duke 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 return on common equity of 13.4% allowed in this case is 1.5 percentage points less than the 14.9% rate of return Duke was allowed in its last general rate case. This reduction of 10% in the Company's allowed rate of return reflects consideration of the risk factors discussed above. However, as a matter of general regulatory policy, the Commission has always attempted to avoid extreme adjustments to the allowed return on equity, either up or down, from the utility's preceding case. The reduction of 150 basis points in this case comes close to being an extreme reduction.

The equity return allowed in this case is also .6 of a percentage point less than the return requested by Duke and significantly reduces the Company's requested rate increase by more than $26 million. The passage of the Tax Reform Act of 1986 may bring about increased risks to corporations in general and public utilities in particular. The loss of the Investment Tax Credit will negatively impact any company with plant under construction. Any lowered corporate tax benefits will likely be flowed through to ratepayers and would not benefit utility stock. Uncertainty breeds investor timidity in the stock market and substantial financial uncertainty is expressed every day by economists in newspapers and financial journals as well as television.

The Commission believes that the rate of return on common equity of 14.0% requested by the Company is excessive, while the rates of return on common equity of 12.3% and 11.0% recommended by the Public Staff and the Attorney General, respectively, are too conservative and stringent and would severely handicap the Company in continuing to provide adequate and reasonably priced electric service to its customers. Therefore, it is the judgment of the Commission, after weighing the conflicting testimony offered by the expert witnesses, that the reasonable and appropriate rate of return on common equity for Duke is 13.4%. It is well settled law in this State that it is for the administrative body, in an adjudicatory proceeding, to determine the weight and sufficiency of the evidence and the credibility of the witnesses, to draw inferences from the facts, and to appraise conflicting evidence. Commissioner of Insurance v. Rate Bureau, 300 N.C. 381, 269 S.E. 2d 547 (1980). State ex rel. Utilities Commission v. Duke Power Company, 305 N.C. 1, 287 S.E. 2d 786 (1982). The Commission has followed these principles in good faith in exercising its expert judgment in determining the fair and reasonable rate of return in this proceeding. The determination of the appropriate rate of return is not a mechanical process and can only be made after a study of the evidence based upon careful consideration of a number of different methodologies weighed and tempered by the Commission's impartial judgment.

The Commission cannot guarantee that Duke will, in fact, achieve the levels of return on rate base and common equity herein found to be just and reasonable. Indeed, the Commission would not guarantee the authorized rates of return even if it could. Such a guarantee would remove necessary incentives for the Company to achieve the utmost in operational and managerial efficiencies. The Commission believes, and thus concludes, that the rates of return approved in this docket will afford the Company a reasonable opportunity to earn a fair and reasonable return for its stockholders while providing adequate and economical service to ratepayers.

## EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 17

The Commission has previously discussed its findings of fact and conclusions regarding the fair rates of return on rate base and common equity 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 I
DUKE POWER COMPANY
North Carolina Retail Operations
Docket No. E-7, Sub 408
Statement of Operating Income
Twelve Months Ended December 31, 1985

(000's)

| Item | Present Rates | Increase Approved | After Approved Increase |
|---|---|---|---|
| Operating Revenue | | | |
| Net operating revenue | $1,978,379 | $133,080 | $2,111,459 |
| Operating revenue deductions | | | |
| Fuel used in electric generation | 391,267 | | 391,267 |
| Purchased power and net interchange | 254,270 | | 254,270 |
| Other operating and maintenance | 469,301 | | 469,301 |
| Depreciation and amortization | 240,437 | | 240,437 |
| Taxes other than income | 111,709 | 4,285 | 115,994 |
| Interest on customer deposits | 523 | | 523 |
| Income taxes | 221,369 | 63,419 | 284,788 |
| Investment tax credit amortization | (13,564) | | (13,564) |
| Total operating revenue deductions | $1,675,312 | $ 67,704 | $1,743,016 |
| Net Operating Income for Return | $ 303,067 | $ 65,376 | $ 368,443 |

## SCHEDULE II
## DUKE POWER COMPANY
North Carolina Retail Operations
Docket No. E-7, Sub 408
Schedule of Rate Base and Rate of Return
Twelve Months Ended December 31, 1985

(000's)

| Item | Approved Rates |
|---|---|
| Investment in electric plant | $ 5,464,227 |
| Less: Accumulated depreciation | (1,808,119) |
| Accumulated deferred income taxes | (485,506) |
| Operating reserves | (14,706) |
| Net investment in electric plant | $ 3,155,896 |
| Allowance for working capital | 218,204 |
| Net original cost rate base | $ 3,374,100 |
| Rate of Return: | |
| Present | 8.98% |
| Approved | 10.92% |

## SCHEDULE III
## DUKE POWER COMPANY
North Carolina Retail Operations
Docket No. E-7, Sub 408
Statement of Capitalization and Related Costs
Twelve Months Ended December 31, 1985

(000's)

| | Ratio % | Original Cost Rate Base | Embedded Cost % | Net Operating Income |
|---|---|---|---|---|
| | Present Rates | | | |
| Long-term debt | 42.90 | $1,447,489 | 8.91 | $128,971 |
| Preferred stock | 10.80 | 364,403 | 8.27 | 30,136 |
| Common equity | 46.30 | 1,562,208 | 9.22 | 143,960 |
| Total | 100.00 | $3,374,100 | | $303,067 |
| | Approved Rates | | | |
| Long-term debt | 42.90 | $1,447,489 | 8.91 | $128,971 |
| Preferred stock | 10.80 | 364,403 | 8.27 | 30,136 |
| Common equity | 46.30 | 1,562,208 | 13.40 | 209,336 |
| Total | 100.00 | $3,374,100 | | $368,443 |

## EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 18, 19, AND 20

Company witness Denton, Public Staff witness Turner, CUCA witness Phillips, and NCIEC witnesses Baron and Barber presented testimony and evidence regarding cost-of-service allocations and rate design. In addition, the following witnesses for CUCA and NCIEC presented testimony which included specific suggestions regarding rate design matters.

Charles Kovach, Plant Manager of the Eaton Corporation Transmission Plant, testified that Duke's rate structure should be revised in order to better reflect the true cost of serving each rate class; that Duke's proposed rate increase should not be allowed; and that Duke should be required to absorb higher costs from time to time just like any other industry.

Harry LeGette of Glen Raven Mills testified that electricity price increases to the textile industry have been considerably below increases in the consumer price index since 1967, but that electricity price increases to three of Glen Raven's plants have been considerably greater than increases in the consumer price index since 1981; that electricity prices to large users should reflect economies of scale; that industrial rates should not subsidize other rates; and that all customers should have the opportunity to go on time-of-day rates.

Jack Poteet, Plant Manager of the Morganton, North Carolina, plant for Great Lakes Carbon Corporation, testified that his plant is Duke's largest single meter customer in North Carolina; that a rate increase of the magnitude proposed by Duke would be devastating to the plant; that industrial rates in North Carolina should be competitive with such rates in South Carolina and elsewhere; that rates in North Carolina should be equitable between rate classes; and that the proposed rate increase should be denied.

Russell E. Bowman, Jr., Engineering Manager for Home Curtain Corporation, testified that its electricity costs were increasing more than any other of its overhead cost components; that it does not have any major energy conservation moves which can help offset the increases; and that it would like for the Commission to ensure that the industrial rates reflect the true cost of service.

Jimmy Franklin Plyler, Corporate Energy Coordinator for Cannon Division of Fieldcrest Cannon, testified that Fieldcrest opposes the subsidization of residential customers by industrial customers; that it supports the proposed OPT rate although it doesn't feel it is truly cost based; that it opposes any revenue adjustment to account for customers shifting to time-of-day rates until the following rate case when the actual revenue undercollection would be known; that it opposes the 12-month demand ratchet; that it opposes pumped storage hydrogeneration because it is a costly means of peak generation; and that the price paid to cogenerators should be higher in order to encourage more cogeneration.

James Leonard, Manager of Economic Analysis for Burlington Industries, presented an overview of the state of the U. S. textile industry and urged that the problems of the textile industry be considered when setting electric rates.

Robert A. Vogler, Director of Utilities for R. J. Reynolds Tobacco Company, testified that it committed to build an 80 MW cogeneration plant in 1981 with the assistance and encouragement of Duke Power; that Reynolds based its decision on the assumption that the rates for power sold to Duke would increase at about the same pace as the rates for power purchased from Duke, which has been the case up to 1985; that after the new plant came on line in 1985, the rates for power sold to Duke no longer increased while the rates for power purchased from Duke continued to increase; and that Reynolds is now losing money on the cogeneration facility.

Jàck Entwistle, senior engineering associate at Celanese, testified that industrial rates should not subsidize other rate classes; that he supported the rate design testimony of Nicholas Phillips, Jr., in this proceeding; and that he supports the proposed OPT rate schedule.

James H. Butz, Manager of Electricity Supply and Regulatory Affairs for Air Products and Chemicals, testified that Duke should be required to reevaluate its policy on pricing interruptible power with a view toward making such power competitively priced with other suppliers; that a utility should not rely solely on mathematical formulas to calculate rates without regard to the impact of those rates on its customers; and that there is no exact formula to calculate the cost of interruptible service because such service is a by-product of firm service.

Class Rates of Return

All of the witnesses who testified concerning rate design and cost of service .allocations agreed that industrial customers are currently paying a greater than average rate of return and residential customers are currently paying less than the average rate of return. All of the witnesses agreed that some action should be taken by the Commission to move the industrial rate of return closer to the average rate of return. The parties disagreed, however, with respect to the manner and the extent to which such movement should be accomplished in this proceeding.

Company witness Denton recommended that the industrial class receive an increase of 13.99% and the residential and general service classes receive an increase of 15.94%, a difference of 1.95 percentage points. He contended that the lesser increase for the industrial class would have the effect of moving that class toward a "band of reasonableness" of plus or minus 10% of the average retail rate of return. Witness Denton also recommended that the revenue adjustment discussed elsewhere herein in connection with the adoption of time-of-day Schedule OPT be spread equally among all classes of customers. Since the revenue adjustment is largely attributable to undercollection of revenues from the industrial customers, it also would have the effect of further reducing the industrial customers' rate of return. Witness Denton testified that the revenue adjustment would reduce the industrial class rate of return to slightly within the "band of reasonableness."

NCIEC witness Baron supported Duke's proposal provided the Commission adopted Schedule OPT. NCIEC witness Barber testified that adoption of Duke's proposal would move the industrial average rate of return much closer to the band of reasonableness but not necessarily within the band of reasonableness depending upon the assumptions one made concerning the undercollection resulting from the introduction of rate schedule OPT.

Public Staff witness Turner supported Duke's proposed 1.95 percentage point difference between the industrial class increase and the residential class increase, but he recommended that residential rates be limited to an increase of 8.73% more than the overall percentage increase granted the Company if the Commission should reduce the overall increase requested by Duke. He recommended that the undercollection caused by the opening of rate Schedule OPT should not be distributed equally to all of the classes but should be distributed to each class in proportion to the undercollection caused by that class.

CUCA witness Phillips recommended that the industrial customers receive 50% of the overall average rate increase.

G.S. 62-140 prohibits rates which provide any "unreasonable preference or advantage of any person." The North Carolina Supreme Court has stated that the issue with respect to G.S. 62-140 "is not whether the differential is merely discriminatory or preferential; the question is whether the differential is an unreasonable or unjust discrimination." State ex rel. Utilities Commission v. Carolina Utilities Customers Association, 314 N.C. 171, 195 (1985). The Commission believes the evidence in this case supports a movement toward equal rates of return. It would be inappropriate, however, to equalize the class rates of return in just this one case. To do so would subject residential customers to much greater rate trauma than normal. The Commission also recognizes that the cost studies available in this case relate only to a brief historical period. Customer demand and energy usage characteristics vary from time to time, and they must be evaluated over an extended period of time in order to determine normal variations in rates of return. Therefore it is unrealistic to expect to design rates which will produce exactly equal rates of return over time.

The Commission believes that adoption of Duke's proposed rate design will not result in an unreasonable discrimination to any customers. It makes substantial movement toward equalizing class rates of return and, at the same time, avoids substantial rate shock and trauma to the residential class. Therefore, the Commission finds Duke's proposal both reasonable and appropriate.

Outdoor Lighting Schedules

Company witness Denton proposed in his prefiled testimony that the outdoor lighting rate schedules receive no increase in this proceeding because of the higher than average rate of return of the outdoor lighting class under present rates. At the hearing, witness Denton recommended that outdoor lighting rate Schedules T and T2 receive a 5% decrease, which would still result in rates of return for the outdoor lighting class that are higher than for any other rate class. The proposal for no increase to the outdoor lighting class was supported by Public Staff witness Turner. Neither of the proposals was opposed by any other party.

The Commission makes the observation that the outdoor lighting class represents a minor class of service and that significant rate increases are being applied to other rate schedules in this proceeding. The Commission concludes that a zero percent increase for each of the outdoor lighting rate schedules would be most appropriate for purposes of this proceeding.

## Schedule OPT

The Company has proposed to introduce a new time-of-day rate schedule OPT for nonresidential customers. The schedule provides for large power, medium power, and small power service under a single rate schedule and is structured as a Hopkinson type rate design.

Public Staff witness Turner and NCIEC witness Baron supported the new Schedule OPT as proposed by Duke. CUCA witness Phillips supported the concept of Schedule OPT but recommended certain modifications to it. Witness Phillips proposed that only the energy charges in Schedule OPT should be reduced in order to accomplish any overall reduction in Schedule OPT revenues which might be required by the Commission. He based his determination of the energy charges which would be appropriate for Schedule OPT on the energy related costs produced by the summer CP allocation of generating costs in Duke's cost of service study.

Witness Phillips also proposed that existing customers who have current contracts regarding combined billing or other extra facilities should be allowed to switch to new Schedule OPT without having to update such contracts. He contends that customers should not be discouraged from seeking service under Schedule OPT by subjecting their current contract arrangements to review if they opt for Schedule OPT.

The Commission notes that a reduction in the proposed energy charges relative to the demand charges of Schedule OPT would result in even more customers switching to the schedule accompanied by even more revenue undercollection than has been discussed herein. The Commission is not persuaded at this time to revise Schedule OPT from the form in which it has been proposed by the Company. The Commission is also not persuaded that it should address in this proceeding the matter of existing contract arrangements of customers who seek to switch to Schedule OPT. There is insufficient evidence in this case to do so considering the variety of details which could be involved, and customers can always petition for relief on a case-by-case basis if such contract arrangements should become a problem.

The Commission concludes that new Schedule OPT appears to be suitable and should be adopted as proposed by the Company.

## Schedules GT and IT

In connection with offering new time-of-day rate Schedule OPT, Duke proposed to close existing time-of-day rate Schedules GT and IT to any customers not already on said rates. Company witness Denton testified that Schedule OPT was more appropriate for TOD customers than Schedules GT or IT because Schedule OPT does not distinguish among customers on the basis of end use of electricity as do Schedules GT and IT.

Public Staff witness Turner also proposed that Schedules GT and IT be closed to new customers if new Schedule OPT is adopted. CUCA witness Phillips proposed that Schedules GT and IT remain open to new customers if new Schedule OPT is adopted pending sufficient experience with Schedule OPT.

The Commission notes that all of the time-of-day rate schedules, whether OPT or GT or IT, are voluntary, and that it has previously concluded that Schedule OPT is a suitable substitute for Schedules GT and IT. Therefore, the Commission concludes that Schedules GT and IT should be closed to additional customers as proposed by the Company.

Revenue Undercollection

Company witness Denton recommended that all rate schedules be increased to reflect a $42,167,000 revenue undercollection which the Company estimates will occur due to customers migrating primarily from non-TOD rates to TOD rates, particularly new rate Schedule OPT. The amount of the undercollection was estimated by making a comparison of customer bills under the proposed current rates and the proposed rate schedule OPT. The aggregate savings for all customers who would receive a savings was determined to be approximately $82,000,000 if all customers who can save by switching to the TOD rates do so immediately upon implementation of the new rates. However, recognizing that all customers who might receive a savings would not necessarily move to a new TOD rate schedule immediately, witness Denton proposed that only 50% of the estimated undercollection be included in this case.

NCIEC witness Baron recommended that the Commission adopt the Company's proposal.

Public Staff witness Turner proposed that the $42,167,000 revenue adjustment proposed by Duke be reduced by an additional 8% to compensate for the delay in meeting orders for rate Schedule OPT. His recommendation was based in part upon his conclusion that Duke's experienced undercollection in Docket No. E-7, Sub 391, was only 45% of the maximum possible undercollection.

Witness Turner also pointed out that the Commission allowed similar adjustments in the Company's last two rate cases. He testified that in Docket No. E-7, Sub 373, the Company proposed, and the Commission allowed, a total revenue adjustment of $2,321,000. Witness Turner stated that in Docket No. E-7, Sub 391, the Company's figures showed an actual revenue loss of $2,013,000, or 86% of the loss anticipated from the TOD rates established in Docket No. E-7, Sub 373. He further testified that in Docket No. E-7, Sub 391, the Company proposed a revenue adjustment due to TOD migration of $21,267,000 and the Commission allowed an adjustment of $15,300,000. Witness Turner testified that the Company's figures in this proceeding in Docket No. E-7, Sub 408, show an actual revenue loss of $9,600,000 from the TOD rates established in Docket No. E-7, Sub 391, or 45% of the amount originally sought by Duke.

CUCA witness Phillips proposed that the Commission take no action with respect to the proposed revenue adjustment in this case and that it defer any action until Duke's next rate case at which time the appropriate amount of any revenue undercollection would be known.

This Commission has consistently required that time-of-use rates be "revenue neutral," such that the total revenue requirement will remain the same if all customers are on time-of-use rates or if all customers are on conventional nontime-of-use rates. When time-of-use rates are voluntary, customers who use time-of-use rates will naturally be those who will pay less under the time-of-use rates than they would otherwise. Therefore, 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, this Commission approved Duke's request to increase its general service and industrial rate schedules by $1,500,000 due to increased time-of-use availability in order to recover the level of revenue approved by this Commission. That approval was one of the grounds for an appeal by CUCA of the Commission's final Order in Docket No. E-7, Sub 373. In its decision, the North Carolina Supreme Court upheld the Commission's ruling, holding:

> In order 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. State ex rel. Utilities Commission v. Carolina Utilities Customers Association, 314 N.C. 177, 200 (1985). (Emphasis added)

The principle involved in this case is identical. The Commission concludes that a rate design adjustment is required for the Company to actually collect the revenues approved herein. The Commission further concludes that the amount of revenue adjustment should be approximately 42% of the estimated maximum undercollection and that the estimated maximum undercollection should be reduced consistent with the overall rate increase adopted herein.

Witness Turner proposed that any revenue adjustment adopted herein should be recovered from each rate class in proportion to the amount each class contributes to the overall revenue undercollection. He presented exhibits showing that approximately $41 million of Duke's proposed $42 million revenue adjustment will be attributable to the industrial customers. The Company recommends that any revenue adjustment be spread equally across all rate classes. The NCIEC and CUCA witnesses supported Duke's proposal.

The Commission notes that spreading the revenue adjustment across all rate classes will result in rates of return for each rate class which are significantly closer together than before. In view of the large magnitude of the revenue adjustment, the Commission concludes that it should be spread across each rate class in equal amounts per kWh of retail sales for purposes of this proceeding.

Witness Turner proposed that any revenue adjustment allowed herein be accumulated in a deferred account and that the amount of revenue accumulated in the deferred account should be reduced on an ongoing basis by verifiable revenue shortfalls. He also proposed that the Company should be required to file a proposed methodology for calculating actual revenue shortfalls as a basis for reducing the accumulated revenues in the deferred account subject to Commission approval and that the Company should be required to file a semiannual report with the Commission detailing all activity regarding the deferred account. The Company opposed the proposal.

The Commission is of the opinion that the proposal by witness Turner for a deferred account is reasonable and, further, that the suggestion by CUCA witness Phillips for a true-up of the revenue adjustment in the following rate case would be appropriate.

Impact of Rate Increase and Revenue Adjustment

In order to estimate the impact of the TOD revenue adjustment and the overall rate increase on each rate class, the Commission utilized the information regarding kWh sales, revenues, net income and rate base applicable to each rate class as contained in the cost allocation studies which are a part of the record in this proceeding. The table of figures below illustrates the Commission's rough estimate of such impact on each rate class.

| | NC Retail | Residential | General | Industrial | Lighting |
|---|---|---|---|---|---|
| TOD Adjustment: | | | | | |
| Amt. Deleted | ($32,953) | | | ($32,953) | |
| Percent | - | | | (5.7%) | |
| Amt. Added | $32,953 | $11,254 | $8,664 | $13,035 | |
| Percent | - | 1.5% | 1.5% | 2.2% | |
| Rate Increase: | | | | | |
| Amount | $133,080 | $57,547 | $43,880 | $31,653 | 0.0 |
| Percent | 6.7% | 7.4% | 7.4% | 5.5% | 0.0 |
| Total Increase: | | | | | |
| Amount | $133,080 | $68,801 | $52,544 | $11,735 | 0.0 |
| Percent | 6.7% | 8.9% | 8.9% | 2.0% | 0.0 |

The Commission recognizes that the information contained in the cost allocation studies in this proceeding will change somewhat as a result of the various adjustments to revenues, expenses, and rate base adopted herein and that the actual impact on each customer rate class will differ to a certain extent from the figures shown in the table above. Nevertheless, the Commission is of the opinion that the figures shown in the table above are a reasonable estimate on which to base a conclusion that the rate designs adopted herein will not result in unreasonable discrimination between the rate classes for purposes of this proceeding. The figures indicate that the rate designs approved in this proceeding are nondiscriminatory and will cause substantial movement toward equalized class rates of return in this proceeding.

Interruptible Rider IS

The Company proposes to modify the exposure hours of interruptible service Rider IS to coincide with the hours currently designated as on-peak hours under time-of-day rate Schedules GT, IT, and OPT. The Company also proposes to make Rider IS available to all customers served under time-of-day rate Schedules GT, IT, and OPT as well as to customers served under non-TOD rate Schedules G, GA, I, and IP in order to avoid excluding a significant segment of industrial and commercial customers from interruptible rates.

The Public Staff supports Rider IS as proposed by Duke for purposes of this proceeding and recommends that no adjustment be made in the interruptible credit in this case. CUCA witness Phillips also supported Rider IS as proposed by Duke, but recommended that it also be extended to Schedule PG customers as discussed elsewhere herein. He further recommended that Duke review the level of the interruptible credit in Rider IS as soon as possible.

NCIEC witness Baron supported the Company's proposal to open Rider IS to the time-of-day rate customers. However, he testified that his analysis indicated that the industrial interruptible credit in Rider IS should be at least $4.48/kW month instead of Duke's proposed $2.05/kW month for 600 hours of annual interruption; that although Duke proposes a slight modification in the number of exposure hours, it seems to think the probability of interruption is so small through the early 1990's that an increase in the credit is not justified; that Duke uses 2258 exposure hours per year to develop its credit (i.e., 600/2258 times cost per kW of an I.C. turbine); and that the $4.48/kW month he recommends is based on the same method Duke uses in Docket No. E-100, Sub 53, for calculating avoided capacity costs in 1991. He also recommended that the number of exposure hours be limited to 150 hours per year.

Duke witness Denton testified that the interruptible credit in Rider IS is only justified to the extent that the interruption of service actually avoids future capacity costs. During cross-examination, he testified that the actual interruption under Rider IS of approximately four hours over the past 2.5 years could not be contemplated to be an avoidance of new generating capacity.

Based upon the evidence in this case, the Commission concludes that Rider IS should be adopted as proposed by the Company. The Rider should be available to time-of-day customers as well as to non-TOD customers, and that the interruptible credit should not be increased in this proceeding.

CUCA Proposed Rider OPI

CUCA witness Phillips proposed a new rate schedule Rider OPI which he recommended be made available to customers served under time-of-day Schedules OPT, IT, and GT. Rider OPI would allow purchase of energy at reduced rates during off-peak hours with no explicit demand charge. He seems to base the level of energy charges in his Rider OPI on the average energy related production costs produced by the summer CP allocation method for the industrial class.

Duke witness Denton testified that Rider OPI would result in additional revenue undercollection which would have to be borne by the other ratepayers and that he did not believe the Company would experience enough additional sales under Rider OPI to offset the revenue undercollection. The Company also pointed out that no evidence was presented as to the revenue or sales impact of Rider OPI.

The Commission is of the opinion that Rider OPI as proposed by CUCA should be rejected for purposes of this proceeding for the reasons generally given by Duke witness Denton.

Rate Schedule PG

CUCA witness Phillips proposed a number of changes in rate Schedule PG. He proposed that the services offered under Schedule PG be "unbundled" in order to provide separate cost-justified rates for (1) supplementary, (2) back-up, and (3) maintenance service on both a firm and an interruptible basis. Duke witness Denton testified that the Company was currently studying whether such an "unbundling" of services was feasible.

Witness Phillips proposed that the "30 minute demand rule" under Schedule PG be eliminated and that proportional capacity credits be payable under the schedule even if the demand supplied by a qualifying facility (QF) was not continuous. Witness Denton testified that PG customers have four off-peak months to perform maintenance in order to ensure their continuous performance during on-peak months, that PG customers can also perform maintenance during the off-peak hours of on-peak months whenever needed, and that some firm rule such as the 30-minute rule is necessary to ensure that the capacity being purchased by Duke under Schedule PG is reliable capacity.

Witness Phillips also proposed that Interruptible Rider IS be made available to Schedule PG customers as well as to other industrial customers, that a higher demand credit should be established for rates applicable to purchase by Duke from a QF under Schedule PG, and that the rates for power purchased by Duke from a QF be increased by the same amount as rates for power sold by Duke to a QF under Schedule PG.

The Commission has carefully considered each of the proposals and makes the following observations. The rates contained on Schedule PG are a specific combination of rates. No QF can purchase power from Duke under Schedule PG and sell power to Duke under Schedule PP, which is the avoided cost rate schedule established by this Commission in biennial proceedings. No. QF can purchase power from Duke under retail rate Schedule I or G and sell power to Duke under Schedule PG. The rates for power purchased from Duke and the rates for power sold to Duke under Schedule PG are a "package deal" and must be analysed as such. The rates in Schedule PG for power sold to Duke cannot be independently compared to Schedule PP rates or other avoided cost rates without also comparing the rates in Schedule PG for power purchased from Duke to some other retail rates such as Schedule I. Witness Phillips fails to make a satisfactory comparison of Schedule PG to a combination of Schedule PP and Schedule I or to any other comparable combination. The net effect of such a combination of rates is controlling in Schedule PG.

The Commission also makes the observation that it will shortly conduct further hearings in Docket No. E-100, Sub 53, to review the avoided cost rates established under Schedule PP; that Schedule PP is available now to all Schedule PG customers who are willing to purchase power from Duke under Schedule I or a comparable retail rate schedule; that Interruptible Rider IS is available now to all Schedule PG customers who are willing to purchase power from Duke under Schedule I or a comparable rate schedule; and that Schedule PG is a strictly voluntary rate schedule.

The Commission concludes that the rate design for Schedule PG should be adopted as proposed by the Company in this proceeding. This is not to say that the Commission believes that Schedule PG should not be reviewed but that there is insufficient evidence in this case for an adequate review of Schedule PG. Nothing herein is intended to preclude any party from seeking a review of Schedule PG in any future rate proceeding or complaint proceeding.

Closed Rate Schedules GA, GB, and RA

Rate Schedules GA, GB, and RA have been closed to new customers since December 1, 1981, October 3, 1980, and January 1, 1979, respectively. Both Schedules RA and GA were restricted to residential and commercial "all-electric" customers, respectively. Schedule GB was created to lessen the rate impact to some customers when the separately stated demand charge was added to the general and industrial rate schedules. In Docket No. E-7, Sub 391, the Public Staff recommended that higher than average increases could be used to phase these schedules out over time. The Commission concluded in that case that closed rate Schedule GA should be merged into the other available rate schedules and that the Company should file a specific set of plans for accomplishing the merger with its next general rate case filing. Both a five-year plan and a 10-year plan were to be included. The Commission further concluded that the Company should also present studies which explore merging closed rate Schedules GB and RA with other available rate schedules.

The Company presented its study to merge rate Schedule GA with other appropriate rate schedules and offered the following conclusions and recommendation:

> Both 5-year and 10-year plans to merge Schedule GA with Schedules G and I, if implemented, would result in substantial customer trauma. In addition, significant and costly modifications would have to be made to the current billing system to actually implement either an advisory or a mandatory plan. Furthermore, these yearly rate adjustments would require frequent rate cases to determine the annual revenue impact on the Company and corresponding rate changes that would have to be made. Finally, it was assumed in the study that all relationships among rates will remain constant in the future. It is, however, impossible to predict the relationships that will exist in the future. For these reasons it is recommended that Schedule GA should not be merged with the other available rate schedules at this time.
>
> The Company is proposing optional Hopkinson rates in this filing, and recommends that in the future the Wright type rate be modified in order to facilitate the migration of present customers to appropriate rate schedules.

The Public Staff stated that it understood the recommendation to mean that the Company agrees to make modifications to its Wright type rates which will cause present GA customers to move, over time, to either the G, I, or OPT rate schedules and that these rate modifications should be made within the context of general rate proceedings. The Public Staff supported the Company's recommendations and proposed that the Company should, in each future general rate case, indicate the modifications that have been made to facilitate GA customer migration to other appropriate rate schedules and the impact such modifications will have on the GA customers.

The Company also presented a "Study of the Five-Year Plan to Merge Present GB Customers Into Other Available Schedules," in compliance with the Commission's Order in Docket No. E-7, Sub 391. The Company's recommendation based on its study is as follows:

> [T]hat no action be taken to merge rate schedule GB into other available rate schedules at this time. Recognizing that existing rate schedules G, GA, and I with separately stated demand charges have some of the characteristics of Hopkinson Type rates, they do not adequately reflect the wide range of characteristics of different groups of customers. The long-term solution is to modify the existing Schedules G, GA, and I so that they will have the characteristics of Wright Type rates. Over time, this modification would encourage customers to move.

The Public Staff agreed that phasing out Schedule GB should be a long-term process and that the rate modification should be made within the context of a general rate proceeding. The Public Staff recommended that the Company should, in each future rate case, indicate the rate modifications which will have been made to facilitate the movement of customers from Schedule GB to other appropriate rate schedules and the expected impact the modifications will have on the GB customers.

The Company's study of merging rate schedule RA into other available rate schedules concludes with the following recommendation:

> [T]he development of a seasonally differentiated, blocked single residential rate would be a more effective way to simplify the pricing of residential service and encourage the efficient use of generation and other resources. Therefore, the Company recommends that neither of the merger strategies analyzed be implemented.

Witness Turner stated that the general objective of developing a single residential rate is appropriate if it leads to merging RA customers with other rate schedules currently open to other customers who have usage features similar to the "grandfathered" RA customers. The Public Staff did not agree that the future rate design should be blocked for reasons it has stated in previous cases, but it did agree that future rate designs could be seasonally differentiated provided the Company can provide a cost basis for such differentiation. The Public Staff indicated that it supported the modified rate Schedules RA and RC proposed in this case because the modification somewhat reduces price differentials between Schedule RA and Schedules R(W/H) and RC, thus beginning the merging process. The Public Staff recommended that in future cases the Company should indicate: (1) the specific rate modifications that have been made to facilitate the continuation of merging rate Schedule RA with other available rate schedules, and (2) the impact such rate modifications will have on the existing RA customers.

Based on the foregoing, the Commission concludes that customers served under closed rate Schedules GA, GB, and RA should be encouraged to move to other currently available and appropriate rate schedules, that such encouragement should take the form of rate modifications which make alternative rate schedules more attractive to GA, GB, and RA customers, and that this objective should be met on a gradual basis over time. The Commission also concludes that for each of these closed rate schedules, the Company should specify in each future general rate proceeding the measures taken and the impact of such measures which will result in a gradual but meaningful migration of GA, GB, and RA customers to currently available and appropriate rate schedules.

General

In addition to those revisions already discussed herein, the Company proposes various miscellaneous rate changes which were not opposed by any party. Such changes include in part: provisions to open certain time-of-day rate schedules to all eligible customers regardless of the availability of power line carrier equipment; provisions to increase the on-peak energy charges and decrease the off-peak energy charges in time-of-day Schedules GT and IT relative to the other rate blocks; and provisions to increase the summer "tail block" rate and decrease the winter "tail block" rate of residential rate Schedules RA and RC relative to the other rate blocks.

There were several miscellaneous rate design suggestions offered by various public witnesses, some of which have been discussed herein. The Commission makes the observation that those rate design suggestions not discussed in detail herein have been addressed in prior proceedings at one time or another and that a fresh review of a given suggestion might be appropriate in future proceedings upon receipt of new evidence concerning the issue.

The Commission concludes that the rate designs proposed by the Company are reasonable and appropriate for this proceeding except as modified herein.

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 $133,080,000 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, plus a computation showing the level of revenue produced by each rate schedule. Within ten (10) working days after the date of this Order, Duke Power Company shall file a computation showing the overall North Carolina retail rate of return after the increase and the rate of return by major rate class after the increase. In addition, the Company shall provide a rate-of-return comparison showing the rate of return deviation from the overall North Carolina retail rate of return by customer rate class based upon the increased level of revenues approved in decretal paragraph number 1.

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 of Form E-1 of the minimum filing requirements for general rate applications.

4. That the Optional Power Service, time-of-day rate Schedule (OPT) is hereby approved on a voluntary basis for all nonresidential customers.

5. That Duke Power Company is hereby required to specify, in each future general rate case, those rate design modifications it has proposed in said rate case which are intended to facilitate the migration of Schedules GA, GB, and RA customers to appropriate alternative rate schedules, and the impact such rate design modifications are expected to have on Schedules GA, GB, and RA customers. Each design modification and its impact should be discussed separately for each rate schedule.

6. That Duke Power Company is hereby required to set aside the revenue shortfall allowance for customers migrating from non-TOD rates to TOD rates in a deferred account on a cents per kWh basis to accumulate over time according to monthly kWh billings.

7. That the revenue accumulated in the deferred account described in decretal paragraph number 6 shall be reduced by verifiable actual revenue shortfalls as customers migrate to TOD rate schedules from other rate schedules.

8. That Duke Power Company shall file for Commission approval not later than 30 days after the date of this Order a methodology for calculating actual revenue shortfalls applicable to decretal paragraph number 7.

9. That Duke Power Company shall file with the Commission a semiannual report of all deferred account activity, with supporting documentation, applicable to decretal paragraph number 6.

10. That the interruptible service credit shall not be changed.

11. That Duke Power Company is required to place the excess property taxes collected in a deferred account for refund to ratepayers if the Company prevails in its property tax assessment dispute with the North Carolina Department of Revenue.

12. That Duke Power Company shall be required to refund to ratepayers the NRC fee increase allowed to be collected in rates in this proceeding on a provisional rate basis in the event that the NRC fee increase is ultimately determined to be unconstitutional, illegal, or invalid.

13. That Duke Power Company shall file with the Commission copies of reports submitted to the NRC concerning radwaste processing at Oconee. A copy of the NRC license to operate the Oconee radwaste facility shall also be filed with the Commission.

14. 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.

15. 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 transactions associated with the levelization of the Catawba capacity buybacks as reflected herein.

16. That effective January 1, 1987, the federal income tax and the related gross receipts tax components of the rates and charges approved in this proceeding for Duke Power Company shall be billed and collected on a provisional rate basis pending further investigation and final disposition of this matter concerning the impact of the Tax Reform Act of 1986 on the Company's cost of service.

17. That effective January 1, 1987, Duke Power Company shall place in a deferred account the difference between revenues billed under the rates approved in this proceeding including provisional components thereof and revenues that would have been billed had the Commission in determining the attendant cost of service based the federal income tax component thereof on the Internal Revenue Code as now amended by the Tax Reform Act of 1986, assuming all other parameters entering into the cost of service equation are held constant.

18. That Duke Power Company shall file in its next general rate case a detailed plan demonstrating its projected plant decommissioning costs and recovery thereof.

19. That any motions, contentions, or proposed adjustments filed in this proceeding and not previously ruled upon are hereby denied.

ISSUED BY ORDER OF THE COMMISSION.
This the 31st day of October 1986.
NORTH CAROLINA UTILITIES COMMISSION
(SEAL) Sandra J. Webster, Chief Clerk

Chairman Robert O. Wells, dissenting in part and concurring in part.
Commissioner Ruth E. Cook, dissenting in part and concurring in part.

## APPENDIX A
## DOCKET NO. E-7, SUB 408
## GUIDELINES FOR DESIGN OF RATE SCHEDULES

Step 1: Determine the amount of rate schedule 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. Increase the industrial class rate schedules by 1.95 percentage points less than the other retail rate schedules as originally proposed by the Company.

b. Maintain the present level of revenues for outdoor lighting rate Schedules T, T2, and T2X as originally proposed by the Company.

Step 3: Reduce the rate schedule revenues determined in Step 2 for each applicable industrial rate schedule by the same percentage in order to produce a decrease in the overall rate schedule revenues for the industrial class by an amount determined as follows:

a. Estimate the amount of revenue adjustment required if all eligible industrial customers switch to TOD rates under the level of rates determined in Step 2.

b. Calculate 42% of the amount of revenue adjustment determined in Step 3a.

Step 4: Increase the rate schedule revenues determined in Step 3 for the industrial class rate schedules and the rate schedule revenues determined in Step 2 for the residential class rate schedules and general service class rate schedules, respectively, in proportion to the kWh retail sales to each rate schedule in order to produce an additional amount of rate schedule revenues equal to the amount determined in Step 3b. The total rate schedule revenues produced under Steps 2, 3, and 4 should then equal the total rate schedule revenues determined in Step 1.

Step 5: 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 4, except as follows:

a. Maintain the same relative proportions between the rate blocks in Schedules R, RA, and RC as proposed by the Company.

b. Maintain the same relative proportions between the rate blocks in Schedules GT, IT, and OPT as proposed by the Company.

Step 6: Round off individual prices to the extent necessary for administrative efficiency, provided said rounded off prices do not produce revenues which exceed the overall revenue requirement established by the Commission in this proceeding.

APPENDIX B

DOCKET NO. E-7, SUB 408

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
) NOTICE TO
) CUSTOMERS OF
) RATE INCREASE

On October 31, 1986, the North Carolina Utilities Commission, after several months of investigation and following several weeks of hearings held throughout the State, denied Duke's request for an increase of $289.3 million over rates currently in effect while approving an increase of approximately $133.1 million. The Company's application for rate relief was filed with the Commission on March 27, 1986. During hearings held in September the Company reduced its requested increase to $236.5 million. The rate increase allowed by the Commission equates to an overall increase of 6.73% over rates now in effect as compared to an increase of 14.7% 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 $72.76 per month will increase to approximately $79.21 per month or in a range of approximately 8.9%. Duke's residential rates were increased more than its industrial rates due to the Commission having determined that such a distribution was necessary because the present industrial rates were already earning a higher rate of return than the residential rates. The Commission also adopted measures which will make time-of-day rates available to all customers on a voluntary basis.

In allowing the 6.73% increase, the Commission found that the approved rates would provide Duke, under efficient management, an opportunity to earn an approximate 10.92% rate of return on the cost of its electric plant and facilities. The Commission found that the 6.73% rate increase to be the minimum that could be granted and still allow Duke to maintain good service.

Among the more controversial issues addressed by the Commission in its Order was the appropriate ratemaking treatment to be accorded Unit No. 2 of Duke's Catawba Nuclear 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 NCMPA; and the determination of the appropriate rate of return Duke's common shareholders should be given the opportunity to earn. The Commission concluded that the decision to build and the construction of Catawba Unit No. 2 was reasonable and prudent and in the ratepayers' best interest. The Commission further concluded, consistent with its decision in Duke's last general rate case, 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. It should be noted that Duke's large nuclear construction program, which was implemented to meet the growing demands of its customers and has resulted in the completion of four large nuclear units in the past few years, is now complete with the addition of Catawba Unit 2. The Commission concluded that the return Duke's common shareholders should be given the opportunity to earn is 13.40%, a decrease from the 14.9% approved in Duke's last general rate case. Similarly, Duke's overall return on its total cost of capital invested in its electric plant and facilities has decreased from 11.93% to 10.92%.

The increase granted was due principally to the construction of Catawba Unit No. 2, additional facilities at the Oconee Nuclear Station, and increased operation and maintenance expenses. The need for the increase was lowered by the decrease in Duke's overall cost of capital.

The rate increase will become effective for service rendered on and after October 31, 1986.

Commission Chairman Robert O. Wells and Commissioner Ruth E. Cook dissented on rate of return on common equity capital, capital structure, and new costs related to the Catawba Contracts.

DUKE POWER COMPANY
Docket No. E-7, Sub 408

Chairman Robert O. Wells Dissenting in Part:

I dissent from the decision of the Majority on three points: I believe (1) that the Majority has utilized an excessively conservative high-cost capital structure, (2) that the Majority has allowed an excessive rate of return on common equity and (3) that the Majority has, without any justification, allowed Duke to charge its North Carolina retail customers new costs (the A/B factor adjustment) arising from the Company's sale of the Catawba Nuclear Station. I concur in and support the remaining findings and conclusions of the Majority Order.

The extra cost to consumers of the Majority's high cost capital structure is $6.4 million annually, the extra cost of the Majority's extravagant common equity rate of return is $46.5 million annually and the extra cost of the Majority's Catawba decision is $3.1 million annually. Thus, Duke's North Carolina retail residential, commercial, and industrial customers are being required to pay excessive rates in the total amount of $56 million annually. This amounts to 42% of the rate increase awarded Duke by the Majority.

The North Carolina Supreme Court has stated in enunciating the regulatory powers conferred upon the Commission by Chapter 62 that ". . . The primary purpose of this chapter is not to guarantee to the stockholders of a public utility constant growth in the value of and in the dividend yield from their investment, but is to assure the public of adequate service at a reasonable charge. . . ." State ex rel. Utilities Commission v. General Telephone Company, 285 N.C. 671, 208 S.E. 2d 681 (1974). The Majority recognizes 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. 377, 388, 206 S.E. 2nd 269 (1974); however, the Majority fails to implement the General Assembly's intent in this case. I recognize that it is for the Commission to weight the evidence and to exercise its judgment within the scope of its authority on the issues presented to it. I also recognize that the Commission must exercise a measure of its subjective judgment in fixing rates. State ex rel.Utilities Commission v. Duke Power Company, 305 N.C. 1, 287 S.E. 2nd 786 (1982); State ex rel. Utilities Commission v. Edmisten, 29 N.C. App. 428, 225 S.E. 2nd 101, affirmed, 291 N.C. 424, 230 S.E. 2nd 647 (1976). However, the Commission's decisions must be supported by competent, material, and substantial evidence in view of the entire record as submitted. Substantial evidence is "more than a scintilla or a permissible inference." Utilities Commission vs. Southern Coach Company, 19 N.C. App. 597, 199 S.E. 2nd 731 (1973), cert. denied, 284 N.C. 623, 201 S.E. 2nd 693 (1974). The standard of substantial evidence requires "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." Id. I believe, and will demonstrate in this dissent, that the Majority's decisions on the three issues on which I dissent are unsupported by competent, material and substantial evidence in view of the record as a whole and unsupported by a proper analysis of the evidence in the record.

In presenting its discussion of the evidence regarding the capital structure and the cost of common equity capital, the Majority creates the illusion that it has carefully considered and weighed the evidence in reaching its decision. However, it has not done so. The Majority has determined the common equity component of Duke's capital structure to be 46.3% and the cost of Duke's common equity capital to be 13.4%. Such conclusions cannot be justified in any rational way based upon the evidence of record, including the testimony, exhibits, and cross examination of Duke's own witnesses. To reach such conclusions, it was necessary for the Majority to reject material and substantial evidence in deference to the murky realm of "feelings," "cushions" and "fudge factors". (See the Public Staff and Attorney General cross examination of Duke witness Olson.) In essence, the Majority rejects the wheat of reason for the chaff of subjective judgment.

I will consider the three issues on which I dissent separately.

## Capital Structure

I believe that the law requires and that the weight of the evidence overwhelmingly supports use of the capital structure proposed by the Public Staff. The appropriate common equity component of the capital structure is 45%, not the 46.3% allowed by the Majority.

Five witnesses testified on the appropriate capital structure for use in this proceeding. The Company presented the testimony of Mr. Lee, Dr. Olson, and Mr. Stimart. The Attorney General sponsored the testimony of Dr. Wilson. The Public Staff presented the testimony of Mr. Sessoms.

Mr. Lee testified that the Company's principal financial objective is to maintain double-A ratings on its senior securities. Stating that Standard and Poor's (S&P) had announced "a solid double-A electric utility capital structure would comprise about 50 percent or more common equity, 42 percent debt and the balance preferred stock," he also testified that the specific goal of the Company's Long-Term Financial Plan is a capitalization consisting of 45% to 50% common equity and a maximum of 45% long-term debt. However, an examination of the Company's most recent Long-Term Financial Plan reveals that while Duke in fact follows S&P's guidelines for the debt ratio, there is no mention of any S&P guidelines for the common equity ratio.

Dr. Olson recommended that the Commission should set Duke's rates at a level that will permit the common equity ratio to be in the 45% to 50% area. In his opinion, the capital structure proposed by Duke was reasonable to utilize for ratemaking purposes in this case.

Mr. Stimart sponsored the schedules relating to Duke's capitalization ratios at December 31, 1985. He also updated Duke's capital structure to June 30, 1986. The updated capital structure, which excluded current maturities from long-term debt and current sinking fund requirements from preferred stock, consisted of 46.49% common equity, 10.75% preferred stock, and 42.76% long-term debt at June 30, 1986.

It was the opinion of Dr. Wilson that Duke's consolidated capital structure contained an unnecessarily large share of common equity for an efficient electric utility operation. Dr. Wilson pointed out that Duke's common equity ratio at December 31, 1985, was approximately five percentage points higher than the electric utility industry average. He testified that the degree to which an excessive common equity ratio contributes to risk and capital cost reductions, in comparison with an adequate common equity ratio of approximately 40%, is minimal.

Mr. Sessoms first examined the actual capital structure which was requested by the Company. However, several considerations caused him to conclude that the actual capital structure of Duke was too conservative, i.e., too heavily weighted with common equity, for ratemaking purposes. First, he compared the capital structure of Duke to the electric utility industry and also to the publicly traded and double-A rated electric utilities. These comparisons showed Duke's capital structure contained a higher percentage of common equity than the average, median, or composite common equity ratio of the industry and that the capital structure of Duke was conservative even in relation to the average capital structure of the double-A rated electrics which are publicly traded. Second, he considered the S&P published financial benchmarks for debt leverage and concluded that Duke could be leveraged further and still be within an acceptable level for a double-A rating. Third, he noted that Duke's own current Financial Forecast projects Duke's common equity ratio to become 50% in 1988. From these considerations, he concluded that Duke's actual capital structure should not be used for ratemaking purposes.

Witness Sessoms recommended a pro forma capital structure consisting of 45.0% common equity, 11.0% preferred stock, and 44.0% long-term debt. He stated that this capital structure was still less risky in relation to the industry and that it would allow the Company to be within the financial benchmarks for debt leverage (39%-46%) recommended by S&P for a double-A rating. Furthermore, he pointed out that the adoption of this capital structure for ratemaking purposes would tend to discourage the Company from further increasing the equity component to even higher levels as forecasted. After considering all factors, including the fact that this capital structure was within the range recommended by Duke's witness Olson and the fact that such a capital structure would significantly reduce Duke's cost of service and, consequently, consumer rates as compared to the capital structure requested by the Company, it was his opinion that the pro forma capital structure he proposed was fair to both the Company and its customers. I agree.

I would not hesitate to use a pro forma, or hypothetical, capital structure in this case, rather than Duke's actual capital structure shown by the evidence. This Commission has on many occasions in the past increased Duke's actual common equity capitalization ratio on a pro forma basis for ratemaking purposes. These pro forma increases in Duke's common equity component augmented the rate increases allowed in these past cases. These pro forma increases, even on an individual basis, far outweigh the modest pro forma decrease that witness Sessoms proposed herein.

Unchallenged evidence indicates that on a pretax basis each dollar of Duke capital supporting the North Carolina retail rate base has the following approximate annual costs: debt-9.2 cents, preferred stock-17.04 cents, and common equity-25.0 cents. As this cost comparison indicates, common equity is the most expensive form of capital. The Commission is legally charged with fixing rates as low as reasonably consistent with due process, and it is part of that responsibility to set the common equity component of Duke's capital structure as low as reasonable for ratemaking purposes. This the Majority does not do.

It is clear from the evidence that Duke is conservatively financed under any reasonable comparison. Duke is conservatively financed in relation to the electric utility industry, in comparison to the publicly traded and double-A rated electrics, and in comparison to the average capital structure of the comparable groups used by both the Company and Public Staff rate of return witnesses. In its June 27, 1986, edition, Value Line (a highly regarded independent financial advisory service) cites the equity ratio and fixed charge coverage of Duke in relation to its industry and states, "DUKE IS A FINANCIAL POWERHOUSE. Despite the large construction program, just about all of the company's key financial barometers are exceptionally strong. The equity ratio of 46.2%, tax rate of 45.7%, and fixed charge coverage of 233% all compare favorably to the industry averages of 41%, 37%, and 176%."

Company President Lee testified in the last general rate case that there comes a point above which you shouldn't raise your common equity and that the equity component of the capital structure should level off at about 45% or 46%. Although no changes in guidelines have been announced by S&P since that testimony and although capital market conditions have continued to improve, Duke's own Financial Forecast (March, 1986) projects its common equity component to be 50% by 1988 with a reduction in the debt ratio to 40%. On cross-examination Mr. Stimart confirmed that this was the Company's plan. Mr. Stimart was also questioned about the Company's Long-Term Financial Plan which discusses, among other things, alternatives available to Duke for cash management which would restrain the growth in the common equity ratio. As is obvious from this plan, Duke management has been well aware that the common equity ratio is becoming unacceptably high, that reducing the common equity ratio by common stock repurchases would reduce the overall cost of capital, and that, in Duke's own words, "in all likelihood the equity ratio would be adjusted downward for ratemaking purposes" at some level.

The Majority in its Order expresses its concern regarding the burgeoning common equity component of Duke's capital structure. The Majority conveys this concern to Duke by allowing a common equity capitalization ratio higher than this Commission has allowed Duke in the past 18 years and, perhaps, the highest ever. The Majority expresses a stern warning to Duke regarding its general uneasiness with the upward creep of the common equity capitalization ratio. Even if this warning sent by the Majority is heard and heeded, and I do not concede that it will be, this rhetoric will cost Duke's residential, commercial, and industrial customers an additional $6.4 million annually. The Majority's warning in this regard is virtually meaningless. It is full of "sound and fury," ultimately "signifying nothing." During the past three years Duke's common equity ratio has grown from 40% to 46.5% and the Commission has continued to allow virtually all of the growth in this high-cost capital to be reflected in the Company's public utility rates. If the Company wishes to minimize investor risk to such a degree, the cost of such minimization; i.e., the high equity ratio, should be placed on shareholders and not ratepayers.

## Rate of Return

The Majority's decision on the rate of return on common equity further maximizes the benefits to Duke's shareholders. A one percent (1%) difference in the allowed return on common equity equates to a difference in revenue requirements of $42.3 million. Such sum is equivalent to a 2.4% increase in rates. Clearly, this is the crucial issue. It goes to the very heart of this rate case. Due to different methodologies, adjustments, etc., the recommendations of the witnesses regarding the common equity rate of return ranged from 11.0% to 14.0%. I believe the appropriate rate of return to be 12.3%.

The Majority has placed virtually every argument it can conjure up in its justification for allowing Duke a clearly excessive cost of common equity of 13.4%. "Words sometimes serve as a smokescreen to obscure the truth, rather than a searchlight to reveal it." The Majority is overreaching itself. For example, the Majority suggests that Duke's investor risk will be increased by the Tax Reform Act of 1986. However, the riskiness of an investment is generally measured in relative, not absolute, terms. Since the Tax Reform Act applies to all firms including the electric utility industry, Duke's relative riskiness will remain unchanged.

Other arguments advanced by the Majority are equally specious. The Majority portrays the DCF model as too mechanical and of little value, but cost allocation models such as the Summer Coincidental Peak Demand methodology used by the Commission to allocate costs between jurisdictions and between customer classes are far more mechanical as to their operation and subjective as to their inputs. Other methodologies used by the Commission in determining cost of service, such as load dispatch models and generation-mix fuel costing models, are, in most instances, far more mechanical than the DCF model.

The Majority expresses concern over the reduction of Duke's equity return by 150 basis points. Yet, since September of 1985, when the Commission decided Duke's last general rate case, yields on long-term double-A rated utility bonds have dropped a minimum of 330 basis points. In Duke's last rate case, the Commission allowed a common equity return of 14.9% at a time when the yield on long-term double-A rated utility bonds averaged 11.61% during the rate case hearings. This represented a spread of 329 basis points. Witness Sessoms testified in this case that current estimated yields on new issues of such bonds are approximately 9%. A spread similar to that used by the Commission in Duke's last case would, in the present case, produce the 12.3% return that I support. The Majority, rather than explaining why it has reduced Duke's common equity return from 14.9%, should be explaining why it has limited the reduction to a mere 150 basis points. Duke itself concedes that the maximum cost of its common equity capital is now 14%.

The Majority's presentation of the evidence on rate of return offers little evaluation or weighing of the evidence offered by the witnesses, except to the extent that the Majority seeks in general to discredit the DCF model which was relied upon by the witnesses in estimating the cost of common equity capital. The Majority does not state with any degree of specificity the basis of its findings. It seeks to deny the propriety of the Public Staff's and the Attorney General's motions asking for specific findings by stating "that such motions seek to require the Commission to make findings which none of the expert witnesses in this case could or would make." Such a statement is not quite accurate. For example, with regard to the issuance cost of new common stock all witnesses presented their specific recommendation in this regard. Dr. Olson stated that the proper cost allowance was .5%, Mr. Sessoms stated that the proper allowance for such cost was .1%, and Dr. Wilson stated that no allowance should be made in this regard. The Majority states that the 13.4% return it allows includes an allowance for issuance cost, but it does not quantify the magnitude of its allowance.

The witnesses were also specific with regard to the range of common equity returns they considered to be appropriate. With respect to utilization of the DCF model, the witnesses were specific as to the appropriate range of dividend yields and the appropriate range of the rate of growth of dividend yields which they considered to be proper for use in the model. Based upon such criteria, each witness then exercised his best judgment as to a single point estimate of the cost of common equity capital. The point estimate was within the specific range estimates of the witnesses. The Majority's problem is that while all witnesses agree that the Duke-specific DCF model is the superior method for use in this proceeding, no combination of a dividend yield within the dividend yield ranges of all witnesses and a growth rate within the dividend yield growth ranges of all witnesses for a Duke-specific DCF model will produce a return greater than 12.6%.

I will now turn to the analysis of the evidence that the Commission should have undertaken. Three witnesses testified on the cost of common equity capital. Dr. Olson testified on behalf of Duke. Dr. Wilson testified on behalf of the Attorney General, and Mr. Sessoms testified on behalf of the Public Staff.

In his prefiled testimony, Dr. Olson recommended that the cost of common equity to Duke be set at 14.9%. In an update to his prefiled testimony, he lowered his recommendation to 14.0%. Dr. Olson relied on two separate market-based approaches to determine the cost of common equity for Duke. First, he employed a Duke-specific discounted cash flow model (DCF) and a DCF model based on a group of companies comparable on average in risk to Duke. The DCF results for the Duke-specific study indicated an equity investor return requirement of 11.9%-12.4%. This study was the superior approach in Dr. Olson's opinion. Further, Dr. Olson adjusted the return by adding an additional cost for flotation and an additional cost to compensate investors for down markets. Thus, the cost of common equity which resulted from his Duke-specific study was 12.9%-13.4%. Dr. Olson also relied on an risk premium study. By adding a risk premium of 4.75% to the current double-A bond yield of 9.0%, Dr. Olson determined the equity investor return requirement suggested by this study to be 13.75%. Again, costs were added to compensate investors for flotation costs and down markets, resulting in an indicated cost of common equity for Duke of 14.85%.

Dr. Wilson recommended that Duke be allowed the opportunity to earn 11.0% on its common equity capital. He based his recommendation primarily on his DCF model, which employs a regression and correlation analysis of the historical growth rate of Duke and 79 electric companies. His model yielded a range for the cost of equity to Duke of 10.0% to 11.5%. When the model was employed as to the 79 electrics, it indicated a cost of equity of 10.5% to 12.5%.

Witness Sessoms recommended that the allowed return on common equity be set at 12.3%. He relied upon DCF studies of Duke and of a group of companies which exhibit risk measures similar to those of Duke. The results of his DCF study for Duke indicated an investor return requirement in the range of 11.5%

to 12.3%. The results of the comparable group study indicated a range of 12.0%-12.9%. From these ranges, he made a point estimate for Duke of 12.2%. He then calculated a selling expense factor of .1% based on the financing costs attributable to the issuance of new common equity shares over the years 1976-1985. Adding the .1% factor to the equity investor return requirement of 12.2%, he made a recommendation of 12.3%.

I have several problems with Dr. Olson's testimony. As noted above, Dr. Olson made a one percent (1%) addition to the return requirement produced by the DCF model to provide for flotation costs and down markets. For his flotation cost adjustment, Dr. Olson estimated the average cost as a percent of the net proceeds from issuance of new shares and derived a 4.0% adjustment which he applied to the total book value of common equity. This adjustment is equivalent to adding one-half of one percent (.5%) to the cost of Duke's common equity capital. From the standpoint of revenue requirements, Dr. Olson's flotation cost adjustment translates into $21.2 million annually to Duke's North Carolina retail customers. Such a sum is outlandish and is unsupported by any credible evidence. Duke issued new shares of common equity five times over the entire 10-year period of 1975-1985. The total cost of issuance was $16.1 million for an average cost per issue of $3.2 million. To permit Duke to collect $21.2 million annually to cover Dr. Olson's flotation cost fiction is total unwarranted. However, it cannot be denied that such a result is to a very high degree implicit in the Majority having allowed Duke a 13.4% return on common equity. Mr. Sessoms added only one-tenth of one percent (.1%) for flotation costs. A .1% flotation cost adjustment will provide annual revenues of $4.2 million on a North Carolina retail basis. Such a sum will more than compensate investors for the costs of issuance of new common stock. Furthermore, the evidence is that Duke will not issue new stock in the foreseeable future. Therefore, whatever allowance is made for flotation cost will, in the foreseeable future, compensate investors for a cost Duke will not incur.

Dr. Olson's 4% down market adjustment is also without merit. According to Dr. Olson, this adjustment is applied to protect Duke investors from market-related moves in the price of Duke common stock if Duke issues new shares of stock. However, it is not the responsibility of this Commission, or of Duke ratepayers, to protect investors from swings in market price. The cost of Dr. Olson's down market adjustment to Duke's North Carolina retail ratepayers is another $21.2 million annually. The Majority, by allowing a 13.4% return on common equity, has in effect adopted a major portion of this down market adjustment. Again I note that Duke does not expect to issue any new common stock for the next three or four years. Indeed, the record reveals that Duke presently has surplus cash in excess of $400 million which could be used for capital expansion if needed.

My final problem with Dr. Olson's testimony concerns his risk premium study. While I have no problem with use of a risk premium method per se, the risk premium study employed by Dr. Olson in this proceeding causes me great concern. From the risk premium studies in his prefiled testimony, Dr. Olson estimated the cost of common equity to Duke to be 13.5%-14.0%. Dr. Olson updated his estimate at the hearing, and although interest rates had fallen on Duke bonds, his updated risk-premium study reflected a rise in the cost of common equity to 14.85%! I can place very little weight on a study that shows falling interest rates resulting in a higher return on common equity. Dr. Olson's contentions in this regard were debunked on cross-examination.

Furthermore, Dr. Olson's risk-premium approach relied upon a Paine Webber study regarding the appropriate risk premium. This study was basically a survey of financial analysts which asked the analysts how much of a risk premium they would require (a) if an electric utility is involved in nuclear construction and (b) if an electric utility is not involved in nuclear construction. According to Dr. Olson the analysts' response to question (a) was 4.6% and to question (b) was 2.6%. The time frame of the questionnaires was the period 1974-1979. Comparing economic conditions during the 1974-1979 era with current economic conditions is not credible. Clearly current economic conditions are far more representative of the economic conditions that are likely to prevail for the foreseeable future than are economic conditions of the 1974-1979 era. Moreover, Duke is not now involved in a nuclear construction program. Therefore, question (b) of the Paine Webber questionnaire applies to Duke with an attendant risk premium of 2.6%. The sum of Dr. Olson's bond yield of 9.2% and a risk premium of 2.6% yields a common equity cost of only 11.8% before adjustment for flotation cost.

It is often observed that during the period beginning in the early 1970's Duke has not achieved its authorized rate of return. However, in developing the cost of capital for use in a general rate case proceeding, the Commission is attempting to measure investor expectations, not to estimate the return that a company will in fact achieve. To suggest that a company has been treated unfairly because investor expectations at a particular point in time were not subsequently realized is without merit. To compensate investors prospectively for failure to achieve the so-called authorized return in the past is not only unfair to current and future ratepayers, but also is in violation of the statutory prohibition against retroactive ratemaking. As the North Carolina Supreme Court has stated, the primary purpose of this Commission's regulatory authority ". . . is not to guarantee to the stockholders of a public utility constant growth in the value of and in the dividend yield from their investment . . ." State ex rel. Utilities Commission v. General Telephone Co., 285 N.C. 671, 208 S.E. 2d 681 (1974).

Duke's common stock is currently trading at a price over 150% of its book value even though Duke is currently earning substantially less than the 14.9% return on common equity found fair by this Commission in September 1985. Most persons knowledgeable in the field of public utility finance agree that a prudently managed and financially healthy public utility should be permitted a level of earnings that will allow the sale of its common stock at a price equal to or slightly above book value. Thus, one must conclude that Duke is now earning and is expected to earn a rate substantially above its true cost of common equity capital. An objective analyst could hardly now conclude that Duke is being treated unfairly because it is not achieving its authorized rate of return.

The common equity returns recently allowed by regulatory bodies in other states make the excessiveness of the Majority's common equity return allowance to Duke even more evident. The Majority has presented less than current returns in its discussion of the evidence even though the more current returns that follow were available for review. Recent equity returns allowed by regulators in other states, which the Majority chooses to ignore, are as follows:

| Company (Jurisdiction) | Order Date | Equity Return (Per Cent) | Overall Return (Per Cent) |
|---|---|---|---|
| Boston Edison Co. (Mass.) | 6/26/86 | 12 | 10.46 |
| Western Massachusetts Electric Co. (Mass.) | 6/30/86 | 13 | 11.18 |
| Rochester Gas & Electric Co. (N.Y.) | 7/14/86 | 12.6 | 10.75 |
| Central Hudson Gas & Electric Co. (N.Y.) | 7/17/86 | 12.4 | 10.66 |
| Delmarva Power & Light Company (Del.) | 8/19/86 | 13.0 | 10.08 |

The evidence before the Commission in this case clearly indicates that overall economic conditions have dramatically improved since the Company's last general rate case, that interest rates have declined significantly, that during the past 18 months the common stock of Duke has traded above book value (and at present is selling in excess of 150% of book value), and that Duke has now completed an immense construction program and presently has approximately $400 million of cash invested in short-term liquid assets. Duke, indeed, is a financial powerhouse.

Neither the evidence of record nor the Majority's Order reveal the basis of the Majority's decision that the cost of Duke's common equity capital is 13.4%. The record, however, is replete with evidence that clearly reveals the excessiveness of the Majority's findings in regard to the cost of equity capital. The Majority decisions on capital structure and rate of return together require the residential, commercial, and industrial customers of Duke in North Carolina to pay an additional $52.9 million annually to cover a cost of capital that, in fact, does not exist. I must reject the Majority's findings on this issue.

## A/B Factor Adjustment

The final matter to be discussed is the Majority's decision to allow Duke to charge its North Carolina retail customers new costs of $3.1 million annually arising from the Catawba Sale Agreements.

According to the evidence the Catawba Buyers, who are also wholesale customers of Duke, receive electric energy from two sources: The Buyers' retained capacity related to their ownership interest in the Catawba Station and the Duke system. The total cost of electric energy acquired from the Duke system is subject to jurisdictional cost allocation. Public Staff witness Maness testified that the portions of the Buyers' requirements not satisfied by their retained capacities are provided for the most part by supplemental power purchased under the provisions of their Interconnection Agreements. The Interconnection Agreements provide that the costs of supplemental capacity are allocated to the Buyers on a peak demand basis. Mr. Maness stated that this contractual allocation method is more favorable to NCEMC and SREC, and less favorable to NCMPA and PMPA, than the FERC allocation methodology they were all subject to prior to the contracts becoming effective. To mitigate this relative favorableness and unfavorableness cost modifiers referred to as the A and B factors are applied to each Buyer's price of supplemental capacity which increases the price charged to NCEMC and SREC and decreases the price charged to NCMPA and PMPA. Mr. Maness testified that the increase in charges to NCEMC and SREC is completely offset by the decrease to NCMPA. However, Mr. Maness stated there is no offset to the decrease in the amount charged to PMPA. According to Mr. Maness, it is this unrecovered cost from PMPA which the Company is attempting to allocate to the remainder of its jurisdictional customers, including North Carolina retail.

It is important to note that the A/B factor adjustment as proposed by the Company and adopted by the Majority is a marked departure from the normal methodologies and procedures employed by this Commission in jurisdictional cost allocations. The objective of a jurisdictional cost of service study is to assign to each jurisdiction those elements of cost of service for which each respective jurisdiction is responsible. The costs in question are directly related to the Catawba Buyers supplemental capacity. Thus, under fundamental ratemaking practices and procedures the cost of such capacity would not be assigned in any way to the Company's North Carolina retail operations. Absent a strong showing of justification, I do not believe that this Commission should, as the Majority has done, abandon willy-nilly a classic axiom of public utility rate regulation.

The Company offered virtually no evidence to support the propriety of its assignment of this cost to its North Carolina retail customers. Company witness Stimart offered some very general and limited testimony to the effect that the A/B factor was a crucial element in coming to an agreement with the Catawba Buyers and should not be evaluated separately from other contract provisions. He contended that overall the Catawba agreements were beneficial to the Company's North Carolina retail customers and that such customers should be required to bear the costs in question.

The issue before the Commission is not whether the Catawba contracts, taken as a whole, are beneficial to the Company's North Carolina retail customers. I concede that they are. My concern is that costs not heretofore identified continue to emerge from the Catawba contracts to the detriment of the Company's North Carolina retail customers. This concern is further magnified by the Majority's willingness to accept these new costs without adequate justification as to its fairness and reasonableness. The Majority warns Duke that additional costs arising from the Catawba Agreements in the future will be subject to an individual review and evaluation. The future is now. The A/B factor adjustment is, as the Majority recognizes, a cost of the Catawba Agreements that was neither quantified nor brought to the Commission's attention before the present case. For that reason, it should have been subjected in this case to the individual review and evaluation of which the Majority speaks. There is insufficient evidence in this record to evaluate the reasonableness of this cost. Duke has not carried its burden of proof on this issue, and I would disapprove the adjustment.

The benefits of the Catawba Agreements and their costs should be distributed fairly among all of Duke's customers and its shareholders. No one has benefitted more from the contracts than Duke shareholders. It does not seem unreasonable to expect the shareholders to bear some of the costs to provide the benefits in which they share or, alternatively, to require Duke to offer some evidence of justification as to why Duke's North Carolina retail customers should be required to bear an ever increasing share of the cost of the Catawba Agreements. It is my concern that Duke's North Carolina retail customers are receiving too little of the benefit and too much of the cost.

## Conclusion

In reaching its decisions regarding the appropriate capital structure and the appropriate rate of return on common equity, the Majority has disregarded the evidence. In reaching its decision to require North Carolina retail ratepayers to bear the new A/B factor costs, the Majority has passed a cost on to ratepayers without any meaningful examination as to whether the cost is reasonable.

I am very much aware of the latitude that is granted this Commission in exercising its subjective judgment. However, as the North Carolina Supreme Court has said, the Commission is not at liberty "to roam at large in an unfenced field." 257 NC 233, 237, 125 S.E. 2nd 457 (1962) Its decisions must be based upon substantial evidence. To do otherwise is error of law. The evidence upon which the Majority bases its findings and conclusions regarding the capital structure, the cost of common equity capital, and the A/B factor costs is not substantial, and the Majority does not take into account the contradictory evidence of record.

The Majority in this case has unjustly approved rates that are excessive by $56 million. The Majority could have done differently. It could have and should have provided for a reasonable return on common equity of 12.3% rather than an excessive return of 13.4%. It could have and should have utilized a capital structure reflecting a 45% common equity ratio which would have been less heavily weighted with high-cost common equity capital than is the capital structure utilized by the Majority which reflects a 46.3% common equity capitalization ratio. Finally, it could have and should have disallowed the new cost associated with the Catawba Sale Agreements.

Had the Majority followed these far more reasonable courses of action the rate increase which it would have placed on Duke's residential, commercial and industrial customers would have been 42% less than that allowed.

To maintain a sound economy we must have an adequate, reliable, and economically priced supply of electric energy. In order for electric utilities to raise the necessary capital on reasonable terms to build needed production and transmission facilities, they must be granted a return that will allow them to remain financially healthy. The foregoing more reasonable courses of action, which I advocate, are in full accord with these concepts. The evidence and analysis presented here proves the rate increase granted Duke Power Company by the Majority is unjust, unneeded and excessive by $56 million. To the extent these excessive rates will be billed and collected by Duke Power Company, and they will be, they add to the cost of doing business in North Carolina. They undermine the competitive position of home-based business and industry. They impede our ability to create and attract new business and jobs to our State and our ability to maintain the well being of traditional industries in North Carolina .

The effect of the Majority's decision is to place an unjust and unnecessary burden on Duke's residential, commercial and industrial customers. The adverse impact on the State's economy and the financial well-being of Duke's customers is undeniable.

Credibility in regulatory decisions is fundamentally important to the regulatory process. If decisions of this Commission are in fact not credible or are perceived as not credible, public confidence in regulation is undermined, and clarion calls for extreme solutions to regulatory problems are made easier to heed. The job of planning and implementing sound regulatory policy and practice' is made more difficult for those charged with the responsibility of meeting the demands of a challenging future.

For the foregoing reasons I dissent from the Majority's decisions, which burden Duke's North Carolina retail residential, commercial, and industrial ratepayers with unreasonable and unjustifiable additional costs in excess of $56 million annually.

Robert O. Wells, Chairman

Commissioner Ruth E. Cook Dissenting in Part:

I dissent from the Majority Order in three respects. I believe that the Majority has allowed Duke an excessive rate of return on common equity. I support a rate of return of 12.3%. I also believe that the 46.3% common equity component of the capital structure adopted by the Majority in this case is excessive. Finally, I disagree with the Majority's decision to impose on ratepayers certain new costs arising from the Catawba Sale Agreements.

The Majority's decisions on the first two issues alone account for an additional $52.9 million annually. I believe that the Majority's decisions on all three issues place an unfair and unwarranted penalty on Duke's ratepayers.

I concur in the dissenting opinion filed this day by Commission Chairman Robert O. Wells for the reasons set forth in that dissenting opinion. I concur in and support the remaining findings and conclusions of the Majority Order.

Commissioner Ruth E. Cook

DOCKET NO. E-7, SUB 410

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Application of Duke Power Company )
Pursuant to G.S. § 62-133.2 Relating ) ORDER APPROVING FUEL
to Fuel Charge Adjustments for ) CHARGE RATE REDUCTION
Electric Utilities )

HEARD IN: Commission Hearing Room 2115, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on Monday, June 30, 1986, at 11:00 a.m.

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

APPEARANCES:

For Duke Power Company:

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

For the Public Staff:

Paul L. Lassiter and Antoinette R. Wike, Staff Attorneys, Public Staff, North Carolina Utilities Commission, P. O. Box 29520, Raleigh, North Carolina 27626-0520
For: The Using and Consuming Public

BY THE COMMISSION: This matter arose upon the filing of an application by Duke Power Company (Duke or the Company) on April 1, 1986, pursuant to G.S. § 62-133.2 and North Carolina Utilities Commission Rule R8-54 relating to fuel charge adjustments for electric utilities. By its application, Duke contended that it was entitled to an increment in its fuel charge component based on a test period consisting of the 12 months ended December 31, 1985. The Company proposed, however, that the application be heard simultaneously with the hearings in its current general rate case (Docket No. E-7, Sub 408) and that the implementation of a new fuel factor be delayed until new rates are established in that case.

On April 21, 1986, the Public Staff filed a motion asking the Commission (1) to require Duke to file a revised proposed fuel component incorporating a 90% experience modification factor (EMF) and a test period updated to include February and March 1986 and (2) to schedule a hearing on an expedited basis. On April 30, 1986, Duke filed a response in opposition to the Public Staff's motion. Among the issues raised by the motion and response are the appropriate test period in this proceeding and whether an increment or decrement to the fuel factor is justified. By Order issued May 2, 1986, the Commission denied the Public Staff's motion except to the extent allowed by scheduling a hearing and requiring public notice.

The matter came on for hearing as scheduled at the time and place shown above. Duke presented the testimony and exhibits of William R. Stimart, Vice President of Regulatory Affairs. The Public Staff presented the testimony and exhibits of Richard J. Durham and Thomas S. Lam, both engineers in the Public Staff Electric Division. Duke also presented the rebuttal testimony and exhibits of Mr. Stimart.

In addition to the evidence adduced at the hearing, the Commission has taken judicial notice of its Orders in Docket Nos. E-2, Sub 503, and E-22, Sub 281, the most recent fuel charge adjustment proceedings for Carolina Power & Light Company and Virginia Electric and Power Company, respectively.

Based upon a careful consideration of the foregoing, 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 business of developing, generating, transmitting, distributing, and selling electric power to the public in North Carolina. Duke is lawfully before this Commission based upon its application pursuant to G.S. § 62-133.2.

2. The test period for purposes of this proceeding is the 12-month period ended December 31, 1985, normalized and adjusted for certain changes through May 31, 1986.

3. Duke's fuel purchasing practices and power purchasing practices were reasonable and prudent during the test period.

4. The adjustment proposed by the Company to normalize weather is reasonable and appropriate for purposes of this proceeding.

5. The reasonable and appropriate system customer growth adjustment for use in this proceeding is 460,428,000 kWh on a total Company basis.

6. A normalized generation mix is reasonable and appropriate for purposes of this proceeding.

7. The kWh generation from each nuclear unit should be normalized based on a 62% capacity factor.

8. The use of updated unit fuel prices as proposed by the Company is reasonable and appropriate for purposes of this proceeding.

9. The preliminary fuel factor approved in this proceeding should reflect only the 1986 purchase requirements under the Catawba Agreements and one month of sales under Article 11 of the Agreements.

10. The preliminary fuel factor which is appropriate for use in this proceeding is 1.2125¢ per kWh, excluding gross receipts tax, which reflects a reasonable fuel cost of $402,297,000 for North Carolina retail service. The result is a fuel factor which is 0.0055¢ per kWh less than the present fuel factor approved in Docket No. E-7, Sub 391.

11. To the preliminary fuel factor should be added an experience modification factor (EMF) decrement of 0.0046¢ per kWh which reflects 90% of the difference between Duke's actual reasonable and prudently incurred level of test year fuel costs ($404,557,000) and the revenues that were actually collected by the Company under the fuel factors in effect during the test

period ($406,255,000). The resulting final fuel factor is 1.2079¢ per kWh, excluding gross receipts tax.

12. The preliminary fuel factor of 1.2125¢ per kWh will be superseded by a new fuel factor in Duke's pending general rate case. The EMF decrement will remain in effect for 12 months from the date it becomes effective.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 1

The evidence for this finding of fact, which is essentially informational and jurisdictional in nature, is contained in the Commission's files and records and is not disputed.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 2

G.S. § 62-133.2 provides that the Commission shall hold a hearing within 12 months after an electric utility's last general rate case to determine whether an increment or decrement rider is required "to reflect actual changes in the cost of fuel and the fuel cost component of purchased power over or under rates established in the last preceding general rate case." G.S. § 62-133.2 further provides that additional hearings shall be held on an annual basis but only one hearing for each such electric utility may be held within 12 months of the last general rate case. G.S. § 62-133.2(c) sets out the verified, annualized information and data which the utility is required to furnish to the Commission at the hearing for a historic 12-month test period "in such form and detail as the Commission may require." Pursuant to Rule R8-54, the Commission has prescribed the test period to be used as the "12 calendar months ending not more than 90 days prior to the date of the application" filed by a public utility under G.S. § 62-133.2. Thus, Duke's filing, which was made on April 1, 1986, utilized the 12 months ended December 31, 1985, as the test period in this proceeding. All of the exhibits and testimony submitted by the Company in support of its application utilized the 12 months ended December 31, 1985, as the test year for purposes of this proceeding.

The Public Staff recommends use of a 12-month test period updated through April 30, 1986, for purposes of developing both the appropriate fuel adjustment factor and an experience modification factor.

The Commission concludes that the test period which is appropriate for use in this proceeding is the 12 months ended December 31, 1985, adjusted for certain fuel price changes through May 31, 1986, a normalized generation mix, normalization for customer growth and weather, and Article XI of the Catawba Agreement. Use of a 12 month test period ended December 31, 1985, is justified and appropriate for the following reasons. First, such test period is consistent with the requirements set forth in Commission Rule R8-54 regarding applications for fuel charge adjustments filed by electric utilities pursuant to G.S. § 62-133.2. Second, the Commission is of the opinion that use of a calendar year test period in this case and use of a calendar year test period in future fuel charge cases for Duke Power Company will serve to establish a more effective and consistent regulatory framework regarding applications for fuel charge adjustments by electric utilities. Duke witness Stimart testified as to the problems that arise from using different test periods for the same utility from one fuel proceeding to the next and from using different test periods for developing the EMF rider. To address these problems, the Commission will soon enter an Order in Docket No. E-100, Sub 47, a rulemaking proceeding primarily concerning the development and use of an EMF, scheduling future annual fuel adjustment proceedings for Duke Power Company on the first Tuesday during May of each year based upon verified annualized information and data utilizing a calendar year test period for purposes of establishing both a fuel charge increment or decrement rider and an EMF rider in future cases initiated under G.S. § 62-133.2. Thus, this rule change will lead to use of consistent nonoverlapping test periods from year to year. The Commission agrees with Duke Power Company that G.S. § 62-133.2 does not authorize use of one test period to determine the appropriate fuel charge adjustment rider and a different test period to determine any over- or undercollection of fuel costs for purposes of developing an EMF rider. The fuel adjustment proceeding for Duke to be held in May of 1987 will utilize the calendar year 1986 as the test period for purposes of establishing a fuel charge increment or decrement rider and an EMF rider. Consistent with the Order soon to be entered in Docket No. E-100, Sub 47, in future annual fuel adjustment proceedings, the EMF will reflect 100% of a company's actual reasonable and prudently incurred fuel cost recovery experience.

## EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 3

NCUC Rule R8-53(b) requires each electric utility to file a Fuel Procurement Practices Report at least once every 10 years plus each time the utility's fuel procurement practices change. In conjunction with Duke's last G.S. § 62-133.2 hearing (Docket No. E-7, Sub 390), R. H. Hall, Vice President for Fuel Purchases, Mill-Power Supply Company, a wholly owned subsidiary of Duke, which acts as Duke's purchasing agent, testified regarding Duke's fuel procurement practices and the factors affecting fuel prices. In addition, the Company's fuel procurement practices were filed with the Commission in Docket No. E-100, Sub 47, and remained in effect during the 12 months ended December 31, 1985. This is reflected in this proceeding in Mr. Stimart's testimony. The Commission and the Public Staff also receive monthly reports as to Duke's fuel costs under the Company's present fuel procurement practices.

No evidence was offered in this proceeding in opposition to the Company's fuel procurement and power purchasing practices and there appears to be no controversy with respect to their reasonableness. Accordingly, the Commission concludes that Duke's fuel procurement and power purchasing practices and procedures were reasonable and prudent during the test period.

## EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 4

The evidence supporting this finding of fact is found in the testimony and exhibits of Company witness Stimart and Public Staff witness Lam. Both parties agree that the appropriate adjustment to normalize weather for the test period is 841,828 MWHs on a total Company basis and 543,708 on a North Carolina retail basis. There being no contradicting evidence in the record on this point, the Commission concludes that the appropriate weather normalization adjustment to be used in establishing a fair and reasonable fuel factor is that proposed by the parties.

## EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 5

The evidence relating to this finding of fact was presented in the testimony and exhibits of Company witness Stimart and Public Staff witness Durham. The information filed with the Company's application included an adjustment for customer growth in accordance with Commission Rule R8-54. The controversy during the hearing was over the appropriate methodology for calculating the adjustment. Both the Company and the Public Staff assert that they utilized the regression analysis methodology adopted by the Commission in Docket No. E-7, Sub 391, to calculate their customer growth adjustments, yet the Company's total system adjustment as reflected in Mr. Stimart's rebuttal Exhibit 1 is 460,428,000 kWh, and the Public Staff's system adjustment is 607,155,278 kWh.

In Docket No. E-7, Sub 391, both the Company and the Public Staff utilized a regression analysis to calculate their proposed adjustments. The differences between their respective adjustments were not substantial and were based on the use of data covering different time periods and the treatment of certain large industrial customers. The Commission adopted the regression methodology of Public Staff witness Carrere, which utilized linear, exponential, power, and logarithmic equations, but adopted the Company's treatment of industrial customers.

Mr. Stimart testified on rebuttal that the Company's customer growth adjustment in this proceeding was calculated in accordance with the methodology adopted in Docket No. E-7, Sub 391, which primarily utilized a linear regression equation. Although Mr. Durham states that his customer growth adjustment is based on the same methodology, he acknowledges that he has introduced a polynomial equation which was not utilized by Mr. Carrere in the last rate case.

After review of the record, the Commission concludes that the appropriate customer growth adjustment to be used in this proceeding is that proposed by the Company, which results in a total system customer growth adjustment of 460,428,000 kWh and a North Carolina retail customer growth adjustment of 255,298,000 kWh. The Commission reaches this conclusion for the reasons generally given by the Company in this case without prejudice to the right of any party who may so desire to propose a different methodology, other than the one approved herein, in future proceedings.

## EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 6, 7, 8, 9, AND 10

The evidence relating to these findings of fact is found in the testimony of witnesses Stimart and Lam.

As required by NCUC Rule R8-54(a)(3)(iv), Mr. Stimart in his testimony calculated three separate fuel factors as follows:

| | |
|---|---|
| (a) Docket No. E-7, Sub 391, unit fuel prices | 1.2509¢/kWh |
| (b) Actual test period burned unit fuel prices | 1.2198¢/kWh |
| (c) Actual test period purchased unit fuel prices | 1.2309¢/kWh |

Public Staff witness Lam calculated a fuel factor of 1.2050¢ per kWh. This calculation was based on the 12 months ended December 31, 1985, with April

1986 fuel prices and utilized the customer growth adjustment furnished him by Mr. Durham, and Catawba contract Article XI power interchange as calculated by Public Staff Accountant Maness which assumed Catawba 2 would be commercial September 1 and, therefore, Article XI would stop at that time. In addition, Mr. Lam employed an EMF based on 12 months ended April 1986 which indicated his computed fuel factor should be reduced by .0979¢ per kWh. This resulted in his recommended fuel factor of 1.1071¢ per kWh which results in a decrement of 0.1109¢ per kWh from the base fuel component of 1.2180¢ per kWh approved in Duke's last general rate case.

On rebuttal, Mr. Stimart testified that when the application in this docket was filed, all fuel calculations to be used in the pending general rate case for the calendar year 1985 test period had been completed and that in order to maximize the efforts which had been put forth in preparing for the general rate case, most of the fuel cost calculations used in Docket No. E-7, Sub 408, were incorporated in this case. However, in rebuttal, witness Stimart undertook to recalculate the fuel factor by "meshing" the methodology used by Public Staff witness Lam in this case and that used by the Commission in Docket No. E-7, Sub 391, while utilizing the May 1986 coal and long-term purchased power prices which were the latest available. Further, in calculating Catawba contract Article XI interchange, the Company annualized the then existing Article XI entitlement.

Mr. Stimart's fuel factor shown in his rebuttal testimony was computed as follows:

1. Test period kWh sales are normalized for weather, customer growth, and the effects of the Catawba agreements.

2. Total generation is calculated by applying a five-year average line loss/company use factor to the normalized kWh sales from Step 1.

3. Oil and gas generation is a two-year average.

4. Nuclear generation is based on a 62% capacity factor for Oconee, and McGuire and 60% for Catawba Unit 1. These capacity factors approximate the national averages for similar types of nuclear plants, and are the same capacity factors used in setting the fuel base in Docket No. E-7, Sub 391.

5. Conventional hydro generation is based on the Company's historical median hydro generation for the period 1955 through 1985. Pumped storage hydro generation is based on the average pumped storage operation at Jocassee for the period 1976-1985.

6. Purchased and interchange generation adjusted for the annualization of Catawba capacity buyback and Article XI interchange and the normalization of a new parallel generator contract.

7. Residual generation is total generation calculated in Step 2 less generation calculated above for oil, gas, nuclear, hydro, and purchased power. This residual generation is prorated to coal, short-term purchased power, and interchange.

8. The coal generation was priced at 1.783¢ per kWh using May 1986 burned costs, the latest available data.

9. Nuclear generation was priced by unit using the price for fuel currently in the reactor for each unit, which produces a weighted composite cost of .540¢ per kWh.

10. Long term purchased power price updated for most current information.

There are four areas of difference between the fuel factor developed by the Company as outlined above and that presented by the Public Staff. The first area is customer growth, which the Commission has considered hereinabove and has concluded, without prejudice, that the Company's customer growth adjustment is reasonable and appropriate for use in this proceeding.

Second, the Public Staff and Company disagree on the treatment of the effects of Article XI of the Catawba contracts. The Public Staff includes an annualized level reflecting the estimate that Article XI will only be in effect for approximately one month during the time between the date of issuance of this Order and the date an Order will be entered in Docket No. E-7, Sub 408, the Company's pending general rate case docket. In making this adjustment, the Public Staff accepts the Company's estimate that Catawba 2 will commence commercial operation on September 1, 1986. This estimated date is used by the Company in its exhibits filed in Docket No. E-7, Sub 408, and had not been revised as of the date of the close of the hearing in this case. The Company's position on this matter results in a fuel factor based on Article XI being in effect during the entire period of time between the date of the Order in this proceeding and the date of the Order in Docket No. E-7, Sub 408. Because the preliminary fuel factor adopted in this case will be in effect only in 1986, until it is superceded by a new fuel factor in the Company's pending general rate case, and because it will become effective prior to the expected commercial operation date of Catawba Unit 2, the Commission concludes that the methodology proposed by the Public Staff, which incorporates the Company's estimate of the commercial operation date for Catawba 2, is reasonable and appropriate for including the effects of Article XI of the Catawba contracts in this proceeding.

Third, the Company and the Public Staff disagree on the appropriate capacity factor to be used for Catawba Unit 1. Both parties agree, however, that a normalized generation mix should be adopted in this proceeding. The Company uses a 60% capacity factor, as used in Docket No. E-7, Sub 391, when the unit had just become operational. The Public Staff uses a 62% capacity factor, as used by the Company for Catawba Unit 1 in Docket No. E-7, Sub 408. After a review of the record on this matter and the Base Load Power Plant Performance Reports filed with the Commission by the Company, the Commission concludes that the 62% capacity factor is fair and reasonable for Catawba Unit 1. This determination is supported by the testimony and exhibits offered by Public Staff witness Lam, particularly the justification and reasons offered in support of the Public Staff's position.

Fourth, the Company and the Public Staff disagree on the appropriate price levels for coal, long-term purchased power, and nuclear generation. According to witness Stimart's testimony and exhibits, the coal and long-term purchased power prices are based on more current information than those of the Public Staff. As to the nuclear generation price level, the Public Staff's level is based on the April 1986 burn price while the Company used a weighted composite price based on a nuclear capacity factor of 62% and the price of fuel currently in the reactor for each unit. Thus, the Public Staff's number is weighted by the generation actually achieved from each nuclear unit during the month of April 1986 while the Company's number is weighted by the generation from each unit based on the 62% capacity factor adopted elsewhere herein for calculating the Company's nuclear generation level. Based on the foregoing and a review of the entire record in this matter, the Commission concludes that the fuel price levels presented by the Company are reasonable and appropriate for use in this proceeding. This determination is supported by the testimony and exhibits offered by Duke witness Stimart, particularly the justification and reasons offered in support of the Company's position.

All other considerations and calculations that comprise the determination of the appropriate fuel factor were agreed to by the parties, except for the experience modification factor issue that is discussed elsewhere. Therefore, the Commission adopts all the considerations and calculations agreed to by the parties in developing the appropriate fuel factor to be used in this proceeding.

Based on all of the foregoing, the Commission concludes that the appropriate fuel factor, prior to consideration of the experience modification factor, is 1.2125¢ per kWh, as shown in the table below:

TOTAL COMPANY

| | Adjusted Generation (mWh) | Fuel Price $/mWh | Fuel (000s) |
|---|---|---|---|
| Coal | 29,103,741 | 17.83 | $518,920 |
| Oil and Gas | 6,975 | 79.28 | 553 |
| Light Off | | | 5,686 |
| Nuclear | 27,281,597 | 5.40 | 147,321 |
| Hydro | 1,863,800 | | 0 |
| Pumped Storage | (196,848) | | 0 |
| Purchased Power | | | |
| Long-Term Contract | 393,239 | 13.14 | 5,167 |
| Short-Term Contract | 110,539 | 20.60 | 2,277 |
| Interchange In | 205,017 | 22.79 | 4,672 |
| Interchange Out | (615,025) | 17.10 | (10,517) |
| Catawba Purchases | 5,104,579 | 7.16 | 36,549 |
| Catawba Sales | (883,841) | 5.44 | (4,808) |
| Total Generation | 62,373,773 | | 705,820 |
| Less: | | | |
| Intersystem Sales | 565,320 | | (11,553) |
| Line Loss | 4,549,102 | | |
| System Sales | 57,259,351 | | $694,267 |
| Fuel Factor (Cents/kWh) | 1.2125 | | |

## EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 11 AND 12

The evidence supporting these findings of fact is found in the testimony and exhibits of Company witness Stimart and Public Staff witness Lam. The evidence of record is that during the test period ended December 31, 1985, Duke collected fuel related revenues of $406,255,000 through its electric rates and incurred $404,557,000 in fuel and purchased power .expenses, resulting in an overcollection of $1,698,000. There is no evidence in this record which would indicate that Duke's actual 1985 test year level of fuel and purchased power expenses in the amount of $404,557,000 was not reasonable and prudently incurred. In fact, there appears to be no controversy in this case with respect to the reasonableness and prudence of such costs.

The Company contends., however, that an EMF should not be used in this proceeding until the Commission adopts a final rule providing for uniform and consistent test periods and appropriate accounting procedures for uniform application to all electric utilities.

The Commission presently has a rulemaking proceeding under consideration in Docket No. E-100, Sub 47, regarding the establishment of appropriate and consistent procedures for use of an EMF rider. The electric utilities, the Public Staff, and several other interested parties have now filed initial and reply comments in that rulemaking docket.

In this case, the Public Staff has proposed development of an EMF decrement rider of 0.0979¢ per kWh based upon use of a 12-month test period ending April 30, 1986. During that 12-month period, Duke experienced an overcollection of its reasonable and prudently incurred fuel costs in the amount of approximately $35.6 million.

The Commission has previously approved use of an EMF in two prior G.S. § 62-133.2 proceedings involving Carolina Power & Light Company (Docket No. E-2, Sub 503) and Virginia Electric and Power Company (Docket No. E-22, Sub 281). The Public Staff has appealed the CP&L case (in which the Commission ordered an increment fuel adjustment rider including an EMF) contending that G.S. § 62-133.2 does not authorize the Commission to adopt an EMF. In the Vepco case, in which the Commission ordered a decrement rider, the Public Staff itself proposed use of an EMF, as it does in this case.

The Commission concludes that it is appropriate to adopt an EMF rider in this proceeding for Duke Power Company based upon the 12-month test period ended December 31, 1985. The Company filed its application based upon such test period pursuant to Commission Rule R8-54, and the Commission has previously found in this Order that it is appropriate to decide this case based upon use of such calendar test year. The Commission has adopted an EMF rider in this proceeding for all of the reasons set forth in the Orders entered in Docket Nos. E-2, Sub 503, and E-22, Sub 281, and the discussions set forth in those Orders in support of adoption of the EMF are hereby incorporated by reference. The Commission will soon enter an Order in Docket No. E-100, Sub 47, establishing uniform rules for all electric utilities regarding the use and development of an EMF rider predicated upon consistent use of a uniform test period for each company. For Duke Power Company, the Commission will prescribe a calendar year test period for future G.S. § 62-133.2 fuel adjustment proceedings as the basis for establishing the appropriate fuel charge increment or decrement rider and an EMF rider. Use of a calendar year test period for Duke in future proceedings will be consistent with the action taken by the Commission in this case.

Furthermore, because the EMF calculation is based on a 12-month test period and annual kWh sales, it will operate as intended only if it is in effect for 12 months. Duke witness Stimart testified, "For the experience modification factor to be workable, we must have procedures in place that provide an on-going vehicle for recovery of costs, and which provide conformity from period to period with and without general rate cases." Therefore, the Commission concludes that an EMF decrement rider of 0.0046¢ per kWh, independent of the preliminary fuel factor, should be approved in this proceeding based upon 90% of the difference between Duke's actual 1985 test year level of reasonable and prudently incurred costs for fuel and purchased power and the fuel related revenues actually collected by the Company through its electric rates during the test period. The EMF rider will remain in effect for 12 months from its effective date. The preliminary fuel factor is subject to review and change in Duke's pending general rate case. As previously stated, the EMF rider to be established for Duke in its 1987 fuel charge adjustment proceeding will be based upon Duke's actual fuel cost recovery experience for the calendar year 1986.

Based on all the foregoing, the Commission concludes that the fuel factor of 1.2125¢ per kWh found to be appropriate elsewhere herein when reduced by the EMF decrement of .0046¢ per kWh results in a net fuel factor of 1.2079¢ per kWh. This net fuel factor is .0101¢ per kWh less than the fuel factor of 1.2180¢ per kWh approved in Docket No. E-7, Sub 391.

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 and has allowed a change based upon adjusted and reasonable fuel expenses prudently incurred under efficient management and economic operations.

IT IS, THEREFORE, ORDERED as follows:

1. That, effective for service rendered on and after the date of this Order, Duke shall adjust the base fuel component in its North Carolina retail rates by an amount equal to a 0.0101¢ per kWh decrement, excluding gross receipts tax, from the base fuel component approved in Docket No. E-7, Sub 391; and further, that 0.0046¢ per kWh of such decrement, representing the EMF portion, shall remain in effect for 12 months from the date of this Order.

2. That Duke shall file appropriate rate schedules and riders with the Commission in order to implement the fuel charge adjustment approved herein not later than 10 days from the date of this Order.

3. That Duke shall notify its North Carolina retail customers of the fuel adjustment decrement approved herein by including the "Notice to Customers of Rate Reduction" attached as Appendix A as a bill insert with bills rendered during the Company's next normal billing cycle.

4. That Duke shall follow deferred accounting with respect to 100% of the difference between actual reasonable and prudently incurred fuel costs,

including the fuel component of purchased power, and fuel related revenues realized under rates in effect. Such accounting requirement is effective as of January 1, 1986.

ISSUED BY ORDER OF THE COMMISSION
This the 29th day of July 1986.

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

Appendix A
DOCKET NO. E-7, SUB 410

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Application of Duke Power Company )
Pursuant to G.S. 62-133.2 Relating ) NOTICE TO CUSTOMERS
to Fuel Charge Adjustments for ) OF RATE REDUCTION
Electric Utilities )

NOTICE IS HEREBY GIVEN that the North Carolina Utilities Commission entered an Order on July 29, 1986, after public hearings approving a fuel charge rate reduction in the rates and charges paid by the retail customers of Duke Power Company in North Carolina. The rate reduction will be effective for service rendered on and after July 29, 1986. The rate decrease was ordered by the Commission after review of Duke's fuel expenses during the 12-month test period ended December 31, 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 Duke Power Company or in an annual fuel adjustment proceeding.

The Commission's Order will result in a rate reduction of approximately 10¢ for a typical residential customer using 1,000 kWh per month.

ISSUED BY ORDER OF THE COMMISSION.
This the 29th day of July 1986.

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

DOCKET NO. E-22, SUB 288

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 2115, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on Thursday, December 4, 1986, at 9:30 a.m.

BEFORE: Commissioner Sarah Lindsay Tate, Presiding; and Commissioners A. Hartwell Campbell and J. A. "Chip" Wright

APPEARANCES:

For Virginia Electric and Power Company:

Edgar M. Roach, Jr., Hunton and Williams, Attorneys at Law, P.O. Box 109, Raleigh, North Carolina 27602

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 and Lemuel W. Hinton, Assistant Attorneys 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 component of purchased power over or under the base fuel rate established in the last general rate case. The statute further requires that additional hearings be held on an annual basis but only one hearing for each utility may be held within 12 months of the last general rate case. The last general rate case order for Virginia Electric and Power Company ("the Company") was issued by the Commission on December 5, 1983, in Docket No. E-22, Sub 273. The last order approving a fuel charge rate reduction for the Company was issued by the Commission on December 27, 1985, in Docket No. E-22, Sub 281. There having been no review of the Company's fuel costs since that case, the Commission issued an order on July 8, 1986, scheduling an annual fuel charge adjustment proceeding for the Company, pursuant to G.S. 62-133.2, and required the Company to file the information prescribed by NCUC Rule R8-55(b)(1) and the change in rates, if any, that it proposed at least 60 days prior to the hearing and to give public notice at least 30 days prior to the hearing.

On October 3, 1986, the Company filed testimony and exhibits of the following witnesses: Samuel A. Hall, III, Fuel Rates Manager; G. Patrick Rooney, Senior Regulatory Coordinator; and M.R. Schools, Jr., Director - Corporate Accounting in the Controller Department. The Company also filed information and workpapers required by NCUC Rule R8-55(d)(1). In this filing, the Company derived a primary fuel cost component by normalizing test period (12 months ended June 30, 1986) fuel expenses to reflect changes in nuclear capacity factors, operation of the Bath County Pumped Storage Project, and June 1986 unit fuel prices. The Company calculated an experience modification factor (EMF) based on the difference between actual reasonable and prudently-incurred fuel expenses and the fuel-related revenues that were actually realized during the test period (excluding July, August, and September 1985 due to an overlap with the EMF established in the previous fuel adjustment proceeding), to which it proposed to include a refund of the North Carolina jurisdictional portion of the Westinghouse Settlement interest differential credit. The result was a total fuel cost component of 1.401¢/kwh (including gross receipts tax) which is an increase of .019¢/kwh over the current fuel charge.

The Company proposed, however, that the current fuel cost component of 1.382¢/kwh remain in effect. In order to achieve this result, the Company derived a new primary fuel cost component of 1.466¢/kwh (including gross receipts tax) by adjusting the total fuël cost component currently in effect to reflect the Westinghouse refund and EMF of .084¢/kwh. See Exhibit SAH-1, Schedule 4.

On November 19, 1986, the Public Staff filed the testimony and exhibit of Richard J. Durham, an Engineer in the Electric Division. The Public Staff recommended that the Commission approve a new fuel charge of 1.301¢/kwh (excluding gross receipts tax) by establishing a primary fuel component of 1.382¢/kwh, an EMF decrease of .039¢/kwh, and a Westinghouse Refund Rider of .042¢/kwh. It was the Public Staff's position that the Company's fuel factor should be based on an unadjusted test year for three reasons. First, it is consistent with the methodology used in the Company's last general rate case and subsequent fuel proceedings. Second, the Commission determined in Docket No. E-22, Sub 281, that it would be inappropriate from a ratemaking standpoint to make a normalization adjustment to recognize fuel savings attributable to the operation of the Bath County Project until the Bath County facility is fully included in the Company's cost of service in a general rate case. Third, should the use of an unadjusted test year not be entirely representative of prospective fuel costs, the EMF will adjust for any over/underrecovery of reasonable and prudent fuel costs. It was also the Public Staff's position that a separate rider be established apart from the EMF to administer the refund associated with the Westinghouse Settlement. The resulting fuel charge is a decrement of .036¢/kwh from the current fuel charge (excluding gross receipts tax).

The matter came on for hearing as scheduled. Upon stipulation of the parties, the prefiled testimony of the witnesses was copied into the record and their exhibits were admitted into evidence. All parties waived cross-examination.

Based upon the foregoing, the Commission makes the following

## FINDINGS OF FACT

1. Virginia Electric and Power Company is duly organized as a public utility operating under the laws of the State of North Carolina and is subject to the jurisdiction of the North Carolina Utilities Commission. The Company is

engaged in the business of developing, generating, transmitting, distributing, and selling electric power to the 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 months ended June 30, 1986.

3. The Company's fuel purchasing practices and power purchasing practices during the test period were reasonable and prudent.

4. The Company's actual test period jurisdictional fuel expense was $26,780,740. The Company's jurisdictional fuel revenue exceeded jurisdictional fuel expense for the period October 1985 - June 1986 by $757,856. The jurisdictional portion of the Westinghouse Settlement interest differential credit is $808,231. The Company's test period jurisdictional sales were 1,937,609,000 kwh.

5. It is just and reasonable to establish the Company's primary fuel component in this proceeding by use of the actual fuel expense incurred by the Company on a jurisdictional basis during the test period, resulting in a primary fuel component of 1.428¢/kwh (including gross receipts tax), a decrement of .211¢/kwh from the base fuel approved in the Company's last general rate case, Docket No. E-22, Sub 273.

6. It is just and reasonable to establish an EMF based on 100% of the Company's jurisdictional overrecovered fuel expenses for the nine months ended June 1986, resulting in an EMF of (.040)¢/kwh (including gross receipts tax).

7. It is just and reasonable to establish a separate rider to refund the jurisdictional portion of the Company's Westinghouse Settlement interest differential credit, resulting in a Westinghouse Refund Rider of (.043)¢/kwh (including gross receipts tax).

8. The total fuel charge approved in this proceeding is 1.345¢/kwh, which is a decrement of .294¢/kwh from the 1.639¢/kwh base fuel component approved in the Company's last general rate case, Docket No. E-22, Sub 273, and a decrement of .037¢/kwh from the 1.382¢/kwh fuel component approved in the Company's last fuel adjustment proceeding, Docket No. E-22, Sub 281. (All rates include gross receipts tax.)

9. The fuel charge adjustment approved in this proceeding will result in a reduction in charges to the Company's retail electric customers in North Carolina of approximately $716,915 annually based on test period sales. Such a reduction is just and reasonable and is based upon actual fuel expenses reasonably and prudently incurred by the Company under efficient management and economical operations.

WHEREUPON, the Commission reaches the following

## CONCLUSIONS

The Commission concludes that it is just and reasonable to approve a fuel charge adjustment for the Company pursuant to G.S. 62-133.2 effective beginning with service rendered during the next regularly scheduled billing cycle, resulting in a uniform decrement of .294¢/kwh (including gross receipts tax) to the Company's base rates. This uniform decrement reflects actual changes experienced by the Company in its cost of fuel and the fuel component of purchased power during the 12 months ended June 30, 1986, a reduction of .040¢/kwh (including gross receipts tax) to reflect an overcollection of fuel expense during the 9 months ended June 1986, and a reduction of .043¢/kwh to refund a portion of the Westinghouse Settlement interest differential credit. In making this determination, the Commission has carefully considered all of the evidence, including that 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 herein is based on the actual fuel expense reasonably and prudently incurred by the Company under efficient management and economical operations. Such fuel charge decrement will remain in effect until changed by the Commission in a subsequent general rate case pursuant to G.S. 62-133 or an annual fuel charge adjustment proceeding pursuant to G.S. 62-133.2.

On August 14, 1986, the Commission issued its Order Revising Rules and Procedures by which the Commission revised Commission Rule R8-55 dealing with the procedure to be followed in annual fuel charge adjustment proceedings. The new Rule provides that upon finding an abnormality having a probable impact on the utility's revenues and expenses during the test period, the Commission will normalize the capacity factor for nuclear production facilities by using an equally weighted average of each nuclear unit's actual lifetime operating experience and the national average for nuclear production facilities in the most recent North American Electric Reliability Council's Equipment Availability Report, giving "due consideration to new plants and certain unusual events." Although the Commission has used actual, rather than normalized, capacity factors in issuing the present Order, the Commission finds that the present proceeding is unusual and unique and that the Commission's actions herein are not inconsistent with our recent Rule revisions. Company witness

Hall testified that because of the Company's excellent test year nuclear performance, normalized test year fuel expenses would be significantly higher than actual test year fuel expenses. Nonetheless, the Company did not request any increment to its fuel cost component in this proceeding. The Public Staff did not propose any increment; it proposed a decrement. Another unusual factor present in this proceeding relates to the Company's Bath County pumped storage facility. In the Company's last annual fuel charge adjustment proceeding, Docket No. E-22, Sub 281, the Commission refused to adopt a normalization adjustment to recognize fuel savings attributable to the commercial operation of the pumped storage facility since the facility had only recently begun commercial operation and was not fully reflected in the Company's rate base and cost of service. The Company has not filed a general rate case to include the Bath County facility since that time, and the situation with respect to this facility remains the same. The Commission has used actual, rather than normalized, fuel expenses in the Company's last two annual fuel charge adjustment proceedings (Docket Nos. E-22, Sub 278 and Sub 281) and the Company's last two general rate cases (Docket Nos. E-22, Sub 265 and Sub 273). This situation is unique to Virginia Electric and Power Company; it is not the case with any other company subject to G.S. 62-133.2. In these circumstances, we conclude that it is proper to use actual fuel expenses in this proceeding. Finally, we note that this procedure is being used pursuant to an agreement of the parties and that the parties specifically stipulated at the hearing herein that this procedure would not establish any precedent for future proceedings under Rule R8-55.

IT IS, THEREFORE, ORDERED as follows:

1. That, effective beginning with service rendered during the next regularly scheduled billing cycle, the Company shall adjust the base fuel component in its North Carolina retail rates approved in Docket No. E-22, Sub 273, by a decrement of .211¢/kwh to reflect a new primary fuel cost component of 1.428¢/kwh (including gross receipts tax).

2. That an EMF Rider in the amount of (.040)¢/kwh (including gross receipts tax) is hereby approved and shall remain in effect for a period of one year. A Westinghouse Refund Rider in the amount of (.043)¢/kwh (including gross receipts tax) is hereby approved and shall remain in effect until the refund is completed.

3. That the Company shall file appropriate rate schedules and riders with the Commission in accordance with this order not later than 10 days after the effective date of this Order.

4. That the Company shall notify its North Carolina retail customers of the fuel charge decrement approved herein by including "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 regular billing cycle.

ISSUED BY ORDER OF THE COMMISSION.
This the 11th day of December 1986.

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

APPENDIX A
DOCKET NO. E-22, SUB 288

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 , 1986, approving a $716,915 reduction in the annual rates and charges paid by the retail customers of Virginia Electric and Power Company (the Company) in North Carolina. The rate reduction will be effective for service rendered beginning with the billing month of January 1987. The rate decrease was ordered by the Commission after review of the Company's fuel expenses during the 12-month test period ended June 30, 1986, and reflects actual changes experienced by the Company in its cost of fuel and the fuel component of purchased power. This fuel charge reduction will remain in effect unless and until otherwise changed by the Commission in a subsequent general rate case or annual fuel charge proceeding for the Company.

The Commission's order will result in a rate reduction of approximately 37¢ for a typical residential customer using 1,000 kwh per month.

ISSUED BY ORDER OF THE COMMISSION.
This the 11th day of December 1986.

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

DOCKET NO. E-22, SUB 285

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

| In the Matter of | | |
|---|---|---|
| Application of Virginia Electric and Power Company to Revise Residential Energy Conservation Standards | ) ) ) ) | ORDER REVISING RESIDENTIAL SCHEDULES 1, 1P, AND 1T ENERGY CONSERVATION STANDARDS |

BY THE COMMISSION. On January 17, 1986, Virginia Electric and Power Company (Vepco) filed proposed revisions in Residential Schedules 1, 1P, and 1T to amend the current Energy Conservation Standards for homes, townhouses, and apartments and to offer a new standard for manufactured housing (mobile homes).

In lieu of the present performance type conservation standard, the Company is proposing a prescriptive type standard with specific alternative insulation provisions. The new standards will achieve approximately the same performance level as the old. They are designed to improve communications with builders, realtors, and home buyers and to simplify the review and approval process in the field.

The Company also proposed for the first time Energy Conservation Standards for manufactured or mobile homes which are consistent with those already required by Duke Power Company and Carolina Power & Light Company to qualify for a conservation discount. This uniformity in minimum requirements will permit the manufacturer to construct homes to the same level of energy efficiency for customers throughout North Carolina. The Public Staff concurred in the revisions proposed by the Company. The Commission is of the opinion that the revisions in the Energy Conservation Standards proposed by the Company should enhance the Company's energy conservation efforts and should be approved.

IT IS, THEREFORE, ORDERED that Virginia Electric and Power Company Schedules 1, 1P, and 1T be revised as proposed by the Company.

ISSUED BY ORDER OF THE COMMISSION.
This the 28th day of January 1986.

NORTH CAROLINA UTILITIES COMMISSION
Sandra J. Webster, Chief Clerk

(SEAL)

DOCKET NO. G-21, SUB 235
DOCKET NO. G-21, SUB 237
(REMANDED)

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Application of North Carolina Natural Gas Corporation for an Adjustment in Its Rates and Charges ) ORDER ON REMAND

HEARD IN: Commission Hearing Room 217, Dobbs Building, Raleigh, North Carolina, on November 4-6, 1985

BEFORE: Commissioner Edward B. Hipp, Presiding; and Commissioners Robert K. Koger and Ruth E. Cook

APPEARANCES:

For North Carolina Natural Gas Corporation:

Donald W. McCoy and Alfred E. Cleveland, McCoy, Weaver, Wiggins, Cleveland and Raper, Attorneys at Law, P. O. Box 2129, Fayetteville, North Carolina 28302

For the Public Staff:

Antoinette R. Wike, Chief Counsel, and 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

For Aluminum Company of America:

Samuel Behrends IV, LeBoeuf, Lamb, Leiby & McRae, Attorneys at Law, 336 Fayetteville Street Mall, Raleigh, North Carolina 27602

For the Cities of Wilson, Rocky Mount, Greenville, and Monroe:

David R. Straus, Spiegel & McDiarmid, Attorneys at Law, Suite 1100, 1350 New York Avenue, N. W., Washington, D. C. 20005

For Carolina Utility Customers Association, Inc.:

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

BY THE COMMISSION: This proceeding arises on remand from the North Carolina Supreme Court's decision issued April 2, 1985, on an appeal from the Commission's Final Order entered in these dockets on January 6, 1984.

The Supreme Court affirmed the Commission's Order in part and reversed the Order in part and remanded the case to the Commission for further proceedings. The Supreme Court Order was certified to the Commission on April 22, 1985.

On May 24, 1985, the Commission entered an Order scheduling a prehearing conference in Raleigh, North Carolina, on June 14, 1985, for the purposes of defining the issues on remand and the scope of the further hearing, and determining a procedural schedule for the prefiling of additional testimony.

The prehearing conference was convened as scheduled, and all parties indicated above appeared and participated. On June 20, 1985, the Commission issued its Prehearing Order which, among other things, established the issues on remand as follows:

(a) Are the increase in annual revenues of approximately $3.3 million brought about by elimination of the Curtailment Tracking Rate (CTR) and the rates necessary to produce such revenues just and reasonable?

(b) Do the approved rates unreasonably discriminate among the various classes of NCNG Customers in violation of G.S. 62-140(a); and, if so, what remedy is appropriate?

(c) Does the approved transportation rate, Rate Schedule T-1, unreasonably discriminate?

(d) Should the Industrial Sales Tracker (IST) revenue calculations be recomputed retroactively to reflect inclusion of new industrial and large commercial customers as ordered by the Supreme Court and does the IST unreasonably discriminate even with the inclusion of such new customers?

In addition, the Commission established the scope of the further hearing. The record of the hearings previously conducted by the Commission was already before the Commission, and the further hearing was set for the purpose of receiving additional testimony.

The Commission ordered North Carolina Natural Gas Corporation (NCNG) to prepare and present at the hearing full cost of service studies based on at least two different methodologies. As to each methodology, NCNG was ordered to compute rates of return on the basis of (1) the rates established in the general rate case Order, and (2) current rates reflective of any negotiations.

The hearing date was established as September 23, 1985. By Order dated July 17, 1985, the Commission rescheduled the hearing for Monday, November 4, 1985, at 2:00 p.m. in the Commission Hearing Room. The hearing date was rescheduled following procedural motions filed by the Company and intervenors Cities and Alcoa.

The matter came on for hearing on remand in Raleigh at the date and time set forth above. The Company presented the direct and rebuttal testimony and exhibits of Gerald A. Teele, Vice President - Rates and Budgets.

Alcoa presented testimony in the form of an affidavit and a responsive affidavit of Maynard F. Stickney, Chief Industrial Engineer of Alcoa's Badin, North Carolina works.

Carolina Utility Customers Association, Inc. (C.U.C.A.), the successor intervenor to the North Carolina Textile Manufacturers' Association (NCTMA), 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 cities of Wilson, Rocky Mount, Greenville, and Monroe (Cities) presented the direct, rebuttal, and surrebuttal testimony and exhibits of Fred R. Saffer, Principal, Fred Saffer Utility Consultants, Inc., of Orlando, Florida.

The Public Staff presented the testimony and exhibits of Raymond J. Nery, Director, Natural Gas Division.

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. North Carolina Natural Gas Corporation is a corporation organized under the laws of the State of Delaware and authorized to do business in the State of North Carolina and is a franchised public utility providing natural gas service to its customers in North Carolina. The Company is properly before the Commission in this proceeding, pursuant to Chapter 62 of the General Statutes of North Carolina, as a result of the North Carolina Supreme Court's opinion issued April 2, 1985, remanding these dockets to the Commission for further consideration.

2. The revenues required to produce the rate of return on common equity of 15.50% and the rate of return on original cost rate base of 13.08% includes the $3,420,423 of revenues resulting from elimination of the CTR. The fact that all customers' natural gas rates would increase as a result of the elimination of the CTR was included in the Company's initial application and in the testimony, exhibits and workpapers of Company witness Teele, and the testimony of Company witness Wells and Public Staff witness Garrison.

3. The rates approved by the Commission in this case, including the increase in rates necessary to produce the $3,420,423 resulting from the elimination of the CTR, are just and reasonable.

4. 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 NCNG must provide and maintain in order to meet the requirements of its customers, competitive conditions, and consumption characteristics and other factors cited hereinafter. The Company's unit rates are closely related to the Commission's priority of service rules and regulations (i.e., the highest rate is charged to the residential customers who have the highest priority of service, while the lowest tariff rate is charged to large industrial customers using natural gas for boiler fuel. Boiler fuel is the first use of natural gas that is interrupted when service interruptions become necessary). The approved rates do not unreasonably discriminate among the various classes of NCNG customers in violation of G.S. 62-140(a).

5. Under the Supreme Court's opinion, it is not necessary for the Commission to consider the alternative ratemaking approach presented by Cities, in which the rates to the Cities would be predicated on the end-use of the gas consumed by Cities' customers, because of Finding of Fact No. 4 above.

6. NCNG presently delivers natural gas to its commercial and industrial customers pursuant to various rate schedules. The Company purchases natural gas from Transco, its pipeline supplier, and resells such gas to its commercial and industrial customers under Rate Schedules 2, 3A, 3B, 4, 5, 6 and the negotiated Rate S-1. NCNG also transports natural gas for and on behalf of its industrial and municipal customers under Rate Schedules T-1 and T-2 (the latter rate was accepted for filing by the Commission on May 30, 1985). Full margin transportation rates are fair and reasonable and should be maintained in this proceeding. "Margin" as used herein is defined to mean the normal sales rate of NCNG less Transo's CD-2 commodity charge and less the gross receipts taxes applicable to the normal sales rate.

7. The Company's transportation Rates T-1 and T-2, being based on the margin included in sales Rate Schedules 4, 5 and 6, are not excessive and do not unreasonably discriminate as the applicable sales rates have been found to be just and reasonable and not unreasonably discriminatory.

8. The Industrial Sales Tracker (IST), as modified by this Order, is necessary, appropriate, just and reasonable and should be maintained in this proceeding. The IST has been and will continue to be based on the filed tariff rates (excluding special increments or decrements included in rates at any time) for Rate Schedules 4, 5 and 6 plus the realized rates from sales at negotiated rates to customers in NCUC Priorities 2.8 through 9.0 under Rate Schedule S-1 (NCNG industrial customers) and SM-1 (Rate Schedule S-1 for Sales to NCNG's municipal customers). The IST must be modified to include as IST customers all customers who have heavy oil as an alternate fuel. All non-IST customers who pay tariffed rates will be subject to the increments and decrements that result. The IST will also include new customers in Priorities 2.8 through 9.0 as ordered by the Supreme Court. All transportation revenues under Rate Schedules T-1 and T-2 have been and will continue to be credited to the IST for the benefit of the Company's non-IST customers. The IST affirmed in this proceeding is not unreasonably discriminatory to or within customer classes.

9. The Company's IST has operated since December 12, 1983, and it has enabled the Company to provide lower rates to its residential, commercial, high priority industrial process and municipal customers by maximizing revenues from the industrial markets (old and new customers) without charging the industrial customers any higher rates.

10. The IST revenue reserve account should be increased by $102,732 to reflect inclusion in the IST calculations of new industrial and large commercial customers in NCUC Priorities 2.8 through 9.0 added to NCNG's system since June 30, 1983. That amount, plus applicable interest at 10.00% should be added to the IST revenue reserve account and not retained as revenues by NCNG. A retroactive adjustment should also be made to account for the inclusion of all non-IST customers who pay tariffed rates in the increments and decrements resulting from operation of the IST as previously ordered herein.

## EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 1

The evidence for this finding of fact is contained in the verified application of the Company seeking an increase in its rates and charges, the Commission's files and records, the Prehearing Order, and the testimony and exhibits of Company witness Teele and Public Staff witness Nery. This finding of fact is essentially informational, procedural, and jurisdictional in nature and is uncontested.

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

The evidence for these findings of fact is found in the testimony and Exhibit A of Company witness Teele and the testimony of Alcoa witness Stickney on remand. None of the other witnesses addressed the issue of the elimination of the CTR.

Company witness Teele's Exhibit A is a two-column presentation which sets forth the effect of elimination of the CTR on NCNG's operating revenues under two different approaches. The first column, which was used by the Company and the Public Staff and accepted as correct and appropriate by the Commission, reflects the elimination of the CTR as a pro forma adjustment to revenues so as to state the Company's end-of-period revenues at base rates (tariff rates exclusive of special increments or decrements). The Commission notes that this treatment is consistent with the long-standing ratemaking practice for natural gas companies in this State. End-of-period revenues should be stated on the basis of the current base rates in effect at the end of the test year; by definition, special increments or decrements such as for deferred gas costs, storage gas appreciation, the CTR, etc. are not base rates because they do not represent cost of service items included in the test year, and furthermore, they are temporary in nature (i.e., they can be changed without the necessity of a general rate case proceeding). Such was the case with NCNG's CTR, as it was revised at least annually, and subject to annual true-up and refunds to customers, after first becoming a rate decrement on January 21, 1979 (Tr., Vol. 1, Page 105).[1]

The second column of figures shown on Teele Exhibit A depicts an alternative presentation, which Intervenor witness Stickney and counsel for C.U.C.A. advocated, showing elimination of the CTR not as a pro forma adjustment to end-of-period revenues but rather as part of the general rate increase approved by the Commission. Instead of a general rate increase of $1,117,531, the alternative presentation shows the general rate increase to be $4,537,954, consisting of the increase in base rate revenue of $1,117,531 plus $3,420,423 from the elimination of the CTR.

The Commission notes that the Company's total revenue requirement of $168,891,196 established in our January 6, 1984, Order is unaffected because of elimination of the CTR. This is shown on line 7 of Teele Exhibit A. The

[1] Unless otherwise indicated, all transcript references in this Order are to the transcript on remand.

overall revenue requirement established in this case was determined in the traditional manner of determining the Company's reasonable test year operating expenses, depreciation, general taxes and June 30, 1983, original cost rate base. A fair and reasonable rate of return of 13.08% was applied to the original cost rate base to determine net operating income for return plus associated income taxes on the equity component of that return. The sum of these various costs is $168,891,196 as summarized on Schedule I, page 34 of the January 6, 1984, Order. The elimination of the CTR has no impact on that revenue requirement.

Establishing the $168,891,196 annual revenue requirement for the new test year (originally the twelve months ended December 31, 1982, and updated to the twelve months ended June 30, 1983) ended the Company's obligation to continue the then existing CTR decrement of $.1049 per dekatherm, which was based on a test year ended June 30, 1977, the date of the Company's previous general rate case.

The Commission previously concluded in the January 6, 1984, Order that the $168,891,196 revenue requirement and the rates necessary to produce that annual revenue requirement were just and reasonable. The revenues required to produce the rate of return on common equity of 15.50% and the rate of return on original cost rate base of 13.08% included the $3,420,423 of revenues resulting from the elimination of the CTR, and the rates approved by the Commission in this case, with the CTR of zero, are just and reasonable.

Additionally, the Commission's review of the entire record of this case and its file applicable to NCNG's CTR (Docket No. G-21, Sub 177, Sub 177-A, Sub 177-B, Sub 177-C, Sub 177-D and Sub 177-E) shows that the Company set out in its application, testimony and exhibits in the instant case that it was proposing to eliminate the CTR from its rate structure.

The Commission in Appendix B attached to this Order is presenting Schedules I, II and III contained in the original Final Order in the case. The schedules attached hereto differ from those in the original Order since the elimination of the CTR is treated as an allowed increase amount. In contrast, such amount was treated in the original Order as a pro forma end-of-period adjustment. The Commission believes the initial treatment of this issue is the most accurate. However, these schedules are presented to clearly demonstrate that treatment of the CTR as an increased revenue amount has no impact whatsoever upon the revenue requirements of the Company. It should be noted that the gross receipt tax rate in effect at the issuance date of the original order was used for comparison purposes in Schedules I, II and III.

## EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 4 THROUGH 10

The evidence regarding rate design issues is found in the testimony of all the witnesses--Company witness Teele, Alcoa witness Stickney, C.U.C.A. witness Loos, Cities witness Saffer, and Public Staff witness Nery.

The Company and the Public Staff agreed on all major issues on remand i.e., that NCNG's present rates approved by the Commission are just and reasonable and are not discriminatory; that the IST is a reasonable, necessary and non-discriminatory ratemaking mechanism, but that the IST revenue reserve account should be increased by $102,732 (See Teele Exhibit B., line 8) to reflect inclusion of the margin NCNG earned on new industrial and large commercial customers during the period beginning December 12, 1983, and ending April 1, 1985, in order to comply with the Supreme Court's opinion with respect to the inclusion of new industrial and large commercial customers in the IST calculations.

Alcoa, C.U.C.A. and the Cities generally took the position that rates should be based on cost of service with equalized class rates of return. The Cities presented an alternative proposal for the Cities' Rate Schedule RE-1 in case the Commission decided for whatever reason not to adopt equalized class rates of return. That proposal--referred to as the "look through" approach--would base the Cities' rate on the end-use of the gas, using the class rates of return of NCNG's retail customers to calculate rates for the Cities.

Alcoa and C.U.C.A. took the position that the IST is unfair because it is discriminatory against large industrial customers. The Cities' position on the IST is that they have accepted it but do not like it, apparently because they would prefer to set rates primarily on the basis of cost of service (Tr., Vol. 2, pages 168, 172, and 173).

## CUSTOMER CLASS RATES OF RETURN AND THE DISCRIMINATION ISSUE

### General

The Company proposed in its initial filing to collect essentially all of its proposed rate increase from its residential and commercial customers. In fact, no increase in the base rates of industrial Rate Schedules 4, 5, and 6 and municipal Rate Schedule RE-1 was proposed by NCNG. Even though the Commission approved an increase in base rates substantially less than the increase sought by the Company, the Commission directed the Company to increase the base rates of its residential and commercial customers while maintaining the existing base rates for Rate Schedules 4, 5, 6, and RE-1 (as previously discussed, all NCNG customers' tariff rates were increased by $.1049 per dekatherm to reflect the elimination of the CTR). The Commission's decision on rate design followed the recommendation of Company witness Ransom who testified in the original proceedings in this case that his estimated cost of service study performed for the 12 months ended December 31, 1982, indicated that the primary reason for NCNG's increase in costs (other than general inflation) appeared to be directly related to increases since 1977 in the number of residential and commercial customers served. For that reason, together with the competitive conditions existing in the industrial market in April 1983, witness Ransom proposed that all the increases in the Company's base rates should be assigned to the residential and commercial customers (Tr., Vol. 5, page 10).

### Estimated Cost of Service and Class Rates of Return

In the remand proceedings, Company witness Teele prepared and presented the results of several cost of service studies as directed by the Commission in the Prehearing Order entered in these dockets on remand on June 20, 1985. In fact, witness Teele prepared 18 different cost of service studies, using three basic methodologies (Peak Day Responsibility, Seaboard and United) with six cases for each method. The variability in the six cases centered around (1) the use of a design day peak demand or an actual three-day average peak; (2) the classification of negotiated sales either as a separate customer class or with such negotiated sales merged with those of the regular rate schedules for customers in similar NCUC priorities of service; and (3) as specifically ordered by the Commission, calculation of revenues and resulting rates of return reflecting current (i.e., June 1985) negotiated rate margins instead of test year (June 1983) negotiated rate margins.

Public Staff witness Nery testified that he prepared certain cost of service studies using the Seaboard and United methods, but decided not to introduce them because the results came out very close to NCNG's. Witness Nery testified that the Public Staff supports the cost of service studies filed by NCNG (Tr. Vol. 3, page 18).

Witness Teele presented an exhibit which showed the class rates of return for each of the 18 cost of service studies. Teele Exhibit C shows that the residential customers in Rate Schedule 1 have a rate of return substantially less than the system average. It also shows that industrial process customers in Rate Schedules 3A and 3B have a rate of return of at least 22% in all cases. It shows, too, that the municipal customers in Rate Schedule RE-1 have a rate of return ranging from 23% to 38%. However, it also shows that there is great variability in the rates of return for the large industrial customers in Rates 4, 5, and 6, depending on the cost of service methodology used to allocate fixed costs, the facts used and assumptions made regarding peak-day usage and the level of, and margins realized from, sales of gas at negotiated rates. The Commission notes that 37% of the Company's sales to NCNG's industrial customers in the test year were at negotiated rates (Tr., Vol. 1, page 126). For the Company's fiscal year ended September 30, 1985, 45% of the Company's industrial gas volumes consisted of negotiated sales or transportation of the customers' own gas. It is also relevant that in 1985, as in 1983, over 65% of the Company's total sales and transportation volumes go to the industrial market, and 75% of NCNG's industrial market is supplied with No. 6 oil as the alternate fuel. These numbers are significant and cannot be ignored in our determination of just and reasonable sales and transportation tariff rates and in our determination of the impact of the IST on the Company and all of its customers.

The rates of return calculated by witness Teele for large industrial customers were in the following range:

| Rate Schedule | High | Low |
|---|---|---|
| 4 | 173.53% | 12.72% |
| 5 | 163.35% | 5.86% |
| 6 | 142.04% | -5.34% |

Estimated Cost of Service Methodologies

For each industrial rate schedule, the high rates of return are derived from the use of the Peak-Day Responsibility Method, Case 1, which allocates very little fixed costs to the interruptible customers. Witness Teele testified that the Peak-Day Responsibility method is generally no longer used in the natural gas industry because it gives no recognition to the annual use of the pipeline, resulting in understating the cost of serving large interruptible industrial customers and overstating the cost of serving firm customers with low load factors, such as residential and commercial customers. For that reason, he did not recommend its use by the Commission even though it comes closest to the method of cost allocation Company witness Ransom used in the original proceedings in this case (Tr., Vol. 1, page 23). That particular methodology was also essentially utilized by Cities witness Saffer in the original proceedings. This explains for the most part how witness Saffer calculated industrial rates of return in excess of 100% (in one case, over 200%) in the original proceedings and, perhaps, why the Supreme Court concluded that there appeared to be substantial discrimination in NCNG's rates. The only cost of service studies before the Commission in the original proceedings were those presented by witness Ransom and witness Saffer. The Public Staff did not prepare cost of service studies in the original proceedings.

On the other hand, the very lowest rates of return for the industrial rate schedules are derived from the use of the United Method, Cases 5 or 6, which allocate the greatest amount of fixed costs to the industrial rates and also reflect the impact of the low margin negotiated sales and/or transportation service. Witness Teele took no specific position on the use of the United method. He recommended the use of the Seaboard method for use on the NCNG system to establish estimated cost of service as a useful guide in designing rates (Tr., Vol. 1, page 26) because it recognizes that the annual use of the pipeline is just as important as peak-day usage and therefore results in a reasonably equitable allocation of fixed costs among the various classes of customers. The Commission takes note of the fact that witness Teele allocated Transco demand charges 50/50 between peak-day usage (demand) and annual usage (commodity) in his version of the Seaboard method. This methodology recognizes that (a) Transco demand charges represent a fixed cost to the local distribution companies such as NCNG as surely as depreciation of NCNG's own facilities are fixed costs; (b) Transco demand charges do not include variable costs such as the commodity cost of purchased gas, all of which are included in Transco's commodity rate; and (c) interruptible customers of the local distribution companies in North Carolina should be accountable for their fair share of Transco (or other interstate pipeline) demand charges because of the significant share of pipeline capacity industrial customers in North Carolina have available to them on practically a year-round basis (Tr., Vol. 4, pages 40-42). Because of that significant and proper change in allocating Transco demand charges, witness Teele's Seaboard method is unlike any of the others presented in this case. The method he refers to as "Peak-Day Responsibility" would be considered by some experts as "Seaboard." In fact, witness Saffer refers to Mr. Ransom's estimated cost of service methodology as the "Atlantic Seaboard Method" (Tr., Vol. 4, page 114).

## Other Relevant Ratemaking Factors

Company witness Teele testified that estimated cost of service studies are a useful guide in designing rates for a natural gas utility. Public Staff witness Nery testified that "Cost of service and rate of return, while superficially the most objective basis of comparison (indicators of discrimination), are actually among the least objective because of the judgment and assumptions that go into performing cost of service studies." (Tr., Vol. 3, page 17).

Moreover, both witness Teele and witness Nery testified that there are several other factors or ratemaking principles in addition to cost of service to consider in designing rates for a natural gas utility. Among those mentioned and explained by witnesses Teele and Nery are these: (1) value of service to the customer; (2) the type and priority of service received by the customer, and if the service is interruptible, the frequency of the interruptions; (3) the quantity of use; (4) the time of use; (5) manner of service; (6) competitive conditions in the marketplace related to the acquisition of new customers; (7) historic rate differentials between the various classes of customers; (8) the revenue stability to the utility; and (9) economic and political factors which are inherent in the ratemaking process.

Both witness Teele and witness Nery testified that at least 50% of the Company's total market has the capability to switch to residual fuel oil, primarily No. 6. In the absence of competitive gas prices (provided by negotiated rates or the Company's transportation of customer-owned gas) during the test year and even more recently during the summer of 1985, the Company could have lost a substantial share of its total gas market. Witness Teele stated that the risk to the Company associated with serving its large commercial and all industrial customers is very high because of those customers' switching capability and the impact it has on the customers who remain on the system. When any customer is lost from the system and not replaced at the identical location (residence, commercial building or factory), the remaining customers must pay the fixed costs associated with the lost customer if the utility is to be able to maintain the financial resources to continue providing good service. According to Commission directive, any customer in Priorities 2.5 through 9 (i.e., all but residential and small commercial) has to have alternate fuel capability, and therefore they have the immediate ability to switch to their alternate fuels if competitive conditions so warrant. Witness Teele and witness Nery testified 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 either (1) reducing the Company's margin on sales of Transco's CD-2 gas so that the prices are competitive with fuel oil (i.e., negotiated sales); or (2) arranging with the customers and Transco to transport lower cost, spot-market gas at total delivered costs to the customers equal to or, in many cases, less than the cost of No. 6 fuel oil.

## C.U.C.A. Testimony

C.U.C.A. witness Loos testified that the Company's rates applicable to large industrial customers, as measured by the cost of service studies, 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 rates. Witness Loos contended that the subsidy should be eliminated as rapidly as possible. He recommended rate reductions in every industrial rate schedule, ranging from a reduction of $.12 per dt for Rate 6 (large Boiler Fuel) to $.75 per dt for Rate 3A (Industrial Process Uses, less than 300 dt per day). To make up the revenue loss from industrial customers, witness Loos recommended an increase in residential Rate 1 of $1.79 per dt or 32%. During redirect examination by counsel, witness Loos testified that he would not object to a smaller movement of rates as long as the Commission indicated that its long-term objective was to move toward equalized rates of return.

Company witness Teele demonstrated in his rebuttal testimony that the rates recommended by witness Loos were based essentially on his own cost of service study. Among other things, Mr. Loos's recommended rate changes would cause Rate 6 to be higher than any other industrial rate schedule including Rate 3A, in spite of the fact that Rate 6 customers (Priorities 7 through 9) are the first customers interrupted during cold weather; Rate 5 customers could purchase gas for $.41 per dekatherm less than Rate 6 customers even though Rate 5 customers use smaller quantities and have a higher priority of use; the Cities' Rate RE-1 would be higher than all of NCNG's industrial rates recommended by Mr. Loos; and, finally, witness Loos would have the Commission price NCNG's residential rate for customers in eastern North Carolina at $1.00 per dt more than the residential rates for the other two major gas companies in the State serving the Piedmont and western North Carolina.

## Cities Testimony

Cities witness Saffer presented the results of his replication of the cost of service studies performed by Company witness Teele and C.U.C.A. witness Loos. In addition, witness Saffer expanded each of these various cost of service studies to show the results of the "look through" approach he advocates if the Commission chooses not to set rates on the basis of equalized class rates of return. In essence, witness Saffer testified that cost of service should be the primary consideration for setting all utility rates, including NCNG's rates; and he testified that all cost of service studies presented in this entire case (original and remand) demonstrated that there was substantial rate discrimination on the basis of cost of service studies against the Cities.

Witness Saffer's "look through" approach begins with the Cities' market profile (residential, commercial, and various industrial classes) and then allocates NCNG's cost of service allocated to Rate RE-1 to these various end-users. Witness Saffer applies the rate of return applicable to each of NCNG's retail customer classes to the same customer class of the Cities. For example, if NCNG's residential customer class showed a rate of return of 4%, then witness Saffer allocated a 4% rate of return to the Cities' residential market, and so on through industrial boiler fuel. The end result of witness Saffer's "cost of service study within a cost of service study" is a proposed rate reduction for the Cities and an offsetting rate increase to NCNG's residential customers so that the Cities residential customers can receive the same supposed "subsidy" that NCNG's residential customers receive.

## Commission Conclusion - Class Rates of Return and Risk

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 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. Witness Teele's testimony and Exhibit C provide the best illustration of that variability. Witness Teele's Cases 5 and 6 are particularly instructive in this regard as they demonstrate the impact that different levels of negotiated sales (prices and volumes) can have on rates of return, with or without the operation of an IST.

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 presented in this case.

NCNG's unit rates are geared directly toward the Commission's Priority of Service Rules and Regulations in Rule R6-19.2. The priority system fully considers (a) type of use of the gas; (b) quantity of use; (c) manner of use; (d) alternate fuels used by industrial customers; and (e) of course, frequency of interruptions of service. The following chart lists NCNG's present unit rates in order of priority.

| Rate Schedule | Description | Priorities | Charges (tail block only) |
|---|---|---|---|
| 1 | Residential | 1.1 | $.52646 per therm |
| 2 | Commercial & Small Industrial | 1.2-2.4 | .52066 |
| NGV | Nat. Gas Vehicles | 2.41 | .57418 |
| 3A | Industrial Process | 2.5 | .50404 |
| 3B | Industrial Process | 2.6 | .48948 |
| 4 | Other Commercial & Industrial | 2.8-5 | .48922 |
| 5 | Boiler fuel | 6 | .47951 |
| 6 | Large Boiler Fuel | 7,8 & 9 | .46008 |
| RE-1 | Municipal | - | .46632 |

The relative unit rates for customers in Rate Schedules 1 through 6 reflect the relative priorities of interrupting service during the peak periods. Such priorities reflect the ability of customers to switch to alternative fuels. Currently, the unit prices per dekatherm are highest for residential customers served on Rate Schedule 1 and are progressively lower through Rate Schedule 6. As shown in the above chart, the unit prices per dekatherm for Rate Schedule 4 are higher than for Rate Schedule 5 and reflect the fact that Rate Schedule 5 customers would be interrupted more frequently than Rate Schedule 4 customers. The higher unit prices for Rate Schedule 4 than for Rate Schedule 5 also reflect the fact that the cost of alternative fuels is generally higher as a class for Rate Schedule 4 customers than for Rate Schedule 5 customers. The Commission notes also that Rate Schedule RE-1 for municipal customers is the second lowest tariffed rate on NCNG's system.

The Commission recognizes that the residential and certain industrial and commercial customers do not generally have the ability to change rapidly to alternate fuels, as such a change requires a capital investment in new heating equipment, nor do they have the possibility of negotiating their rates. The risk to NCNG 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 commerical and 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 commerical and industrial customers who have heavy fuel oil as an alternative and who negotiate rates. The IST approved herein will spread any loss due to negotiation over any customers in the other rate schedules 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 NCNG loses a customer from its system, the Company's other customers must then assume the burden of carrying the costs associated with such lost customer. Because those commercial and industrial customers served directly on Rate Schedules 4, 5, 6, and S-1, and indirectly under Rate RE-1 and SM-1, 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 commercial and industrial customers on Rate Schedules 4, 5, 6, and S-1 favors a higher rate of return for such rate schedules. Likewise, the increased risk associated with serving a substantial industrial market indirectly through Rate RE-1 and Rate SM-1 favors a higher rate of return for these rate schedules to the Cities.

## Other Factors Applicable to Industrial Customers

Additionally, with respect to industrial customers, the Commission finds that very few of them have long-term contracts (greater than one year); none of them pay demand charges; and no customer in Priorities 2.8 through 9 (regular Rate Schedules 4, 5, and 6) pay facilities charges, which means they pay NCNG nothing in any month they do not purchase gas. NCNG has no take-or-pay contract provisions with its customers in contrast to NCNG's contract with Transco which calls for the payment of a minimum bill penalty if NCNG fails to take at least 65% of its annual contract volume, or in contrast to Transco's contracts with some producers which call for Transco to take a certain volume of gas or else pay the producer for it anyway. Nearly all of them can burn alternate fuels at will and get lower energy costs with no obligation to take natural gas and meet NCNG's costs. These same customers can negotiate lower gas rates with NCNG by threatening to go off natural gas, forcing NCNG to meet competitive costs in order not to lose sales. Furthermore, NCNG has been transporting lower cost, spot-market gas for many of these customers, thus saving them substantial amounts of money compared to alternate fuel prices. In many instances, NCNG's affiliate acted as agent without charging an agency fee in securing these customers' natural gas requirements that were transported in 1985.

Company witness Teele introduced uncontroverted evidence that the Company's large industrial customers receive service from NCNG throughout the year. Indeed, during the most recent winter of 1984-1985, industrial process gas users received service on all but two days of the year. The two days that customers served under Rate Schedules 3A and 3B were interrupted were January 20 and 21, 1985, when the average temperatures in NCNG's service area were 15°F. and 13°F., respectively. The low temperature on January 21, 1985, of -3°F. and the average temperature of 13°F. were the lowest recorded temperatures of the twentieth century.

Even large boiler fuel customers received service on 88% of the days during the twelve months ended August 31, 1985. The number of days' service received by NCNG's industrial customers for that twelve months period is as follows (Tr., Vol. 1, pages 26 and 27):

| Rate Schedule | No. of Days Served |
|---|---|
| 3A and 3B | 363 |
| 4 | 355 |
| 5 | 328 |
| 6 | 320 |

This strongly indicates that NCNG's industrial customers are served on what amounts to nearly a firm basis, and considering the value of service to these industrial customers, it also indicates that industrial rates of return on original cost rate base should be higher than system average.

## Other Factors Applicable to Cities

With respect to the Cities, the Commission recognizes they can add customers at will and NCNG must serve these added peak loads at a cost to the Cities no greater than the present tariff rate available to all four Cities for all types of customers. Company witness Teele testified that in the two years ended June 30, 1985, the Cities added residential and commercial customers, with the attendant increase in temperature-sensitive peak loads, at a greater rate than NCNG is adding such retail loads, probably because NCNG generally has achieved greater saturation in its market than have the Cities in their markets.

The Cities are also eligible to receive, and do receive, the negotiated rates and transportation service that NCNG's industrial customers receive. As Cities witness Saffer testified, NCNG has cooperated with the Cities in their efforts to expand their systems and retain their own large industrial customers.

Public Staff witness Nery offered uncontradicted evidence that the Cities operate at an overall load factor of less than 50% compared to NCNG's system average of 63% in the test year (71% in fiscal year 1985). Like the large industrial customers, the Cities are exempt from demand charges. If the Cities had to pay demand charges to NCNG (or Transco) on the same basis that NCNG pays demand charges to Transco, the Cities' cost of gas would increase by $446,000, or about $.10 per dt (Tr., Vol. 3, page 71), according to witness Nery. Additionally, as both Public Staff witness Nery and Company witness Teele testified, NCNG provides all storage and load balancing services for the Cities, because none of the Cities have any storage facilities or separate storage service contracts. The Cities pay only a flat, volumetric rate to NCNG which cannot be increased even during peak demand periods on the NCNG system when the Cities' takes of gas are as much as 2 1/2 times greater than their average daily use and while many, if not all, large industrial customers' service is being interrupted. All of these significant factors point toward a higher rate of return requirement for NCNG's sales to the Cities.

## Original Cost Does Not Reflect Fair Value

The Commission is also fully aware that most capital costs allocated to the industrial and municipal customers were incurred by NCNG 25 to 30 year ago when the original transmission line was constructed. The facilities have low original costs and are substantially depreciated while the high priority customers (residential and commercial) have substantially more of the most recent capital costs allocated to them, thus reflecting the brunt of the post-1973 inflation in those costs. Thus, even under the most carefully prepared estimated original cost of service study, the playing field among the various classes of NCNG customers is not level. Even if the estimated cost of service studies could be properly and fairly adjusted for inflation, which no party has proposed, it is doubtful that estimated cost of service studies could ever be used as anything more than Company witnesses Ransom and Teele have testified they have used them--as useful guides in designing natural gas rates.

### Discrimination Between End Users

The Cities also contend that Rate Schedule RE-1 is unreasonably discriminatory as between the end-users served directly by NCNG and the end-users served by the Cities. The Cities argued that for any given group of end-users, the value of service is the same regardless of how the individual customer is served and, therefore, that service to a group of end-users should be priced the same by NCNG regardless of whether the service is furnished directly by NCNG or indirectly through one of NCNG's wholesale customers, the Cities. If the Commission determines that class rates of return are not to be equalized, the Cities argue that Rate Schedule RE-1 should be set to reflect the same benefits and burdens as NCNG's retail rates, through allowing the residential customers served by the Cities the opportunity to benefit from the same rate advantages as the residential customers served directly by NCNG.

The fallacy with this argument is that only the Cities themselves, not the customers of the Cities, are the customers of NCNG. The Commission's ratemaking jurisdiction stops at the city gate, and so does the discrimination issue. The discrimination prohibited by G.S. 62-140 is unreasonable discrimination among the customers of the utility, not between the utility's retail customers and the retail customers of the utility's wholesale customers.

### Commission Conclusion - No Unreasonable Discrimination

Based upon a careful consideration of the evidence in this case, the Commission concludes that the Company's rates previously approved are just and reasonable and do not result in any unjust or unreasonable discrimination or preference between customers or classes of customers. The Commission is of the opinion that the rates previously approved in this proceeding result in a fair distribution of the overall rate increase granted to NCNG 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. 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.

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 6) and at the other end of the scale based on priorities of service (represented by Priority 1 for Rate Schedule 1) appears to be a just and reasonable way to establish rate differentials between the various classes of service, especially where such rate differentials are generally 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 estimated cost of service studies.

## THE CITIES' "LOOK-THROUGH" APPROACH
## Overview

The Supreme Court stated in its opinion, "On remand the Commission will decide whether the present rates result in unjust and unreasonable discrimination among ratepayers. If the Commission finds such discrimination to exist, it will examine the remedies proposed by TMA and Cities and decide if one of those or some other remedy is appropriate." (Emphasis added).

The Commission has made no such finding that NCNG's rates are unjust and unreasonably discriminatory. In fact, we have concluded that NCNG's rates are just and reasonable and do not result in any unjust or unreasonable discrimination or preference between customers or classes of customers. Thus, under the Supreme Court's opinion, we are not required to examine the Cities "look-through" ratemaking proposal applicable to Rate RE-1 presented by Cities witness Saffer. Nevertheless, we have examined it, and we reject it for the reasons stated below.

Witness Saffer's "look-through" ratemaking approach, if adopted, would result in a rate decrease of $1.3 million to Rate RE-1 for the Cities and a $1.3 million rate increase to NCNG's residential customers served under Rate Schedule 1. Such a result clearly would be contrary to the evidence, taken as a whole, presented in this case, including estimated cost of service which is fundamental to witness Saffer's "look-through" approach.

## How the Cities "Look-Through" Rate is Determined

There are three main factors underlying witness Saffer's "look-through" approach: (1) The four Cities' combined market profiles (i.e., sales to residential, commercial, and industrial customers classified under the Commission's priority system as Priority 1.1 (residential); Priorities 1.2 to 2.4 (commercial and small industrial); Priorities 2.5 and 2.6 (industrial process users with propane as the only alternative to natural gas); and Priorities 2.8 through 6.2 (other industrial uses, including boiler fuel, with residential fuel oil as the alternative fuel). (The Cities do not have any large boiler fuel customers in Priorities 7.0 to 9.0 as NCNG does); (2) The calculated class rates of return for NCNG's retail customers derived from NCNG's estimated cost of service study; and (3) NCNG's estimated costs to serve Rate Schedule RE-1 as derived from the NCNG estimated cost of service study. Witness Saffer then breaks down the NCNG estimated cost of service study applicable to Rate RE-1 into individual segments matching the Cities' market profiles (i.e., residential, commercial, and industrial). Then in calculating the end result of the "look-through" approach--the revenue decrease to Rate RE-1 and revenue increase to Rate 1--witness Saffer utilizes the various NCNG rates of return for its various classes of retail customers to apply to the Cities' market profile (i.e., the Cities' own mix of retail customers). Not surprisingly, as the residential customers on NCNG's system have the lowest rate of return of any customer class, and because the Cities' residential sales are in excess of 30% of the Cities' total sales while NCNG's residential sales are only 14% of its total sales, witness Saffer arrives at a revenue adjustment of $1.3 million based on the "look-through" approach.

Factors Against Adoption of the "Look-Through" Approach

The Commission finds several factors against adoption of the "look-through" approach:

(1) The approach is based entirely on estimated cost of service which, as we have previously concluded, is not the only significant factor to be used in ratemaking. Furthermore, estimated cost of service on the NCNG system is heavily tilted in favor of the Cities and interruptible industrial customers because the transmission system was substantially constructed over 25 years ago, whereas the distribution system represents costs of more recent vintages. The Cities receive no allocation of NCNG's distribution costs, as they operate their own distribution systems.

(2) The approach assumes that NCNG's costs are identical to the Cities' costs. Company witness Teele testified that NCNG incurs costs that the Cities do not incur, principally property taxes and income taxes. Also, witness Teele testified that the NCNG system was constructed initially as an intrastate pipeline company for service initially to industrial customers and to some of the Cities it now serves. Most of the present-day distribution systems were added years later after NCNG reversed its operating losses of the early 1960's and began to grow. Witness Teele testified that the Company depends upon all of its present-day markets for operating efficiency and revenue stability. If the NCNG system were to be constructed today, it would probably be much different than it looks today. The Commission is aware that NCNG operates three compressors and nearly 1,000 miles of transmission pipeline--far more than any other natural gas distribution company in this State. The Cities' gas systems are relatively small distribution systems with little transmission capability, no storage facilities and no line-pack capabilities or compressors.

(3) Witness Saffer's approach fails to consider other benefits the Cities receive from NCNG, such as negotiated rate sales and transportation service by NCNG, both of which result in substantial reductions in the effective unit cost of gas to the Cities.

(4) Finally, the "look-through" approach advocated by witness Saffer could encourage the Cities to add high margin residential customers on their systems without any regard to the unfavorable impact this could have on NCNG's peak demand, because additional sales in the Cities' residential markets would lead to a lower Rate RE-1 from NCNG in future rate cases due to the fact that the NCNG residential customers have always provided a rate of

return to the Company lower than the system average rate of return. Because of other important factors in addition to estimated cost of service that should be considered in setting natural gas rates in this State, the rate of return situation is likely to continue for a long time into the future even if the Company and the Commission choose to move NCNG's rates closer to more equalized class rates of return, because such a process will require many years and several rate cases to accomplish.

### NCNG's Margin-Based "Look-Through" Calculation

On rebuttal, Company witness Teele presented an alternate "look-through" calculation for Rate RE-1 based on margin rather than estimated cost of service or rate of return. Witness Teele's approach consisted of first applying the margins (revenue, less gross receipts tax, less the commodity cost of gas) in NCNG's retail rates to the Cities' market profile to obtain the margin that Cities' customers would pay if NCNG's retail rates were applied to Cities' customers. From the total resulting margin, witness Teele deducted NCNG's applicable distribution costs on a total Company average basis included in the margin, as the Cities have their own distribution systems. Witness Teele compared the total margin less distribution costs to the margin actually built into the Cities' approved rates in the test year and found that the "look-through" result he had calculated was $.02 per dt greater than the margin actually included in the test year municipal Rate RE-1 and Rate SM-1 (the negotiated rate for the Cities). On this basis, witness Teele concluded, without recommending any "look-through" ratemaking approach, that NCNG's rates to the Cities require no adjustment as they are within a zone of reasonableness. According to witness Teele, his "look-through" calculation based on margin in NCNG's retail rates and average total company distribution costs (applicable to NCNG's customers excluding the four Cities) provides additional evidence that NCNG's Rate RE-1 is just and reasonable and does not discriminate against the Cities.

### The Cities' Surrebuttal Testimony

Cities witness Saffer offered surrebuttal testimony in which he stated that witness Teele's approach was conceptually wrong (Tr., Vol. 5, page 72). Witness Saffer introduced an exhibit which modeled witness Teele's "look-through" calculation, except that witness Saffer used allocated distribution costs from the estimated cost of service study rather than the Company average as witness Teele had done. Witness Saffer concludes that if witness Teele's margin-based calculation were properly adjusted to reflect allocated distribution costs, NCNG's rates to the Cities could be demonstrated to be approximately $1.5 million too high.

### Commission Conclusion on "Look-Through"

After careful consideration of this matter, the Commission concludes that Company witness Teele's margin-based calculation adequately demonstrates that no adjustment is required in Rate RE-1. Witness Teele's approach is reasonable and does not depend, to any significant degree, upon allocated costs.

Witness Saffer's approach, on the other hand, depends entirely upon allocated costs from the estimated cost of service study. By implication, witness Saffer's exhibit shows that NCNG's average distribution costs would rise from $.65 per dt calculated by witness Teele to $1.05 per dt shown on witness Saffer's exhibit if NCNG were to serve the retail customers of the Cities. Witness Saffer introduced no evidence that NCNG's average distribution costs per dt would increase at all if NCNG were to serve the four Cities' retail customers directly. Considering the fact that NCNG sold 28,032,486 dt to its retail customers and only 4,880,589 dt to the Cities during the test year, it is extremely doubtful that NCNG's average distribution costs per dt would increase at all from their present level of $.65 per dt, much less to the $1.05 per dt that witness Saffer calculates entirely on the basis of allocated NCNG costs to the Cities' market profile which is much more heavily residential than NCNG's. Because most of NCNG's distribution costs are fixed and the NCNG distribution system is much larger than the four Cities' distribution systems, the Commission believes that there could be economies of scale not recognized by witness Saffer which, if anything, would lower NCNG's average distribution costs per dt rather than increase them. Indeed, witness Teele's workpaper attached to Teele Exhibit G showed that NCNG's total distribution costs to serve all existing customers were $18.2 million. If NCNG's average distribution costs per dt were to increase to $1.05 per dt as calculated by witness Saffer, NCNG's total company distribution costs would rise to $34.6 million. Obviously, an increase of $16.4 million (a 90% increase) to serve the four Cities and increase retail dekatherm sales by 17% would clearly be an implausible result.

### Cities Contradictory Position

Witness Saffer, in his direct testimony, stated that, "If the Cities have certain advantages in being non-profit and municipally owned and operated, they should be able to pass those benefits to their citizens unhindered by discriminatory rates." (Tr., Vol. 2, pages 121 and 122). Witness Saffer goes on to say, "If they (Cities) operate inefficiently and cannot justify their continued existence, they should not be aided by rates which discriminate against others. Thus, the Cities' efficiency, their rates, and their balance sheets are not in my view relevant to this case, for both the Commission's jurisdiction and its analysis should end at the city gates." (Tr., Vol 2, page 122).

Under cross-examination by the Company of his surrebuttal testimony, witness Saffer stated that the City of Greenville's distribution costs were between $1.16 per dt and $1.20 per dt including the transfer to the City's general fund. Backing out that general fund transfer, the City of Greenville's distribution costs were still $.96 per dt, according to witness Saffer (Tr., Vol. 5, page 94).

Whether the proper measure of a city's distribution costs should include the general fund transfer (similar to net income for an investor-owned utility) or not, the Commission notes that at least one of the four Cities--Greenville--has distribution costs significantly higher than NCNG's $.65 per dt ($.52 if property taxes and income taxes not applicable to a municipally-owned gas system are excluded).

The Cities cannot imply with consistency that their costs are lower than NCNG's and, therefore, they should not be penalized based on a Rate RE-1 that shows the Cities pay NCNG a rate of return in excess of system average and also contend that they actually have higher distribution costs per dt than NCNG and that, too, should entitle them to a lower rate from NCNG.

### Commission Conclusion on Rate RE-1

The Commission concludes, without regard to whether the Cities' costs are higher or lower than NCNG's, that the existing Rate RE-1 is just and reasonable and does not unreasonably discriminate against the Cities. The Commission concludes that the "look-through" approach advocated by Cities is unnecessary and unwarranted, and that, in fact, its adoption would unduly penalize the retail residential customers of NCNG while granting the Cities a rate decrease not supported by the full weight of all the evidence presented in this case.

## TRANSPORTATION RATES
### Overview

The Company had one transportation rate--Rate T-1--for industrial boiler fuel customers at the time of this rate case in 1983. In May 1985, the Company petitioned the Commission to accept for filing Rate Schedule T-2 for non-boiler fuel industrial customers in Priorities 2.8 through 5.0. By its Order dated May 30, 1985, the Commission accepted NCNG's Rate Schedule T-2 tariff sheets for filing. The Commission is aware that NCNG has transported substantial volumes of customer-owned gas under both of the transportation rate schedules during the recent summer period ending October 31, 1985.

### NCNG's Transportation Rates

Rate T-1 is a step rate which essentially provides for Rate 6 full margin in the first step for volumes transported less than 300 dt per day and quantity discounts in the second step (300 to 3,000 dt per day) and third step (over 3,000 dt per day). Such quantity discounts give recognition to the fact that the very largest users of natural gas for boiler fuel usually are able to obtain No. 6 fuel oil at the very lowest prices in the State since many of them are located at or near the port of Wilmington. Even so, Rate T-1 is also negotiable downward just as Rate T-2.

As no transportation volumes were included in the test year, all transportation revenues flow directly into the IST. Therefore, when NCNG arranges for new transportation service or begins transporting gas for customers who otherwise would not be served natural gas at all, it is NCNG's non-IST customers that receive substantially all the benefits from transportation revenues. Of course, those particular industrial or municipal customers receiving the transportation service also receive the direct benefits of natural gas delivered at prices no greater and usually less than their alternate fuel prices. NCNG also benefits from transportation service by (a) utilization of available capacity and (b) obtaining additional revenues from the increased volumes which flow into the IST and thereby help keep NCNG's rates to all customer classes competitive.

### Full Margin Rates Are Not Discriminatory

The Supreme Court stated in its opinion, "We do not hold that it is unjust and unreasonable as a matter of law for a utility to earn the same profit margin on transported gas that it earns on its own retail sales of gas."

The Public Staff proposed continuation of full margin transportation rates. Witness Nery 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 rates. He testified that setting a transportation rate at less than full margin would be discriminatory.

C.U.C.A. witness Loos testified that the only just and reasonable basis for setting transportation rates is on the basis of the cost of providing the service.

The Commission concludes that full margin transportation rates are fair and reasonable and should be maintained in this proceeding. The Commission has recently adopted full margin transportation rates for Piedmont Natural Gas Company and for Public Service Company of North Carolina. 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 estimated cost of service, value of service, quantity of gas used, the time of use, the manner of use, the equipment which NCNG 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 instant 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 NCNG 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. As the services performed by NCNG 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 is also no difference in time of use under the rate schedules which would justify different margins. All of these factors support continuation of full margin transportation rates in this case.

Accordingly, the Commission finds and concludes that NCNG's transportation Rates T-1 and T-2 are just and reasonable and do not unreasonably discriminate among classes of customers.

## INDUSTRIAL SALES TRACKER

### Overview

Both the Company and the Public Staff supported the continuation of the Industrial Sales Tracker (IST) as originally established in this case, except that in accordance with the Supreme Court's opinion, new industrial and large commercial customers in Priorities 2.8 through 9.0 (the IST customers) are to be included in the IST revenue and margin calculations.

C.U.C.A. witness Loos contended that the Company's 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 costs were used to develop rates for large industrial customers, there would be little need for negotiated rates or an IST. (Tr., Vol. 2, pages 20; 22; 32 and 33).

Alcoa witness Stickney testified that the IST discriminates among and against industrial customers because not all customers can negotiate rates, and that the industrial tariff rates (the caps on industrial rates) are too high (Tr. Vol. 4, pages 67-69).

Cities witness Saffer testified that the Cities have accepted the IST, but they do not like it, apparently because they would prefer to set rates primarily on the basis of cost of service. Witness Saffer, fully aware that the Cities presently receive the IST rate decrement in their NCNG Rate Schedule RE-1, attempted to justify the IST as an acceptable deviation from cost-based rates that he advocates (Tr., Vol. 2, page 110).

### Benefits of the IST

Company witness Teele 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.

Witness Teele also testified that in the period the IST has been in effect (from December 12, 1983), NCNG has increased its total sales and transportation volumes from approximately 32,000,000 dt in the test year to over 36,000,000 dt in 1985. Most of this increase has occurred in the transportation of customer-owned gas in the large industrial market. Primarily because of the greater volumes and, to a lesser extent, somewhat higher alternate fuel prices in 1984 and 1985 compared to those in effect at the end of the June 30, 1983, test year, NCNG's IST had generated about $5.5 million of credits (or refunds payable to non-IST customers). At the time of the hearings, the Company had already refunded to its customers approximately 50% of these credits, and NCNG presently has an IST decrement of approximately $.17 per dt in the rates of Rate Schedules 1, 2, 3A, 3B and RE-1 to refund the remainder over a twelve months period. (As will be discussed hereinafter, these refunds must be recomputed retroactively and prospectively to include all non-IST customers as hereinafter defined.)

Clearly, the IST has worked well for NCNG and all of its customers. The Company has no plans to file another general rate case until such time as the Company's LNG plant now under construction is nearly completed. The non-IST customers, who are at risk for carrying the Company's entire cost of service in the event alternate fuel prices fall substantially and the IST customers leave the natural gas system as they are free to do at any time, have received substantial reductions in their rates from the IST decrement included in NCNG's rates since May 1, 1984. The industrial customers included in the IST calculations do not get the IST rate decrement, but neither are they subject to an IST surcharge if one becomes necessary because of a decline in alternate fuel prices, NCNG's loss of sales in the industrial market, or both. Industrial customers get a cap on their cost of gas, but they have no such cap with respect to residual fuel oil prices. On the other hand, if alternate fuel prices decline below the level of NCNG's tariff rates, the industrial customers can obtain lower cost energy by (a) negotiating a lower natural gas rate, (b) arranging for NCNG to transport lower-cost gas purchased by either the customer himself or NCNG's affiliate as agent for the customer, or (c) burning the alternate fuel. Captive natural gas customers--generally residential, commercial, and small industrial customers--do not have these options available to them.

## The IST and The Discrimination Issue

The IST as modified by this Order does not discriminate unreasonably either between or within classes. Mr. Teele's testimony indicates that new customers with heavy fuel oil as their alternate fuel are included in the IST calculation (Tr. Vol. 1, pp. 16-17). Under the modified IST, both new and old Rate Schedule 4, 5, 6 and RE-1 customers who use heavy fuel oil as an alternate fuel are included in the IST. Any difference, positive or negative, between the amount collected from these customers and the base period margin is included in the IST, and any resulting refund or surcharge is spread over all non-IST customers. Thus, both new and old IST customers are treated alike. It should be recognized that those non-IST customers negotiating rates do not participate in increments or decrements resulting from the IST mechanism. The Commission believes that non-IST customers negotiating rates should reasonably be treated in a manner different from non-IST customers paying tariffed rates regarding IST increments and decrements. Non-IST customers having alternate fuels other than heavy fuel oil may still be able to negotiate more favorable rates and thus would not pay increments if ordered to do so. Since such customers would not pay increments, it seems only equitable to likewise require that decrements be foregone for those volumes of gas purchased by non-IST customers at negotiated rates.

C.U.C.A. argued that one group, industrial customers who use heavy fuel oil as an alternate fuel, are singled out for unlawfully discriminatory treatment under the IST. This contention also fails on its face. Differentiating between customers on the basis of whether or not they have heavy fuel oil as an alternate fuel is reasonable. As reflected in the testimony of Company witness Wells during the original hearing in this docket, the underlying reason for the Company's desiring an IST was to provide a mechanism to deal with the uncertainty caused by the fluctuating price of heavy fuel oil, the predominant alternate fuel for Rate Schedules 4, 5 and 6 and some of the Rate Schedule RE-1 industrial customers, and the need to negotiate with such customers. In regard to why NCNG felt such a tracker should be approved, Mr. Wells testified:

> We are currently in a period of very unstable prices for heavy oil used by large industrial and commercial customers and for natural gas. This situation, together with the fact that our natural gas rates are at or above the cost of fuel oil to several industrial customers, make it impossible to project with reasonable assurance the volume of natural gas that can be sold under the various industrial rate schedules or the price at which natural gas can be sold to industrial customers at negotiated prices under our Rate Schedule No. S-1.
>
> The projected sales volume by rate schedules shown in column 2 of Teele Exhibit II reflects the Company's best estimate of what its sales volume and mix will be during the next year based on current prices for heavy fuel oil and natural gas. Unfortunately, a modest change in either the cost of oil or natural gas could significantly alter the total sales volume and/or sales mix. Because of the significant impact which this could have on the customers and the Company, we believe it is prudent to adopt a mechanism which provides some protection for both. (Tr. Vol. 3, 134-5)

These IST customers get (1) the benefit of a capped tariff rate and (2) the opportunity to negotiate when the price of heavy fuel oil drops. Mr. Teele testified during the remand proceeding:

> The IST is not discriminatory because the industrial IST customers get a cap through tariff rates which fix the customers' maximum cost of gas and they also get the benefit of lower gas rates by negotiation when the price of oil decreases. This treatment is generally available only to the industrial IST customers including industrial customers of our municipal customers and not to the residential, commercial and other general service customers. Hence, there is no discrimination in the fact that any excess margin flows back only to the general service customers who are at risk for carrying the company's entire cost of service if the larger IST customers decide to switch to alternate fuel. (Tr. Vol. 1, p. 38)

Heavy fuel oil is the cheapest alternative to natural gas for industrial users. As the lower tariff rates in Schedules 4, 5 and 6 reflect the lower priorities of service, there is less room for the Company to negotiate downward to retain the margins and still earn any profit. There is also a greater likelihood that the Company will not be able to meet the price of the competitive fuel and these customers will leave the system. As indicated by Mr. Teele's testimony, when this happens, the remaining customers are left carrying the entire cost of service.

In summary, it was concern over the price of heavy fuel oil and the problems related thereto that was the impetus for the Company's seeking an IST. The IST customers already benefit from their capped tariff rates. They also benefit from being able to negotiate or switch to heavy fuel oil when its price drops. Moreover, the lower tariff rates used for sales to these customers increases the risk that the Company will not be able to negotiate to meet the price of heavy fuel oil when it declines and the customers will go off the system leaving the remaining customers to carry the entire system cost. Clearly, whether or not heavy fuel oil is an alternate fuel is a reasonable basis for differentiating among customers, and including or excluding customers in the IST on that basis is not unreasonably discriminatory.

There are, however, several changes that it is appropriate to make in the IST rider. Mr. Nery's testimony indicated that the T-2 rate was filed after the IST, but that revenues from both the T-1 and T-2 rates are included in the IST (TR. Vol. 4, p. 15). The IST rider as currently filed does not reflect either that the T-2 revenues or that new customers are included. The current IST Rider also does not recognize Rate Schedule NGV which was added in 1984. The IST rider should be changed to reflect the inclusion of T-2 revenues and new customers. 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 this case. The IST rider should also be modified to make all non-IST customers, regardless of their rate schedule, who pay tariffed rates subject to the increments or decrements that result from the IST mechanism. As originally written, only customers on Rate Schedules 1, 2, 3, and non-IST customers on Rate Schedule RE-1 were subject to the increments or decrements. This provision must be modified to include all non-IST customers, i.e., all customers who do not have heavy fuel oil as an alternative fuel, paying tariffed rates in the increments and decrements.

## Commission Conclusion on IST

Having considered all the evidence, the Commission concludes that the IST is necessary, appropriate, just and reasonable, and should be continued in this proceeding.

The evidence in this proceeding and the past operation of the IST for NCNG 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 so as to retain those sales and still have a reasonable opportunity to earn the allowed rate of return.

The Commission also concludes that the filed tariff rates for industrial service should be set above the price of alternate fuel. It seems only appropriate that if almost all Rate Schedule 1 through 3B, plus RE-1, 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 4, 5, and 6 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 4, 5, and 6 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 Public Service Company. (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 margins from Rate Schedule 4, 5, and 6 sales do not appear to be in unusual jeopardy, except for sales to customers in Rate

Schedules 4, 5, and 6 who use heavy fuel oil as an alternate fuel. Thus, there is no need to include all of the Rate Schedule 4, 5, and 6 customers in the IST at this time. The Company should establish rate class subcategories to recognize the presence of IST and non-IST customers within Rate Schedules 4, 5, and 6. Rate Schedule subcategories 4A, 5A and 6A shall include customers in Rate Schedules 4, 5 and 6 having alternate fuels other than heavy fuel oil or customers deemed by the Commission to be non-IST customers. In contrast, Rate Schedules 4B, 5B and 6B shall include those customers determined by the Commission to be IST customers having an alternate fuel of heavy fuel oil. Such non-IST customers on Rate Schedules 4, 5, and 6 purchasing gas at tariffed sales rates would participate in IST increments and decrements. However, as stated previously, those customers on negotiated rate schedules shall not participate in increments or decrements resulting from the IST mechanism. The Commission concludes that it is appropriate for NCNG to recompute and adjust retroactively the refunds made pursuant to the IST to account for all non-IST customers, regardless of rate schedule, in the increments and decrements resulting therefrom. NCNG is required to file with the Commission a plan necessary to accomplish this matter within ten (10) days from the effective date of this Order. As a result of the decision rendered in this regard, it will be necessary for the Company to recompute the base period monthly margin contained in the IST to exclude margins relating to those customers in Rate Schedules 4, 5, and 6 having alternative fuels other than heavy fuel oil. It is appropriate for the Company to file a revised IST Rider C (attached hereto as Appendix A) containing the recomputed monthly base margins within ten (10) days from the date of this Order. Workpapers supporting the revised base period monthly margin calculations should also be filed with the Commission for review and comment by the parties.

### Margin on New Customers Added From June 30, 1983, through April 1, 1985

Pursuant to the Commission's Order dated January 6, 1984, NCNG retained the margin on new industrial customers added from June 30, 1983, to April 1, 1985. Details of the customers, volumes and monthly margins are contained in Company witness Teele's Exhibit B. (The total amount of margin plus the applicable North Carolina gross receipts tax is $102,732.) The Company discontinued that practice beginning April 2, 1985, the date of the Supreme Court's opinion in which the Court stated: "...we hold that excluding new industrial and large commercial customers from the operation of the IST is unjust and unreasonable as a matter of law."

During the hearings, all parties except the Company took the position that the $102,732 earned by NCNG from the new industrial customers should be included in the IST revenue reserve account. Company witness Teele testified that NCNG should retain the $102,732 as revenues to the Company (Tr., Vol. 1, page 17). However, in its brief and proposed order, the Company concurred with the other parties that the Company should not retain the $102,732 as revenues.

Accordingly, the Commission finds and concludes that NCNG should transfer the sum of $102,732, plus interest at the rate of 10.00% per annum from revenues to the IST revenue reserve account so that the non-IST customers will receive the full benefit of margin earned on all new industrial and large commercial customers since June 30, 1983. For the period beginning with the date rates became effective pursuant to the December 12, 1983 Notice of

Decision and Order through April 1, 1985, interest shall accrue upon the actual end-of-month margin earned on new customers (those customers now eligible to be IST customers) added by the Company. For the period subsequent to April 1, 1985, interest shall accrue upon the entire margin earned on new customers during the period of $102,732.

IT IS, THEREFORE, ORDERED as follows:

1. That the annual revenue requirement of $168,891,196 established for NCNG in the Commission's January 6, 1984, Final Order was not affected by the elimination of the CTR. The inclusion of the $3,420,423 in revenues as a result of the elimination of the CTR was a part of the general rate increase approved in this proceeding and the rates to produce those revenues are just and reasonable and shall remain in effect.

2. That the rates of NCNG, including transportation Rate Schedules T-1 and T-2, are just and reasonable and do not unreasonably discriminate among the various classes of NCNG customers. No changes in NCNG's tariff rates are necessary, and the present rates as approved in this proceeding shall remain in effect.

3. That the IST mechanism with the inclusion of new industrial and large commercial customers added after June 30, 1983, and with the new provisions discussed herein, does not unreasonably discriminate among or within the classes of customers and, therefore, is allowed to continue in effect until the Company's next general rate case. The Company shall establish rate class subcategories for Rate Schedules 4, 5 and 6 consistent with the conclusions previously reached herein in that regard. A revised IST Rider C in the format attached hereto as Appendix A shall be filed with the Commission within ten (10) days from the date of this Order.

4. That NCNG shall transfer the sum of $102,732, plus accrued interest at the rate of 10.00% per annum to the IST revenue reserve account. Such transfer shall be reported as a separate line item in NCNG's upcoming annual IST "true-up" report for the twelve months ending December 31, 1985.

5. That NCNG shall recompute and adjust retroactively the refunds heretofore made pursuant to the IST to account for inclusion of all non-IST customers, regardless of their rate schedule, in the increments and decrements resulting therefrom. NCNG shall file with the Commission ten days from the date of this Order a plan stating the manner in which such recomputations and refunds may be accomplished.

ISSUED BY ORDER OF THE COMMISSION.
This the 31st day of January 1986.

NORTH CAROLINA UTILITIES COMMISSION
Sandra J. Webster, Chief Clerk

(SEAL)

# APPENDIX A
# NORTH CAROLINA NATURAL GAS CORPORATION
Fayetteville, North Carolina
N.C.U.C. TARIFF

## INDUSTRIAL SALES TRACKER - RIDER A

### Applicability

This Rider is applicable to Service Rate Schedule Nos. 1, 2, 3, 4, 5, 6, RE-1, T-1, T-2, E-1, S-1, SM-1, and NGV. 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. To accomplish this, the North Carolina Utilities Commission (NCUC) has authorized the Company to negotiate rates with commercial and industrial customers in priorities 2 through 9 who have the capacity to use an alternate fuel, and to recover certain lost margin resulting from negotiated rates through this IST. The margin subject to this IST is limited to margin from that portion of sales under Rate Schedules 4, 5, 6, (Rate Schedule subcategories 4B, 5B and 6B) and RE-1 representing users having the installed capability to burn heavy fuel oil as an alternate fuel.

### Definitions

"Unit margin" is defined as the Company's energy charge per unit of gas as shown in the Company tariff (exclusive of temporary increments), less gross receipts tax on that energy charge and less Transco's commodity cost of gas included in the Company's tariff sheets.

"Margin" is defined as the unit margin times the sales quantities.

### Rate Schedule Nos. 4, 5, 6, and RE-1

The NCUC has established the following base period monthly margins for the Company in its Order in Docket G-21, Sub 235:

| TEST PERIOD<br>MONTH/YEAR | BASE PERIOD MARGIN |
|---|---|

Only that portion of sales representing users having the installed capability to burn heavy fuel oil (#4, #5, or #6 fuel oil) as an alternate fuel will be included in the IST, plus any such new customers added after June 30, 1983. Each month the Company will calculate the total revenue, exclusive of customer charges, received from such sales plus the total revenue, exclusive of customer charges, received from sales under Rate Schedule Nos. S-1 and SM-1 representing users having the installed capability to burn heavy fuel oil as an alternate fuel. From this revenue, the Company will subtract (1) the effect of any temporary increments included in the Company's rates, (2) gross receipts tax of 3.22% and (3) the commodity cost of gas (calculated by multiplying the total quantity of gas sold to these customers times the Transco commodity cost of gas included in the effective tariff sheets for that month). This amount will then be compared to the above margin for the applicable month and any difference, either positive or negative, included in the IST deferred account.

No margin loss or gain will be considered in the IST for that portion of sales representing users who do not have the installed capability to burn heavy fuel oil as an alternate fuel.

Rate Schedule Nos. 1, 2, 3, and NGV

No margin loss or gain will be considered in the IST.

Transportation Service Under Rate Schedule Nos. T-1 and T-2

All revenue less gross receipts tax received by the Company for transportation service will be included in the IST deferred account.

Emergency Sales Under Rate Schedule No. E-1

All revenue less gross receipts tax received by the Company in excess of the revenue less gross receipts tax which would have been received if the quantity of gas had been sold on the customers regular rate will be included in the IST deferred account.

Savings In Cost Of Gas

The revenue effect of the difference between Transco's commodity cost of gas and the cost of gas under Transco's special marketing program or other similar programs will be included in the IST deferred account. Cost of gas savings which are passed directly to individual end users because of the grandfathering provisions of FERC Order No. 436, or similar programs, are excluded from this calculation.

True-Up of IST Deferred Account

This IST shall be effective as of December 12, 1983. A true-up of the IST deferred account shall be filed by January 15, 1985, for the 12 months ending November 30, 1984, and annually thereafter. Any balance in the IST deferred account which is owed to the Company's customers at the time of the true-up will be returned to customers by reducing rates uniformly to Rate Schedule Nos. 1, 2, 3, NGV, and the non-IST sales on Rate Schedule Nos. 4, 5, 6, and RE-1. Any balance in the deferred account which is owed to the Company by the customers at the time of the true-up will be recovered by increasing rates uniformly to Rate Schedule Nos. 1, 2, 3, NGV, and the non-IST sales on Rate Schedule Nos. 4, 5, 6, and RE-1. No increases or decreases in rates will apply to sales on Rate Schedule Nos. S-1 and SM-1 which are used by the Company for all negotiated sales.

Reports

The Company will file monthly reports of activity in the IST deferred account with the Commission.

Interim Rate Changes

The Company and the Public Staff will monitor the balance in the IST deferred account on a continuing basis and may recommend to the Commission interim rate adjustments when warranted between annual true-ups.

Negotiated Rates

The Company may continue to negotiate rates with customers in priorities 2 through 9 in order to retain sales to said customers whether or not the margins from such sales are subject to the IST.

APPENDIX B
SCHEDULE I
NORTH CAROLINA NATURAL GAS CORPORATION
Docket No. G-21, Sub 235
STATEMENT OF OPERATING INCOME
Twelve Months Ended December 31, 1982

| Item | Present Rates | Increase Approved | After Approved Increase |
|---|---|---|---|
| Operating Revenues: | | | |
| Natural gas sales | $163,865,412 | $4,537,954 | $168,403,366 |
| Revenues - completed construction not classified | 109,498 | - | 109,498 |
| Miscellaneous revenues | 378,332 | | 378,332 |
| Total operating revenues | $164,353,242 | $4,537,954 | $168,891,196 |
| Operating Revenue Deductions: | | | |
| Cost of gas | $133,965,008 | - | $133,965,008 |
| Cost of gas - completed construction not classified | 69,957 | - | 69,957 |
| Operation and maintenance | 9,643,735 | - | 9,643,735 |
| Depreciation | 2,593,159 | - | 2,593,159 |
| Taxes other than income | 10,938,519 | 272,277 | 11,210,796 |
| Interest on customer deposits | 66,325 | - | 66,325 |
| Income taxes | 2,276,052 | 2,100,419 | 4,376,471 |
| Total operating revenue deductions | $159,552,755 | $2,372,696 | 161,925,451 |
| Net operating income | $ 4,800,487 | $2,165,258 | $ 6,965,745 |

## SCHEDULE II
## NORTH CAROLINA NATURAL GAS CORPORATION
Docket No. G-21, Sub 235
## STATEMENT OF RATE BASE AND RATE OF RETURN
Twelve Months Ended December 31, 1982

| Item | Amount |
|---|---|
| Investment in Gas Plant | |
| Gas utility plant in service | $89,141,608 |
| Accumulated depreciation | (31,115,023) |
| Net plant in service | 58,026,585 |
| Allowance for working capital | 5,504,533 |
| Accumulated deferred income taxes | (9,718,540) |
| Customer advances for construction | (6,264) |
| Cost-free capital - Transco refund | (125,377) |
| Cost-free capital - Gain on CFI settlement | (407,266) |
| Original cost rate base | $53,273,671 |
| Rate of Return | |
| Present rates | 9.01% |
| Approved rates | 13.08% |

## SCHEDULE III
## NORTH CAROLINA NATURAL GAS CORPORATION
Docket No. G-21, Sub 235
## STATEMENT OF CAPITALIZATION AND RELATED COSTS
Twelve Months Ended December 31, 1982

| Item | Ratio % | Original Cost Rate Base | Embedded Cost % | Net Operating Income |
|---|---|---|---|---|
| | Present Rates - Original Cost Rate Base | | | |
| Short-term debt | 18.00 | $ 9,589,261 | 11.00 | $1,054,819 |
| Long-term debit | 27.00 | 14,383,891 | 9.52 | 1,369,346 |
| Common equity | 55.00 | 29,300,519 | 8.11 | 2,376,322 |
| Total | 100.00 | $53,273,671 | - | $4,800,487 |
| | Approved Rates - Original Cost Rate Base | | | |
| Short-term debt | 18.00 | $ 9,589,261 | 11.00 | $1,054,819 |
| Long-term debt | 27.00 | 14,383,891 | 9.52 | 1,369,346 |
| Common equity | 55.00 | 29,300,519 | 15.50 | 4,541,580 |
| Total | 100.00 | $53,273,671 | - | $6,965,745 |

DOCKET NO. G-21, SUB 255

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

| In the Matter of | | |
|---|---|---|
| Application of North Carolina Natural Gas | ) | FINAL ORDER GRANTING |
| Corporation for an Adjustment of Its Rates | ) | PARTIAL INCREASE IN |
| and Charges | ) | RATES AND CHARGES |

ORAL ARGUMENT
ON EXCEPTIONS
HEARD IN: Commission Hearing Room 2115; Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina on Monday November 3, 1986, at 9:30 a.m.

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

APPEARANCES:

FOR NORTH CAROLINA NATURAL GAS CORPORATION:

Donald W. McCoy and Alfred E. Cleveland, McCoy, Weaver, Wiggins, Cleveland & Raper, Attorneys at Law, 222 Maiden Lane, Post Office Box 2129, Fayetteville, North Carolina 28302

FOR THE USING AND CONSUMING PUBLIC:

Gisele L. Rankin and David T. Drooz, Staff Attorneys, Public Staff - North Carolina Utilities Commission, Post Office Box 29520, Raleigh, North Carolina 27626-0520

FOR THE CAROLINA UTILITY CUSTOMERS ASSOCIATION, INC.:

Jerry B. Fruitt, Fruitt and Austin, Attorneys at Law, Post Office Box 12547, Raleigh, North Carolina 27605

FOR THE ALUMINUM COMPANY OF AMERICA:

Samuel Behrends, IV, LeBoeuf, Lamb, Leiby, & MacRae, Attorneys at Law, 336 Fayetteville Street Mall, Post Office Box 750, Raleigh, North Carolina 27602

FOR THE CITIES OF WILSON, ROCKY MOUNT, MONROE, AND GREENVILLE:

David R. Straus, Spiegel & McDiarmid, Attorneys at Law, Suite 1100, 1350 New York Avenue NW, Washington, DC 20005

BY THE COMMISSION: On March 27, 1986, North Carolina Natural Gas Corporation (N.C.N.G., Applicant, or the Company) filed an application with the North Carolina Utilities Commission for authority to increase its rates and charges for retail natural gas service in North Carolina by $6,145,662 annually.

By Order dated April 22, 1986, the Commission declared the matter to be a general rate case pursuant to G.S. 62-137; suspended the proposed rates for a period of 270 days from the effective date of April 26, 1986; set the matter for hearing; declared the test period to be the 12 months ended September 30, 1985; and required the Company to give notice to its customers of the proposed increase and the hearings.

On June 30, 1986, N.C.N.G. filed supplemental testimony and exhibits in this docket which in effect amended the Company's initial application so as to increase the Company's requested rate increase from $6,145,662 to $8,193,100.

On July 1, 1986, the Public Staff filed a motion requesting the Commission to require N.C.N.G. to publish and mail a new notice of hearing in order to inform its customers of the details of the revised revenue increase. On July 8, 1986, N.C.N.G. filed a Response to the Public Staff's Motion for Additional Notice, objecting to said Notice. By Order dated July 9, 1986, the Commission required N.C.N.G. to publish an amended notice of hearing in newspapers having general coverage in its North Carolina service area.

The Carolina Utility Customers Association, Inc., (C.U.C.A.) filed a Petition to Intervene on April 25, 1986. The Petition to Intervene of Aluminum Company of America (Alcoa) was filed on June 10, 1986. On July 10, 1986, the Cities of Wilson, Rocky Mount, Monroe, and Greenville, North Carolina (Cities) filed a Petition to Intervene, as well as a Motion for Limited Admission to Practice by David R. Straus and Gary J. Newell of the Washington, D.C., law firm of Spiegel and McDiarmid. By Orders of the Commission of various dates, all of these petitions and motions were allowed.

The matter came on for hearing before a Commission Hearing Panel consisting of A. Hartwell Campbell, Presiding, and Commissioners Sarah Lindsay Tate and Ruth E. Cook at the places and on the dates scheduled in the Commission Order setting investigation and hearing. The following public witnesses appeared at the hearing in Fayetteville, North Carolina, on July 24, 1986: Norman Dalton, John Noble, James R. Faulk, and Phillip Harrington. No public witnesses appeared or offered testimony in Wilmington on July 24, 1986. Charles E. Sanders appeared at the public hearing in Kinston on July 25, 1986.

The case in chief was heard in Raleigh beginning on August 4, 1986. N.C.N.G. presented the testimony and exhibits of the following witnesses:

1. Frank Barragan, Jr., President and Director of N.C.N.G. (direct testimony);.

2. Calvin B. Wells, Executive Vice President and Director of N.C.N.G. (direct testimony);

3. Gerald A. Teele, Vice President - Rates and Gas Supply of N.C.N.G. (direct, supplemental, and rebuttal testimony);

4. Judith A. Wheeler, Director of Rates and Budgets of N.C.N.G. (direct and supplemental testimony);

5. Charles M. Butler, III, Vice President of Kidder, Peabody & Company, Inc. (direct testimony); and

6. Raymond A. Ransom, Consultant with Ransom Engineers, P.C. (rebuttal testimony).

The Cities of Wilson, Rocky Mount, Monroe, and Greenville presented the testimony and exhibits of the following witnesses':

1. John R. Kersten, Consultant with Saffer Utility Consultants, Inc.;

2. Sheree L. Brown, Senior Consultant and Vice President of Saffer Utility Consultants, Inc.; and

3. Fred R. Saffer, President of Saffer Utility Consultants, Inc.

Alcoa offered the affidavit of Maynard F. Stickney.

The Public Staff presented the direct testimony and exhibits of the following witnesses:

1. Jeffrey L. Davis, Engineer, Public Staff Natural Gas Division;

2. Eugene H. Curtis, Jr., Engineer, Public Staff Natural Gas Division;

3. Elizabeth C. Porter, Supervisor of the Natural Gas Section, Public Staff Accounting Division; and

4. Danny P. Evans, Financial Analyst, Public Staff Economic Research Division.

On October 15, 1986, the Commission Hearing Panel entered a recommended order in this docket whereby North Carolina Natural Gas Corporation was granted a partial rate increase of approximately $6.1 million on an annual basis. Certain corrections were made to the recommended order pursuant to errata orders entered in this docket on October 17, 1986, and October 22, 1986. The notice to the parties attached to the recommended order provided that exceptions were due on or before October 30, 1986, and that if no exceptions were filed, the recommended order would become effective and final on November 4, 1986.

On October 20, 1986, N.C.N.G. filed a notice with the Commission indicating that the Company intended to place its proposed rates into effect on November 1, 1986, pursuant to G.S. 62-135. The Company also filed an undertaking to refund for Commission approval. On October 28, 1986, N.C.N.G. filed amended tariffs with an effective date of November 1, 1986, reflecting the rates approved in the recommended order. N.C.N.G. indicated that it would place these rates into effect on November 1, 1986, pursuant to G.S. 62-135 rather than the rates initially proposed by the Company in its application.

On October 28, 1986, Aluminum Company of America filed certain exceptions to the recommended order. On October 29, 1986, the Public Staff also filed certain exceptions to the recommended order and a motion whereby the Commission was requested to make specific findings with respect to the return on common equity allowed N.C.N.G. in this case. The Public Staff requested the Commission to set this matter for oral argument pursuant to G.S. 62-78(c).

The motion requesting specific findings regarding the allowed return on common equity filed by the Public Staff is hereby decided as hereinafter provided in the discussion set forth in conjunction with the Evidence and Conclusions for Finding of Fact No. 14. The Commission observes that the Public Staff's motion seeks to require the Commission to make specific findings which none of the expert witnesses in this case could or would make, including Public Staff witness Evans. What the Public Staff is seeking are the specific, individual components which make up the Commission's final determination. The Commission believes that the determination of a reasonable rate of return is, in the end, basically a matter of sound regulatory judgment which is not readily capable of being separated into individual components. Even the testimony of Public Staff witness Evans supports this conclusion. Witness Evans' studies showed dividend yields ranging from 3.23% to 7.30% and an estimate of growth rates ranging from 4.01% to 11.96%. This resulted in a return on common equity range of 12.8% to 13.8%. From this range, Public Staff witness Evans concluded that N.C.N.G.'s required rate of return on common equity was 13.3%. Witness Evans did not specify what specific dividend rate or growth rate he was utilizing in making this determination or what weight he gave to his different methodologies. It is obvious from his testimony that the 13.3% recommendation was not a result of adding any specific components but was rather the result of his expert judgment after looking at all of the evidence.

On October 30, 1986, the Carolina Utility Customers Association, Inc. filed certain exceptions to the recommended order and notice of appeal. On that same date, N.C.N.G and the Cities of Wilson, Rocky Mount, Greenville, and Monroe also filed certain exceptions to the recommended order.

On October 30, 1986, the Commission entered an Order in this docket scheduling oral argument on exceptions for Monday, November 3, 1986, at 9:30 a.m. Upon call of the matter for oral argument on exceptions, all of the parties were represented by counsel and participated in the oral argument.

On November 3, 1986, the Commission entered an Order approving the undertaking to refund filed by N.C.N.G. on October 20, 1986.

Based upon the foregoing, the evidence adduced at the hearing, the entire record in this proceeding, and the exceptions to the recommended order and oral argument offered by the parties with respect thereto, the Commission now makes the following

## FINDINGS OF FACT

1. North Carolina Natural Gas Corporation is a corporation organized under the laws of the State of Delaware and authorized to do business in the State of North Carolina. N.C.N.G. is a franchised public utility providing natural gas service to its customers in North Carolina. The Company is properly before the Commission in this proceeding, pursuant to Chapter 62 of the General Statutes of North Carolina, for a determination of the justness and reasonableness of its proposed rates and charges.

2. The test period for purposes of this general rate case is the 12 months ended September 30, 1985, adjusted for actual changes based on circumstances and events occurring through the close of the hearings.

3. N.C.N.G. originally requested an annual increase in operating revenues of $6,145,662. In its updated testimony and exhibits filed on June 30, 1986, the Company sought to show that an increase of $8,193,100 was justified.

4. N.C.N.G. is providing an adequate quality of natural gas service to its customers in North Carolina.

5. The reasonable allowance for working capital for the Company is $4,054,426.

6. The appropriate amount of cost-free capital resulting from Transco refunds is $125,377.

7. N.C.N.G.'s reasonable original cost rate base used and useful in providing service to its customers is $74,693,722. This rate base consists of plant-in-service of $120,902,856 plus a working capital allowance of $4,054,426 less accumulated depreciation of $37,890,127, accumulated deferred income taxes of $11,942,607, and cost-free capital of $430,826. This rate base includes $19,348,884 for the Company's new Liquified Natural Gas (LNG) plant and $432,167 for its new Fayetteville District Office Building, both of which were used and useful at the time the hearings were concluded in this docket.

8. N.C.N.G.'s end-of-period operating revenues for the test period, after appropriate and reasonable engineering and accounting adjustments, are $126,118,775.

9. The depreciation rates proposed by the Company for utilization in depreciating its LNG facility are proper with the exception of Accounts 363.0 (Purification Equipment) and 363.1 (Liquification Equipment). The appropriate depreciation rates for these two accounts are 3.98% for Account 363.0 and 4.76% for Account 363.1.

10. It is proper to recognize interest synchronization of Job Development Investment Tax Credits (JDITC) in calculating income taxes for ratemaking purposes in this proceeding.

11. The costs of Washington Storage Service (WSS) represent valid and prudent costs of rendering natural gas service and have been and will continue to be of benefit to all of the Company's customers.

12. The reasonable level of test year operating revenue deductions for N.C.N.G. after accounting, pro forma, and end-of-period adjustments is $120,119,666, which includes an amount of $3,831,273 for actual investment currently consumed through reasonable actual depreciation after annualization to year-end level.

13. The capital structure for N.C.N.G. which is reasonable and proper for use in this proceeding is as follows:

| Item | Ratio |
|---|---|
| Long-term debt | 56.41% |
| Common equity | 43.59% |
| Total | 100.00% |

14. The proper cost of long-term debt for use in this proceeding is 10.33%. The reasonable rate of return for N.C.N.G. to be allowed on its common equity is 14.0%. Using a weighted average for the cost of debt and common equity, with reference to the reasonable capital structure heretofore determined, yields an overall just and reasonable rate of return of 11.93% to be applied to the Company's original cost rate base. Such rate of return will enable N.C.N.G., by sound management, to produce a fair return for its stockholders, to maintain its facilities and service in accordance with the reasonable requirements of its customers, and to compete in the market for capital funds on terms which are reasonable and fair to the customers and to existing investors.

15. Based upon the foregoing, N.C.N.G. should increase its annual level of gross revenues under present rates by $5,956,540. The annual revenue requirement approved herein is $132,075,315, which will allow N.C.N.G. 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 N.C.N.G.'s property used and useful in providing service to its customers and its reasonable test year operating revenues and expenses as previously set forth in these findings of fact.

16. 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 the ability to negotiate rates, value of service, quantity of natural gas used, the time of use, the manner of use, the equipment which N.C.N.G. must provide and maintain in order to meet the requirements of its customers, competitive conditions, and consumption characteristics.

17. An Industrial Sales Tracker (IST) is necessary and reasonable and should be included in the rates of N.C.N.G. The IST should be continued as approved in the Order on Remand of January 31, 1986. Retail customers with alternate fuels other than heavy fuel oil should not be included in the IST at this time.

18. The schedules of rates and charges proposed by N.C.N.G. are unjust and unreasonable. The rates set forth in Appendix B attached hereto and approved herein will produce the approximate level of revenues from the sale of natural gas approved herein.

19. The language in Rate Schedules T-1 and T-2 on which N.C.N.G. has relied to impose a 2% allowance for compressor fuel and line loss volumes in its transportation service and negotiated sales should be deleted from those tariffs as of the date of this Order. A further hearing will be held to decide the disposition of the monies collected pursuant to this allowance in the past.

## EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 1, 2, AND 3

The evidence for these findings of fact is contained in the verified application, the Commission's Order of April 22, 1986, the original and supplemental testimony and exhibits of Company witnesses Teele and Wheeler, and the testimony and exhibits of Public Staff witness Porter. These findings of fact are essentially informational, procedural, and jurisdictional in nature and are generally uncontested.

## EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 4

The evidence for this finding of fact consists of the testimony of Company witness Barragan and the public witnesses who appeared at the hearings in Fayetteville. The testimony of the public witnesses dealt almost entirely with the level of rates being charged or proposed to be charged by the Company for its services. No evidence was presented by any witness that the level of service provided by N.C.N.G. to its customers is not adequate. Therefore, the Commission concludes that the quality of service provided by N.C.N.G. to its customers is adequate.

## EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 5

The evidence for this finding of fact is contained in the testimony and exhibits of Company witness Teele, Cities witnesses Kersten and Brown, and Public Staff witnesses Porter and Curtis. The following tabular summary shows the amounts presented by each witness at the hearing:

| Item | Company Witness Teele | Public Staff Witnesses Porter and Curtis | Cities Witnesses Kersten & Brown |
|---|---|---|---|
| Cash - lead/lag study | $ 707,773 | $ 707,773 | $ 59,479 |
| Plant materials and operating supplies | 1,231,772 | 1,231,772 | 1,231,772 |
| Meter repair parts | 43,097 | 43,097 | 43,097 |
| Stores expense | 54,485 | 54,485 | 54,485 |
| Natural gas stored | 3,318,732 | 2,947,329 | 1,319,955 |
| Equal payment plan | (165,306) | (165,306) | (165,306) |
| Sales tax accruals | (380,684) | (380,684) | (380,684) |
| Minimum bank balances | 329,100 | 329,100 | 329,100 |
| Customer deposits | (1,084,543) | (1,084,543) | (1,084,543) |
| Working capital allowance | $ 4,054,426 | $ 3,683,023 | $ 1,407,355 |

Since all witnesses agreed on the cost levels of plant materials and operating supplies, meter repair parts, stores expense, equal payment plan, sales tax accruals, minimum bank balances, and customer deposits, the Commission concludes that the amounts for these items are appropriate to use in this proceeding.

There are six items that constitute the differences in the levels of cash working capital and natural gas inventory proposed by the Company, the Cities, and the Public Staff. Those items are as follows:

1. The Company and the Public Staff utilized the per books cost of service while the Cities used an end-of-period cost of service to calculate cash working capital.

2. The Cities eliminated "non-cash" items in computing the cash working capital per the lead/lag study; whereas, the Company and the Public Staff included "non-cash" items in their determination.

3. The Company and the Public Staff included net income for common equity at a zero days payment lag in the lead/lag study while the Cities eliminated the common equity funds from the calculation of the cash working capital requirement.

4. The Cities eliminated the cost of Washington Storage Service (WSS) gas inventory from the natural gas inventory to be included in rate base. The Company and the Public Staff included in rate base WSS gas storage inventory based on the end of test year volumes and the current commodity cost of gas.

5. The Company and the Cities included a pro forma level of LNG inventory based on 403,846 dekatherms; whereas, the Public Staff included LNG inventory based on 269,231 dekatherms.

6. The Company and the Public Staff used aggregate customer revenue lags to apply to expense lead/lags to calculate total system cash working capital. The Cities calculated a separate cash working capital based on individual customer class revenue lags and expense levels resulting from their cost of service study.

The Commission recognizes that the Cities in its brief has only argued for its position on the issues cited in Item Nos. 4 and 6 above; however, since in regard to the other issues the Cities' brief states "we are not pushing here our position...," the Commission finds merit in addressing each of the above issues raised in this proceeding.

The first area of difference concerns the use by the Company and the Public Staff of the per books cost of service for the test year ended September 30, 1985, in calculating cash working capital while the Cities used the end-of-period cost of service before the proposed rate increase.

The Commission believes and reaffirms its opinion expressed in past rate case proceedings that per books is the reasonable and appropriate basis for the calculation of a working capital allowance in all but the most unusual of circumstances. Based upon the facts presented in this proceeding, the Commission can find no highly unusual circumstance which would cause it to deviate from that position. Therefore, the Commission concludes that the actual per books cost of service used in the lead/lag study results in a reasonable and fair analysis and is appropriate for use in this proceeding.

The second area of difference concerns noncash items eliminated by witness Kersten in his determination of the cash working capital requirement. Witness Kersten testified that no cash outlay is required for certain booked expenses such as depreciation and that the inclusion of the noncash expenses is not appropriate for the determination of a working capital requirement. Witness Teele, through rebuttal testimony, discussed why certain noncash expenses should be included in the lead/lag study. He testified that the full balance of accumulated depreciation and deferred income taxes has been deducted from rate base and that the daily amount of these items times the revenue lag has not been collected through rates at the end of the test period. Thus, the inclusion of depreciation and deferred income taxes and the assignment of zero lag days to these expenses allows the Company to earn a return on the amount of investment which has been deducted from rate base but not collected in rates.

Based on the evidence of record and consistent with our treatment in the past concerning these noncash items, the Commission concludes that it is appropriate to include noncash items such as depreciation in the lead/lag study.

The third area of difference concerns the proper treatment of common equity funds in the lead/lag study. The Company and the Public Staff both assigned zero lag days to common equity funds since income available for common equity as a component of the cost of service belongs to the stockholder on the day it is earned. Witness Kersten testified that common equity investors realize that dividends are paid quarterly. He stated that the rate of return reflects the timing of the dividend payment, and it would be inappropriate to require the ratepayers of N.C.N.G. to pay additional dollars attributable to a cash working capital requirement that does not exist.

The Commission concurs with the treatment of common equity funds proposed by the Company and the Public Staff in determining cash working capital. The common shareholder is entitled to his earnings on a daily basis, and the assignment of a zero lag to this component of cost of service compensates him for the fact that there is a lag in the time he earns his income and the time he actually receives the income due to the lag the Company experiences in collecting revenues from its customers.

The fourth area of difference concerns whether or not WSS gas inventory should be included in rate base as a part of natural gas stored inventory. The Company and the Public Staff included it in inventory based on the end of test year volumes and the current commodity cost of gas. The Cities eliminated it from rate base on the grounds that it is not available for peak day service and that the output from the new LNG plant would be available to meet peak demands any time demand exceeds long-term contract supply. Cities' witness Brown testified that the WSS gas was much more expensive than the LNG gas and, in any event, the WSS gas should not be assigned to noninterruptible customers.

The Commission is not persuaded by Cities' arguments that WSS storage costs should be removed from rate base. WSS gas has consistently been included in rate base in prior natural gas rate cases, and while the cost of the storage is fairly low, the possible benefits accruing to N.C.N.G. and its customers because of the changing status of Transco are valuable. In the Evidence and Conclusions for Finding of Fact No. 11, the Commission concludes that the WSS is of benefit to all of the Company's customers and therefore concludes that WSS storage costs should be included in rate base in natural gas inventory.

The fifth area of difference concerns the proper level of LNG inventory. There is agreement between the parties that the cost rate of gas in storage is $2.759, per dekatherm (dt) which is Transco's CD-2 commodity rate effective May 1, 1986. N.C.N.G. estimated a 13-month average level of gas in the LNG facility of 403,846 dekatherms, which, based on the CD-2 commodity rate of $2.759 per dekatherm, generates a cost of gas as testified to by N.C.N.G. witness Teele of $1,114,211. The Cities did not take issue with N.C.N.G.'s proposed level of inventory. Public Staff witness Curtis testified that the 13-month average of LNG in storage, as calculated by N.C.N.G., was too high given the late start up of the facility. In the calculation by witness Curtis, he used an average 13-month level of 269,231 dekatherms as opposed to the Company's 403,846 dekatherms. Based on witness Curtis' 13-month average, and a CD-2 commodity rate of $2.759 per dekatherm, the Public Staff's calculation of the value of stored gas in inventory would be $742,808. The difference between the Company and the Public Staff arises because Company witness Teele projects that 500,000 dt of LNG will be liquefied and vaporized in the first year of operation while Public Staff witness Curtis projects that only 300,000 dt will be liquefied and vaporized. Witness Teele testified that at least 500,000 dt will be needed to meet a design winter, such as the Company experienced during the winter of 1976-77, and that the LNG plant was built in order to meet a 20% colder-than-normal winter.

After careful consideration, the Commission concludes that the proper amount for natural gas in storage is $3,318,732 as presented by the Company. In reaching this conclusion, the Commission recognizes that the Company can continue to liquefy gas up until the time that the coldest weather strikes this winter and that the Company must be prepared for the possibility of an extremely cold winter. Additionally, the lower level of LNG in storage proposed by Public Staff witness Curtis could possibly result in an inability on the part of the Company to recover its costs of providing necessary storage services in order to meet the peak demands of its customers and in order to enhance the deliverability and safety of its pipeline system.

The final area of disagreement concerns the Cities' calculation of a separate cash working capital allowance for the municipal class of customers. Witness Kersten testified that the municipal customers have the shortest revenue lag and therefore should not be penalized for the slower paying residential and industrial customers. He further stated that a separate calculation should be made for each class of customers based on the actual revenue lag of each class and the operating expenses assigned in the cost of service study. The Commission rejects witness Kersten's proposal to calculate a separate cash working capital for each class of customers on the basis that, in this proceeding, it would be impractical to require the Company to perform individual lead/lag studies for each class of customers and improper to allow the Company to use the results of the Cities' calculation of a separate cash working capital allowance for the municipal class of customers, while requiring that other classes of customers' cash working capital requirements be determined based upon a total company cash working capital allowance. Furthermore, witness Kersten's proposal assumes that cost of service is the only criterion used in determining rate design. As stated in Finding of Fact No. 16, the Commission also considers a number of other criteria in a determination of rate design.

The Commission finds, based on the evidence presented in this proceeding, that it is proper and reasonable to calculate a total company cash working capital allowance and to allocate such allowance among the various classes of customers. The Commission is aware that, even though a lead/lag study is the most accurate method in determining the cash working capital, it is not a precise determination. The Commission is also aware that the cash working capital requirement is only a portion of the rate base that must be considered in this proceeding. After reviewing all of the methodologies used for calculating the cash working capital, the Commission concludes that the amount of $707,773 for customer funds advanced for operations as proposed by the Company and the Public Staff is the most reasonable estimate and is appropriate to use in this proceeding.

Based on the foregoing, the Commission concludes that the reasonable and appropriate allowance for working capital for use in this proceeding is $4,054,426.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 6

Company witnesses Teele and Wheeler and Public Staff witness Porter offered testimony regarding the proper ratemaking treatment of the Transco refunds received by the Company in 1978. Company witness Wheeler reduced book retained earnings by the net of tax producer refunds based on the Company's interpretation of the Commission's Final Order in the Public Service general rate case (Docket No. G-5, Sub 200), which stated:

> "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."

Company witness Teele testified that since N.C.N.G. had removed the refunds from retained earnings such monies had properly been classified as cost-free as required by the Commission in the Public Service Order.

Public Staff witness Porter testified that N.C.N.G.'s proposal was not in compliance with the Commission Order in that docket. She further testified that the Public Service Order specifically stated that "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." In State ex rel. Utilities Commission v. Public Service Company, 307 N.C. 474, 299 S.E. 2d 425 (1983), the North Carolina Supreme Court held that certain Transco refunds could not be distributed to the utility's customers because it was impracticable to identify the exact customers who paid those monies, as required by the law at that time. As witness Porter noted, the Commission has consistently treated Transco refunds as cost-free capital and reduced rate base in all natural gas general rate case proceedings held since that court ruling, including the last N.C.N.G. general rate case in which Company witness Teele accepted the adjustment. She further stated that the intent of the Commission's treatment is to prevent ratepayers from paying a return on capital which they contributed. Company witness Teele admitted on cross-examination that the effect of the Company's adjustment was to require the ratepayers to pay a return on the cost-free capital equal to the embedded cost of debt.

Witness Porter agreed with the Company regarding the adjustment to decrease retained earnings by the amount of the Transco refunds, but testified that this adjustment should be made in addition to the deduction of those refunds from rate base as cost-free capital. The Company and the Public Staff agree that retained earnings are greater due to the Company's treatment of the refunds as income on its books, therefore resulting in a higher common equity ratio than would otherwise exist.

The Commission concludes, based on all the evidence presented and taking judicial notice of the court rulings and prior Orders regarding this ıssue, that it is appropriate to treat these refunds as cost-free capital supplied by ratepayers. In order to prevent ratepayers from paying any return on this cost-free capital, the Commission finds that it is proper to reduce rate base by the net of tax refunds of $125,377 and also to remove the refunds from the common equity portion of the Company's capital structure.

## EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 7

The evidence concerning the rate base is found in the testimony and exhibits of Company witnesses Teele, Wheeler, and Ransom; Public Staff witnesses Porter and Curtis; and Cities witnesses Brown and Kersten. The amount of each item in the rate base proposed by the Company and the Public Staff are as follows:

| Item | Company Witnesses Teele & Wheeler | Public Staff Witnesses Porter & Curtis | Difference |
|---|---|---|---|
| Plant in service | $120,902,856 | $120,902,856 | $ - |
| Accumulated depreciation | (37,965,269) | (37,890,127) | (75,142) |
| Net plant | 82,937,587 | 83,012,729 | 75,142 |
| Working capital allowance | 4,054,426 | 3,683,023 | (371,403) |
| Accumulated deferred income taxes | (11,942,607) | (11,942,607) | - |
| Cost-free capital - Transco refunds and CFI settlement | (305,449) | (430,826) | (125,377) |
| Original cost rate base | $ 74,743,957 | $ 74,322,319 | $ (421,638) |

Both the Company and the Public Staff proposed an amount for gas utility plant in service of $120,902,856. That amount includes $19,348,884 for the Company's new LNG plant and $432,167 for the Company's new Fayetteville District Office Building, both of which were used and useful at the time the hearings were closed.

Intervenors Alcoa and C.U.C.A. took the position during the hearings that the Company had not in any of its prefiled testimony or exhibits proved the need for the LNG plant and that perhaps N.C.N.G. had constructed the plant to meet the demands of its interruptible industrial customers. However, neither of these intervenors introduced any evidence to sustain these contentions. On rebuttal, Company witness Ransom testified as to the need for the LNG plant in terms of meeting N.C.N.G.'s growing peak demands of the high priority customers through priority 2.6, as well as improving the deliverability of natural gas on the Company's entire system and adding to the flexibility of the system for other than extremely cold days. Company witness Ransom also testified that the cost of building an LNG plant to provide the needed additional peak day supply and deliverability is less than any other practical alternative, including building new pipe lines to Transco connections or finding underground storage. Witness Ransom testified that the LNG plant is now used and useful.

Company witness Teele testified that the peak day demand on the design day during the test period was approximately 208,000 dt, which includes approximately 48,000 dt of demand from industrial customers, most of which have alternate fuel capabilities. Witness Teele further testified that the plant was built because of the growing demands of the Company's high priority customers who use natural gas for space heating, and the plant had to be built to allow for future growth of those high priority demands. Accordingly, witness Teele testified that the Company could serve the interruptible demands of industrial customers through Priority 5 (nonboiler uses) in the first year of the plant's operation. Intervenors Alcoa and C.U.C.A. took issue with this, claiming that, because demands of interruptible customers were included in allocating costs of the LNG plant to customer classes, the Company must have built the plant for its interruptible market.

Company witnesses Ransom, Barragan, and Teele all testified that the plant was designed and built to meet the growing demands of its firm, higher priority customers over a number of future years and that the LNG plant would be required in 1986-87 because of the expiration of a peaking contract for 30,000 dt per day that N.C.N.G. had with Piedmont Natural Gas Company. Company witness Ransom also testified that the LNG plant would add to the flexibility of N.C.N.G.'s entire natural gas system by improving overall system deliverability and safety and providing a source of high pressure gas in a short amount of time. He testified that this would be of much value in times of lack of pipeline supply due to a pipeline break or when a large industrial plant should unexpectedly be confronted with a large demand beyond N.C.N.G.'s usual delivery capacity.

The Commission concludes that the Company has adequately demonstrated the need for the LNG plant as the most economical means of serving the present and future needs of its high priority market. The Commission is aware from witness Ransom's testimony that the planning for this plant began several years ago and was based on projections of what high priority demands would be for several years into the future. The Commission is also aware that significant plant investments of this type must be designed to accommodate future growth. There is also uncontroverted evidence that the LNG plant will improve the overall deliverability and system integrity of N.C.N.G.'s natural gas delivery system and will offer industrial customers additional protection from plant shutdowns in the event that they have unexpectedly large fuel requirements beyond N.C.N.G.'s usual delivery capacity. Accordingly, the Commission finds that the Company's LNG plant is used and useful and will be of benefit to all of the Company's customers.

Company witness Wells testified that the Fayetteville District Office Building was occupied at the time of hearing. Cities witness Kersten testified that, while the Fayetteville District Office Building should be allowed in rate base, the Cities should not be required to pay for any part of the cost of that facility since it is not used and useful in providing service to the Company's wholesale customers. This question is more adequately addressed in the area of rate design. The Commission discusses this matter and other issues affecting the allocation of the Company's revenue requirement and the rate design in the

Evidence and Conclusions for Finding of Fact No. 16. Based upon the evidence, the Commission finds that it is appropriate to include the investment by the Company in its LNG plant and the Fayetteville District Office in rate base and thus concludes that the appropriate level of plant in service to be included in rate base in this proceeding is $120,902,856.

Public Staff witness Porter and Company witness Wheeler agreed that the proper level of accumulated deferred income taxes is $11,942,607. No other party to this proceeding raised questions in this regard. Since there is no controversy in this regard, the Commission finds that the appropriate level of accumulated deferred income taxes to be used in this proceeding is $11,942,607.

The Company and the Public Staff disagree as to the proper amount of accumulated depreciation to be deducted from rate base. This difference arises due to the Public Staff's adjustment to end-of-period depreciation expense related to the LNG plant. Since the Commission has adopted the Public Staff's adjustment to depreciation expense in this regard as discussed in the Evidence and Conclusions for Finding of Fact No. 9, it is also appropriate to make the corollary adjustment to accumulated depreciation. The Commission therefore finds the proper level of accumulated depreciation to be $37,890,127.

The next area of difference concerns the allowance for working capital. The Commission has found in the Evidence and Conclusions for Finding of Fact No. 5 that $4,054,426 is the appropriate level and therefore includes that amount for the working capital allowance in the determination of rate base in this proceeding.

The remaining difference between the Company and the Public Staff concerns the treatment of the net-of-tax Transco refunds. The Commission has found in the Evidence and Conclusions for Finding of Fact No. 6 that the Transco refunds of $125,377 are cost-free capital and concludes that it is appropriate to deduct these funds from rate base.

Based on the foregoing, the Commission concludes that the reasonable and appropriate original cost rate base for use in setting rates in this general rate case proceeding is $74,693,722.

## EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 8

N.C.N.G. witnesses Teele and Wheeler testified that the end-of-period operating revenue level, based on 33,898,239 dekatherms, was $125,720,181. Public Staff witness Curtis, using the same May 1, 1986, rates applied to the same volume as utilized by N.C.N.G., concluded that the end-of-period revenue level calculated by the Company was appropriate. There was also no disagreement between the Company and the Public Staff as to the appropriate level of miscellaneous revenues. Further, no other party took exception to the revenue levels under present rates. After adding $398,594 of miscellaneous revenues to the end-of-period operating revenue level of $125,720,181, the Commission concludes that total operating revenues of $126,118,775 are appropriate for use in this proceeding.

## EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 9

The evidence supporting this finding of fact as to the proper depreciation rates is found in the testimony of N.C.N.G. witness Teele and Public Staff witness Curtis.

N.C.N.G. filed a depreciation schedule for its LNG plant which was consistent with the depreciation study as utilized by Public Service Company of North Carolina (Public Service) in its last depreciation study in Docket Nos. G-5, Subs 166 and 168, except for two accounts. The two accounts that N.C.N.G. used different depreciation rates for are Account 363.0 (Purification Equipment) and Account 363.1 (Liquification Equipment). Company witness Teele used rates of 6.33% for these two accounts. The increase of the depreciation rate from 4.75%, as utilized by Public Service for the two accounts, to 6.33% was made based on an average service life of 15 years versus the 20 years which Public Service had used. Company witness Teele testified that N.C.N.G.'s engineers had determined that 15 years would be a reasonable service life to use for both purification equipment and liquification equipment because of the possibility of hairline cracking of the purification refractory and the large costs involved in reconditioning the system, together with the loss of efficiency due to wear and tear on the liquification equipment after approximately 60,000 to 70,000 operating hours which is equivalent to about 15 years of expected LNG production.

Public Staff witness Curtis testified that the rates to be utilized for the depreciation of N.C.N.G.'s new liquification and purification equipment should be based on the historical experience data from the LNG facilities owned and operated by Public Service and Piedmont Natural Gas Company (Piedmont). Witness Curtis further testified that Public Service has had its LNG facility in operation for approximately 10 years, has utilized a depreciation rate of 4.75% for these two accounts over the life of the plant, and has made no capital expenditures for replacement of plant in these two accounts. Piedmont has had its LNG facility operating for approximately 13 years and utilizes a 3.98% depreciation rate for Account 363.0 and a 4.76% depreciation rate for Account 363.1, and also has made no capital expenditures for replacement of plant in these two accounts. Piedmont's depreciation rates were approved November 1, 1984, and are the latest approved by the Commission. Public Service's depreciation rates were approved January 1, 1982.

Based on the fact that N.C.N.G. has no historical operation of its LNG facility on which to base rates and must, therefore, base its depreciation rates on other sources, the Commission finds and concludes that, due to the similarity of the LNG facilities of N.C.N.G. and Piedmont and the fact that Piedmont's rates are the most recent rates approved by the Commission, the depreciation rates as approved for Piedmont are appropriate for N.C.N.G. The purification and liquification equipment at the N.C.N.G. facility, while of the same type as that of Piedmont and Public Service, should reflect updated technologies and should last as long as, or a longer period of time than, equipment at the other two LNG facilities in North Carolina rather than a shorter amount of time.

## EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 10

The evidence for this finding of fact is contained in the testimony and exhibits of Company witnesses Teele and Wheeler and Public Staff witness Porter.

The Company recommended that the Commission treat Job Development Investment Tax Credits (JDITC) in the same manner as they had been treated in the past. The Public Staff argued that the Court of Appeals' ruling in State ex rel. Utilities Commission v. Carolina Telephone, 61 N.C. App. 42, 300 S.E. 2d 395 (1983) and the Commission's past treatment was based on the specific language contained in IRS Regulation 1.46-6 prior to May 30, 1986. Effective May 30, 1986, Regulation 1.46-6 was amended to eliminate the language in question and to expressly permit the use of interest synchronization in computing income tax expense for ratemaking purposes. The first and only major general rate case decision to be rendered since the change in the regulation dealt with General Telephone Company of the South in Docket No. P-19, Sub 207. In that docket, the Commission found that it was proper to recognize interest synchronization in determining the proper level of the cost of service.

Company witness Teele stated in rebuttal testimony that the "Internal Revenue Code Section 46(f)(2) very clearly states that investment credits must be treated as shareholder capital...." During cross-examination, witness Teele admitted that the Code does not contain such language and that in fact such language was contained in the old Regulation but had been stricken from the new Regulation. Witness Teele admitted that the new Regulation allowed this Commission to recognize interest synchronization without jeopardizing the Company's right to take the credit.

The Company argued that such treatment was not required by the regulation and therefore the Commission could choose not to recognize interest synchronization. While this is true, the Commission finds as a fact that N.C.N.G.'s tax expense is collected from its customers through rates charged for cost of service. To the extent the investment tax credit excuses part of this tax expense, the Code provides the Company with cost-free capital. Since the original source of this capital was the ratepayers, they should get the benefit which is now allowed under the new regulation. Witness Teele agreed on cross-examination that his methodology produced a higher revenue requirement than witness Porter's treatment and that he was aware of the North Carolina Supreme Court's interpretations of G.S. 62-133(b) which requires utility rates to be set as low as constitutionally possible.

The Company argued that the clarification of the Regulation was not consistent with the Internal Revenue Code and that, in fact, many of the large accounting firms disagree with the clarification. Witness Teele admitted that all interested parties, including the large accounting firms, were given an opportunity to respond to the proposed clarification both through written response and additionally through a public hearing. This Commission is not the proper forum for challenging IRS Regulations. The Internal Revenue Service is responsible for interpreting and clarifying the Code by means of regulations. Until such time as a court overturns Regulation 1.46-6, it is presumed valid and is binding as law.

The Commission concludes, based on all the evidence presented, that it is reasonable and appropriate to recognize interest synchronization in determining the proper level of cost of service. The Commission is aware of the North Carolina Court of Appeals' decision in the Carolina Telephone case but that decision was based on the wording of Regulation 1.46-6 prior to clarification and amendment and therefore is not binding in this case or in future cases before the Commission. The treatment accorded by the Public Staff is in accordance with the Internal Revenue Code and Regulation 1.46-6 and provides the Company's shareholders the overall rate of return on the accumulated investment tax credits. Consistent with the Internal Revenue Code, such treatment provides for a sharing of the benefits between ratepayers and shareholders, while producing a revenue requirement consistent with G.S. 62-133(b) and the relevant case law.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 11

The evidence for this finding of fact is contained in the testimony and exhibits of Cities witness Brown and the rebuttal testimony of Company witness Teele. In her prefiled testimony, Cities witness Brown proposed that the costs of WSS storage be disallowed in this proceeding because they pertain to a nonfirm storage service and are not needed because the Company now has its LNG plant on line.

In rebuttal testimony, Company witness Teele presented some background data on WSS including how it originated and how it was used in the severe curtailment days of the mid- and late 1970's. He also explained that the Company still utilizes WSS today, but on a more limited basis, because Transco ceased gas curtailments in 1982. Witness Teele also explained how the need for WSS could increase in the future if Transco's proposed settlement becomes a reality and if N.C.N.G.'s CD contract with Transco is reduced, both of which are distinct possibilities.

Under cross-examination by the Public Staff and by the Company, Cities witness Brown indicated a lack of understanding of the nature of WSS and was also not aware that the WSS could become a firm service under terms of Transco's settlement. Witness Brown testified that the nonfirm interruptible customers create the need for storage services.

The Commission is well aware of the role that the WSS gas played during the severe curtailment of natural gas in North Carolina during the decade of the 1970s. The Commission also understands that all of the natural gas companies operating in North Carolina have retained their WSS contracts, which are for a term of 20 years, and that the utilization of WSS is not as great as it once was. However, the fact that conditions have changed in natural gas markets in the 1980s compared to the 1970s does not now mean that the costs of WSS should not be included as an allowable cost of service. Furthermore, the Commission is aware of the pivotal role that WSS probably will play in the future if Transco's open access proposal becomes a reality. Certainly, the Company has acquired all of its storage service contracts with Transco and has constructed its LNG plant because of the peak demands of its firm market, the customers who use natural gas for space heating on cold winter days. WSS gas cannot substitute for an LNG plant because they are two different things: WSS was established to augment deliveries of natural gas when the basic contract supply is curtailed; the LNG plant was constructed to meet growing peaks on

N.C.N.G.'s system and to improve the deliverability and safety on its entire 800-mile pipeline system.

Based on all the evidence in the record, the Commission concludes that the costs of Washington Storage Service represent valid and prudent costs of rendering natural gas service and have been and will continue to be of benefit to all of the Company's customers.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 12

Evidence for this finding of fact is found in the testimony and exhibits of Company witnesses Teele and Wheeler, Cities witnesses Kersten and Brown, and Public Staff witnesses Curtis and Porter.

The following table sets forth the various differences as filed between the Company, the Public Staff, and the Cities with respect to operating expenses.

| Item | Company | Public Staff | Cities |
|---|---|---|---|
| Cost of gas | $ 97,434,829 | $ 97,434,829 | $ 97,434,829 |
| Operation and maintenance | 12,343,779 | 11,852,261 | 12,270,685 |
| Depreciation | 3,906,415 | 3,831,273 | 3,906,415 |
| Taxes other than income | 5,396,218 | 5,391,992 | 5,396,218 |
| Interest on customer deposits | 86,763 | 86,763 | 86,763 |
| Income taxes | 1,222,393 | 1,407,551 | 1,258,385 |
| Total operating expenses | $120,390,397 | $120,004,669 | $120,353,295 |

As the above table shows, the Company, the Public Staff, and the Cities used the same cost of gas in determining the Company's proper level of operating revenue deductions. This $97,434,829 level of expense for gas is associated with the sales volume used by N.C.N.G. and the Public Staff in determining the proper level of operating revenues and is based on May 1, 1986, rates. The parties are also in agreement as to the proper level of interest on customer deposits to be included in the cost of service. There being no controversy as to the proper levels for cost of gas and interest on customer deposits, the Commission concludes that $97,434,829 is the appropriate amount for the cost of gas and $86,763 is the appropriate amount for interest on customer deposits to be included in the cost of service in this proceeding.

The first area of difference concerns the proper amount of operation and maintenance expense. The following table summarizes the adjustments proposed by the Public Staff and the Cities:

| | Public Staff | Cities |
|---|---|---|
| Country club dues | $ 14,516 | $ - |
| Advertising | 78,936 | - |
| Payroll | 62,963 | - |
| LNG electric expense | 193,360 | 73,094 |
| Amortization of computer software | 71,231 | - |
| Inflation adjustment | 70,512 | - |
| Total differences | $ 491,518 | $73,094 |

Public Staff witness Porter removed country club dues from the cost of service on the basis that they are not necessary or beneficial for the provision of natural gas service. The Company argued that its officers' salaries are not large by any reasonable standard. Therefore, in the Company's opinion the Club memberships are a necessary prerequisite in attracting and retaining management talent. The Commission finds that these dues are definitely not directly necessary or beneficial to the provision of service by the Company and concludes that it is reasonable and appropriate to exclude these dues from the cost of service in this proceeding. Such treatment is consistent with prior Commission ratemaking practice.

The second item of difference concerns the proper amount of advertising expense. The Company adjusted test year expense to allocate 15% of advertising expense to nonutility operations on the basis that nonutility revenue is only 3.05% of the total Company revenue and that the primary purpose of advertising is to sell gas. Public Staff witness Porter testified that 50% of the Company's advertising expense should be allocated to nonutility operations to provide an even sharing of the costs between utility operations and nonutility operations. The amount of her adjustment considered the effect of the Company's own adjustment in its filing which removed 15% of advertising expense from the cost of service. Witness Porter further stated that the majority of the advertisements in question promote the sale of appliances, which indirectly promotes the sale of gas, and that during a time of gas surplus it is beneficial to the utility operations to increase natural gas sales. On cross-examination, Company witness Wheeler testified that she had eliminated 15% of the cost of the Company's advertising because much of it is related to appliances, and revenues from gas appliance sales are recorded as nonutility revenues. The Company's position is that the adjustment of 15% made in its filing is adequate to reflect the cost responsibility of the nonutility merchandising and jobbing function. However, Company witness Wheeler agreed on cross-examination that advertising which promotes the sale of appliances should increase the Company's nonutility revenues from both appliance sales and installation and servicing the appliances.

The Commission's position regarding expenses incurred to promote the sale of appliances has generally been to disallow such expenses since they are not within the regulated utility operations for which ratepayers must pay the cost of service under G.S. § 62-133. However, in this time of gas surplus, it is of benefit to the Company's natural gas utility operations to make the public aware of the availability of gas. This type of advertising provides relevant information to ratepayers. Therefore, the Commission concludes, based on the evidence presented and the particular circumstances of this case, that it is reasonable and appropriate to allocate 50% of the advertising expenses to nonutility operations and 50% to utility operations to allow an equal sharing of these expenses. The Commission believes that this ratemaking treatment is entirely fair and reasonable to the Company since our general policy has been to disallow such expenses.

The third area of difference in the amount of $62,963 relates to adjustments proposed by the Public Staff to remove $59,103 of wages and salary expense and $3,860 of associated pension expense from the test year cost of service. The wage adjustment consists of $21,054 relating to scheduled wage and salary adjustments for N.C.N.G.'s employees to be granted after August 8 and prior to September 30, 1986, and the remaining portion of the wage adjustment in the amount of $38,049 is the salary level of the Vice President-Sales position which is now vacant. Public Staff witness Porter eliminated these expenses from the cost of service on the basis that G.S. § 62-133(c) allows consideration only of actual changes in expenses through the close of the hearing, not speculative changes. The Company witness testified that the wage and salary increases at issue will be granted, as they are in accordance with the Company's operating budget. While conceding that the position of Vice President-Sales has been vacant since November 1985, the Company testified that N.C.N.G. is still seeking someone to fill this position which had been occupied for the preceding 23 years by an individual who retired on medical disability in the 1986 fiscal year.

After careful consideration, the Commission concludes that the Public Staff's proposed adjustment of $59,103 to wages and salary expense is not appropriate. With respect to the scheduled wage and salary increases to be granted between August 8 and September 30, 1986, the Commission recognizes that these wage and salary increases will have been granted by the date of this Order. In the Company's G-1 minimum filing requirements presented in this docket, the data show that the wage and salary expense increase at issue is for 5% merit increases to be granted to the remaining eligible employees who have anniversary dates falling between August 8, 1986, and September 30, 1986. The Commission firmly believes that the Company will grant these remaining merit increase amounts to its employees with anniversary dates falling between August 8, 1986, and September 30, 1986, just as it has for other eligible company employees who have received their merit increases on their anniversary dates occurring prior to the close of the hearing in this docket. The Commission does not consider these adjustments to be based on speculative changes. The 5% merit increase adjustment is a known or actual change which is based upon circumstances and events occurring through the close of the hearing and the Commission finds that the inclusion of such expenses is necessary for determining a representative level of salary expense. With respect to the vacant Vice President-Sales position, the Commission recognizes that the Company has had such a position for many years and it would be inappropriate to penalize the Company now because the position is temporarily vacant. With the onset of natural gas deregulation and the far ranging impact of FERC Order No. 436 on the Company's markets, the Commission believes that the Company has a valid need for a person in this executive position and is actively seeking to fill this position and thus concludes that the allowance of this cost is reasonable and proper in determing the Company's representative level of salary expense to be reflected in the Company's cost of service in this proceeding. Further, in regard to the Public Staff's adjustment of $3,860 to pension expense associated with these wage adjustments, the Commission concludes that it is proper to include the pension expense adjustment in conjunction with the payroll adjustment.

The fourth area of disagreement deals with the amount of electric expense related to the operations of the LNG plant. Both the Public Staff and the Cities adjusted LNG electric expense to remove an estimated 15% increase in Carolina Power & Light Company's (CP&L) rates included by the Company. Company witness Teele admitted during cross-examination that CP&L had not yet filed for a rate increase and even if they had there would be no way to know how much of an increase the Commission would grant.

In rebuttal testimony, witness Teele conceded that the $73,094 adjustment for the CP&L rate increase is a valid adjustment by the Public Staff because it appears CP&L will not file a rate request with the Commission prior to the end of calendar year 1986.

Therefore, the Commission agrees with the Public Staff and the Cities that it is appropriate to remove the $73,094 of pro forma electric expense included by N.C.N.G. because of an anticipated future rate increase from CP&L.

The remaining portion of the Public Staff adjustment in the amount of $120,266 is due to the different position of the parties with respect to inventory turnover in the LNG facility. N.C.N.G., through witness Teele, testified that 500,000 dekatherms of gas would be the ongoing level of turnover in the LNG facility on an annual basis. The Company estimated electric costs excluding the CP&L anticipated increase in rates, based on CP&L's time-of-day rates, to be $487,293. Public Staff witness Curtis testified that for the first couple of years annual turnover in the LNG facility would be at an ongoing level of approximately 300,000 dekatherms, due primarily to the late completion of the LNG facility. This 300,000 dekatherm level of average storage would generate electric costs of $367,027, excluding any anticipated CP&L rate increase. Public Staff witness Curtis did not dispute that the costs for 500,000 dekatherms, as estimated by the Company, were as indicated above, but contended that the 500,000 dekatherm average level of inventory and/or turnover would not be realized.

The Commission has previously discussed the difference in LNG volumes between the Company and Public Staff and has concluded that the Company's proposed level of 500,000 dt turnover per year for liquefied and vaporized gas is reasonable. Accordingly, it is reasonable to accept that the Company will indeed incur the electricity costs required to operate the plant at that level.

Based on all the foregoing evidence, the Commission concludes that the amount of $487,293 is the proper amount of LNG electricity expense to be included in the Company's cost of service.

The fifth issue concerns the amortization of computer software. Public Staff witness Porter testified that the Commission included amortization expense relating to computer software used in the customer information system in the cost of service in the last rate case (Docket No. G-21, Sub 235) based on a three-year amortization period. Witness Porter stated that the Company began amortizing the software on their books in January 1984 and based on a three-year amortization period the software will be fully amortized in December 1986; therefore, it is necessary to reduce operating expenses to a going level of amortization expenses prospectively. Witness Porter included a level of expense based on three years, the estimated period until the next general rate case. The Company offered no testimony regarding this issue.

The Commission concludes that it is appropriate for the reasons given by witness Porter to adopt the Public Staff's adjustment and to reduce amortization expense by $71,231 to recognize a going level of expense through which the Company can recover the unamortized balance of the software costs.

The final difference in operation and maintenance expenses concerns an inflation/growth adjustment proposed by the Public Staff in the amount of

$70,512. Company witness Wheeler proposed to adjust certain items of operation and maintenance expenses, which were not identified and adjusted separately, by an overall inflation/growth factor of 5%. The Company's 5% factor included an inflation rate of 2% to recognize ½ of the test year inflation rate and an inflation rate of 3% to adjust expenses not otherwise adjusted up to September 30, 1986. Public Staff witness Porter testified that the inflation/growth adjustment factor she used was 2.75%, which allowed for inflation during the test year plus an increase in expenses subsequent to the test year because of customer growth. The Company and the Public Staff agree on the expense amounts which are in need of adjustment, they just disagree on the inflation/growth factor to use in making the adjustment. The expenses which would be effected by these adjustments would include items such as: meter maintenance expense, mains maintenance expense, office supplies expense, communications systems expense, regulating station expense, customer installation expense, etc.

Based on a careful evaluation of the evidence presented, the Commission concludes that the approach used by the Company is fair and reasonable and should be allowed in this proceeding. The inflation rate used by the Company is reasonable and not excessive and some adjustment should be made to test year operation and maintenance expenses which have not been otherwise directly adjusted if the Company is to have a reasonable opportunity to earn the return found just and reasonable in this proceeding. While overall inflation has abated in recent years, it is still a fact of life. Evidence in the record indicates that the Company's general liability insurance premium increased over $500,000 (a sixfold increase) last November. While such amount is included in the cost of service in this proceeding, it is important to realize that the Company had already begun incurring the expense 11 months before the rate relief approved in this proceeding can be allowed to take effect. The Commission believes that allowing a reasonable adjustment for general inflation in expenses not specifically adjusted otherwise is fair to the customer while allowing the Company some protection against unforeseen and large increases in operation and maintenance expenses which can and do occur from time to time. However, the Commission does not completely agree with the amount of the Company's adjustment which would reflect an adjustment for inflation occurring beyond the close of the hearing up to September 30, 1986. The Commission finds that it is reasonable to decrease the Company's proposed inflation adjustment to specific expenses by $10,422 to determine a reasonable level of the expenses so affected by this adjustment. In making this adjustment, the Commission has pro rated the Company's adjustment in order to eliminate the portion of the Company's adjustment covering the time period from August 8, 1986 to September 30, 1986.

Based on the foregoing, the Commission concludes that the appropriate level of operation and maintenance expense for use in this proceeding is $12,095,580.

The next area of difference concerns the proper amount of depreciation expense. The Commission found in Finding of Fact No. 9 that the Public Staff's adjustments to the depreciation rates filed by N.C.N.G. are appropriate and therefore concludes that the proper level of depreciation expense to be used in this proceeding is $3,831,273.

The difference in taxes other than income in the amount of $4,226 arises due to the wage and salary expense adjustments previously discussed. Since the Commission did not adopt the Public Staff's proposed adjustment to payroll expense, it is also appropriate to reject the Public Staff's adjustment to FICA payroll taxes of $4,226. Based on this decision, the Commission concludes that the appropriate level of taxes other than income to be included in the cost of service is $1,343,284.

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, expenses, investment, and the treatment regarding JDITC, the Commission concludes that the appropriate level of state income tax expense is $178,879 and federal income tax expense is $1,096,124 under present rates.

The federal income tax expense included in the cost of service in this case has been calculated based upon the Internal Revenue Code as it presently exists. The Commission takes judicial notice of the fact, however, that Congress has recently enacted the Tax Reform Act of 1986, a wide-ranging tax reform law which will, upon implementation, significantly reduce the federal tax rate of most, if not all, investor-owned public utilities (including N.C.N.G.) engaged in providing public utility services in North Carolina. This reduced federal tax rate, when effectuated, will have an immediate and favorable impact on the cost of providing public utility services to consumers in North Carolina. President Reagan signed the Tax Reform Act of 1986 into law on October 22, 1986.

By Order dated October 23, 1986, the Commission initiated a generic investigation in Docket No. M-100, Sub 113, to examine and quantify the benefits to be derived by the regulated utilities arising from the Tax Reform Act of 1986. To this end, the Commission concludes that it is reasonable and appropriate to approve the federal income tax component allowed in the cost of service in this case on a provisional rate basis effective January 1, 1987. Therefore, N.C.N.G. shall bill and collect the federal income tax expense component of the rates and charges approved in this proceeding on a provisional rate basis pending further investigation and disposition of this matter, with accompanying deferred accounting for the amount of reduced federal taxes. Specifically, effective January 1, 1987, N.C.N.G. is hereby directed to place in a deferred account the difference between revenues billed under the rates approved in this proceeding, including provisional components thereof, and revenues that would have been billed had the Commission in determining the attendant cost of service in this case based the federal income tax component thereof on the Internal Revenue Code as amended by the Tax Reform Act of 1986, assuming all other parameters entering into the cost of service equation are held constant.

Based on the evidence presented and conclusions reached herein, the Commission concludes that the proper level of operating revenue deductions for use in this proceeding is $120,119,666, which consists of the following items:

| Item | Amount |
|---|---|
| Cost of gas | $97,434,829 |
| Operation and maintenance expenses | 12,095,580 |
| Depreciation | 3,831,273 |
| Gross receipts taxes | 4,052,934 |
| Other general taxes | 1,343,284 |
| Interest on customer deposits | 86,763 |
| Income taxes | 1,275,003 |
| Total operating revenue deductions | $120,119,666 |

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 13

The evidence for this finding of fact is found in the testimony and exhibits of Company witness Wheeler and Public Staff witness Evans.

There was basically no disagreement concerning the appropriate capital structure to be used in this case. Both the Public Staff and the Company agreed that the Company's capital structure at September 30, 1985, with a pro forma adjustment for the planned issuance of $20 million of new long-term debt and an adjustment to retained earnings to eliminate the Transco refunds as discussed in the Evidence and Conclusions for Finding of Fact No. 6. was the proper capital structure for use in this proceeding. The only difference was that Public Staff witness Evans excluded investment tax credits as an item in his recommended capital structure. This effectively increased both the long-term debt and common equity capitalization ratios from those proposed by the Company.

Based on the Commission's conclusion concerning the proper treatment of investment tax credits in Finding of Fact No. 10 and the agreement of the witnesses otherwise, the Commission concludes that the proper capital structure for use in this proceeding is that presented by the Public Staff and is as follows:

| Item | Ratio |
|---|---|
| Long-term debt | 56.41% |
| Common equity | 43.59% |
| TOTAL | 100.00% |

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 14

The evidence for this finding of fact is found in the supplemental testimony and exhibits of Company witness Wheeler and in the direct testimony and exhibits of Company witnesses Wells and Butler and Public Staff witness Evans.

Company witness Wheeler filed supplemental testimony and exhibits showing a reduction in the embedded cost of long-term debt from 11.27% to 10.33% to reflect a reduction in the interest rate on the new long-term debt issue of $20 million. The Public Staff agreed with this adjustment. The Commission concludes that, consistent with the appropriate capital structure found herein, the proper embedded cost of long-term debt for use in this proceeding is 10.33%.

With respect to the cost of common equity, the Company and the Public Staff disagree as to the appropriate cost of capital for N.C.N.G. to be included in this proceeding. Company witness Butler stated in his original prefiled testimony that the cost of equity capital to N.C.N.G. was 17.9%. On the stand, witness Butler updated his cost of equity recommendation to 16.8%. Witness Butler stated that it was his judgment, as an investment banker, that the 16.8% return on equity is required to compensate for the higher risks of North Carolina Natural Gas Corporation and give the Company the opportunity to attract new capital at reasonable rates during most markets.

In both its original and updated testimony and exhibits, the Company utilized a return on common equity of 16.5% in calculating annual revenue requirements. Company witness Barragan testified that a 16.5% return on common equity is the minimum return that the stockholders should receive on their investment in view of the high level of business risk facing the Company. Witness Barragan also testified that N.C.N.G. deserves a higher than average return to recognize its consistently low operating costs and its demonstrated efficiencies in utility operations. Company witness Wells testified that a 16.5% return on common equity is a minimum return the Company believes is necessary to attract new capital on reasonable terms.

Public Staff witness Evans testified that the Company should be granted the opportunity to earn a return on common equity of 13.3%. He derived his equity cost estimate by applying the DCF model to a group of 18 comparable gas distribution companies and another group of eight industrial companies having lower than average betas. Witness Evans concluded, based on his DCF analysis, that the cost of equity capital for N.C.N.G. ranged from 12.8% to 13.8% and he selected the midpoint of this range, or 13.3%, as the single best estimate of equity capital for N.C.N.G.

On cross-examination, Company witness Butler criticized the DCF methodology asserting that it considers what is a historical growth rate and uses it in perpetuity into the future and is therefore invalid. He testified that investors in N.C.N.G. stock have higher expectations of growth because of the high level of business risk facing the Company in today's market. Witness Butler also testified that the Company's market profile includes 70% of its sales volumes to the industrial market. While he recognized that the IST mitigates some of that risk, he described the impossible situation facing the Company if it lost a substantial share of its industrial load and could not recover all of the costs associated with former industrial customers from its remaining high priority market. Witness Butler further testified that the risk the Company faces from the Federal Energy Regulatory Commission's open access rules exposes the Company to the same level of risk as from the loss of sales to alternate fuels.

Witness Butler testified that investors making a decision about buying the common stock of N.C.N.G. or any other company are going to look into the future and not to the past with respect to their requirements for them to be willing to invest their capital. Witness Butler testified that in his opinion the DCF analysis is weakened by its heavy reliance on historical data.

Witness Butler derived his required return on equity by using a formula in which his recommended payout ratio is combined with the Company's current annual dividend to calculate the implied level of earnings per share. Dividing these implied earnings by the book value per share produces his required return on equity.

Public Staff witness Evans in his prefiled testimony criticized this method as being inappropriate because it does not incorporate the price of N.C.N.G.'s stock and therefore does not reflect the competitive market transactions of investors that ultimately determine the cost of equity. The Public Staff presented a cross-examination exhibit based on a total return formula referred to in witness Butler's testimony that purported to demonstrate the inadequacy of his cost of equity calculation. The exhibit was intended to show that the return calculated by witness Butler could not be the same as that expected by rational investors given the market price of N.C.N.G.'s stock in the recent period as well as at the end of the test year. Additionally, in his testimony, witness Butler advised the Commission that if it ordered an inadequate return on equity, then the market price of the Company's stock would be driven below book value. Upon cross-examination, however, he acknowledged that excessive equity returns could drive the market price well above book value and that N.C.N.G. was currently trading at 140% of its book value. Mr. Butler also agreed that the cost of capital was lower today than it was at the time of the Company's last rate case.

Public Staff witness Evans estimated the market cost of equity to N.C.N.G. to be in the range 12.8% to 13.8%. He arrived at this estimate based on a DCF analysis of N.C.N.G. and two groups of companies similar in risk to N.C.N.G. He recommended that his best estimate of N.C.N.G.'s cost of equity was 13.3% and that this rate should be used to set rates in this proceeding. Witness Evans reviewed current financial market conditions and determined that his recommendation met investor return requirements for the level of risk undertaken. The Company criticized the DCF methodology basically because it uses historical data to estimate future growth rates in dividends. Witness Evans pointed out that historical information was the only known and actual information an investor had to work with and it would not be rational to believe that this information was totally discarded by investors. He also noted that he had incorporated a forecast of future growth rates in his DCF analysis as well as historical information. The Company contended that its smaller size and high percentage of industrial sales volumes made it more risky than Mr. Evans' comparable group. Witness Evans stated that all relevant risk would be reflected in the market price of N.C.N.G.'s stock. He further explained that the beta value he calculated for N.C.N.G. using Value Line's methodology suggested that the Company was one of the least risky stocks in relation to those in his comparable groups.

The determination of the appropriate fair rate of return for the Company is of great importance and must be made with great care because whatever return is allowed will have an immediate impact on the Company, its stockholders, and its customers. In the final analysis, the determination of a fair rate of return must be made by this Commission, using its own impartial judgment and guided by the testimony of expert witnesses and other evidence of record. Whatever return is allowed must balance the interests of the ratepayers and investors and meet the test set forth in G.S. § 62-133(b)(4):

> "...to enable the public utility by sound management to produce a fair 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 te 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, 388, 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. In State ex rel. Utilities Commission v. General Telephone Company of the Southeast, 281 N.C. 318, 370-71, 189 S.E. 2d 705 (1972), the North Carolina Supreme Court said:

> "The apparent precision with which experts, both for the utility and the protestants, compute a fair return is somewhat illusory. The habitual bickering and theorizing of such witnesses over the relative merits of methods of computing cost of equity capital, such as the earnings-to-price ratio or the discounted cash flow, lends a false appearance of certainty to the ultimate decision which is for the Commission."

See also State ex rel. Utilities Commission v. Duke Power Company, 305 N.C. 1, 23, 287 S.E. 2d 786 (1982) ("the determination of what constitutes a fair rate of return requires the exercise of subjective judgment by the Commission...").

The foregoing discussion indicates a considerable difference between the Company and the Public Staff in both the methodologies used and the results obtained concerning the cost of equity to N.C.N.G. The Commission finds that the reasonable rate of return for N.C.N.G. to be allowed on its common equity is 14.0%. Combining this with the appropriate capital structure and cost of debt heretofore determined yields an overall just and reasonable rate of return of 11.93% to be applied to the Company's original cost rate base. Such a rate of return will enable N.C.N.G. by sound management to produce a fair return for its stockholders, to maintain facilities and services in accordance with the reasonable requirements of its customers, and to compete in the market for capital funds on terms which are reasonable and fair to the customers and existing investors.

The authorized rate of return on common equity of 14.0% 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 December 1983, when N.C.N.G. was allowed a rate of return on common equity of 15.5%. Furthermore, current interest rates are stable and the stock of N.C.N.G. is trading well above book value. The cost of financing is clearly lower than it has been in several years. The Company is a financially healthy utility. For instance, Company witness Butler testified that although N.C.N.G.'s mortgage bonds are not rated by either Moody's or Standard and Poor's, investors have regarded the Company's credit as worthy of A/A ratings. The 14.0% rate of return on common equity allowed in this proceeding also reflects and recognizes the fact that the risk of N.C.N.G. has decreased as a result of continued approval of the IST and the inclusion of the Company's LNG plant in the cost of service. On the other hand, the Commission is well aware of the current volatility of the gas market. N.C.N.G. faces the substantial risk of customers switching to oil or obtaining their own gas. This risk is exacerbated for N.C.N.G. because 70% of its sales volumes go to industrial customers. These factors certainly affect the reasonable rate of return which the Company should be allowed in this proceeding. The Commission recognizes that N.C.N.G. is a small but efficient and well-managed natural gas 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 return on common equity of 14.0% allowed in this case is 150 basis points less than the 15.5% rate of return N.C.N.G. was allowed in its last general rate case. This reduction of almost 10% in the Company's allowed rate of return reflects consideration of the risk factors discussed above.

The Commission believes that the rate of return on common equity of 16.5% requested by the Company is clearly excessive, while the rate of return on common equity of 13.3% recommended by the Public Staff is too conservative. Therefore, it is the judgment of the Commission, after weighing the conflicting testimony offered by the expert witnesses, that the reasonable and appropriate rate of return on common equity for N.C.N.G. is 14.0%. It is well settled law in this State that it is for the administrative body, in an adjudicatory proceeding, to determine the weight and sufficiency of the evidence and the credibility of the witnesses, to draw inferences from the facts, and to appraise conflicting evidence. Commissioner of Insurance v. Rate Bureau, 300 N.C. 381, 269 S.E. 2d 547 (1980). State ex rel. Utilities Commission v. Duke Power Company, 305 N.C. 1, 287 S.E. 2d 786 (1982). The Commission has followed these principles in good faith in exercising its expert judgment in determining the fair and reasonable rate of return in this proceeding. The determination of the appropriate rate of return is not a mechanical process and can only be made after a study of the evidence based upon a careful consideration of a number of different factors weighed and tempered by the Commission's impartial judgment.

The Commission cannot guarantee that N.C.N.G. will, in fact, achieve the levels of return on rate base and common equity herein found to be just and reasonable. Indeed, the Commission would not guarantee the authorized rates of return even if it could. Such a guarantee would remove necessary incentives for the Company to achieve the utmost in operational and managerial efficiencies. The Commission believes, and thus concludes, that the rates of return approved in this docket will afford the Company a reasonable opportunity to earn a fair and reasonable return for its stockholders while providing adequate and economical service to ratepayers.

## EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 15

The Commission has previously discussed its findings and conclusions regarding the fair rates of return on rate base and common equity which N.C.N.G. should be given the opportunity to earn.

The following schedules summarize the gross revenues and the rates of return which the Company should have a reasonable opportunity to achieve based on the rates approved herein. Such schedules, illustrating the Company's gross revenue requirements, incorporate the findings of fact and conclusions heretofore and herein approved by the Commission.

### SCHEDULE I
NORTH CAROLINA NATURAL GAS CORPORATION
Docket No. G-21, Sub 255
STATEMENT OF OPERATING INCOME
For the Test Year Ended September 30, 1985

| Item | Present Rates | Increase Approved | Approved Rates |
|---|---|---|---|
| Operating Revenues: | | | |
| Sale of gas | $125,720,181 | $5,956,540 | $131,676,721 |
| Other revenues | 398,594 | - | 398,594 |
| Total operating revenues | 126,118,775 | 5,956,540 | 132,075,315 |
| Operating Revenue Deductions: | | | |
| Cost of gas | 97,434,829 | - | 97,434,829 |
| Operation and maintenance | 12,095,580 | 29,544 | 12,125,124 |
| Depreciation | 3,831,273 | - | 3,831,273 |
| Other general taxes | 1,343,284 | - | 1,343,284 |
| Gross receipts taxes | 4,052,934 | 190,849 | 4,243,783 |
| Interest on customer deposits | 86,763 | - | 86,763 |
| State income taxes | 178,879 | 344,169 | 523,048 |
| Federal income taxes | 1,096,124 | 2,480,310 | 3,576,434 |
| Total operating revenue deductions | 120,119,666 | 3,044,872 | 123,164,538 |
| Net operating income for return | $ 5,999,109 | $2,911,668 | $ 8,910,777 |

SCHEDULE II
NORTH CAROLINA NATURAL GAS CORPORATION
Docket No. G-21, Sub 255
STATEMENT OF RATE BASE AND RATE OF RETURN
For the Test Year Ended September 30, 1985

| Item | Present Rates | Approved Rates |
|---|---|---|
| Gas utility plant in service | $120,902,856 | $120,902,856 |
| Accumulated depreciation | (37,890,127) | (37,890,127) |
| Net plant in service | 83,012,729 | 83,012,729 |
| Working capital allowance | 4,054,426 | 4,054,426 |
| Accumulated deferred income taxes | (11,942,607) | (11,942,607) |
| Cost-free capital | (430,826) | (430,826) |
| Original cost rate base | $ 74,693,722 | $ 74,693,722 |
| Rate of return | 8.03% | 11.93% |

SCHEDULE III
NORTH CAROLINA NATURAL GAS CORPORATION
Docket No. G-21, Sub 255
STATEMENT OF CAPITALIZATION AND RELATED COSTS
For the Test Year Ended September 30, 1985

|  | Original Cost Rate Base | Ratio % | Embedded Cost % | Net Operating Income |
|---|---|---|---|---|
|  | Present Rates |  |  |  |
| Long-term debt | $42,134,729 | 56.41% | 10.33% | $4,352,518 |
| Common equity | 32,558,993 | 43.59% | 5.06% | 1,646,591 |
| Total | $74,693,722 | 100.00% |  | $5,999,109 |
|  | Approved Rates |  |  |  |
| Long-term debt | $42,134,729 | 56.41% | 10.33% | $4,352,518 |
| Common equity | 32,558,993 | 43.59% | 14.00% | 4,558,259 |
| Total | $74,693,722 | 100.00% |  | $8,910,777 |

## EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 16

The evidence concerning cost of service and rate design is found in the testimony and exhibits of Company witness Teele, Public Staff witnesses Davis and Curtis, Cities' witnesses Kersten and Saffer, and in the affidavit of Alcoa witness Stickney.

### 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 1 by 20.74%; increase commercial Rate Schedule 2 by 11.21%; increase the municipal Rate Schedule RE-1 by 8.74%; increase Rate Schedules 3A, 3B, and 4 by 1.12% to 1.57%; and decrease Rate

Schedules 5 and 6 by 1.18% and 4.71%, respectively. Company witness Teele stated that the Company is embarking on a long-term plan to move all of its rate schedules closer to the overall rate of return reflected in its cost-of-service studies. He testified that value of service, especially that of the industrial market, plays an important role in natural gas ratemaking. Witness Teele also noted other factors considered in rate design as being: (1) the items listed in the Commission's January 31, 1986, Order on Remand in Docket No. G-21, Sub 235, with respect to factors other than estimated cost of service and value of service which must be considered in the rate design; (2) the recent precipitous decline in alternate fuel prices; (3) the number and type of new customers added; and (4) consideration of the impact of additional revenue requirement on all customers.

Cities' witness Kersten testified that the cost-of-service study that he was sponsoring employed the same methodology as the Company's. Witness Kersten stated that both he and the Company had utilized the Seaboard Method and a peak design day, and the differences in the rates of return in the cost-of-service studies were attributable only to the adjustments made by the Cities' witnesses. Witness Kersten stated that the adjustments as presented by the Cities' witnesses concerning the allocation of administrative and general expenses, the cash working capital allowance, the allocation of the Fayetteville District Office Building, the assignment of Company use volumes and gas losses, and the estimated costs for the LNG facility have a combined revenue impact of $792,919. The Cities are therefore advocating a reduction in the Rate Schedule RE-1 revenue requirement to the cost-of-service revenue requirement which its witnesses generated.

The Cities' witness Saffer contends that a fully developed cost-of-service study should be used to set rates. Witness Saffer testified that all ratemaking factors are considered in a proper cost-of-service study except for value of service; and that value of service concepts are so subjective that the results of applying such concepts are questionable. He also contends that no showing has been made that gas purchases by the Cities for resale are more risky than N.C.N.G.'s own retail sales to individual customers, nor especially that gas purchases by the Cities for resale are more risky than N.C.N.G.'s overall retail sales. He further pointed out that the higher rates of return for industrial customers were more fiction than fact because many industrial customers negotiate actual rates below the tariff rates used to determine rates of return, and therefore many industrial customers actually pay rates which produce very low rates of return.

Public Staff witness Davis presented four different cost-of-service studies based on two different methodologies. The studies were performed utilizing the following methods: the Seaboard Methodology with a three-day sustained peak; the Seaboard Methodology with an actual peak day; the United Methodology with a three-day sustained peak; and the United Methodology with an actual peak day. The results of these cost-of-service studies fluctuated widely depending on the assumptions used in preparing the studies. Witness Davis testified that these studies are useful tools in assisting with the design of rates, but since it is a judgmental study, it should not be used solely to determine the magnitude of adjustments to rates. He testified that the cost-of-service studies that he had developed had been used by Public Staff witness Curtis in his proposal for rate design.

Public Staff 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 their alternate fuels. He proposed to increase residential Rate Schedule 1 by 12.71%, increase Rate Schedule 2 by 4.67%, increase Rate Schedule 3A by 2.12%, increase Rate Schedule 3B by 1.73%, increase Rate Schedule 4 by 2.03%, decrease Rate Schedule 5 by 0.05%, decrease Rate Schedule 6 by 4.00%, and increase Rate Schedule RE-1 by 5.38%.

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 cost-of-service studies presented in this docket are not objective in nature, but rather reflect the preparer's judgment as to how to fairly allocate common costs among customer classes, as well as being based on numerous assumptions. Different studies often show widely varying rates of return depending on the methodology followed and the assumptions involved. For example, Public Staff witness Davis used two different methodologies for his four cost-of-service studies with widely divergent results. There are several other factors or ratemaking principles in addition to cost of service to consider in designing rates for natural gas utilities. Among these are: (1) the value of service to the customer; (2) the type and priority of service received by the customer and, if the service is interruptible, the frequency of interruptions; (3) the quantity of use; (4) the time of use; (5) the manner of service; (6) the competitive conditions in the market place related to the acquisition of new customers; (7) the historic rate differentials between the various classes of customers; (8) the revenue stability to the utility; and (9) the economic and political factors which are inherent in the ratemaking process. The rate design adopted herein 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 customers, while giving appropriate consideration and weight to each of the relevant factors noted by Company witness Teele and by the North Carolina Supreme Court in State ex rel. Utilities Commission v. N. C. Textile Manufacturers Association, Inc., 313 N.C. 215, 328 S.E. 2d 264 (1985) ("Textile Manufacturers" opinion) (Docket Nos. G-21, Subs 235 and 237).

Rates of return for customers who have no alternate fuels readily available, such as residential customers, should not be directly compared to rates of return for those customers who do in fact have alternate fuels, 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.

N.C.N.G.'s unit rates are based largely on the Commission's priority of service rules and regulations in Commission Rule R6-19.2. The priority system fully considers: (a) type of use of the gas; (b) quantity of use; (c) manner of use; (d) alternate fuels used by industrial customers; and (e) of course, frequency of interruptions of service.

In this case, as in the Remand Case in Docket No. G-21, Sub 235, approximately 70% of N.C.N.G.'s sales to its end-user market is to industrial customers with alternate fuel capabilities. However, in this proceeding, because of the decline in alternative fuel prices, 44% of the Company's sales to its end users are being made at negotiated rates; and in addition, 33% of N.C.N.G.'s sales to the Cities are being made at negotiated rates. This indicates that, if anything, the business risk to N.C.N.G. has increased. Establishing rates based only on estimated cost of service would only accomplish increasing the rates to the captive high priority customers and would not eliminate the need for the Company to negotiate rates for sales to its industrial customers nor to end users of the Cities, because the evidence in this case is that many industrial customers can purchase alternate fuels at prices even lower than N.C.N.G. can purchase contract gas from Transco.

The Commission recognizes that the residential and certain industrial and commercial customers do not generally have the ability to switch rapidly to alternate fuels, nor do they generally have the possibility of negotiating their rates. The risk to N.C.N.G. of maintaining its margin on service to these classes of customers is significantly less than the risk to the Company of maintaining its margins on service to large industrial customers, absent an IST. Furthermore, the use of an IST places the additional costs on the residential and other customers of participating in the maintenance of margins on service to the large industrial customers who negotiate rates. The IST approved herein will spread margin losses due to negotiation over the non-IST customers in Rate Schedules 1, 2, 3, NGV and the non-IST sales on Rate Schedules Nos. 4, 5, 6 and RE-1. 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 N.C.N.G. loses an industrial 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 4, 5, and 6 are large customers 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 4, 5, and 6 favors a higher rate of return for such rate schedules, if, in fact, it can be achieved. Likewise, the increased risk associated with serving a substantial industrial market indirectly through Rate RE-1 and Rate SM-1 favors a higher rate of return for these Rate Schedules to the Cities.

The Commission is also fully aware that dollars of capital costs are not of equal purchasing power. In Docket No. G-21, Sub 235, the Company's last general rate case, in the Order issued by this Commission after remand from the Supreme Court, it was pointed out that most capital costs allocated to industrial and municipal customers were incurred by N.C.N.G. 25 to 30 years ago when the original transmission line was constructed. Those facilities have low original costs and are substantially depreciated while the high priority customers (residential and commercial) have substantially more of the most recent capital costs allocated to them, thus reflecting the brunt of the post-1973 inflation in those costs. In this proceeding, it was pointed out that the LNG plant represents approximately 25% of the Company's rate base. Again, a primary reason for this is inflation and the fact that estimated cost-of-service studies are not adjusted for dollars of unequal purchasing power. Thus, even under the most carefully prepared estimated original cost-of-service studies, the playing field among the various classes of N.C.N.G. customers is not level. The dollars of capital costs for the LNG plant represent current costs, and thus the Commission concludes that it is proper to use an estimated cost-of-service study in allocating the additional revenue requirement from the plant to the various customer classes. However, even if the estimated cost-of-service studies could be properly and fairly adjusted for inflation, which no party has proposed, it is doubtful that estimated cost-of-service studies with respect to the embedded costs could ever be used as anything more than Company witness Teele and Public Staff witnesses Davis and Curtis have testified as one factor in, and a useful guide for, designing natural gas rates.

The relative rates of return for customers in Rate Schedules 1 through 6 and RE-1 also reflect the relative priorities of interrupting service during peak periods. Such priorities reflect the ability of customers to switch to alternate fuels. Currently, the unit prices per dekatherm are highest for residential customers served on Rate Schedule 1, and are progressively lower through Rate Schedule 6. For example, the unit prices per dekatherm for Rate Schedule 4 are higher than for Rate Schedule 5, and reflect the fact that Rate Schedule 5 customers would be interrupted more frequently than Rate Schedule 4 customers. The higher unit prices for Rate Schedule 4 than for Rate Schedule 5 also reflect the fact that the cost of alternate fuels is generally higher as a class for Rate Schedule 4 customers than for Rate Schedule 5 customers.

Finally, anchoring the rate designs at one end of the scale based on value of service (represented by the approximate cost of alternate fuels for Rate Schedule 6) and at the other end of the scale based on priorities of service (represented by Priority 1 for Rate Schedule 1) 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 in a general way 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 therein. This can be shown by the resulting rates of return from the Public Staff's four cost-of-service studies for Rate Schedule S-1, which show the rates of return of this class to be above the system average using the Seaboard Method utilizing a three-day sustained peak, below the system average using the United Method utilizing both one-day peak and the three-day sustained peak, and under the Seaboard Method utilizing a one-day peak.

The Cities advanced a determined argument that the wholesale Rate Schedule RE-1 should be based on a rate of return equal to the overall system rate of return according to the cost-of-service studies. Such reasoning assumes that all rates are in fact based on the cost-of-service studies; whereas, we have explained herein that the cost of service studies are only one of a number of relevant considerations. For instance, priority of service is another major consideration.

While factors such as the Cities' load factor relative to the N.C.N.G. system and the Cities' peak demand periods relative to the N.C.N.G. system might best be reflected in the cost-of-service studies, other factors like interruptibility of service to the Cities relative to the rest of the N.C.N.G. system would best be reflected in priority of service considerations.

The Cities have the same priorities of service assigned to their different classes of users as N.C.N.G. has for its ratepayers. When N.C.N.G. interrupts service to a given class of customers, the Cities are asked to interrupt service to their comparable class of users. The mix of users reflecting different priorities of service for the Cities is different from the mix of customers reflecting different priorities of service of N.C.N.G. Schedule RE-1 is intended to reflect an approximate composite of the priorities of service represented by the Cities. Such priorities of service are not captured in a cost-of-service study.

The Cities are also eligible to receive negotiated rates. When N.C.N.G. negotiates rates with a given class of customers, the Cities are also eligible to negotiate rates to reflect service to their comparable class of users. Such value of service considerations are not captured in a cost-of-service study. The cost-of-service studies also cannot reflect the far larger percent increase being imposed on the majority of N.C.N.G. customers in this case than is being imposed on the Cities, even though the majority of N.C.N.G. customers are residential just as the majority of the Cities' users are residential.

The Commission further notes that Rate Schedule RE-1 has also been increased much less on a percentage basis than residential rates in an attempt to adjust rates of return for each rate class closer to the overall rate of return. Rate Schedule RE-1 has been increased in this case by 6.0% while residential Rate Schedule 1 has been increased by 15.9%, a much more significant and larger percentage increase. Furthermore, the company proposed to increase Schedule RE-1 by 8.74% as part of a 6.45% overall increase; the Public Staff proposed to increase Schedule RE-1 by 5.38% as part of a 4.11% overall increase; and the Commission is adopting a 6.0% increase for Schedule RE-1 as part of a 4.72% overall increase. The 6.0% increase adopted for Schedule RE-1 is very nearly the same increment above the overall increase as that recommended by the Public Staff, and it is considerably less than that recommended by the Company. Simply put, the rate design approved in this proceeding does not unreasonably discriminate against the Cities after weighing and balancing all of the relevant factors discussed by the Supreme Court in the Textile Manufacturers' opinion.

## Allocation of LNG Plant and Fayetteville District Office Building

In Finding of Fact No. 7 and the evidence and conclusions set forth in support thereof, the Commission found that N.C.N.G.'s LNG plant and Fayetteville District Office Building are both used and useful and should be included in the Company's rate base in this proceeding.

Alcoa, through the affidavit of Maynard F. Stickney and its brief, takes the position that no part of the costs or revenue requirement of the LNG plant should be allocated to industrial customers. The Commission disagrees. Allocation of the costs of the LNG plant to the Company's various customer classes as the Company and the Public Staff have proposed is just and reasonable and does not unfairly burden interruptible industrial customers, whose rates are not based entirely on the estimated cost of service. There was an abundance of testimony in this proceeding to the effect that most of the large industrial customers are receiving natural gas at less than the Company's regular tariff rates and, in some cases, industrial customers are getting spot market natural gas at rates well below the cost of the Company's contract gas supplies. Even with the allocation of some of the LNG plant costs to the interruptible customers, the Commission notes that the high priority customers in Rate Schedules 1 and 2 and RE-1 are absorbing most of the cost of the LNG plant and also most of the rate increase in this proceeding. There was also evidence that the LNG plant will improve the overall deliverability and system integrity of N.C.N.G.'s delivery system and will offer industrial customers additional protection from service interruptions in the event they have unexpectedly large fuel requirements beyond the Company's usual delivery capacity.

The Cities, through witness Kersten, recommended that the Company's new Fayetteville District Office Building should be allocated entirely to retail service, on the theory that such building is not used and useful in providing service to the Company's wholesale customers. The new Fayetteville District Office Building is but one of several office buildings included in the Company's rate base, some portion of which serve retail customers and some portion of which serve wholesale customers. The cost of such buildings is apportioned between retail and wholesale customers in the cost-of-service studies in a consistent manner, and the same allocation procedure was used for the new Fayetteville District Office Building as used for the Company's other office buildings. To directly assign the new Fayetteville District Office Building to retail service would be inappropriate without also reconsidering the specific use of each of the Company's other buildings, and the evidence in this proceeding is not sufficient for such an undertaking. No one challenged the procedure for allocating the cost of the existing office buildings between retail and wholesale service. Therefore, the Commission is not persuaded that the cost of the new Fayetteville District Office Building should be separately allocated to retail service only. The Commission finds that the Fayetteville District Office Building is used and useful and will be of benefit to all of the Company's customers.

## Allocation of GSS and LGA Costs

Cities' witness Brown testified that noninterruptible customers' demands may be met even on a peak design day by long-term contract volumes and LNG gas, with an LNG output of 5,921 dt left to serve interrruptible customers. Witness Brown further testified that contract gas plus excess LNG supplemented by stored gas from LGA and GSS could meet S-1 and SM-1 demands without interruption, so that one could conclude that the LGA and GSS peaking storage services are needed only to prevent interruption of S-1 and SM-1 supply. In other words, while Cities agrees that the storage was originally installed to meet noninterruptible demands, Cities contends that it is no longer needed for noninterruptible demand and that firm customers should not have to pay for it. Adoption of the adjustment proposed by the Cities would reduce the RE-1 revenue requirement by $36,913 and would reduce the other firm classes' revenue requirements as well.

Company witness Teele argued that the purpose of peaking storage is to meet the variability in demands placed upon the system by noninterruptible customers and that, accordingly, storage services should be allocated to noninterruptible customers.

The Commission agrees that peaking storage should be allocated to noninterruptible customers. Although the new LNG plant might render the LGA and GSS storage services less useful than they once were, it does not necessarily eliminate such usefulness especially in view of the uncertainty surrounding the effect of open access to the Transco pipeline. The Commission is not persuaded that the LGA and GSS storage services are no longer used and useful in serving the cities. Therefore, the Commission rejects the adjustment proposed by the Cities.

### Administrative and General Expenses

There is a dispute in this case between N.C.N.G., on the one hand, and the Public Staff and Cities, on the other hand, concerning allocation of A&G expenses. In its prior cases the Company has followed the practice of allocating A&G expenses in accordance with O&M expenses (less gas). The Company now proposes to change its method significantly to one which allocates such expenses on the basis of peak and average demand. Public Staff witness Davis proposed the same allocation of A&G expenses as was used in prior cases by the Company.

The administrative and general expense category includes those expenses, the allocation of which cannot be made on the basis of clearly defined functions. It is customary to base the allocation of such expenses on the basis of other allocated expenses, and N.C.N.G. has historically used "other O&M" to allocate A&G expense. For example, those salaries classified as A&G relate to employees which are providing such services as payroll and personnel services, accounting, and finance. These services are directly attributed to payroll expenses of a particular company or to day-to-day operations that are reflected in other operation and maintenance expenses. It is therefore appropriate to use another broad allocator, such as O&M expenses or wages and salaries, to allocate these expenses.

While there may be some merit in N.C.N.G.'s concern with the validity of its prior method, the Company has failed to justify application of its new one, leaving the Commission no choice but to continue the "other O&M" allocation of A&G expenses. Use of a peak and average demand method for allocating A&G seems to be contrary to the manner in which many of such costs are incurred. It is not surprising, therefore, that witness Teele knew of no other utility in the country which allocates A&G expenses in the way the Company proposes here. Accordingly, the Commission rejects the Company's A&G allocator as presented in this docket and accepts the allocator proposed by Public Staff witness Davis.

It should be pointed out here that the Commission's rejection of the Company's allocation of A&G expenses does not directly affect the revenue requirement in this proceeding for any particular rate schedule by causing a specific adjustment to said revenue requirement. Rather, it only indirectly affects N.C.N.G.'s revenue requirement by altering the rates of return for the Company's rate schedules, which is but one of the several factors or measures the Commission has used to evaluate appropriate and nondiscriminatory rate levels.

### EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 17

The evidence for this finding of fact is contained in the testimony of Company witness Wells, Company witness Barragan, Public Staff witness Curtis, and the testimony and exhibits of Company witness Teele.

The Industrial Sales Tracker (IST) was established by this Commission in the Company's last general rate case, Docket No. G-21, Sub 235, by Order dated. December 12, 1983. The IST as initially established was modified by this Commission's Order on Remand dated January 31, 1986. Both the Company through witness Wells and the Public Staff through witness Curtis have recommended the continuation of the current IST. The Cities do not oppose continuation of the IST. C.U.C.A. opposes the IST. C.U.C.A. contends that the IST discriminates among classes of customers and within customer classes and that it is used to justify retail tariff rates which are higher than actual current fuel costs.

The purpose of the IST is to stabilize the Company's margin on the sale of gas to industrial customers having heavy fuel oil as their alternate fuel. The IST offers protection to both the Company's customers and stockholders from the volatility in heavy oil prices and the strong likelihood that the Company's sales to customers having heavy oil as their alternate fuel will vary significantly, either up or down, from the volumes established in a general rate case. The record in this case is replete with evidence that, in the absence of the Company's ability to obtain low-cost spot market gas for its large volume customers with heavy oil as an alternate fuel, the Company would be unable to sell gas at all to most of those customers. Whatever margins are earned on any sales, whether at regular tariff rates or at negotiated rates, to IST customers are being credited to the IST for benefit of the non-IST customers. N.C.N.G. presently has a rate decrement of 16.08 cents for the IST and has been refunding dollars collected through the IST to its non-IST customers since May 1984. Industrial customers included in the IST also benefit in at least two ways: (1) they have an established cap on their natural gas rates through the Company's filed tariff rates; and (2) they are able to negotiate their gas rates downward or switch to the heavy oil when its price drops. The evidence in this proceeding is that many of the Company's large volume, heavy oil customers are obtaining natural gas at prices well below even Transco's contract commodity rate to the Company because the Company has been able to obtain low-cost spot market gas to serve this market.

C.U.C.A. presented its discrimination argument in the last N.C.N.G. rate case, and the Commission considered and rejected the argument in its Order on Remand of January 13, 1986. As the Commission stated in that Order, under the modified IST, both new and old Rate Schedules 4, 5, 6, and RE-1 customers who use heavy fuel oil as an alternate fuel are included in the IST. Any difference, positive or negative, between the amount collected from these customers and the base period margin is included in the IST, and any resulting refund or surcharge is spread over all non-IST customers. Thus, both new and old IST customers are treated alike. It should be recognized that those non-IST customers negotiating rates do not participate in increments or decrements resulting from the IST mechanism. The Commission believes that non-IST customers negotiating rates should reasonably be treated in a manner different from non-IST customers paying tariffed rates regarding IST increments and decrements. Non-IST customers having alternate fuels other than heavy fuel oil may still be able to negotiate more favorable rates and thus would not pay increments if ordered to do so. Since such customers would not pay increments, it seems only equitable to likewise require that decrements be foregone for those volumes of gas purchased by non-IST customers at negotiated rates.

C.U.C.A. argued that one group, industrial customers who use heavy fuel oil as an alternate fuel, are singled out for unlawfully discriminatory treatment under the IST. This contention also fails on its face. Differentiating between customers on the basis of whether or not they have heavy fuel oil as an alternate fuel is reasonable. Heavy fuel oil is the cheapest alternative to natural gas for industrial users. As the lower tariff rates in Schedules 4, 5, and 6 reflect the lower priorities of service, there is less room for the Company to negotiate downward to retain the margins and still earn any profit. There is also a greater likelihood that the Company will not be able to meet the price of the competitive fuel and these customers will leave the system. As indicated by witness Teele's testimony, when this happens, the remaining customers are left carrying the entire cost of service. Both the Company and the Public Staff supported including in the IST only customers using heavy oil as an alternate fuel in this proceeding.

In summary, it was concern over the price of heavy fuel oil and the problems related thereto that was the impetus for the Company's seeking an IST. The IST customers already benefit from their capped tariff rates. They also benefit from being able to negotiate or switch to heavy fuel oil when its price drops. Moreover, the lower tariff rates used for sales to these customers increase the risk that the Company will not be able to negotiate to meet the price of heavy fuel oil when it declines and the customers will go off the system leaving the remaining customers to carry the entire system cost. Clearly, whether or not heavy fuel oil is an alternate fuel is a reasonable basis for differentiating among customers, and including or excluding customers in the IST on that basis is not unreasonably discriminatory.

There is also evidence that other alternate fuel prices, specifically No. 2 fuel oil and propane, have declined substantially during 1986. Neither the Public Staff nor the Company proposed to include customers having No. 2 fuel oil or propane as their alternate fuel in the IST. Company witness Wells testified in his prefiled testimony that it might be necessary to amend the IST to cover sales to customers using No. 2 fuel oil and propane if the recent price volatility continues much longer. On cross-examination,. witness Wells testified that the Company was not proposing to add such customers to the IST now but would like to keep that option open later. On cross-examination, witness Teele testified that the Company does not have a position on including customers of No. 2 fuel oil or propane in the IST and that the only way the Company would consider such an amendment to the present IST would be if the Company could retain the margin on new customers added. In answer to a question from Commissioner Tate, Public Staff witness Curtis testified that the Public Staff is currently satisfied with including only the heavy oil customers in the IST. Cities witness Saffer testified on the stand that all negotiated rate revenues should flow through the IST regardless of the alternate fuel that the customer may have. Essentially, this means that a small group of customers using No. 2 fuel oil and propane would be in the IST (i.e., those with whom the Company is negotiating rates). The Cities made no recommendation with respect to customers using No. 2 fuel oil and propane served under the Company's regular tariff rates. The Commission concludes that, for the present, the IST should be limited to heavy oil customers for the reasons generally given by N.C.N.G. and the Public Staff in their testimony. This is also consistent with the decision previously made by the Commission in Docket Nos. G-21, Subs 235 and 237 (Remanded). The rationale set forth by the Commission in the "Order on

Remand" entered in those dockets on January 31, 1986 is reaffirmed and hereby incorporated by reference.

The evidence in this proceeding and the past operation of the IST for N.C.N.G. clearly indicate that an IST facilitates the fixing of just and reasonable rates in a general rate case. The Commission concludes that the IST mechanism is a just and reasonable methodology to balance the risks between the Company's customers and its stockholders in these times of very volatile energy prices. The Company's high priority markets--its residential, commercial and small industrial customers, who bear the risk of carrying the Company's entire cost of service if industrial customers leave the system--are afforded some protection in the event that alternate fuel prices rise in the future. Large industrial customers with dual fuel capability are provided a cap on their energy costs through the regular tariff rate and, of course, have the option to obtain natural gas at even lower prices or burn the alternate fuel if prices decline. Stockholders receive some protection from the IST in that the Company's total margin will not be eroded quickly because of the loss of industrial load or because of margin losses on negotiated rate sales. Company witness Barragan testified that the IST does not offer stockholders anything more, not even as much, as would a stable environment.

Having considered all the evidence, the Commission concludes that the IST mechanism is reasonable and should be included in the rates of N.C.N.G. With sales to customers having heavy oil as their alternate fuel representing 61% of the Company's industrial sales volumes and 41% of its total sales, the IST is especially appropriate for N.C.N.G., and the Commission concludes that only volumes sold to customers having heavy oil as their alternate fuel are to be included in the IST. Therefore, the IST approved by the Commission in this proceeding is identical in all material respects to the IST approved by the Commission in its January 31, 1986, Order on Remand.

The Commission fully recognizes that the level of sales volumes and the negotiated sales losses provided for in the IST approved herein are based on a normalized level of sales. However, a provision has been made in the IST for undercollections or overcollections to be trued-up on an annual basis. Further, the Commission believes and so concludes that the time value of money should be considered in the IST mechanism and thus finds that any such under- or overcollections should carry the overall rate of return found fair herein.

### The IST Decrement From Docket No. G-21, Sub 235

The Cities contended that the IST decrement to the Cities of $.01503 was improperly calculated and that the Cities should be credited with the same $.01608 decrement applied to the other non-IST customers of N.C.N.G. The decrements arose out of the January 31, 1986, Order on Remand in Docket No. G-21, Sub 235.

The Commission has reviewed the contention by the Cities and makes the following observation. The Rate RE-1 IST decrement represents an estimated weighted average decrement based on the ratio of (1) sales to customers under Rate SM-1 who are eligible for the IST by virtue of their having heavy fuel oil as an alternate fuel and (2) total sales to Cities under Rate RE-1. The ratio of 5,446,259 dt (5,825,728 dt minus 379,469 dt) non-IST sales versus 5,825,728 dt total sales cited by Cities is 93.5%, and the ratio of the $.01503 decrement to Cities versus the $.01608 decrement to other customers is also 93.5%. Such an approach seems to be fair and accurate. The explanation by Cities as to why the calculation might be improper seems to be that the Company applied the $.01503 decrement to only the eligible volumes rather than to all volumes sold to the Cities, although such contention is certainly unclear in the evidence. The Commission is not persuaded by the evidence in this proceeding that the $.01503 decrement was applied by the Company to only the eligible volumes of the Cities. Nevertheless, the Commission hastens to point out that the matter may be raised again in a formal complaint proceeding under North Carolina Utilities Commission Rule R1-9 if any party, including the Cities, contends that it has additional evidence which was not presented or appropriately considered in this proceeding regarding this issue.

## EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 18

### Facilities Charges

The Company and the Public Staff are in agreement regarding the appropriate facilities charges for Rate Schedules 1, 2, NGV, 3A, 3B, 4, and T-2.

The Commission therefore finds the following facilities charges appropriate:

| | |
|---|---|
| Rate 1 - Heat only | $7.00 |
| Rate 1 - All other | 5.00 |
| Rate 2 | 9.00 |
| Rate NGV | 1.00 (per vehicle) |
| Rate 3A | 100.00 |
| Rate 3B | 200.00 |
| Rate 4 | 200.00 |
| Rate T-2 | 200.00 |

The Company did not propose facilities charges for Rate Schedules 5, 6, RE-1, S-1, and T-1. The Public Staff proposed the same $200.00 per month facilities charges for all of these Rate Schedules except RE-1. The Public Staff included in its revenue requirement a facilities charge for the Cities to the extent they had negotiated rate sales. That is, a City having any sales at negotiated rates in a month under Rate SM-1 would pay a facilities charge but the same City would not pay a facilities charge under Rate RE-1 in any month that it did not have special sales.

The Commission finds that it is appropriate for all of the Company's large customers to pay the same $200.00 per month facilities charges. Therefore, Rate Schedules 5, 6 RE-1, S-1, and T-1 shall have the same $200.00 per month facilities charges applied to those Rate Schedules. Negotiated rate sales made by the Cities under Rate SM-1 will not be assessed a facilities charge, because under the approved rate design each of the Cities would pay the same $200.00 per month facilities charge each month under Rate RE-1 as all of the Company's industrial customers would pay, including those industrial customers of the Company who purchase special sales under Rate Schedule S-1. In any month in which the same customer purchases gas from the Company under its regular tariff rate and the negotiated rate schedule, the customer shall pay only one facilities charge per month. Each industrial customer connected to the Company's system should pay the facilities charge each month whether or not any gas is taken that month by the individual customer.

This approval of a facilities charge for special sales increases the Company's revenue requirement from such sales by $213,800. The Commission is allocating the benefit of this additional revenue from negotiated sales to the Company's high priority customers in Rate Schedules 1, 2, and RE-1, because it is those customers who are required to pick up most of the margin losses from the Company's negotiated sales under the IST mechanism and rate design used in this proceeding.

### Transportation Rates - Overview

The Company has two transportation rates; Rate T-1 for industrial boiler fuel customers in Priorities 6.2 through 9.0 and Rate T-2 for nonboiler fuel industrial customers in Priorities 2.8 through 5.0. Such transportation rates are also available to serve the four municipalities who have end-users in the applicable priorities and who have their own gas supplies and desire N.C.N.G. and the Cities to provide transportation service to them.

### N.C.N.G.'s Transportation Rates

In this proceeding, the Company has proposed full margin transportation rates with Rate Schedule T-2 containing the full margin contained in sales Rate Schedule 4; Rate Schedule T-1 containing the full margin in Rate Schedule 5 for volumes up to 1,500 dt per day; and the full margin contained in Rate Schedule 6 for volumes transported over 1,500 dt per day up to 10,000 dt per day. In addition, the Company proposed a discounted transportation rate in Rate Schedule T-1 for volumes transported over 10,000 dt per day. Witness Teele testified that the Company is not now transporting gas to any customer using over 10,000 dt per day in Priorities 6.2 through 9.0, but that the Company may have such customers in the future.

The Public Staff supports full margin transportation rates, and witness Curtis proposed rates on that basis, although slightly higher than the rates proposed by the Company. The Public Staff's proposed rates were consistent with its recommendations with respect to the proposed rates for Rate Schedules 4, 5, and 6. The Public Staff does not support the discounted transportation rate for Rate Schedule T-1 volumes transported over 10,000 dt per day, but would instead limit Rate T-1 to two steps: (1) volumes up to 1,500 dt per day and (2) volumes over 1,500 dt per day. Rate Schedule T-1 is not a declining block rate; that is, the appropriate rate to be charged to a customer is dependent upon the size of the customer in terms of his average daily usage of natural gas. As the Company and the Public Staff have proposed, a customer using over 1,500 dt per day would not pay the higher rate based on the first step of 1,500 dt per day, but would begin paying the rate in the second step for all volumes transported.

The Commission concludes that a discounted or less than full margin tail-block rate for very large volume customers in Rate Schedule T-1 is not justified by the evidence in this case. N.C.N.G. does not currently even have any customers to which such a discounted rate would apply. The record in this case contains no compelling evidence which would justify approval of a discounted tail block for Rate Schedule T-1 as proposed by the Company. Even so, both Rate Schedules T-1 and T-2 are negotiable downward, and the Company is free to offer negotiated rates to any customer in order to remain competitive.

Transportation revenues from customers having heavy oil as their alternate fuel flow into the IST as do the margins on sales to such customers. Therefore, when N.C.N.G.' arranges for new transportation service or begins transporting gas for heavy oil customers who otherwise would not be served natural gas at all, it is the Company's non-IST customers who receive substantially all the benefits from transportation revenues. Of course, those particular industrial or municipal customers receiving the transportation service also receive the direct benefits of natural gas delivered at prices no greater and usually less than their alternate fuel prices. N.C.N.G. also benefits from transportation service by (a) utilization of available capacity and (b) obtaining additional revenues from the increased volumes which flow into the IST and thereby help keep the Company's rates to all customer classes competitive.

Full Margin Transportation Rates are not Discriminatory

The North Carolina Supreme Court has stated, "We do not hold that it is unjust and unreasonable as a matter of law for a utility to earn the same profit margin on transported gas that it earns on its own retail sales of gas." State ex rel. Utilities Commission v. N.C. Textile Manufacturers Association, Inc., 313 N.C. 215, 328 S.E. 2d 264 (1985).

The Commission concludes that full margin transportation.rates are fair and reasonable and should be maintained in this proceeding. The Commission has adopted full margin transportation rates for Piedmont Natural Gas Company and for Public Service Company of North Carolina. 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 estimated cost of service, value of service, quantity of gas used, the time of use, the manner of use, the equipment which N.C.N.G. must provide and maintain in order to take care of the requirements of its customers, competitive conditions, and consumption characteristics. State ex rel. Utilities Commission v. N.C. Textile Manufacturers Association, Inc., Id.; 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 N.C.N.G. 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. As the services performed by N.C.N.G. 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 is also no difference in time of use under the rate schedules which would justify different margins. All of these factors support full margin transportation rates as proposed by the Company in this case.

Accordingly, the Commission finds and concludes that full margin transportation rates are just and reasonable and do not unreasonably discriminate among classes of customers.

Tariff Rates for Schedules 4B, 5B, and 6B

The Public Staff calculated the revenue requirements for Schedules 4, 5, and 6 using price levels which were based on the competitive levels of alternative fuel prices. On the other hand, the Public Staff proposed tariff rates for Schedules 4, 5, and 6 which were higher than the rates it used to calculate revenue requirements. N.C.N.G. proposed tariff rates for Schedules 4, 5, and 6 customers which were equal to the competitive levels of alternative fuel prices. The intervenor Cities did not propose any specific tariff rates but suggested that such rates should be based upon a fully allocated cost-of-service study. C.U.C.A. also proposed that tariff rates be based upon a cost-of-service study, or that they be based upon the level of alternative fuel prices if such prices were below the levels indicated by the cost-of-service studies.

Neither the Public Staff nor N.C.N.G. proposed rates which reflect the difference between Schedules 4A and 4B, or between 5A and 5B, or between 6A and 6B. Pursuant to the January 31, 1986, Order on Remand in Docket No. G-21, Sub 235, Schedules 4A, 5A, and 6A include customers in Schedules 4, 5, and 6 having alternate fuels other than heavy oil, and Schedules 4B, 5B, and 6B include customers in Schedules 4, 5, and 6 having heavy oil as an alternate fuel.

If the tariff rates for Schedules 4B, 5B, and 6B are set at the current level of alternative fuel prices and the level of alternative fuel prices should subsequently rise, then the rates for Schedules 4B, 5B, and 6B customers cannot be negotiated upward to match the level of alternative fuel prices because the negotiated rates cannot exceed the filed tariff rates.. The filed tariff rates cannot be raised without another rate case involving a considerable amount of time. Under such circumstances, the filed tariff rates would form a cap or ceiling for Schedules 4B, 5B, and 6B rates, which would allow such rates to be negotiated downward if the level, of alternative fuel prices decreases but would not allow such rates to be negotiated upward if the level of alternative fuel prices increases.

If Schedules 4B, 5B, and 6B rates are negotiated downward, the lost margin attributed to such negotiated sales is passed on to the non-IST customers through the IST. If Schdules 4B, 5B, and 6B rates could also be negotiated upward, the additional margin received from such negotiated sales would also be passed on to the non-IST customers through the IST and would offset some of the lost margin charged to said non-IST customers. The Commission concludes that in order to provide a mechanism which will allow rates to be negotiated upward as well as downward, tariff rates for Schedules 4B, 5B and 6B should be set higher than the current levels of alternative fuel prices. Such higher tariff rates would not affect revenue requirements because current sales would not actually take place at the tariff rates but would immediately be negotiated downward to the current level of alternative fuel prices. Similarly, such higher tariff rates would not be unreasonably discriminatory because current sales would not actually take place at the tariff rates but would be at negotiated rates. The Commission emphasizes that setting the tariff rates for Schedules 4B, 5B, and 6B at higher levels than their current alternative fuel price levels is an essential part of the IST mechanism and that such tariff rates cannot be directly compared to the tariff rates for Schedules 1 through 3 or for Schedules 4A, 5A, or 6A.

## Conclusions Regarding Rate Design

After a careful consideration of all the evidence presented in this proceeding, the Commission concludes that the rate design proposed by the Company is reasonable and appropriate except as modified herein.

The rates approved herein, as set forth in Appendix B, are just and reasonable and will generate the appropriate level of revenue to afford the Company an opportunity to achieve the overall rate of return approved herein by the Commission. The approved base rates should be adjusted for any Transco PGA changes and for any temporary increments or decrements currently in effect as of the date of this Order.

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 N.C.N.G. among customer classes and will result in rates of return for each rate class which are closer to the overall rate of return. The approved rates also reflect the relative risk to the Company of serving each class of customers. Specifically, residential Rate Schedule 1 will be increased by 15.9%; commercial Rate Schedule 2 will be increased by 5.9%; municipal Rate Schedule RE-1 will be increased by 6.0%; industrial Rate Schedules 3A, 3B, and 4A will be increased by 0.9%, 0.5%, and 1.7%, respectively; and Rate Schedules 5A and 6A will be decreased by 0.2% and 4.4%, respectively. Furthermore, 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 Supreme Court in the Textile Manufacturers' opinion. Such factors include the estimated cost of service; the ability to negotiate rates; the value of service; the 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.

## EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 19

The evidence for this finding of fact is found in the testimony of Public Staff witness Curtis and Company witness Teele.

Public Staff witness Curtis recommended that $739,201 should be placed in the IST deferred account and flowed back to the non-IST customers. According to witness Curtis, N.C.N.G. is currently charging 2% for line loss and compressor fuel in the rates for those customers for whom N.C.N.G. transports natural gas under its T-1 and T-2 Rate Schedules. Witness Curtis testified that N.C.N.G. is already recouping through its retail rates an amount to cover lost and unaccounted for gas and compressor fuel expenses over its entire volumes and that N.C.N.G. has the ability through the IST to collect for excess compressor fuel charges. Therefore, witness Curtis testified that the 2% charge represents an overcharge by N.C.N.G. and that these dollars should be placed in the IST.

Company witness Teele testified that there is a basis for the 2% charge in the language of N.C.N.G.'s T-1 and T-1 Rate Schedules since those tariffs provide for a service agreement which shall state the customer's entitlement volume and further provide that the entitlement volume shall be the volume of gas received from Transco for the customer less line loss volumes (Rate Schedule T-1) or less compressor fuel and line loss volumes (Rate Schedule T-2). Witness Teele testified that the Company's standard allowance for compressor fuel and lost and unaccounted for gas is 2% and that all such service agreements have provided for the 2% allowance. Witness Teele admitted that the Company has included an allowance for compressor fuel and lost and unaccounted for gas in its cost of service in this case; however, he testified that the allowance made is low in relation to other companies and applies to system supply.

N.C.N.G. Rate Schedule T-1, approved in N.C.N.G.'s last general rate case effective December 12, 1983, provides that the customer's entitlement volume shall be "less line loss volumes." Rate Schedule T-2, which was proposed by N.C.N.G.'s application in Docket No. G-21, Sub 252, on May 17, 1985, and which was accepted for filing effective June 15, 1985, by Commission Order of May 30, 1985, provides that the customer's entitlement volume shall be "less compressor fuel and line loss volumes." Of the $739,201 figure cited by witness Curtis, witness Teele testified that $403,419 represented gas-in-kind retained by the Company pursuant to this tariff language on transportation transactions through October 31, 1985. He testified that this did not represent transportation revenue for purposes of the IST. Teele testified that the remaining $335,782 represented the value of the 2% allowance on TEMCO negotiated sales beginning in November 1985 and continuing through April 1986. These negotiated sales were made pursuant to Rate Schedule S-1. Witness Teele testified that FERC Order 436 necessitated the change from transportation service to negotiated sales, but that gas flowed to the same customers and the substance of the transactions did not change. Therefore, N.C.N.G. imputed the 2% into the cost of gas calculations for the negotiated sales for purposes of the IST.

N.C.N.G.'s position is that it should be allowed to retain the entire amount of the 2% allowance since it is a valid cost of doing business and is provided for in the Company's tariffs as approved by the Commission and in the Company's contracts with customers. The Public Staff's position is that the 2% allowance represents a double recovery, that it should be discontinued on a prospective basis and that the amount collected in the past pursuant to this 2% allowance should be either flowed through the IST to the extent gas was sold at less than full margin or returned to the customer who paid to the extent gas was sold at full margin. C.U.C.A. takes the position that there is no authorization for the 2% allowance in N.C.N.G.'s tariffs and that the money should be refunded pursuant to G.S. § 62-132.

The Commission concludes that N.C.N.G. has included an allowance for compressor fuel and lost and unaccounted for gas in its cost of service and is recovering for such through its rates. It is not the Commission's intent to allow for recoupment of these costs twice, once in N.C.N.G.'s overall rate structure and again as a charge to industrial customers for whom N.C.N.G. is transporting gas or making negotiated sales. Therefore, the Commission concludes that the language in Rate Schedules T-1 and T-2 allowing a customer's entitlement volume to be decreased for line loss and compressor fuel should be deleted and that no similar allowances should be made by the Company in negotiated sales pursuant to Rate Schedule S-1. The Commission does not intend to prevent N.C.N.G. from recovering its reasonably incurred expenses. The Commission cannot however allow the Company to assess a charge for expenses that have already been recovered or expenses that have not been substantiated. If N.C.N.G. can substantiate that it has line losses or other expenses in excess of those currently approved, it can show such in its next general rate case application.

Although the Commission is discontinuing this 2% allowance as of the date of this Order, there remains for decision the issues of how to handle the monies collected pursuant to this allowance in the past up through the date of this Order. The Company maintains that it should be allowed to retain these monies while the Public Staff and C.U.C.A. maintain that the monies should be either refunded or flowed through the IST. Although the parties have presented evidence and argument as to this issue, the Commission concludes that further evidence is needed in order to properly evaluate and decide this issue. The Commission will issue a separate Order in the near future scheduling a further hearing on this issue.

IT IS, THEREFORE, ORDERED as follows:

1. That North Carolina Natural Gas Corporation is hereby authorized to adjust its rates and charges in a manner so as to produce an annual level of revenue no greater than $132,075,315 from its North Carolina retail customers based upon the Commission's adjusted test year level of operations. Said amount represents an increase of $5,956,540 to the level of revenues that would have resulted from rates currently in effect based upon the test year level of operations.

2. That the Industrial Sales Tracker (IST) mechanism is approved as discussed herein and shall be effective for service rendered on and after November 1, 1986. A revised IST Rider A in the format attached hereto as Appendix A shall be filed with the Commission not later than ten (10) days after the date of this Order.

3. That North Carolina Natural Gas Corporation be, and hereby is, required to file appropriate tariffs in conformity with the base rates set forth in Appendix B properly adjusted for the current Transco rates and for the current cost of alternate fuel considered in the IST mechanism and in conformity with the provisions of this Order. Said tariffs shall be filed not later than ten (10) days from the date of this Order effective for service rendered on and after November 1, 1986.

4. That the depreciation rates proposed by N.C.N.G. for its LNG facility be, and hereby are, approved with the exception of those for Account 363.0 - Purification Equipment and Account 363.1 - Liquification Equipment. The approved rates for those accounts are 3.98% and 4.76%, respectively.

5. That N.C.N.G. shall, as of the date of this Order, terminate the 2% line loss and compressor fuel charge currently being assessed customers for transportation service and negotiated sales.

6. That N.C.N.G. be, and hereby is, ordered to notify its customers of the rates and of the Industrial Sales Tracker (IST) mechanism approved herein by appropriate bill insert in the next billing cycle.

7. That N.C.N.G. be, and hereby is, ordered to file a monthly report with the Chief Clerk of the Commission showing the IST volumes sold and the margin earned compared to the base period IST monthly volumes and margin.

8. That the tariffs filed in response to decretal paragraphs 2 and 3 above shall be approved upon further Order of the Commission effective for service rendered on and after November 1, 1986.

9. That effective January 1, 1987, the federal income tax and the related gross receipts tax components of the rates and charges approved in this proceeding for N.C.N.G. shall be billed and collected on a provisional rate basis pending further investigation and final disposition of this matter concerning the impact of the Tax Reform Act of 1986 on the Company's cost of service.

10. That effective January 1, 1987, N.C.N.G. shall place in a deferred account the difference between revenues billed under the rates approved in this proceeding including provisional components thereof and revenues that would have been billed had the Commission in determining the attendant cost of service based the federal income tax component thereof on the Internal Revenue Code as now amended by the Tax Reform Act of 1986, assuming all other parameters entering into the cost of service equation are held constant.

11. That the exceptions filed with respect to the recommended order by N.C.N.G., the Public Staff, Alcoa, C.U.C.A., and the Cities are, except as hereinabove allowed and granted, otherwise denied. Any motions not previously ruled upon are also denied.

ISSUED BY ORDER OF THE COMMISSION.
This the 10th day of November 1986.
NORTH CAROLINA UTILITIES COMMISSION
(SEAL) Sandra J. Webster, Chief Clerk

Chairman Robert O. Wells, dissenting in part and concurring in part.
Commissioner Ruth E. Cook, dissenting in part and concurring in part.
Commissioner Sarah Lindsay Tate, dissenting in part and concurring in part. Commissioner Tate would have affirmed the Recommended Order entered in this docket on October 15, 1986.

REVISED APPENDIX A

NORTH CAROLINA NATURAL GAS CORPORATION
Fayetteville, North Carolina
NCUC Tariff

## INDUSTRIAL SALES TRACKER - RIDER A

1. Applicability

This Rider is applicable to Service Rate Schedule Nos. 1, 2, 3, 4, 5, 6, RE-1, T-1, T-2, E-1, S-1, SM-1, and NGV. 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 heavy fuel oil as an alternate fuel. To accomplish this, the North Carolina Utilities Commission (NCUC) has authorized the Company to negotiate rates with commercial and industrial customers, including such customers served by the four municipalities served at wholesale by the Company, in priorities 2 through 9 who have the capacity to use an alternate fuel and to recover certain lost margin resulting from negotiated rates through this IST. The margin subject to this IST is limited to margin from that portion of sales under Rate Schedules 4, 5, 6 (Rate Schedule subcategories 4B, 5B and 6B), and RE-1 representing users having the installed capability to burn heavy fuel oil as an alternate fuel.

2. Definitions

"Unit margin" is defined as the Company's energy charge per unit of gas as shown in the Company tariff (exclusive of temporary increments or decrements), less gross receipts tax on that energy charge and less the applicable commodity cost of gas included in the Company's tariff sheets. Any changes in Transco's CD-2 demand charge tracked by the Company in its commodity rates volumetrically shall be treated as a special increment or decrement in the Company's rates for the purpose of calculating "unit margin".

"Margin" is defined as the unit margin times the sales quantities. "Heavy Oil" is defined as #6, #5, or #4 fuel oil.

3. Base Period Margins from Sales to Customers Having Installed Capability to Burn Heavy Fuel Oil

The NCUC has established the following base period monthly margins for the Company related to its sales to customers in NCUC Priorities 2.8 through 9.0 who have installed capability to burn heavy fuel oil and are served under Rate Schedules 4, 5, 6, S-1, RE-1, or SM-1 in its Order in Docket G-21, Sub 255:

| TEST PERIOD<br>MONTH/YEAR | BASE PERIOD MARGINS |
|---|---|

Only that portion of sales representing users having the installed capability to burn heavy oil as an alternate fuel will be included in the IST, plus any such new customers using heavy fuel oil and added after September 30, 1985. Each month the Company will calculate the total revenue, exclusive of customer charges, received from such sales. To this revenue, the Company will add the effect of any temporary decrements included in the Company's rates, and from this revenue, the Company will subtract (1) the effect of any temporary increments included in the Company's rates, (2) North Carolina gross receipts tax, and (3) the commodity cost of gas (calculated by multiplying the total quantity of gas sold to these customers times the applicable commodity cost of gas included in the effective tariff sheets for that month). This amount will then be compared to the above margin for the applicable month and any difference, either positive or negative, included in the IST deferred account.

No margin loss or gain will be considered in the IST for that portion of sales representing users who do not have the installed capability to burn heavy fuel oil as an alternate fuel.

4. Rate Schedule Nos. 1, 2, 3, and NGV

No margin loss or gain will be considered in the IST.

5. Transportation Service Under Rate Schedules Nos. T-1 and T-2

All revenue less gross receipts tax received by the Company for transportation service to customers, who have the installed capability to burn heavy fuel oil as an alternate fuel, will be included in the IST deferred account.

6. Emergency Sales Under Rate Schedule No. E-1

All revenue less gross receipts tax received by the Company in excess of the revenue less gross receipts tax which would have been received from customers having the installed capability to burn heavy fuel oil if the quantity of gas had been sold on the customer's regular rate will be included in the IST deferred account.

7. Savings In Cost of Gas

The revenue effect of the difference between Transco's commodity cost of gas and the cost of gas under Transco's special marketing program or other similar programs will be included in the IST deferred account to the extent such gas is sold to customers who have the installed capability to burn heavy oil. Cost of gas savings which are passed directly to individual end-users because of the grandfathering provisions of FERC Order No. 436, or similar programs, are excluded from this calculation.

8. Cost of Compressor Fuel In Summer Period

Compressor fuel used in the test year summer period (April 1 - October 31) is 3,905 dekatherms (dt). To the extent that compressor fuel use in any subsequent summer period exceeds 3,905 dt because of sales or transportation service to customers having the installed capability to burn heavy fuel oil, the Company will include the cost of such excess compressor fuel at the then effective cost of gas computed on the basis of the applicable commodity rate.

9. True-Up of IST Deferred Account

This IST shall be effective as of November 1, 1986. A true-up of the IST deferred account shall be filed by December 15, 1987, for the 12 months ended October 31, 1987, and annually thereafter. Any balance in the IST deferred account which is owed to the Company's customers at the time of the true-up will be returned to customers by reducing rates uniformly to Rate Schedules Nos. 1, 2, 3, NGV, and the non-IST sales on Rate Schedules Nos. 4, 5, 6, and RE-1. Any balance in the deferred account which is owed to the Company by the customers at the time of the true-up will be recovered by increasing rates uniformly to Rate Schedule Nos. 1, 2, 3, NGV, and the non-IST sales on Rate Schedule Nos. 4, 5, 6, and RE-1. No increases or decreases in rates will apply to sales on Rate Schedules Nos. S-1 and SM-1 which are used by the Company for all negotiated sales, nor will any such increases or decreases in rates apply to transportation rates under Rate Schedules T-1 and T-2.

10. Reports

The Company will file monthly reports of activity in the IST deferred account with the Commission.

11. Interim Rate Changes

The Company and the Public Staff will monitor the balance in the IST deferred account on a continuing basis and may recommend to the Commission interim rate adjustments when warranted between annual true-ups.

12. Negotiated Rates

The Company may continue to negotiate rates with customers in order to retain sales to said customers whether or not the margins from such sales are included in the IST.

APPENDIX B

North Carolina Natural Gas Corporation
Rates Approved in Docket No. G-21, Sub 255

| Rate Schedule | Description | Rate Per Month | Rate Per Therm |
|---|---|---|---|
| 1. | Residential | | |
| | Facilities Charge - Heat only (9 months) | $7.00 | |
| | Facilities Charge - All others (12 months) | 5.00 | |
| | First 5 therms | | $.55280 |
| | All over 5 therms | | .50280 |
| | Air Conditioning (April - October) | | .44280 |
| | Gas Lights (Monthly) | 15.17 | |
| 2. | Commercial and Small Industrial | | |
| | Facilities Charge | 9.00 | |
| | First 100 therms | | .47790 |
| | All over 100 therms | | .46790 |
| | Air Conditioning (April - October) | | .40790 |
| NGV | Natural Gas Vehicle | | |
| | Facilities Charge per Vehicle | 1.00 | |
| | All therms | | .45000 |
| 3A. | Industrial Process - Priority 2.5 | | |
| | Facilities Charge | 100.00 | |
| | All therms | | .43180 |
| 3B. | Industrial Process - Priority 2.6 | | |
| | Facilities Charge | 200.00 | |
| | All therms | | .41680 |
| 4A. | Other Commercial and Industrial - Except Heavy Oil | | |
| | Facilities Charge | 200.00 | |
| | All therms | | .39780 |
| 4B. | Other Commercial and Industrial - Heavy Oil | | |
| | Facilities Charge | 200.00 | |
| | All therms | | .41000 |
| 5A. | Boiler Fuel-Priority 6.2 - Except Heavy Oil | | |
| | Facilities Charge | 200.00 | |
| | All therms | | .38330 |
| 5B. | Boiler Fuel-Priority 6.2 - Heavy Oil | | |
| | Facilities Charge | 200.00 | |
| | All therms | | .40000 |

| | | | |
|---|---|---|---|
| 6A. | Boiler Fuel-Priority 7 to 9 - Except Heavy Oil | | |
| | Facilities Charge | $200.00 | |
| | All therms | | $.35395 |
| 6B. | Boiler Fuel-Priority 7 to 9 - Heavy Oil | | |
| | Facilities Charge | 200.00 | |
| | All therms | | .37000 |
| RE-1 | Wholesale to Cities | | |
| | Facilities Charge | 200.00 | |
| | All therms | | .41610 |
| E-1 | Emergency and Overrun Service | | |
| | All therms - on peak | | .91000 |
| | All therms - off peak | | .70000 |
| | Special Sales | | |
| S-1 | Facilities Charge (N.C.N.G. customers only) | 200.00 | |
| S-1 | All therms - special contract - N.C.N.G. | | .35454 |
| SM-1 | All therms - special contract - Cities | | .33530 |
| S-1 | All therms - special TEMCO - N.C.N.G. | | .27998 |
| SM-1 | All therms - special TEMCO - Cities | | .28571 |
| T-1 | Transportation Service - Priority 6.2 to 9 | | |
| | Facilities Charge | 200.00 | |
| | All therms - customers with 0-1500 dt | | 09822 |
| | All therms - customers with over 1500 dt | | .06876 |
| T-2 | Transportation Service - Priority 2.8 to 5 | | |
| | Facilities Charge | 200.00 | |
| | All therms | | 1272 |

DOCKET NO. G-21, SUB 255
NORTH CAROLINA NATURAL GAS CORPORATION

COMMISSIONER RUTH E. COOK, DISSENTING IN PART AND CONCURRING IN PART. I strongly dissent from the decision of the Majority of the Commission in this case relating to the cost of common equity capital. I concur in and support the remaining findings and conclusions in the instant proceeding, Docket No. G-21, Sub 255.

The Majority has determined the cost of N.C.N.G.'s common equity capital to be 14.0%. I firmly believe that the evidence in this case overwhelmingly dictates a common equity return allowance in the range of 13.3%, and certainly no more than the 13.8% which Public Staff witness Evans estimated as the upper end of the market cost of equity for N.C.N.G. The Majority has adopted a rate of return which is unjustified by the evidence and which is outside the band of reasonableness. By setting the common equity cost rate far in excess of the real cost justified by the evidence, the Majority is requiring the ratepayers of N.C.N.G. to pay excessive rates approaching as much as $500 thousand annually to cover a cost that, in fact, does not exist. By doing so the Majority is departing from a fundamental principle of public utility regulation.

This principle of regulation states that public utility rates should 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). Furthermore, the North Carolina Supreme Court has stated in enunciating the regulatory powers conferred upon the Commission by Chapter 62 that ". . . The primary purpose of this Chapter is not to guarantee to the stockholders of a public utility constant growth in the value of and in the dividend yield from their investment, but is to assure the public of adequate service at a reasonable charge . . . ." State ex rel. Utilities Commission v. General Telephone Company, 285 N.C. 671, 208 S.E. 2d 681 (1974).

Under today's economic conditions one can hardly conclude that a common equity return in the range of 13.3%, which I would have allowed, is even remotely confiscatory. One can, however, by even a cursory review of the evidence in this case conclude that the 14.0% return on common equity allowed by the Majority is quite lavish.

No credible evidence in this regard was offered in this proceeding by any witness other than Public Staff witness Evans. Witness Evans performed a discounted cash flow (DCF) analysis of the sort that is widely accepted and highly regarded by most, if not all, enlightened, sophisticated investors and investment analysts. The DCF model is virtually the centerpiece of modern day financial analysis and its theoretical and empirical underpinnings are virtually incontrovertible. However, it is not without its critics.

Critics of the DCF approach quite often seek to discredit the model by suggesting that it is simply a rigid, formulistic and mechanical approach which must be blindly followed and one which is totally devoid of the dynamics of sound judgment. Such rhetoric is, of course, without substance and signifies either the critics' complete lack of understanding of the concept or an unwillingness to accept the result of its application. The DCF model clearly requires the use of sound judgment.

Witness Evans exercised such judgment in arriving at his conclusion that the cost of common equity capital to N.C.N.G. was 13.3%, within his reasonable range of 12.8% to 13.8%. The same cannot be said for Mr. Butler, the Company's witness, who, on the one hand, professed the importance of considering the market yet, on the other, asked the Commission to approve a methodology which totally ignores the market and the way in which investors develop their expectations.

In this regard, I am in complete agreement with Exception No. 5 to the Recommended Order filed in this docket by the Public Staff on October 29, 1986. That Exception and all of the supporting statements by the Public Staff are hereby incorporated by reference. In particular, I strongly believe that the following observations made by the Public Staff in its Exceptions with regard to the 14.2% rate of return allowed in the Recommended Order are extremely well taken and pertinent to this dissent. They apply equally well to the 14.0% rate of return allowed by the Majority in the Final Order:

> "Mr. Butler and other Company witnesses testified to the risks facing NCNG. However, neither Mr. Butler nor any other Company witness quantified these risks for purposes of reflecting them in return on equity. In contrast, the DCF analysis employed by Mr. Evans incorporates both the amount of risk facing investors in NCNG as well as the return expected for bearing that risk. This is due to the fact that the DCF equation explicitly uses market price as one of its variables -- unlike the calculations of Mr. Butler. Investors account for all known risks when they purchase stock, so the market price automatically reflects the level of risk associated with a company. Thus, there is no need to add any percentage for risk to the 13.3% recommended by Mr. Evans. To do so, as the majority on the hearing panel apparently has done, is to effectively double count the risk factor in return on equity. This is especially true since, as shown in Mr. Evans' Exhibit 5, the DCF result for NCNG which incorporates risk, is confirmed by slightly lower returns on equity for two comparable risk groups.
>
> . . . the testimony of Mr. Butler is internally inconsistent, fails to account for investor expectations in the form of market price, fails to quantify risk, and results in a return figure so high that even the Company requested a lower number. Such testimony is not credible. Mr. Evans provided the only other expert analysis of return on equity. There is no evidence or finding of fact adopted in the Recommended Order that is inconsistent with Mr. Evans' testimony. Therefore, there is no basis for the majority on the hearing panel to conclude that a 14.2% return on equity should be allowed, or that the Public Staff recommendation of 13.3% is 'too conservative.' As noted above, the Public Staff's evidence on return on equity is the only credible evidence, and the Public Staff recommendation of 13.3% has all investor expectations and all known risks built into it."

The cost of capital, whether it be debt or equity capital, can be subdivided into three components: the payment investors require for foregoing the use of the funds during the period of the investment, the payment investors require for the anticipated loss of purchasing power during the investment period (i.e., inflation), and the payment investors require for the perceived financial and business risk of the investment undertaken. It is the perceived business risk of the investment that seems to drive the Majority to the conclusion that investment in the common equity securities of N.C.N.G. is indeed a very risky undertaking.

It is not at all clear to me how such a conclusion can be reached based upon the evidence before the Commission in this case. As a matter of fact, it is very difficult to determine any significant degree of risk that the common equity investors of N.C.N.G. are required to bear. The cost of gas purchased at wholesale by N.C.N.G. from its pipeline supplier, Transcontinental Gas Company (Transco), represents approximately 74% of N.C.N.G.'s total cost of service. This Commission now has in place and has had in place for many, many years a rate mechanism known as a purchased gas adjustment (PGA) rider. This mechanism totally insulates the Company's shareholders from the effects of changes in the wholesale cost of gas, since all such changes through operation of the PGA are automatically passed through by this Commission to N.C.N.G.'s ratepayers. Therefore, the common equity investors bear no risk and face no uncertainty with respect to the recovery of the wholesale cost of gas.

The guarantees to N.C.N.G.'s shareholders go far beyond those afforded by the PGA rider. This Commission also has in place a rate mechanism for N.C.N.G. known as the Industrial Sales Tracker (IST). This mechanism allows N.C.N.G. to charge its non-IST customers for its nonrecovery of costs from certain industrial customers. This loss can occur in one of two ways -- either through the customers having left N.C.N.G.'s system or through these customers having negotiated down the price they pay for natural gas. As a result, N.C.N.G. is insulated to a very high degree from the business risk of loss of sales volumes in the industrial market.

Due to economic factors beyond the control of the Company and this Commission, N.C.N.G. has very little, if any, risk of loss of sales volumes in its residential and commercial markets. Such factors also serve to lessen the overall riskiness of investment in the common equity securities of the Company.

The common equity returns most recently allowed for natural gas utilities by regulatory bodies in other states also make the excessiveness of the Majority's common equity allowance to N.C.N.G. in this case even more evident. For instance, regulatory commissions in New Jersey and the District of Columbia recently entered orders on July 30, 1986, and September 5, 1986, respectively, authorizing a rate of return on common equity of 13.3% for both New Jersey Natural Gas Company and Washington Gas Light Company.

In summary, the Majority in finding N.C.N.G.'s cost of common equity capital to be 14.0% has significantly misjudged the business risk of the Company and in so doing has overburdened the Company's ratepayers. N.C.N.G.'s ratepayers deserve and, by law, are entitled to fairer, more equitable treatment from this Commission, and it is for that reason that I dissent.

November 10, 1986

Ruth E. Cook
Commissioner

NORTH CAROLINA NATURAL GAS CORPORATION
Docket No. G-21, Sub 255

Chairman Robert O. Wells Dissenting in Part:

I dissent from the decision of the Majority in this case due to the Majority having allowed N.C.N.G. an excessive return of 14% on its common equity capital. I would have allowed a common equity return within the range of 13.3% to 13.8%.

The Majority, upon review of the Recommended Order issued on October 15, 1986, has lowered the common equity return allowed N.C.N.G. from 14.2% to 14%. I commend the Majority for their movement in the right direction. However, I believe that the Majority could have and should have done more. The weight of the evidence clearly and overwhelmingly supports a common equity return allowance within the range of 13.3% to 13.8%. There are limitations to the bounds of reasonableness. A common equity return allowance greater than 13.8% is beyond the upper bound.

The Majority's decision requires N.C.N.G.'s ratepayers to pay excessive rates which are clearly outside the bounds of reasonableness. Such a result is totally unwarranted and unfair. It is for this reason that I dissent. I concur in the analysis and evaluation of the evidence as presented in Commissioner Cook's dissent and otherwise concur in and support the remaining findings and conclusions of the Majority Order.

Robert O. Wells, Chairman

DOCKET NO. G-9, SUB 251

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Application of Piedmont Natural Gas Company, ) ORDER DENYING MOTION
Inc., for an Adjustment of Its Rates and ) FOR DISAPPROVAL OF
Charges ) CONTRACTS

BY COMMISSIONERS CAMPBELL, KOGER, AND COOK: On February 18, 1986, the Public Staff filed a Motion for Disapproval of Contracts pursuant to G.S. 62-153 asking the Commission to issue an order disapproving the contract between Piedmont Natural Gas Company and PNG Energy Company filed in this docket on January 14, 1986. The Public Staff asked for oral argument on its Motion. On February 25, 1986, Piedmont filed its Response opposing the Motion and asserting that no further argument was needed. On March 3, 1986, the Public Staff filed a letter withdrawing its request for oral argument and asking that the Commission set a schedule for the filing of briefs on the Motion for Disapproval. On March 5, 1986, the Commission issued an Order providing for the filing of briefs in support of or in opposition to the Motion and further providing that the Motion would be decided by the Commission on the basis of the briefs submitted. On March 19, 1986, both the Public Staff and Piedmont filed their briefs arguing the Motion for Disapproval.

By way of background, the Commission notes that in the hearings conducted by this Panel in this general rate case on October 15-17, 1985, the Public Staff raised an issue concerning the purchase of gas supply by Piedmont from its affiliate PNG Energy Company. Considerable testimony was presented with respect to these purchases by Public Staff witness Daniel and Company witnesses Maxheim and Schiefer. In the Order Granting Partial Rate Increase issued by this Panel on December 11, 1985, the Commission included an extensive discussion of the evidence. The Commission found that these purchases were pursuant to a contract between Piedmont and PNG Energy, that G.S. 62-153 requires contracts between public utilities and their affiliates to be filed with the Commission, and that the contract in question had not been filed. The Commission ordered Piedmont to file its contract with PNG Energy pursuant to G.S. 62-153 and further provided that the Commission would review the record in this case and enter such further order as may be appropriate regarding the contract. The contract was in fact filed with the Commission on January 14, 1986. The Public Staff subsequently moved for disapproval of the contract, as noted above.

In its memorandum of law filed in this proceeding on March 19, 1986, the Public Staff argues that PNG Energy is a shell corporation with no independent existence apart from Piedmont, that PNG Energy serves no independent function that could not be served by the employees of Piedmont acting on behalf of Piedmont, and that it is therefore clear that PNG Energy is simply a device to divert profits from Piedmont. It argues that Piedmont could get a better price for the gas supply that it now receives through PNG Energy since Piedmont could, through its own efforts, arrange for this same gas supply at the same price and thereby not pay any commission to PNG Energy.

By its brief of March 19, 1986, Piedmont does not contest its duty to purchase gas at the lowest possible price. However, it argues that it has the right to contract with an affiliate for the services of finding, purchasing and arranging for the delivery of cheap gas supply to Piedmont; that it has the right to pay such an affiliate the cost of the same services in the open market; and that PNG Energy's charges to Piedmont are competitive and, in some cases, lower than what other marketers offering similar services would charge.

The applicable statute, G.S. 62-153, provides in part, 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." Contracts so disappproved by the Commission "shall be void and shall not be carried out by the public utility which is a party thereto, nor shall any payments be made thereunder."

On the basis of the evidence presented in the general rate case hearing and the argument presented by the parties, the Commission makes the following:

## FINDINGS OF FACT

1. PNG Energy Company and its joint venture partner, Enmar, Inc., find gas supply in the field, negotiate the purchase of the gas, and arrange for the transportation of the gas from the wellhead to an interstate pipeline and to the ultimate purchaser of the gas.

2. Piedmont and PNG Energy are parties to a January 10, 1986, contract pursuant to which PNG Energy seeks to obtain gas supply for Piedmont. Pursuant to this contract, PNG Energy does not receive any payment for its services unless the gas it secures for Piedmont is at least 10¢ per dekatherm less than Transco's CD-2 commodity cost of gas. As to gas at least 10¢ per dekatherm less than Transco's CD-2 commodity cost of gas, PNG Energy receives for its services an amount equal to one half of the difference between the cost of the gas and Transco's CD-2 commodity cost of gas less 10¢, up to a maximum of 5¢ per dekatherm. As to gas secured by the joint venture between PNG Energy and Enmar, Enmar is entitled to receive an amount equal to the amount, if any, paid to PNG Energy.

3. John H. Maxheim, Chairman of the Board, President and Chief Executive Officer of Piedmont, is the President and Chief Executive Officer of PNG Energy. Ware F. Schiefer, Vice President of Gas Supply and Transportation for Piedmont, is the Vice President of PNG Energy.

4. Piedmont elected to secure gas supply from non-traditional sources through PNG Energy after being advised that Piedmont might become subject to the jurisdiction of FERC under the Natural Gas Act if it directly participated in the purchase and sale of natural gas outside of North Carolina.

## DISCUSSION OF EVIDENCE AND CONCLUSIONS

The Commission incorporates by reference the discussion of evidence to be found in connection with Finding of Fact No. 20 of the Order Granting Partial Rate Increase issued in this proceeding on December 11, 1985.. That discussion summarizes the relevant evidence presented in the testimony of Public Staff witness Daniel and Company witnesses Maxheim and Schiefer. The findings of fact in the present order are based upon that testimony.

G.S. 62-153 provides for the disapproval of any contract with an affiliate that 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. The North Carolina Supreme Court recently considered this statute in a case of Utilities Commission v. Intervenor Residents, 305 N.C. 62 (1982). The Court wrote as follows:

> G.S. Sec. 62-153 does not prohibit the Utilities Commission from considering fees owed to affiliated corporations under unfiled contracts as expenses of the public utility for purposes of rate making so long as the Commission does determine in the rate making procedure that the agreements between the utility and the affiliated corporations are just and reasonable and it does not appear that their purpose is to conceal or divert profits from the public utility to an affiliate.

Id. at 65-66. We cannot conclude that the contract in question here is unjust or unreasonable and that it was made for the purpose of diverting profits from Piedmont to PNG Energy. Company witness Schiefer testified that PNG Energy's charges to Piedmont "are very competitive and, in some cases, perhaps even below [what] other marketers offering similar services would charge." The testimony of witness Schiefer tends to show that at least one purpose of the contract between Piedmont and PNG Energy was to avoid Piedmont's becoming subject to federal jurisdiction. Furthermore, disapproval of the contract would render it void, and Piedmont would be denied the services of PNG Energy in securing cheap gas supply. We conclude that the Public Staff's Motion for Disapproval of this contract should be denied.

On the other hand, we do not find it necessary or appropriate for us to place our blessings on the contract by specifically approving it. The ultimate issue raised by the Public Staff is the appropriate distribution of the cost savings achieved through the acquisition of lower cost alternate gas supplies. The Public Staff did not propose any specific test year accounting adjustment in this rate case with respect to the operation of the contract in question. The Public Staff may propose such adjustments in future general rate cases and, if it does so, the Commission will consider the appropriate ratemaking treatment of dealings pursuant to this contract in the context of those rate cases. The present ruling is specifically without prejudice to the right of the Commission to make any ratemaking adjustment it may find just and reasonable upon examination of dealings pursuant to this contract in future general rate cases.

IT IS, THEREFORE, ORDERED that the Motion for Disapproval of Contracts filed in this proceeding by the Public Staff on February 18, 1986, should be, and the same hereby is, denied as hereinabove provided.

ISSUED BY ORDER OF THE COMMISSION.
This the 14th day of April 1986.

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 ON RECONSIDERATION

BY THE COMMISSION: On November 20, 1985, the Commission issued an Order Granting Partial Rate Increase for Public Service Company of North Carolina, Inc. (Public Service or Company), in the above referenced docket granting the Company an increase in rates producing additional revenues of approximately $6.7 million annually. On December 1, 1985, Public Service filed a "Motion Seeking Clarification" in the matter in which it proposed rewording the Industrial Sales Tracker (IST) or 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 were necessary in order to clarify various details discussed therein and to ensure that the approved IST was in conformity with the intent expressed in the Order. The Commission, on December 2, 1985, issued an Order approving the Company's proposed reworded IST.

On December 6, 1985, Carolina Utility Customers Association, Inc. (C.U.C.A), filed a "Motion For Reconsideration and Request for Oral Argument" in the case. Specifically, C.U.C.A. requested the Commission to reconsider the decisions rendered regarding the established transportation rates, the approved IST, and the class rates of return resulting from the November 20, 1985, Order and the tariffs approved thereafter to implement the Order. CUCA requested the Commission to grant an oral argument on the issues raised, to reduce the transportation rates to a level based on the cost of transporting gas plus a reasonable rate of return, to abolish the IST approved which CUCA contends is discriminatory and illegal, and finally to adjust the rate structure of the Company to reflect more nearly equalized customer class rates of return for each customer class.

On December 12, 1985, Public Service also filed a "Motion For Reconsideration and Request for Oral Argument" wherein the Company requested the Commission to reconsider the IST approved and to modify such IST to include customers in Rate Schedules 65 and 67 with alternatives fuels other than heavy fuel oil and customers in Rate Schedule 60 having heavy oil, light oil, and propane as alternative fuels.

On December 16, 1985, the Public Staff filed its response to CUCA's motion and a motion for reconsideration. The Public Staff took issue with CUCA's contention that the IST approved by the Commission was in contravention to the North Carolina Supreme Court's decision in State ex rel. Utilities Commission v. N. C. Textile Manufacturers Assoc. Inc., 314 N.C. 313 (1985). However, the Public Staff disagreed with the Commission's exclusion of customers in Rate Schedule 60 and those customers in Rate Schedules 65 and 67 having alternative fuels other than heavy oil from the approved IST. The Public Staff also requested the Commission to grant an oral argument on the matter.

On January 24, 1986, the Public Staff filed a letter with the Commission correcting a statement contained on page 35 of the November 20, 1985 Order which concerned the Commission's directive requiring any customer in priority 2 and below to have alternative fuel capability. According to the Public Staff, the statement contained in the Order is in error. The January 3, 1978 Order in Docket No. G-100, Sub 21 states the following regarding this matter:

> "That all new customers in Priority 2.5 or below shall be required to install alternate fuel capability and reasonable storage capacity as a condition of receiving gas service."

The Commission finds it appropriate to modify the language on page 35 of the November 20, 1985 Order to reflect this correction.

On January 13, 1986, the Commission held an oral argument on the matter. Representatives from Public Service, the Public Staff, and C.U.C.A. appeared and argued in support of their various motions for reconsideration.

The Commission will now address each of the issues raised by the parties in their motions for reconsideration and oral argument.

Class Rates of Return

C.U.C.A. requested reconsideration of the Commission's decision regarding the revenue requirements imposed on Rate Schedules 60, 65, 67, 70, and 72.

C.U.C.A. rejects the notion that all customers in these rate classes have the ability to negotiate rates. C.U.C.A. does not question that these customers may choose to negotiate rates but rather asserts that it is impractical or infeasible for certain customers in these rate schedules to negotiate rates or that customers' ability to negotiate varies from customer to customer. C.U.C.A. recommends that the Commission revise the approved rate structure to more closely align class rates of return with the approved overall rate of return.

The Company and Public Staff advocate no change in the rate structure approved by the Commission.

The Commission has carefully analyzed and reviewed the decision rendered in this regard in the November 20, 1985, Order. The Commission believes that the decision rendered in this regard was entirely reasonable and appropriate for the reasons previously stated in the Order. The approved rate increase was imposed in its entirety upon residential and commercial customers. The tariff or regular sales rates for Rate Schedules 60, 65, 67, 70, and 72 either remained unchanged or were reduced. Additionally, the rates paid by residential and commercial customers exceed substantially the rates paid by industrial customers on Rate Schedules 60, 65, 67, 70, and 72. Finally, all industrial customers have alternate fuels and the right to negotiate rates with the Company. Other relevant factors which were considered in addition to 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 characteristics, and others factors cited in the November 20, 1985, Order. The Company's unit rates are closely related to the Commission's priority of service rules and regulations (i.e., the highest rate is charged to residential customers who have the highest priority of service, while the lowest rate is charged to large industrial customers using natural gas for boiler fuel which is the first use of natural gas that is interrupted when service interruptions become necessary). The different priorities of service result in interruptible features which cause the service to each rate class to differ from that of the other classes in a significant way; thus the rates of return for said rate classes are not directly comparable with each other. The approved rates do not, in the Commission's opinion, unreasonably discriminate among the various classes of Public Service's customers in violation of G.S. § 62-140(a). The preceding rationale coupled with the rationale stated in the November 20, 1985, Order lead the Commission to conclude that the decision previously rendered regarding class rates of return is entirely reasonable and appropriate.

Transportation Rates

In its motion for reconsideration, C.U.C.A. opposes the full margin transportation rates as discriminatory and contends that the rates for transportation service approved in the Order of November 20, 1985, in this proceeding actually exceed full margin.

The Commission does not agree with C.U.C.A. that full margin transportation rates are discriminatory. As discussed fully in the Order of November 20, 1985, full margin transportation rates would ensure that the same margins are received for similar services and would recognize that the service performed by the Company is the same whether the service is provided under the sales rates or the transportation rate.

The Commission also does not agree with CUCA that the margins paid by transportation customers will be different from the margins applicable to customers on the other sales rate schedules. The full margin transportation rates are based on the margins contained in Rate Schedules 60, 65, 67, 70, and 72; not Rate Schedule 80. Rate Schedule 80 is applicable to those customers who have negotiated rates different from the tariff rates. Margin paid by customers on Rate Schedule 80 represents only a portion of the full margin applicable to said customers. The remainder of the full margin applicable to customers served under Rate Schedule 80 is recovered by the IST or is lost due to negotiations.

Industrial Sales Tracker

The IST approved in the Order of November 20, 1985, in this proceeding protects the Company from margin losses for all customers on Rate Schedules 70 and 72 and for those customers on Rate Schedules 65 and 67 who use heavy fuel oil as an alternative fuel.

Margin losses for all customers on Rate Schedules 70 and 72 are protected whether such losses are due to lower negotiated rates or to lower volume sales. Margin losses for those customers on Rate Schedules 65 and 67 who use heavy fuel oil as an alternate fuel are protected when such losses are due to lower negotiated rates, but not when they are due to lower volume sales.

Margin losses for customers on Rate Schedules 60, 65, and 67 who switch to transportation service are also included in the IST, as are all revenues from transportation service.

In its motion for reconsideration the Company seeks to include all Rate Schedule 60, 65, and 67 customers in the IST and to protect per therm margin losses for such customers just as the approved IST does for those Rate Schedule 65 and 67 customers who use heavy fuel oil as an alternate fuel. The Company contends that it still suffers margin losses due to negotiated rates applicable to customers in Rate Schedules 60, 65, and 67 who do not use heavy fuel oil as an alternate fuel.

In its motion for reconsideration, the Public Staff also seeks to include all Rate Schedule 60, 65, and 67 customers in the IST. However, the Public Staff seeks to protect the total margin for such customers rather than the per therm margin just as the approved IST does for Rate Schedule 70 and 72 customers. The Public Staff contends that such an approach will avoid a situation where negotiated rates trigger an increment in the IST even if the total margin allowed in the rate case is already being exceeded. The Public Staff also pointed out that such a procedure would also enable any gains from new sales to Rate Schedule 60, 65, and 67 customers who do not use heavy fuel oil as an alternate fuel to be included in the IST.

In its motion for reconsideration, C.U.C.A. seeks to abolish the IST. C.U.C.A. also objects to protecting only the per therm margin losses for those Rate Schedule 65 and 67 customers who use heavy fuel oil as an alternate fuel rather than the total margin losses for said customers, and it objects to inclusion in the IST of margin losses for those customers who switch to transportation service. C.U.C.A. contends that the true-up provisions in the IST are discriminatory, that there is no basis for the Base Period Margin contained in the IST, and that the IST excludes new customers and new sales.

The Commission does not agree with the Company or the Public Staff that all of the Rate Schedule 60, 65, and 67 customers should be included in the IST. As discussed fully in the Order of November 20, 1985, in this proceeding, the procedure adopted herein is more consistent with that adopted for North Carolina Natural Gas; it focuses the effect of the IST more directly on those margins of the Company which are least secure; and it excludes those margins which do not appear to the Commission to be in unusual jeopardy.

The Commission agrees with the Public Staff that Rate Schedule 65 and 67 customers who use heavy fuel oil as an alternate fuel should be treated the same as Rate Schedule 70 and 72 customers in the IST. Therefore the total margin for Rate Schedule 65 and 67 customers should be protected instead of the per therm margin. Such treatment would be more consistent towards the affected customer groups and would better reflect the Commission's conclusion in this proceeding that the margin for all customers who use heavy fuel oil as an alternate fuel should be protected. Such treatment would also ensure that a situation would not arise wherein a negotiated rate could trigger an increment in the IST even if the total margin allowed in the rate case is already being exceeded. The Commission believes that the Company should establish rate class subcategories for IST and non-IST customers in Rate Schedules 65 and 67. Such a procedure will clearly establish those customers and volumes which are subject to the IST and those which are not subject to the IST. The modification to the IST contained herein will necessitate the filing of a revised IST (attached hereto as Appendix A) by the Company with modified monthly base period margins. Work papers showing the underlying calculations for the base period margins including the $9,679,352 margin applicable to Rate Schedules 70 and 72 shown in the present IST shall be filed with the Commission for review and comment by the parties. Amounts shown in such calculations should be referenced to the November 20, 1985, Order or testimony and exhibits in the case where possible.

The Commission does not agree with CUCA that the IST should be abolished. As discussed at length in the Order of November 20, 1985, in this proceeding, the IST addresses the question of what gas volumes will be sold to industrial customers and at what price levels competitive with alternate fuels; it reduces the number of rate cases by restoring margin lost due to industrial customers leaving the system or reducing their usage; it allows the utility an opportunity to earn its approved rate of return while negotiating lower rates with industrial customers where necessary to retain sales to those customers; and it accounts for revenue losses if industrial sales are lost due to customer shifts to transportation service.

The Commission also does not agree with C.U.C.A. that the IST excludes new customers or new sales volumes. Both old and new customers in Rate Schedules 70 and 72 are included in the IST, and only the margin for Rate Schedules 70 and 72 determined as a part of the rate case is protected by the IST. Likewise, both old and new customers in Rate Schedules 65 and 67 who use heavy fuel oil as an alternate fuel are included in the IST, and only the margin for said Rate Schedule 65 and 67 customers determined as a part of the rate case is protected by the IST.

The Commission also does not agree with C.U.C.A. that the true-up provisions in the IST are unreasonably discriminatory. The increments or decrements resulting from the IST are applied to all customers whose margins are not included in the IST. All customers whose margins are included in the IST are not eligible to participate in the increments or decrements resulting from the IST.

The Commission does not agree with C.U.C.A. that inclusion in the IST of margin losses from those Rate Schedule 60 customers switching to transportation service will be unreasonably discriminatory. Margin losses due to customers switching to transportation service can be offset by including the revenues from such transportation service in the IST, thereby having negligible effect on the overall revenues of the Company. On the other hand, margin losses due to negotiated rates must be offset by increasing rates to the remaining customers on the system. Margin losses due to customers switching to transportation service are not directly comparable to margin losses due to negotiated rates and should not be treated the same. Therefore, it is entirely appropriate to include in the IST any margin losses from industrial customers in Rate Schedule 60 through 72 which are due to such customers switching to transportation service, whether or not they use heavy fuel oil as an alternate fuel.

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 any customer class or within any customer class.

IT IS, THEREFORE, ORDERED as follows:

1. That the November 20, 1985, Order issued in this docket as modified herein be, and is hereby, affirmed by the Commission.

2. That the Company shall file a revised Industrial Sales Tracker-Rider C. in the format attached hereto as Appendix A, containing modified monthly base period margins in conformity with the modifications to the IST contained herein. Work papers showing the underlying calculations for such margins shall be filed in conjunction with the revised IST for review and comment by the parties in the case. The Company shall establish rate class subcategories for Rate Schedules 65 and 67 to recognize the presence of IST and non IST customers within these Rate Schedules.

ISSUED BY ORDER OF THE COMMISSION.
This the 31st day of January 1986.

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

## APPENDIX A
## PUBLIC SERVICE COMPANY OF NORTH CAROLINA, INC.
## NATURAL GAS SERVICE
## INDUSTRIAL SALES TRACKER - RIDER C

### Applicability

This Rider is applicable to Service Rate Schedules 50, 55, 57, 60, 65, 67, 70, 72, 80, 91, and 92. The intent of the Industrial Sales Tracker (IST) is to stabilize the Company's margin from commercial and industrial customers while taking measures to retain sales to those commercial and industrial customers who can most readily use an alternate fuel. To accomplish this the North Carolina Utilities Commission (NCUC) has authorized the Company to negotiate rates with commercial and industrial customers in priorities 2 through 9 who have the capacity to use an alternate fuel and to recover certain lost margin resulting from negotiated rates through this IST.

The margin subject to this IST is limited to all margin from Rate Schedules 70 and 72; plus margin from that portion of sales under Rate Schedules 65 and 67 representing users having the installed capability to burn heavy fuel oil as an alternate fuel; plus margin from Rate Schedule 60 through 67 sales which is lost when customers elect transportation service under Rate Schedules 91 and 92.

### Definitions

"Unit margin" is defined as the Company's energy charge per unit of gas as shown in the Company tariff (exclusive of temporary increments), less gross receipts tax on that energy charge and less Transco's commodity cost of gas included in the Company's tariff sheets.

"Margin" is defined as the unit margin times the sales quantities.

### Rate Schedule 65, 67, 70, and 72

The NCUC has established the following base period monthly margins for Public Service Company in its Order in Docket No. G-5, Sub 200:

| Test Period Month/ Year | Base Period Margin |
|---|---|
| 1/84 | |
| 2/84 | |
| 3/84 | |
| 4/84 | |
| 5/84 | |
| 6/84 | |
| 7/84 | |
| 8/84 | |
| 9/84 | |
| 10/84 | |
| 11/84 | |
| 12/84 | |
| Total | |

Only Rate Schedule 70 and 72 customers, plus those Rate Schedule 65 and 67 customers having the installed capability to burn heavy fuel oil (#4, #5, or #6 fuel oil) as an alternate fuel, plus Rate Schedule 65 and 67 customers electing transportation service will be included in the IST.

Loss of margin on those customers considered to be IST customers will be calculated as follows. Each month the Company will calculate the total revenue, exclusive of customer charge, received from Rate Schedules 70 or 72; plus that portion of the total revenue, exclusive of customer charge, received from Rate Schedule 80 representing customers normally serviced on Rate Schedules 70 or 72; plus that portion of the total revenue, exclusive of customer charge, received from Rate Schedules 65 and 67 representing customers having the installed capability to burn heavy fuel oil as an alternate fuel; plus that portion of the total revenue, exclusive of customer charge, received from Rate Schedule 80 representing customers normally serviced on Rate Schedules 65 or 67 and having the installed capability to burn heavy fuel oil as an alternate fuel. From this revenue, the Company will subtract (1) the effect of any temporary increments included in the Company's rates, (2) gross receipts tax of 3.22%, and (3) the commodity cost of gas (calculated by multiplying the total quantity of gas sold to these customers times the Transco commodity cost of gas included in the effective tariff sheets for that month). This amount will then be compared to the above margin for the applicable month and any difference, either positive or negative, included in the IST deferred account.

Loss of margin on those Rate Schedule 65 or 67 customers who do not have the installed capability to burn heavy fuel oil as an alternate fuel but who elect transportation service will be calculated by multiplying the actual quantities of gas transported by the unit margin in Rate Schedules 65 or 67 as appropriate and including that margin loss in the IST deferred account.

No margin loss or gain will be considered in the IST for those customers serviced under Rate Schedules 65 and 67 who do not have the installed capability to burn heavy fuel oil as an alternate fuel or do not elect transportation service.

### Rate Schedule 60

Only those customers electing transportation service will be included in the IST. Loss of margin on these customers will be calculated by multiplying the actual quantities of gas transported by the unit margin in Rate Schedule 60 and including that margin loss in the IST deferred account.

### Rate Schedules 50, 55, 57, and 85

No margin loss or gain will considered in the IST.

### Rate Schedules 91 and 92

All revenue less gross receipts tax received by the Company for transportation service will be included in the IST deferred account.

Emergency Sales Under Rider A

All revenue less gross receipts tax received by the Company in excess of the revenue less gross receipts tax which would have been received if the quantity of gas had been sold on the customer's regular rate will be included in the IST deferred account.

Savings In Cost Of Gas

The revenue effect of the difference between Transco's commodity cost of gas and the cost of gas under Transco's special marketing program or other similar programs will be included in the IST deferred account. Cost of gas savings which are passed directly to individual end users because of the grandfathering provisions of FERC Order No. 436, or similar programs, are excluded from this calculation.

True-up Of IST Deferred Account

This IST shall be effective as of December 1, 1985. A true-up of the IST deferred account shall be filed by January 15, 1987, for the 12 months ending November 30, 1986, and annually thereafter. Any balance in the IST deferred account which is owed to the Company's customers at the time of the true-up will be returned to customers by reducing rates uniformly to Rate Schedules 50 through 60 and to the non-IST customers in Rate Schedules 65 and 67. Any balance in the IST deferred account which is owed to the Company by the customers at the time of the true-up will be recovered by increasing rates uniformly to Rate Schedules 50 through 60 and to the non-IST customers in Rate Schedules 65 and 67. No increases or decreases in rates will apply to sales on Rate Schedule 80 (which is used by the Company for all negotiated sales) or on Rate Schedules 70 and 72, or to IST customers on Rate Schedules 65 or 67.

Reports

The Company will file monthly reports of activity in the IST deferred account with the Commission.

Interim Rate Changes

The Company and the Public Staff will monitor the balance in the IST deferred account on a continuing basis and may recommend to the Commission interim rate adjustments when warranted between annual true-ups.

## DOCKET NO. G-5, SUB 207

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Application of Public Service Company of North ) ORDER GRANTING
Carolina, Inc., for Authority to Adjust Its ) PARTIAL INCREASE
Rates and Charges ) IN RATES AND CHARGES

HEARD IN: Buncombe County Courthouse, Asheville, North Carolina, on August 18, 1986; City Council Chambers, City Hall, Gastonia, North Carolina, on August 19, 1986; Commission Hearing Room, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on October 6 -10, 1986

BEFORE: Commissioner Ruth E. Cook, Presiding; and Commissioners A. Hartwell Campbell and Julius A. Wright

APPEARANCES:

For Public Service Company of North Carolina, Inc.:

Graham C. Mullen, Mullen, Holland & Cooper, P.A., Post Office Box 488, Gastonia, North Carolina 28053

F. Kent Burns and James M. Day, Boyce, Mitchell, Burns & Smith, P.A., Post Office Box 2479, Raleigh, North Carolina 27602

For the City of Durham:

William I. Thornton, Jr., City Attorney, and Carolyn D. Johnson, Assistant City Attorney, City Attorney's Office, 101 City Hall Plaza, Durham, North Carolina 27705

For Carolina Utility Customers Association:

Jerry B. Fruitt, Attorney at Law, Post Office Box 12547, Raleigh, North Carolina 27605-2547

For the Public Staff - North Carolina Utilities Commission:

Antoinette R. Wike, Chief Counsel, and Paul L. Lassiter, 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's Office:

Lorinzo L. Joyner, Assistant Attorney General, and 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

BY THE COMMISSION: On April 11, 1986, Public Service Company of North Carolina, Inc. (Public Service, the Company, or the Applicant), filed an application with the Commission seeking authority to adjust and increase its rates and charges for retail natural gas service in North Carolina. By Order issued May 13, 1986, the Commission set the matter for investigation and hearing, suspended the proposed rates, and required public notice.

On April 25, 1986, a Petition to Intervene was filed with the Commission by the Carolina Utility Customers Association (CUCA). By Order issued April 28, that Petition was allowed.

On May 12, 1986, a Petition for Leave to Intervene was filed with the Commission by the City of Durham. By Order issued May 14, 1986, that Petition was allowed.

On September 9, 1986, the Attorney General filed Notice of Intervention pursuant to G.S. 62-20.

On September 30, 1986, the Commission convened a prehearing conference with all parties in attendance. On October 2, 1986, the Commission issued its Prehearing Order.

The matter came on for hearing as scheduled. Jim McKinnish, a public witness, appeared and offered testimony at the hearing held in Gastonia on August 18, 1986. There were no public witnesses at the hearings in Asheville on August 19, 1986 or in Raleigh on October 6-10, 1986.

The case in chief was heard in Raleigh beginning on October 6, 1986. The Company presented the testimony and exhibits of the following witnesses:

1. Charles E. Zeigler, President, Chief Executive Officer and Chairman of the Board of Directors of Public Service Company;

2. C. Marshall Dickey, Senior Vice President, Gas Supply and Transportation, Public Service Company;

3. Allen J. Schock, Vice President - Regulatory Affairs, Public Service Company;

4. E. L. Flanagan, Jr., Senior Vice President-Finance and Treasurer, Public Service Company;

5. Dr. James H. Vander Weide, Research Professor of Finance and Economics at the Fuqua School of Business, Duke University; and

6. Charles J. Murphy, a Managing Director of the First Boston Corporation, New York City.

The Public Staff presented the testimony and exhibits of the following witnesses:

1. Eugene H. Curtis, Jr., Utilities Engineer - Natural Gas Division, Public Staff;

2. Jeffrey L. Davis, Utilities Engineer - Natural Gas Division, Public Staff;

3. Raymond J. Nery, Director, Natural Gas Division, Public Staff;

4. Kevin W. O'Donnell, Financial Analyst - Economic Research Division, Public Staff; and

5. John Joseph Salengo, Staff Accountant - Accounting Division, Public Staff.

Pursuant to various requests, the Company and the Public Staff were directed or permitted to file and serve certain additional exhibits either during or subsequent to the hearing.

Based upon the foregoing, the evidence addressed at the hearing, and the entire record in this matter, 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, 1985.

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 $8,815,418. On August 14, 1986, the Company updated its rate increase request through May 31, 1986, to reflect changes in its cost of service. The updated request as a result of these changes was for an annual revenue increase of $7,374,023.

5. The proper allowance for working capital is $11,457,883.

6. Public Service Company's original cost rate base used and useful in providing service to its customers is $153,564,420. This rate base consists of plant-in-service of $241,594,390, plus the unamortized balance of the Customer Information Services project costs of $579,479, plus a working capital allowance of $11,457,883, less accumulated depreciation of $75,523,524, accumulated deferred income taxes of $24,285,808, and cost-free capital of $258,000.

7. Public Service's operating revenues after appropriate accounting and pro forma adjustments under present rates are $198,641,478 and under the Company's proposed rates would be $206,015,501.

8. The test period level of Public Service's operating revenue deductions under present rates after accounting and pro forma adjustments is $181,708,881 which includes the amount of $7,409,719 for actual investment currently consumed through reasonable actual depreciation.

9. It is proper to adjust the common equity component of the Company's capital structure in order to remove the effect of net-of-taxes Transco refunds included in the Company's retained earnings.

10. The capital structure which is proper for use in this proceeding is the following:

| Item | Percent |
|---|---|
| Long-term debt | 47.60% |
| Short-term debt | 7.86% |
| Preferred stock | 3.97% |
| Common equity | 40.57% |
| Total | 100.00% |

11. The proper cost rates for short-term debt, long-term debt, and preferred stock are 7.50%, 11.16%, and 6.98%, respectively. The reasonable rate of return for Public Service to be allowed to earn on common equity is 13.75%. The weighted average cost of capital, derived from the reasonable and fair capital structure and cost rates, is 11.76% 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.

12. Based upon the foregoing, Public Service should increase its annual level of gross revenues under present rates by $2,292,167. The annual revenue requirement approved herein is $200,933,645, 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.

13. The reclassification of the rate schedules and the associated restructuring of routine curtailment priorities as proposed by the Company are reasonable and should be adopted.

14. Equalized rates of return for all rate classes would be unreasonable for this proceeding and would not adequately reflect those considerations regarding value of service, priority of interruptions, and rate increase impact.

15. The Rider D mechanism as modified herein is reasonable and should be adopted in lieu of the Industrial Sales Tracker (IST).

16. The rates and rate revisions proposed by the Company are reasonable and appropriate for purposes of this proceeding except as modified herein. The base rates set forth in Appendix A attached hereto are just and reasonable and will generate the level of revenues necessary to provide a reasonable opportunity to achieve the overall rate of return approved herein. Said base rates approved herein should be adjusted for any PGA charges and for any temporary increments or decrements currently in effect.

## EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 1, 2, 3, AND 4

The evidence for these findings of fact is contained in the verified application, the Commission's records, the Order Setting Hearing, the Notice of Hearing, and the testimony and exhibits of Company witnesses Dickey and Schock and Public Staff witnesses Curtis and Salengo. These findings of fact are essentially informational, procedural, and jurisdictional in nature and, for the most part, are uncontested.

In its application, the Company proposed an increase in annual gross revenues of $8,815,418, from $231,862,574 to $240,677,992. The Company subsequently updated its request through May 31, 1986, to reflect changes, including changes in the cost of gas from Transco under its CD-2 Rate Schedule. The updated request as a result of these changes was for an increase in annual gross revenues from $197,934,410 to $205,308,433 or $7,374,023. However, the company, based upon its acceptance of certain Public Staff adjustments during the course of the hearing, revised its request to an annual revenue increase of $5,508,443, as set forth in its proposed order.

## EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 5

The evidence for this finding of fact is found in the testimony and exhibits of Company witness Schock and Public Staff witnesses Salengo and Curtis. The following tables set forth the allowance for working capital as proposed by these witnesses and reflected in the parties' proposed orders:

| Item | Company | Public Staff | Difference |
|---|---|---|---|
| Cash working capital (lead/lag study) | 436,521 | 424,524 | (11,997) |
| Minimum bank balances | 1,798,609 | 1,798,609 | - |
| Average customer deposits | (1,683,409) | (1,683,409) | - |
| Average materials and supplies inventories | 11,700,911 | 11,267,672 | (433,239) |
| Sales tax billed | (349,513) | (349,513) | - |
| Total working capital | $11,903,119 | $11,457,883 | $ (445,236) |

The Company and Public Staff agree that the proper levels of minimum bank balances, average customer deposits, and sales tax billed are $1,798,609, $1,683,409, and $349,513, respectively. There being no evidence to the contrary, the Commission concludes that these amounts are reasonable and proper for use in this proceeding.

During cross-examination, Company witness Schock stated that the Company would not contest the Public Staff's determination of cash working capital with the exception of the adjustment to the Company's per books amount for the federal income tax-current provision. The Company reflected a negative current provision in the lead/lag study, the result of the Company's deferred income taxes and investment tax credits exceeding its total per books taxes. Witness Schock testified that using a negative income tax, which shows that the Company is entitled to an allowance for working capital on this item, "isn't the right way to go because if you consistently have losses and negative income taxes, you're going to be out of business." The Public Staff objected to using a negative amount for current federal income tax expense because it is not representative of an ongoing level of federal income tax and the Company's calculation exceeds its investment tax credit limitation allowed in the computation of federal income taxes. Public Staff witness Salengo recalculated the current provision for federal income taxes to reflect the investment tax credit limitation required in the computation of the federal income tax liability. The Company, according to witness Salengo, "is limited in the amount of investment tax credit it can take to $25,000 plus 85% of its tax liability. This restriction prevents companies from realizing a negative income tax liability." Witness Salengo further testified that a negative provision for current federal income tax expense used in the calculation of the working capital produced "the result of capital [being] provided by the investors rather than the ratepayers, a distortion of fact." Witness Schock testified that, as a compromise, the revenue lag should be assigned to the federal income tax current provision expense lag, producing a net lag of zero and therefore not increasing or decreasing the working capital requirement.

The Commission generally views the per books approach to the lead-lag study to be appropriate for determining investor funds advanced for operations. This position has been reaffirmed in many general rate case proceedings such as this one. However, a lead/lag study must reflect a period of representative transactions. If a transaction is nonrecurring and distorts the experience of a cost of service item, as in this case, it is appropriate to adjust the per books amounts to a representative level. The Commission concludes that Public Staff witness Salengo's adjustment to current federal income taxes is proper. Since the Company does not question witness Salengo's computation of the current provision, but only its treatment, the Commission finds that the assignment of $188,753 to this item rather than $(440,732) is thus proper and reasonable.

The remaining difference in the amount of $433,239 is due to a disagreement between the parties on the proper level of stored gas inventory to be included in the working capital allowance. The Company and the Public Staff are in agreement on the pricing of the stored gas inventory. The difference in stored gas inventory is due to the Company's use of a 13-month average of 3,042,561 dekatherms as of December 31, 1985, whereas the Public Staff recommended using the 13-month average of 2,780,821 dekatherms as of May 31, 1986, consistent with all other components of rate base. The Company agreed with the Public Staff that it was proper to update the materials and supplies inventory to reflect the 13-month average inventory level at May 31, 1986, but disagreed with the Public Staff's updating of stored gas inventory to May 31, 1986.

During cross-examination Public Staff witness Curtis stated that it was his understanding that the Company delayed injecting gas into storage in order to take advantage of the decrease in the commodity cost of gas effective May 1, 1986. The Company contended that the lag in injecting gas was unusual and resulted in an abnormally low level of stored gas as of May 31, 1986. Witness Curtis stated that the May 31, 1986, level he proposed was greater than the 13-month average for the calendar year 1984 and less than the 13-month average for the calendar year 1985. He stated that the average of the two calendar years was close to the level he proposed using in this proceeding.

The Commission concludes that although the Company's purchasing practices of natural gas are affected by price, which affects the storage level at a given point in time, a representative level of stored natural gas should be used in the determination of the working capital allowance. The level of 2,780,821 dekatherms proposed by the Public Staff is representative of the three-year average and reflects a going level of stored gas inventory. Further, this adjustment is consistent with the Commission's allowance of updates through May 31, 1986. The Commission therefore concludes, based on the evidence presented, that the proper level of stored gas for inclusion in the working capital allowance is $7,672,285.

Based on the foregoing, the Commission concludes that the reasonable and appropriate allowance for working capital for use in this proceeding is $11,457,883.

## EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 6

The evidence for this finding of fact is found in the testimony and exhibits of Company witness Schock and Public Staff witnesses Salengo and Curtis. The following table sets forth the net original cost rate base as proposed by the Company and the Public Staff as reflected in the parties' proposed orders:

| Item | Company | Public Staff | Difference |
|---|---|---|---|
| Plant in service | $241,594,390 | $241,594,390 | $ - |
| Unamortiz~~ed bala~~nce of CIS project | 579,479 | 579,479 | - |
| Accumulated depreciation | (75,523,524) | (75,523,524) | - |
| Allowance for working capital | 11,903,119 | 11,457,883 | (445,236) |
| Accumulated deferred income taxes | (24,285,808) | (24,285,808) | - |
| Cost-free capital | (258,000) | (258,000) | - |
| Original cost rate base | $154,009,656 | $153,564,420 | $ (445,236) |

On August 16, 1986, the Company filed supplemental testimony and exhibits in which it updated the levels of its plant in service and related accumulated depreciation to May 31, 1986. The Public Staff subsequently allocated a portion of the updated amounts to the Company's nonutility operations at the same percentage as the Company had allocated those amounts in its original filing.

During the course of the hearing, the Company accepted the Public Staff's allocation of an additional $109,673 in plant in service and $44,479 in related accumulated depreciation to the Company's nonutility operations reflecting the Company's update of rate base to May 31, 1986. As the Company and the Public Staff agreed that these were proper adjustments and were initially in agreement except for these two adjustments, the Commission concludes that the assignment of the above amounts of plant in service and accumulated depreciation to nonutility operations is proper and further concludes that the appropriate amount of plant in service is $241,594,390 and the proper amount of accumulated depreciation is $75,523,524.

In regard to the unamortized balance of the Company's Customer Information System (CIS) project costs, the Company agreed during the course of the hearing that the Public Staff's adjustment of $863,928 to exclude the labor-related costs was appropriate and that the proper level of the unamortized balance of the CIS projects was $579,479. The Commission therefore concludes, there being no evidence to the contrary, that the unamortized balance of the capitalized CIS project costs to include in rate base is $579,479, the amount recommended by the Public Staff and agreed to by the Company.

The only area of difference concerns the allowance for working capital. The Commission has previously found, in Evidence and Conclusions for Finding of Fact No. 5, that $11,457,883 is the proper allowance for working capital and therefore includes that amount for the working capital allowance in the determination of rate base in this proceeding.

The Company and the Public Staff agree that the proper amount of deferred income taxes to be deducted from rate base is $24,285,808. The Company and the Public Staff also agree that the proper level of cost-free capital to be excluded from rate base is $258,000. There being no evidence to the contrary, the Commission concludes that these amounts are reasonable and proper.

Based on the foregoing, the Commission concludes that the reasonable and appropriate original cost rate base for use in setting rates in this general rate case proceeding is $153,564,420.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 7

The evidence for this finding of fact is contained in the testimony of Company witnesses Dickey and Schock and Public Staff witnesses Curtis and Salengo.

The positions of the parties as to the amount of operating revenues under present rates are as follows:

| Item | Company | Public Staff | Difference |
|---|---|---|---|
| Natural gas sales | $194,996,004 | $196,628,217 | $ 1,632,213 |
| IST margin revenues | 2,261,699 | - | (2,261,699) |
| Miscellaneous revenues | 567,669 | 567,669 | - |
| Total | $197,825,372 | $197,195,886 | $ (629,486) |

Both the Company and the Public Staff were in agreement that the appropriate level of miscellaneous revenues to be included is $567,669. There being no evidence to the contrary, the Commission finds and concludes that miscellaneous revenues are $567,669.

The first area of difference between the Company and the Public Staff in calculating end-of-period revenues from natural gas sales concerns the appropriate end-of-period sales volume. Company witness Dickey used a sales volume of 411,938,140 therms, whereas Public Staff witness Curtis used a sales volume of 415,236,406 therms. The Company and the Public Staff both agreed that the total number of bills for all rate schedules to be used to determine end-of-period revenues is 1,921,526 bills. The difference between the two revenue figures results primarily from the conservation load loss adjustment made by witness Dickey. The adjustment was made to reflect the continuing decline in usage per customer of both the residential and small commercial classes as perceived by witness Dickey. The Company's conservation load loss adjustment resulted in the exclusion of 3,320,225 therms from former Rate Schedules 50 (residential) and 55 (small commercial) and resulted in the Company's proposed exclusion of $1,646,939 of revenues.

A regression analysis prepared by witness Dickey and introduced into evidence by the Public Staff as a cross-examination exhibit suggests that the average usage per bill based on normalized volumes for the residential class decreased from approximately 80 therms per bill to approximately 71 therms per bill over the period February 1982 through July 1986 - an 11.25% decrease. For small commercial customers, the comparable figures were approximately 426 therms per bill to approximately 406 therms per bill - a 4.7% decrease.

Witness Dickey stated that he eliminated from his regression analysis the September 30, 1985, data points showing increased usage for both rate schedules because he believed them to be unreliable. Although he suggested that these data points might have resulted from a weather normalization error, he was unable to explain the nature of the error and made no changes in his weather normalization program. The Public Staff, on the other hand, rejected the entire regression analysis as unreliable due to the exclusion of some of the data and argued that the evidence per Dickey cross-examination Exhibit A shows that usage per bill actually increased for the six-month period from December 31, 1985, through June 30, 1986, from approximately 69.5 therms to approximately 71 therms for Rate Schedule 50 and from approximately 404 therms to approximately 406 therms for Rate Schedule 55. Further, the Public Staff contends that an examination of all data points reveals that usage per bill was highly sporadic during the test period. The Public Staff rejected the conservation load loss adjustment and apparently made no independent study of usage per customer trends.

Upon review of the data used by witness Dickey in his regression analysis (reference Dickey cross-examination Exhibit A), the Commission concludes and agrees with the Company that there has been an obvious decline in the average usage per customer for both the residential and small commercial classes of customers. Further, on the basis of the Company's cross-examination of Public Staff witness Curtis, the reasons for this decline in usage per customer were set forth as follows: increased insulation and customer conservation efforts, increased efficiency in equipment designs, the replacement of old construction by more efficient methods of construction, and the replacement of less efficient equipment with newer equipment by customers. The Commission believes that these factors will in the future continue to impact the level of usage by the Company's customers. It is for these reasons that the Commission believes some adjustment for conservation load-loss is merited by the evidence set forth in this proceeding. However, the Commission is somewhat reluctant to accept the Company's adjustment in full based upon the arguments set forth by the Public Staff that the Company's regression analysis has omitted some of the necessary data. Therefore, based upon the evidence, the Commission concludes that in this proceeding the appropriate sales volumes level and revenues level in regard to this issue should be halfway between the levels proposed by the Company and the Public Staff in order to recognize a reasonable and fair amount of the impact of reduced usage per customer on the Company's residential and small commercial customers. Such an approach results in a natural gas sales revenue level under present base rates of $195,812,110 and reflects the Company's and the Public Staff's agreed upon adjustments for weather normalization, annualization, and customer growth. It also recognizes the exclusion of sales volumes associated with Washington Storage Service as discussed in the Evidence and Conclusions for Findings of Fact No. 8.

The Commission is of the opinion that the apparent decline in the average usage per customer over the last few years should be recognized in future revenue calculations. The Commission concludes that the Company, the Public Staff, and any other interested party should seek to develop an appropriate means of projecting future trends in usage per customer and should be prepared to discuss such projections as a part of the Company's next rate case.

The second area of difference between the Company and the Public Staff in the amount of $2,261,699 concerns the industrial sales loss which was not picked up through the Industrial Sales Tracker (IST) in the test year. Since the pro forma sales to heavy oil IST customers were lower than the sales on which the IST margin was based in the last general rate case, the Company would experience a margin short-fall which would be recovered from non-IST customers. The Company showed this IST revenue of $2,261,699 separately from the revenue produced under existing base sales rates because it says the revenue is realized under tariff mechanisms which are actually in effect. According to Public Staff witness Curtis, however, this adjustment is unnecessary since end-of-period revenues should reflect only the on-going level of sales at end-of-period base rates.

Both parties agree that the Company is entitled to this amount of revenue however it is treated. Further, the parties agree that this adjustment does not affect the final rates to be set by the Commission in this proceeding. Nevertheless, each holds strong views about the principles involved. Having considered the matter, the Commission is of the opinion that it is appropriate to recognize this revenue as present revenue produced under the IST mechanism. Such treatment is entirely consistent with the revenue realization principle which is fundamental to periodic income determination. Therefore, the Commission concludes that end-of-period revenues under present rates should include the actual effects of the existing IST mechanism. However it is treated, the Commission, the Company, and the Public Staff all agree that this amount is a part of the revenue the Company is entitled to receive.

In summary, the Commission finds, based upon the decisions made herein, that the appropriate level of operating revenues for use in this proceeding includes revenues from natural gas sales under present rates of $195,812,110, IST related revenues of $2,261,699, and miscellaneous revenues of $567,669 for total operating revenues of $198,641,478.

## 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, and Dickey and Public Staff witnesses Salengo and Curtis.

The following table sets forth the differences between the Company and the Public Staff with respect to operating revenue deductions as set forth in the parties' proposed orders:

| Item | Company | Public Staff | Difference |
|---|---|---|---|
| Purchased gas | $132,044,492 | $132,939,495 | $ 895,003 |
| Operation and maintenance | 25,744,521 | 25,409,568 | (334,953) |
| Depreciation and amortization | 7,409,719 | 7,409,719 | - |
| General taxes | 9,372,789 | 9,335,171 | (37,618) |
| State income taxes | 881,928 | 778,974 | (102,954) |
| Federal income taxes | 5,909,410 | 5,167,451 | (741,959) |
| Total operating expenses | $181,362,859 | $181,040,378 | $(322,481) |

The Company and the Public Staff agree that the proper level of depreciation and amortization expense is $7,409,719. During the course of the hearing the Company agreed with the Public Staff that its originally proposed level of depreciation and amortization expense of $7,416,382 should be adjusted downward by $6,663 to remove the depreciation expense associated with its nonutility operations. The Commission previously found in Evidence and Conclusions for Finding of Fact No. 6 that it was appropriate to allocate a portion of the Company's plant as of May 31, 1986, to nonutility operations. Therefore, the Commission concludes that the allocation of depreciation expense calculated on this plant is also appropriate and agrees with the parties that the proper level of depreciation and amortization expense is $7,409,719.

The difference between the Company and the Public Staff concerning the cost of gas in the amount of $895,003 is attributable solely to the different levels of end-of-period volumes used by the two parties. The Company and the Public Staff both used May 31, 1986, rates in calculating the cost of gas. In addition, Public Staff witness Curtis recommended, and the Company agreed, that all but the capacity costs associated with Washington Storage Service (WSS) should be excluded from the gas cost calculation since the volume levels of WSS is not determinable at this time. The parties agreed that these WSS storage costs associated with volume levels may be recovered as they occur in conjunction with any PGA filings.

Having rejected both the Company's and the Public Staff's proposed sales volumes level and decided that a reasonable level of sales volumes would be halfway between the parties' positions as discussed in the Evidence and Conclusions for Finding of Fact No. 7, the Commission also concludes that the appropriate cost of gas, supporting the sales volumes, for use in this proceeding is $132,491,993. Further, the Commission agrees with the parties that it would be appropriate to recover the storage costs (excluding capacity costs) associated with WSS in conjunction with the Company's PGA filings. Such treatment eliminates disputes over the amount and cost of usage of this Transco provided storage service.

The difference in operations and maintenance expense of $334,953 is made up of the following Public Staff adjustments:

| | Item | Amount |
|---|---|---|
| 1. | Nonutility allocation | $ (58,474) |
| 2. | Pro forma payroll and related costs | (200,861) |
| 3. | Advertising expense | (73,092) |
| 4. | Uncollectibles expense | (2,526) |
| 5. | Total | $(334,953) |

The first area of difference concerns the methodologies used by the parties in this proceeding to allocate various cost-of-service items which are residual expenses to nonutility operations. Public Service is involved in nonregulated activities including merchandising and jobbing (M&J), propane sales, and exploration of gas. The Company and the Public Staff agreed on the total level of residual expenses to be allocated; however, they disagreed on the factors to be used in making these allocations to the Company's nonregulated activities. The residual expenses to be allocated to the nonutility operations include: property insurance premiums expense, excess liability insurance premiums expense, executive risk insurance premiums expense, and American Gas Association (AGA) contributions expense.

Company witness Schock calculated individual factors for the Company's business segments relating to merchandising and jobbing operations and its other subsidiaries based on the percentage of the segment's operating revenue to the total operating revenue of all segments. The method used by witness Schock is the same as the Commission approved in the Company's last rate case in Docket No. G-5, Sub 200. Witness Schock, under cross-examination, testified that there were circumstances which might negate the appropriateness of gross revenue as a means of allocation such as further deterioration in utility revenues while nonutility revenues increased, or a shift in the Company's primary role to that of a transporter. Witness Schock stated that these conditions are being considered in a cost allocation study currently being conducted by the Company as required by the Commission Order in Docket No. G-5, Sub 200, issued November 20, 1985.

Public Staff witness Salengo in direct testimony stated that the three-factor formula he used for the allocation of residual expenses to nonutility operations (a mean average of relative payrolls, average net book value of assets, and operating revenues) combined three broad areas of management concern and lent stability to the allocation factor. Witness Salengo testified that the effects of a misallocation due to unusual circumstances in one area could be alleviated using his three-factor formula, whereas the use of single factor percentage could be unreliable as an indicator of overall activities and therefore nonrepresentative. In addition, witness Salengo testified that the use of the three-factor formula, is advocated by the Cost Accounting Standards Board (CASB) and the Federal Communications Commission. In its brief the Attorney General agreed that the Public Staff's recommended CASB three-factor formula approach was the appropriate allocation methodology in this regard.

This Commission did conclude in the Company's last general rate case proceeding in Docket No. G-5, Sub 200, that at that time the appropriate allocation factor was one based solely on revenues, although it agreed in theory with the three-factor formula adjustment then proposed by the Public Staff. Based on the Company's 1984 financial statements, the ratio of M&J revenues to total revenues was 1.86%, and the ratio of subsidiary revenues to total Company revenues was 1.47%. Comparable percentages in this rate case would be 2.351% allocated to M&J operations and 1.994% to subsidiary operations as proposed to be used by the Company in this proceeding. Public Staff witness Salengo's percentages for 1984 versus 1985 test year calculations using a three-factor allocator are: 3.74% (1984) versus 3.72% (1985) for M&J and 2.40% (1984) versus 2.70% (1985) for subsidiary operations. The Commission is aware that there has been some change in the revenue factor allocator used in the last case versus the one proposed by the Company for use in this case; however, the Commission finds that it is appropriate to use the revenue factor allocator as proposed by the Company in this proceeding. Since the Company is now making a study to determine a proper basis for allocation of these jointly incurred costs, the Commission sees no particular basis for changing the cost allocation methodology it used in the Company's last case prior to review of the results of the study. For this reason, the Commission will continue to use the revenue factor methodology that was found to be appropriate in the Company's last general rate case proceeding.

In making this determination the question remains as to what level of residual expenses the approved revenue factor should be applied for allocation purposes. As stated previously the Company and the Public Staff are in agreement on the base level of residual expenses to be allocated; however, through the Attorney General's cross-examination of Company witness Zeigler serious questions were raised as to the appropriateness of the Company and the Public Staff allocations of AGA dues to nonutility operations. The Attorney General submits in its brief filed in this docket that for the reasons which follow it is inappropriate to include more than 50% of the AGA dues in the Company's cost of service.

This Commission has previously recognized the need to examine more closely AGA expenditures so that a reasonable determination could be made as to the extent to which such costs are to be borne by ratepayers. In Docket No. G-100, Sub 44, after notice and comment, the Commission revised the G-1 minimum filing requirements to provide for more detailed data with respect to AGA expenditures. The final Order entered in that docket dictates the following filing requirements for Item 16a:

> In regard to association dues charged to account 930 - Miscellaneous General Expense provide the following:
>
> (1) Justification for inclusion of said dues in the Company's cost of service.
>
> (2) Explanation of the use of said dues by the Association receiving the dues.
>
> (3) Explanation of purpose and objectives of the association receiving dues from the Company.
>
> (4) Current annual budget of the association receiving dues from the Company by major category of activity; e.g., research, education administration, lobbying, etc.

In Public Service's last rate case, Docket No. G-5, Sub 200, the Company indicated its awareness of the revised G-1 minimum filing requirements and acknowledged their applicability to any of its subsequent rate case filings. Even though the revised G-1 requirements were inapplicable in Docket No. G-5, Sub 200, the Commission declared:

> ...[I]t 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.

A review of Public Service's G-1 filing in this case shows that its Item 16a does not fully comply with the Commission mandate in Docket No. G-100, Sub 44. The only portion of the data required by Item 16a, as revised, which was filed by the Company was the 1985 Final AGA Budget, admitted into evidence as Attorney General Zeigler cross-examination Exhibit No. 1. Moreover the only direct testimony relevant to AGA dues was the prefiled testimony of Company witness Zeigler to the effect that through this trade association the Company supported efforts to "influence legislation and regulation" in an attempt to control gas costs. In the opinion of the Attorney General, it cannot be said that by the foregoing the Company has gone forward with evidence sufficient to satisfy its burden of proving that these dues are an appropriate expense to be borne by its ratepayers. For these reasons it is the opinion of the Attorney General that it is unreasonable to permit the Company to pass 93.6% (per Public Staff) or 95.7% (per Company) of the cost associated with its membership in the AGA to its ratepayers.

Witness Zeigler agreed on cross-examination by the Attorney General that, among other things, the AGA engaged in a national campaign to market gas appliances and the Company's merchandising and jobbing as well as its propane operations benefitted from these efforts. He also acknowledged that according to the 1985 AGA Final Budget this national effort, which included communications with consumers, appliance dealers, and others within the industry, comprised approximately 55% of the Association's total annual budget. These components, when added to the Association's expenditures related to its government relations activities, comprise more than 60% of the total annual budget. An examination of Zeigler Exhibit Nos. 2 and 3 (AGA Program Plans 1986-1988 and AGA 1986 Resource Catalog) supports, according to the Attorney General, the conclusion that a substantial portion of the AGA budget is directed towards advertising, communications, marketing, and government relations and that these activities are a substantial benefit not only to the regulated operations of a natural gas distribution company but also its unregulated operations.

In summary, the Attorney General concluded that the AGA budget shows that more than 50% of the AGA 1985 expenditures benefits the nonutility operations either directly or indirectly. Thus, the Attorney General concluded that a 50% allocation of the AGA dues to the Company's ratepayers and 50% to its nonregulated operations would be appropriate.

Based on the evidence, the Commission believes that the Attorney General has rightfully raised questions concerning both the Company's 95.7% and the

Public Staff's 93.6% allocation of AGA contributions expense to the Company's ratepayers. The Company claims, and the record shows, some of the ways in which the public is benefitted from the AGA membership. For example, the AGA tests appliances and designs for efficiency and safety. It does research on utilization of gas and on safety standards and codes. It has committees working on all aspects of gas industry activities such as supply, operations, planning, employee training and education, marketing, affirmative action programs, and management activities. According to the testimony of Company witness Zeigler on cross-examination, the AGA is also engaged in a national campaign to market gas appliances, and the Company's merchandising and jobbing operations as well as its propane operations benefitted from these efforts. Furthermore, according to the 1985 Final AGA Budget and the testimony of witness Zeigler, approximately 55% of the budget is for communications with consumers, appliance dealers, and others within the industry in regard to this national campaign. The Commission believes that the AGA budget portion directed towards advertising, communications, marketing, and government relations may be a substantial benefit to the unregulated operations of a natural gas distribution company as well as its regulated operations. Furthermore, the Commission is very much concerned over the Company's incomplete response in fulfilling the G-1 minimum filing requirements for item 16a regarding association dues charged to account 930 - Miscellaneous General Expense. Based on the facts of this case, the Commission finds it appropriate to allow only 75% of the Company's AGA contributions expense to be included in the cost of service in this proceeding and demands that the Company comply with the minimum filing requirements of item 16a in all future general rate case proceedings. In view of this decision regarding the AGA contributions and in conjunction with the Commission's prior decision to allocate the other residual expenses using a revenue factor, the Commission concludes that the appropriate amount of residual expenses including AGA contributions to be allocated to nonutility operations is $155,745.

The next area of difference concerns pro forma payroll and related costs. Witness Salengo's calculation of the pro forma payroll and related costs differs from the Company's in the following respects: (1) the Company's use of estimated payroll based on January 31, 1986, levels versus the Public Staff's adjustment to recognize actual payroll as of May 31, 1986; (2) the Company's inclusions of pay increases to be granted past the close of the hearing versus the Public Staff's adjustment to recognize pay increases through the close of the hearing; and (3) the Company's use of overtime hours based on 1985 overtime hours versus the Public Staff's adjustment to recognize overtime levels as of May 31, 1986. The Company did not contest the Public Staff's payroll adjustments, as revised, except for the wage adjustments to remove the effect of payroll increases to be granted by the Company past the close of the hearing. There being no evidence to the contrary, the Commission concludes that the Public Staff adjustments updating payroll and related costs to May 31, 1986, recognizing pay increases through the close of the hearing and the use of overtime levels as of May 31, 1986, are appropriate for use in this proceeding.

The payroll adjustment made by the Public Staff which the Company does disagree with is over the Public Staff's elimination of the Company's reflection of the 4.2% wage increase for employees which is to become effective on December 7, 1986, under its union contracts. The Public Staff does not contest the fact that the increase will become effective as scheduled or the amount of the increase. Its sole position is that the effective date is after the date of the hearing in this case and, therefore, the increase should not be considered by the Commission. The Commission believes that this wage increase is a known and measurable change in the Company's costs that will be in effect during the period when the rates the Commission prescribes in this Order will be in effect. These contractual payroll expense increases are known or actual charges which are based upon circumstances and events occurring through the close of the hearing and the Commission finds that the inclusion of such expenses is necessary for determining a representative level of payroll expense. The Commission believes that in allowing the December 7, 1986, payroll increase it is appropriate to increase the Company's operation and maintenance expenses by $218,346 for a payroll adjustment of $211,617 and an associated pension expense adjustment of $6,729. Such adjustments reflect the Commission's inclusion of $176,749 relating to the annual effect of pay increases due union personnel in December 1986 and $34,868 relating to overtime hours at May 31, 1986, based upon the December 1986 wage increase. This $34,868 adjustment reflects the same percentage adjustment used by the Public Staff and accepted by the Commission in making the adjustment to reflect the impact of the December, 1985 pay increase for overtime hours as of May 31, 1986 rather than using the overtime level at December 31, 1985 as proposed by the Company.

The next issue in dispute is advertising expense. Witness Salengo allocated the expenses in Accounts 909, 913, and 930.10 less directory advertising equally between the Company's utility and nonutility (M&J) operations. He stated that he examined advertising copy whose costs were accounted for as utility operating expenses. In addition he included as Exhibit III samples of such copy involving billboard advertising. Witness Salengo testified that billboard advertising expense is a major component of the advertising costs of the Company. The other major component of advertising expense results from the Company's participation in the Transco Energy Marketing Program which involves advertising on behalf of the Licensed Gas Heating Dealers. Witness Salengo, under cross-examination by the Attorney General, was questioned about the possibility of allocating costs on an ad-by-ad basis rather than an overall 50% factor. He stated that, while he considered allocating costs on individual items, he was satisfied that a 50% allocation to utility operations and 50% to nonutility M&J operations would accomplish the same objective. Witness Salengo stated that, while he believed the advertising in question attempted primarily to sell appliances or bolster the Company's image, it also at least indirectly attempted to sell gas to residential customers. Since gas supply is currently abundant, it is of benefit to the Company's ratepayers to increase the volumes of gas sold. It is for this reason, stated witness Salengo, that he proposed the 50% allocation to utility and nonutility operations as he did in the Company's last general rate case.

The Company contended that it had already directly charged $51,953 of its advertising expenses to the M&J operations and to its propane subsidiary and that the further allocation as proposed by the Public Staff was improper.

The Commission finds the position of the Public Staff acceptable and concludes, based on the overall weight of the evidence, that it is appropriate to reduce the Company's proposed advertising expenses by $73,092 as proposed by the Public Staff to allow an equal sharing of advertising expenses between the Company's utility and nonutility operations.

Finally, the Company and the Public Staff proposed different levels of uncollectibles expense. Since this expense is computed directly based upon operating revenues and the Commission concluded in the Evidence and Conclusions for Finding of Fact No. 7 that the proper level of operating revenues was $198,641,478, then using the .342% uncollectible factor as agreed to by the Company and the Public Staff results in a proper uncollectibles expense amount of $679,354.

The proper level of operating and maintenance expenses, based on the foregoing, is $25,655,731.

The Company and the Public Staff differed by $37,618 with regard to general taxes. This difference is primarily due to gross receipts tax 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 and the uncollectibles expense amount of $679,354, the Commission finds that the proper level of gross receipts taxes is $6,374,380. The remainder of the difference in general taxes is due to a reduction in the amount of $13,919 in pro forma FICA taxes resulting from the decrease in pro forma payroll expense proposed by the Public Staff. As discussed previously the Commission found that it was proper to adjust the Company's payroll expenses to reflect the December 1986 payroll increase, likewise the Commission finds the related FICA tax increase of $15,131 to be proper. Based on the foregoing, the Commission concludes that the proper level of general taxes is $9,396,691.

The remaining differences in operating revenue deductions are the appropriate levels of state and federal income taxes. Since the Commission does not agree in total with either parties' position on rate base, revenues, and expenses, the Commission has made its own determination of the appropriate levels of income taxes to be used in this proceeding. The Commission concludes that the appropriate level of federal income tax expense is $5,877,277 and state income tax expense is $877,470. In its calculation of federal and state income tax expenses, the Commission has agreed with the parties that it is appropriate to recognize interest synchronization of job development investment tax credits in determining the proper level of income tax expense to include in the cost of service.

The federal income tax expense included in the cost of service in this case has been calculated based upon the Internal Revenue Code as it presently exists. The Commission takes judicial notice of the fact, however, that Congress has recently enacted the Tax Reform Act of 1986, a wide-ranging tax reform law which will, upon implementation, significantly reduce the federal tax rate of most, if not all, investor-owned public utilities (including Public Service) engaged in providing public utility services in North Carolina. This reduced federal tax rate, when effectuated, will have an immediate and favorable impact on the cost of providing public utility services to consumers in North Carolina. President Reagan signed the Tax Reform Act of 1986 into law on October 22, 1986.

By Order dated October 23, 1986, the Commission initiated a generic investigation in Docket No. M-100, Sub 113, to examine and quantify the benefits to be derived by the regulated utilities arising from the Tax Reform Act of 1986. To this end, the Commission concludes that it is reasonable and appropriate to approve the federal income tax component allowed in the cost of service in this case on a provisional rate basis effective January 1, 1987. Therefore, Public Service shall bill and collect the federal income tax expense component of the rates and charges approved in this proceeding on a provisional rate basis pending further investigation and disposition of this matter, with accompanying deferred accounting for the amount of reduced federal taxes. Specifically, effective January 1, 1987, Public Service is directed to place in a deferred account the difference between revenues billed under the rates approved in this proceeding, including provisional components thereof, and revenues that would have been billed had the Commission in determining the attendant cost of service in this case based the federal income tax component thereof on the Internal Revenue Code as amended by the Tax Reform Act of 1986. It should be assumed that all other parameters entering into the cost-of-service equation are held constant.

In summary, based on all the foregoing evidence, the Commission concludes that the appropriate level of operating revenue deductions in this proceeding is $181,708,881, which consists of the following items:

| Item | Amount |
|---|---|
| Purchased gas | $132,491,993 |
| Operation and maintenance expense | 25,655,731 |
| Depreciation | 7,409,719 |
| General taxes | 9,396,691 |
| State income taxes | 877,470 |
| Federal income taxes | 5,877,277 |
| Total operating revenue deductions | $181,708,881 |

## EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 9

The evidence for this finding is contained in the testimony and exhibits of Company witness Schock and Public Staff witness Salengo.

Public Staff witness Salengo testified that the treatment of Transco refunds has been an issue in the last two Public Service general rate cases and also in rate cases involving other natural gas companies. He stated that in Docket No. G-5, Sub 200, Public Service's last general rate case, the Commission found it proper to deduct the net-of-tax Transco refunds from the Company's rate base because they were a source of cost-free capital. Witness Salengo, in his direct testimony, stated that the Commission considered only a portion of the effects resulting from the Company's treatment of the Transco refunds. The remaining issue, according to witness Salengo, was discussed in the Commission's final Order in that docket in which the Commission found that these refunds, less income taxes paid on them, flowed to the Company's retained earnings where they continue to reside. Witness Salengo testified that the retained earnings, which are a part of shareholders' equity, are overstated by $258,000 and proposed deducting this amount from the equity component of the Company's capital structure in order to prevent the ratepayers from paying a return on capital that they provided to the Company. This proposed treatment of deducting the Transco refunds from the Company's common equity component of the capital structure was approved by the Commission in the North Carolina Natural Gas rate case Order in Docket No. G-21, Sub 235, issued November 10, 1986.

Company witness Schock, in redirect testimony, stated that, in the years when the Company was paying excessive gas costs, Public Service's retained earnings were reduced because of increased expenses incurred for purchased gas. Thus, when the Company received the Transco refunds and credited them to the cost of gas expense account, retained earnings were increased by $258,000. Witness Schock stated that the "overall impact was to have no effect at all on retained earnings or the Company's equity."

The Commission concludes, based on all the evidence presented and taking judicial notice of the court rulings and prior Orders regarding this issue, that it is appropriate to treat these refunds as cost-free capital supplied by ratepayers. 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 clear that these costs were recovered and were, of necessity, recovered solely from ratepayers. In order to prevent ratepayers from paying any return on this cost-free capital, the Commission finds that it is proper to reduce rate base by the net-of-tax refunds of $258,000 and also to remove refunds from the common equity component of the capital structure.

## EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 10

The evidence for this finding is contained in the testimony and exhibits of Company witnesses Flanagan, Murphy, and Vander Weide and Public Staff witness O'Donnell.

The Company originally requested that the Commission employ the Company's end-of-period capitalization ratios, excluding short-term debt, at December 31, 1985. However, at the time of the hearing the Company updated its request and recommended that the Commission employ the end-of-period capitalization ratios, excluding short-term debt, at May 31, 1986. The Public Staff proposed two different capital structures and rate base levels in recognition of the relationship between short-term debt and gas inventory. In the first proposal the Public Staff recommended the employment of the Company's average capital structure during the 12 months ended May 31, 1986, including short-term debt at an average daily balance. In conjunction with this capital structure, the Public Staff recommended that an average level of gas inventory be placed in the rate base and that the rate base be allocated according to the proposed capital structure. In the second proposal, the Public Staff recommended the employment of the Company's end-of-period May 31, 1986, capital structure, excluding short-term debt, but in conjunction with this capital structure the Public Staff recommended that gas inventory be excluded from the rate base. In both of the Public Staff proposals, the common equity portion of the capital structures was reduced due to Transco refund accounting adjustments that were discussed in Public Staff witness Salengo's direct testimony. The Commission has concluded in Evidence and Conclusions for Finding of Fact No. 9 that the deduction of Transco refunds from the equity component is reasonable and proper for use in this proceeding. Even though the Public Staff recommended two proposals in this case, it specified that the first proposal be its primary recommendation since the use of an average capital structure captures the seasonal fluctuations in the Company's capitalization ratios and matches the gas inventory with short-term debt. The capital structures, embedded cost rates, and associated rate bases proposed by the Company and the Public Staff are as follows:

Company

| Item | Percent | Embedded Cost |
|---|---|---|
| Long-term debt | 49.77% | 11.16% |
| Preferred stock | 4.12% | 6.98% |
| Common equity | 46.11% | - |
| Total | 100.00% | |

Note
The Company included gas inventory in rate base and allocated a recommended rate base of $154,009,656 according to these capitalization ratios.

Public Staff Proposal I

| Item | Percent | Embedded Cost |
|---|---|---|
| Long-term debt | 46.53% | 11.16% |
| Short-term debt | 9.94% | 7.50% |
| Preferred stock | 3.88% | 6.98% |
| Common equity | 39.65% | - |
| Total | 100.00% | |

Note
In this proposal the Public Staff included gas inventory in rate base and recommended that a rate base of $153,564,420 be allocated according to these capitalization ratios.

Public Staff Proposal II

| Item | Percent | Embedded Cost |
|---|---|---|
| Long-term debt | 49.87% | 11.16% |
| Preferred stock | 4.12% | 6.98% |
| Common equity | 46.01% | - |
| Total | 100.00% | |

Note
In this proposal the Public Staff excluded gas inventory from rate base and recommended that a rate base of $145,892,135 be allocated according to these capitalization ratios.

Public Staff witness O'Donnell stated that in his opinion the Company's requested capital structure does not accurately reflect the financing of its rate base investment. He stated: "Based upon my examination of how the Company finances, it is obvious that short-term debt finances the Company's gas inventory which is included in its proposed rate base. As a result, I feel that the Company's proposal to exclude short-term debt from the capital structure is inconsistent with its proposed rate base." Witness O'Donnell presented several exhibits relating to short-term debt, including one graphing the short-term debt and common equity ratios as percents of total capitalization for the December 1978 through June 1986 period, one comparing the level of short-term debt to the level of construction work in progress (CWIP) over that same period, and one comparing the level of short-term debt to the level of gas inventory balances for that same period. He stated that, due to his examination of Public Service's employment of short-term debt, he concluded that the Company employs "short-term debt to such an extent that occasionally, and as recent as the last 4 or 5 months of the test year, short-term debt comprised over 10% of total capital including short-term debt." He stated that in his opinion the amount of short-term debt liability would warrant investors to consider it in pricing Public Service's securities and its inclusion by the Commission in the Company's capital structure. Mr. O'Donnell further stated that clearly the short-term debt balances have, on average, significantly exceeded the CWIP balances and have tended to be closer to the level of gas inventory, a rate base item. In addition, Mr. O'Donnell cited in his direct testimony that the Company's 1985 Annual Report, the prefiled testimony of Company witness Flanagan, and the cross-examination testimony of witness Flanagan in the last Public Service general rate case (Docket No. G-5, Sub 200) all show that short-term debt finances gas inventory. Based on his examination of how the Company finances its rate base investment, Mr. O'Donnell concluded that it was improper to place gas inventory in the rate base and exclude short-term debt from the capital structure. In his opinion, it was unfair for ratepayers to pay the Company a return on that gas inventory but not receive any of the benefits of the short-term debt.

During cross-examination Public Staff witness O'Donnell was questioned quite extensively on the adequacy of his recommendation. The Company attempted to show that under his recommendation the Company would only qualify for a "BBB" Standard & Poor's credit rating. Mr. O'Donnell pointed out that Public Service's bonds were not rated and that the Standard & Poor's credit rating financial benchmarks were not concrete rules but were instead quite flexible. Witness O'Donnell also noted that the spread between "A" rated and "BBB" rated bonds was in the range of 20 to 25 basis points.

Company witnesses Flanagan, Murphy, and Vander Weide all recommended the use of a capital structure excluding short-term debt. Mr. Flanagan was cross-examined extensively by the Public Staff on the issue of inclusion of short-term debt in the appropriate capital structure to employ for ratemaking purposes. He stated that one of the main problems with the inclusion of short-term debt in the capital structure is the determination of the proper short-term debt cost rate to assign to the short-term debt. Under cross-examination, Mr. Flanagan stated that at the time of the hearing Public Service was borrowing short-term debt at 5.95% to just over 6%. However, it was the Public Staff's proposal to assign short-term debt a cost rate of 7.5%, which was the prime rate at the time of the hearing. Furthermore, witness Flanagan admitted that the Company was accruing AFUDC at a 12.45% rate, which was its overall rate of return granted in its last rate case (Docket No. G-5, Sub 200), but was able to finance short-term debt at approximately 6%.

Witness Flanagan also urged the Commission not to include short-term debt in the Company's capital structure but to assume that short-term debt will be repaid by some type of long-term financing. It was the Company's contention that short-term debt was not permanent capital. Under cross-examination, however, witness Flanagan admitted that short-term debt was outstanding on the Company's books for 64 out of the last 66 months. He also admitted that the only two months that short-term debt was not part of the Company's total capitalization were August 1982 and April 1985, which were the months the Company issued long-term debt. Witness Flanagan further agreed that shortly after these long-term debt issuances the Company quickly built up its level of short-term debt to a significant portion of its total capitalization.

Witness Flanagan attempted to discount the correlation between short-term debt and gas inventory and stated that short-term debt had a stronger correlation to the Company's construction and sinking fund requirements. To support this argument he supplied a graph which he believed showed this correlation. However, this exhibit showed that since April 1985 the level of the Company's CWIP and sinking fund requirements have closely tracked its level of internally generated funds and funds arising from its Dividend Reinvestment and Stock Purchase Plan. Furthermore, there was no item on this exhibit that was labeled as short-term debt. During examination of witness Flanagan, the Public Staff asked if the Company could provide an exhibit showing a correlation on a month to month basis over a period of five to six years between short-term debt and any other item that they felt short-term debt was related to. Counsel for Public Service stated that the Company could not provide such a graph.

The Commission notes that the evidence in this case indicates that investors do consider short-term debt in their appraisal of a company's financial standing. During cross-examination, Company witness Vander Weide stated that, "Investors would certainly recognize the amount of short-term debt that the firm has in its capital structure." Company witness Murphy, in his direct testimony, stated that Standard & Poor's considered permanent capital for gas utilities to include "the sum of long-term debt, including current maturities, short-term borrowings used for bridge financing, and all stockholders' equity." (emphasis added). During cross-examination, Company witness Flanagan admitted that Public Service used short-term debt as bridge financing. The following is an excerpt from that cross-examination:

> "Q. Mr. Flanagan, does Public Service on a continuing basis--excuse me--
>
> Mr. Flanagan, does Public Service on a continuing long-term basis use funds from their long-term debt issuance to replace their short-term debt?
>
> A. Yes. When we sell securities, the first application of the proceeds is to repay the bank loan.
>
> Q. And so you use short-term debt as a bridge financing?
>
> A. Yes; interim financing."

The Commission has considered all the evidence in this case and finds the Company's proposal to include gas inventory in rate base while excluding short-term debt from the capital structure to be inappropriate in this proceeding. In view of all the evidence, the Commission finds that gas inventory should be included in the Company's rate base and that short-term debt should also be included in the Company's capital structure.

The return allowed should reflect the capitalization ratios which support the rate base. Witnesses for both the Company and the Public Staff testified that short-term debt supports the rate base item of gas inventory. In regard to his testimony in the previous Public Service rate case, Mr. Flanagan was questioned in this proceeding and answered as follows:

> "Q. Okay. And so from your testimony in the last case, as I understand it then, the short-term debt of the company is self-liquidating with gas inventory?
>
> A. Yeah. We borrow money to build the gas inventory and that build-up in stored gas inventory occurs in the summer and fall each year and as that happens, then we have to go to the bank and borrow money to fund that inventory until later when the gas is withdrawn from storage and sold and converted to receivables and then to cash, then we pay down those notes. So, in that respect, they are self-liquidating."

The Commission notes that, as brought out during cross-examination, Mr. Flanagan's testimony comports with the Company's statements on page 18 of its 1985 Annual Report to its shareholders:

> "Short-term bank loans are also used for the seasonal financing of storage gas inventories. These loans, either conventional or bankers' acceptances, are repaid from the funds generated by the winter sale of the stored gas."

The evidence also shows that short-term debt has been present in the Company's capital structure for 64 out of the last 66 months and, on average, has accounted for approximately 10% of its total capitalization. In addition, Company witness Vander Weide and Public Staff witness O'Donnell both testified that investors certainly recognize the amount of short-term debt in the Company's capital structure. Furthermore, the Commission notes from Murphy Schedule 3 that Standard and Poor's considers short-term debt of gas utilities to be permanent capital when used as bridge financing. During cross-examination, witness Flanagan stated that Public Service did indeed use short-term debt as bridge financing. As a result, this Commission has no doubt that the investment community factors short-term debt into their evaluation of the Company. The Company attempted to show that the use of a 12-month average capital structure ended May 31, 1986, would result in the Company's long-term debt being rated "BBB," which the Commission notes is still an investment grade rating. However, the Company witnesses themselves presented evidence showing that at least one rating agency, Standard & Poor's, already considers short-term debt to be permanent capital for gas utilities. As a result the Commission realizes that ratepayers are already paying higher long-term debt rates due to the Company's use of short-term debt. Short-term debt has been present in the Company's capital structure every month except two for the last 5 1/2 years, and long-term debt investors have surely considered this use of leverage by the Company. The use of short-term debt by the Company is by its own choice, and the Public Staff's proposal to include short-term debt in the capital structure accurately reflects the ongoing financing of the Company's rate base investment. It appears absent the assignment of short-term debt to the financing of the Company's rate base, the rate base investment would exceed the total capital of the Company from other sources. The impropriety of such a result is self evident. The Commission's calculation of the average capital structure is based upon the methodology proposed by the Public Staff. The capital structure so derived is reasonable and appropriate for use in this proceeding.

In determining the appropriate amount of short-term debt to be included in the capital structure, the Commission has reduced the actual average amount of short-term debt outstanding during the test-year as updated by an amount equal to the average balance of CWIP maintained during the test year as updated. Implicit in this allocation of short-term debt is the assumption that such debt is the sole basis for the funding of investment in CWIP. Therefore, consistency and equity require that on a prospective basis Public Service should be required to develop its Allowance for Funds Used During Construction (AFUDC) rate by first assuming that investment in CWIP is supported by short-term debt capital. If the average balance of short-term debt exceeds the average investment in CWIP, the proper AFUDC rate is the short-term debt cost rate net of the interest tax subsidy. To the extent that the most current actual annual average of short-term debt outstanding is less than the most current actual annual average of investment in CWIP, it should be assumed that this residual balance is financed by capital with a cost rate equal to the overall rate of return last found fair by this Commissiom net of the long- and short-term debt interest tax subsidy.

Witness Flanagan contended that the determination of the appropriate cost rate for short-term debt is a problem. The Commission notes that the evidence in this proceeding regarding the appropriate cost of equity is complicated and conflicting. This fact does not relieve the Commission of the responsibility of determining its cost. Nor does any party contend that,' because of the difficulty of determining its cost, common equity should be excluded from the capital structure. In view of Mr. Flanagan's testimony regarding the prime rate and the uncontradicted evidence that the Company has been able to borrow at rates substantially below prime, the Commission finds 7.5% to be a reasonable cost rate for short-term debt at this time.

Based upon the above, the Commission finds that the fair and reasonable capital structure to be employed in this proceeding is the following:

| Item | Percent |
|---|---|
| Long-term debt | 47.6 % |
| Short-term debt | 7.86% |
| Preferred stock | 3.97% |
| Common equity | 40.57% |
| Total | 100.00% |

## EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 11

Three witnesses testified for the Company regarding the cost of capital. They were Dr. James Vander Weide, Charles J. Murphy, and E. L. Flanagan, Jr. Kevin W. O'Donnell testified on the cost of capital for the Public Staff.

In their proposed orders, both the Company and the Public Staff agreed that the cost of long-term debt and preferred stock was 11.16% and 6.98%, respectively. In the Evidence and Conclusions for Finding of Fact No. 10, the Commission found 7.5% to be a reasonable cost rate for short-term debt in this proceeding. The discussion for this conclusion will not be repeated in this section of the Order. The Commission finds and concludes that the cost of long-term debt, short-term debt, and preferred stock is 11.6%, 7.5%, and 6.98%, respectively.

With respect to the cost of common equity, the Company and the Public Staff disagreed as to the appropriate cost for Public Service to be included in this proceeding. Dr. Vander Weide in his originally filed testimony testified that he first studied current economic conditions in the capital markets and then investigated particular factors that affect the performance of Public Service. He found that companies such as Public Service had been hard hit by deregulation, increased competition, and other changes in the natural gas industry. He stated that Public Service was likely to have some very bad financial years ahead unless it gets significant rate relief and price restructuring in this case. He applied two generally accepted methods for measuring the cost of equity capital to Public Service: (1) the Discounted Cash Flow method (DCF) and (2) the Risk Premium test. On the basis of these tests, he concluded that the cost of equity to Public Service at December 31, 1985, was 15.25%. At the time of hearing, he updated his studies to May 31, 1986, to reflect the changes that had occurred in the capital markets since the end of the year. The fair rate of return on equity capital at May 31, 1986, was determined by Dr. Vander Weide to be 14.31% and the overall cost of capital for the Company was determined to be 12.44%. During cross-examination of Dr. Vander Weide, the Public Staff presented Public Staff Vander Weide Cross-Examination Exhibit No. 4 and argued that, if he had updated his cost of equity analysis through September 1986, his DCF results would have been 13.1% instead of his recommended 14.31%. Dr. Vander Weide cautioned, however, that if the cost of common equity capital is to be updated through September 1986, then all other parameters entering into the cost of service equation should also be updated through September 1986.

Mr. Murphy testified that Public Service should position itself to obtain a strong A rating on its bonds and preferred stock. To accomplish this objective, it was the opinion of witness Murphy that the Company must achieve and maintain a pre-tax interest coverage comfortably in excess of three times, preferably in the 3.5 times range. Further, to accomplish this coverage, witness Murphy stated that the Company must at least earn the returns recommended by Dr. Vander Weide.

Mr. Flanagan testified that Public Service needed to raise $77.3 million of new capital in the 1986-1988 period for new construction and for sinking fund requirements. In 1985, the Company's earnings were $1.20 per share and its dividend was $1.80, resulting in a payout ratio of 150% compared with a reasonable objective of 60% to 65%. Even with the full increase sought, the payout ratio would be about 80%, according to witness Flanagan, which is very high. Using Public Staff witness O'Donnell's recommended return the Company would have a payout ratio of 93%. Test year earnings provided a coverage as defined in the Company's indenture of only 1.84 times. At that point, the Company could not issue any long-term debt and the Company's financing ability was in jeopardy. Witness Flanagan testified that higher earnings and realistic rate design are vital to the Company's sound financial condition.

Public Staff witness O'Donnell relied upon the annual DCF model to determine the cost of common equity of the Company. He performed a DCF analysis on Public Service independently as well as on 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 February 24, 1986, to August 16, 1986. This resulted in a dividend yield of 7.5% for Public Service and 6.6% for the comparable group. To estimate the expected growth in dividends Mr. O'Donnell employed several methods. The first of these methods was log-linear "least squares" regression of earnings, dividends, and book value on a per share basis. The second method was the plowback or retention method, and the third method was the use of Value Line forecasts of earnings, dividends, and book value per share. The final method he employed was a method adopted from Value Line which calculates the growth in earnings, dividends, and book value from 10- and five-year periods. Witness O'Donnell noted that since Value Line does not cover Public Service and the Company could not supply any long-term forecasts, he was not able to employ the Value Line forecasted growth rate or the plowback growth rates for Public Service. These methods resulted in an average growth rate of 4.7% to 5.0% for Public Service and 4.9% to 5.6% for the comparable group.

Witness O'Donnell determined the cost of equity to Public Service to be in the range of 12.0% to 12.5% and recommended that the Commission recognize 12.5% to be its cost to the Company. He then adjusted for the selling expense incurred by the Company in issuing new common stock by calculating the Company's weighted average selling expense as a percent of book common equity. Mr. O'Donnell calculated this expense to be .13%, which he added to his previously determined barebones cost of equity to produce a range of 12.15% to 12.65% and recommended a 12.65% cost.

In its Brief, the Attorney General recommended that the Commission only allow the Company an opportunity to earn a return on common equity capital of 12.5%.

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 being guided by the testimony of expert witnesses and other evidence of record. Whatever return is allowed must balance the interests of the ratepayers and investors and meet the test set forth in G.S. 62-133(b)(4):

> "...(to) enable the public utility by sound management to produce a fair return for its stockholders, considering changing economic conditions and other factors, as they then exist, to maintain its

> facilities and services in accordance with the reasonable requirements of its customers in the territory covered by its franchise, and to compete in the market for capital funds on terms which are 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, 388, 206 S.E. 2d 269 (1974).

The foregoing discussion indicates a considerable difference between the Company and the Public Staff in both the methodologies used and the results obtained concerning the cost of equity to Public Service. The Commission finds that the reasonable rate of return for Public Service to be allowed on its common equity is 13.75%. Combining this determination with the appropriate capital structure and cost rates heretofore determined yields an overall just and reasonable rate of return of 11.76% to be applied to the Company's original cost rate base. Such a rate of return will enable Public Service by sound management to produce a fair return for its stockholders, to maintain facilities and services in accordance with the reasonable requirements of its customers, and to compete in the market for capital funds on terms which are reasonable and fair to the customers and existing investors.

The authorized rate of return on common equity of 13.75% 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 Docket No. G-5, Sub 200, when Public Service was allowed a rate of return on common equity of 14.90%. Furthermore, current interest rates are stable, and the cost of financing is clearly lower than it has been in several years. However, due to the Company's need for significant funds for capital expansion in accordance with the reasonable requirements of its customers in its franchised service areas, it is absolutely essential that its financial health be maintained. The 13.75% rate of return on common equity allowed in this proceeding reflects and recognizes the fact that the risk of Public Service will increase somewhat as a result of the approval of Rider D and the discontinuance of the IST. The Commission is further of the opinion that the inclusion of short-term debt in the capital structure will also increase the riskiness of the Company. Furthermore, the Commission is well aware of the current volatility of the gas market. Public Service faces the substantial risk of customers switching to oil or obtaining their own gas. Approximately 40% of the Company's sales volumes go to industrial customers that are on negotiable rates. All of these factors certainly affect the reasonable rate of return which the Company should be allowed in this proceeding. The Commission recognizes that Public Service is an efficient and well-managed gas utility and, in recognition thereof, has authorized an appropriate rate of return in this proceeding which is consistent with such fact and with current economic conditions and applicable risk considerations.

The Commission believes that the rate of return on common equity of 14.31% requested by the Company is clearly excessive, while the rate of return on common equity of 12.65% recommended by the Public Staff is too conservative. Therefore, it is the judgment of the Commission, after weighing the conflicting testimony offered by the expert witnesses, that the reasonable and appropriate rate of return on common equity for Public Service is 13.75%. It is well settled law in this State that it is for the administrative body, in an adjudicatory proceeding, to determine the weight and sufficiency of the evidence and the credibility of the witnesses, to draw inferences from the facts, and to appraise conflicting evidence. Commissioner of Insurance v. Rate Bureau, 300 N.C. 381, 269 S.E. 2d 547 (1980). State ex rel. Utilities Commission v. Duke Power Company, 305 N.C. 1, 287 S.E., 2d 786 (1982). The Commission has followed these principles in good faith in exercising its expert judgment in determining the fair and reasonable rate of return in this proceeding.

The Commission cannot guarantee that Public Service will, in fact, achieve the levels of return on rate base and common equity herein found to be just and reasonable. Indeed, the Commission would not guarantee the authorized rates of return even if it could. Such a guarantee would remove necessary incentives for the Company to achieve the utmost in operational and managerial efficiencies. The Commission believes, and thus concludes, that the rates of return approved in this docket will afford the Company a reasonable opportunity to earn a fair and reasonable return for its stockholders while providing adequate and economical service to ratepayers.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 12

The Commission has previously discussed its findings and conclusions regarding the fair rate of return which Public Service Company should be given the opportunity to earn.

The following schedules summarize the gross revenues and the rates of return which the Company should have a reasonable opportunity to achieve based on the rates approved herein. Such schedules, illustrating the Company's gross revenue requirements, incorporate the findings and conclusions heretofore and herein approved by the Commission.

## SCHEDULE I
## PUBLIC SERVICE COMPANY OF NORTH CAROLINA, INC.
## Docket No. G-5, Sub 207
## STATEMENT OF OPERATING INCOME
## For the Test Year Ended December 31, 1985

| Item | Present Rate | Increase Approved | Approved Rates |
|---|---|---|---|
| Operating Revenues: | | | |
| Natural gas sales | $198,073,809 | $2,234,598 | $200,308,407 |
| Miscellaneous revenues | 567,669 | 57,569 | 625,238 |
| Total operating revenues | 198,641,478 | 2,292,167 | 200,933,645 |
| Operating Expenses: | | | |
| Purchased gas | 132,491,993 | - | 132,491,993 |
| Operating and maintenance expense | 25,655,731 | 7,839 | 25,663,570 |
| Depreciation | 7,409,719 | - | 7,409,719 |
| General taxes | 9,396,691 | 73,555 | 9,470,246 |
| State income taxes | 877,470 | 132,646 | 1,010,116 |
| Federal income taxes | 5,877,277 | 955,939 | 6,833,216 |
| Total operating expenses | 181,708,881 | 1,169,979 | 182,878,860 |
| Net operating income | $ 16,932,597 | $1,122,188 | $ 18,054,785 |

## SCHEDULE II
## PUBLIC SERVICE COMPANY OF NORTH CAROLINA, INC.
## Docket No. G-5, Sub 207
## STATEMENT OF RATE BASE AND RATE OF RETURN
## For the Test Year Ended December 31, 1985

| Item | Amount |
|---|---|
| Plant in service | $241,594,390 |
| Accumulated depreciation | (75,523,524) |
| Working capital | 11,457,883 |
| Accumulated deferred income taxes | (24,285,808) |
| Cost-free capital - Transco refunds | (258,000) |
| Unamortized balance of CIS project | 579,479 |
| Originial cost rate base | $153,564,420 |

| Rate of Return | |
|---|---|
| Present rates | 11.03% |
| Approved rates | 11.76% |

SCHEDULE III
PUBLIC SERVICE COMPANY OF NORTH CAROLINA, INC.
Docket No. G-5, Sub 207
STATEMENT OF CAPITALIZATION AND RELATED COSTS
For the Test Year Ended December 31, 1985

| Item | Capital-ization Ratios | Original Cost Rate Base | Embedded Cost % | Net Operating Income |
|---|---|---|---|---|
| | Present Rates - Original Cost Rate Base | | | |
| Long-term debt | 47.60% | $73,096,664 | 11.16% | $ 8,157,588 |
| Short-term debt | 7.86% | 12,070,164 | 7.50% | 905,262 |
| Preferred stock | 3.97% | 6,096,507 | 6.98% | 425,536 |
| Common equity | 40.57% | 62,301,085 | 11.95% | 7,444,211 |
| Total | 100.00% | $153,564,420 | | $16,932,597 |
| | Approved Rates - Original Cost Rate Base | | | |
| Long-term debt | 47.60% | $73,096,664 | 11.16% | $ 8,157,588 |
| Short-term debt | 7.86% | 12,070,164 | 7.50% | 905,262 |
| Preferred stock | 3.97% | 6,096,507 | 6.98 | 425,536 |
| Common equity | 40.57% | 62,301,085 | 13.75% | 8,566,399 |
| Total | 100.00% | $153,564,420 | | $18,054,785 |

## EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 13, 14, 15, AND 16

The evidence regarding rate design issues is found in the testimony and exhibits of Company witnesses Zeigler and Dickey and Public Staff witnesses Davis, Curtis, and Nery.

### Rate Classifications

The Company proposed a major revision of its rate classifications based on alternate fuels for its large commercial and industrial customers. The Company also proposed to establish separate rate classifications within the residential and small commercial classes for year-round service and for heating service only. The proposed new rate classifications are:

| Rate No. | Description |
|---|---|
| 10 | Residential - Heat Only |
| 12 | Residential - Year-Around |
| 15 | Commercial and Small Industrial - Heat Only |
| 17 | Commercial and Small Industrial - Year-Around |
| 20 | Commercial and Industrial Using in Excess of 50 DT Per Day With Either Propane as an Alternate Fuel or No Industrial Alternate Fuel Capability |
| 25 | Commercial and Industrial Using in Excess of 50 DT Per Day With No. 2 Fuel Oil as an Alternate Fuel |
| 30 | Commercial and Industrial Using in Excess of 50 DT Per Day With No. 4, No. 5, or No. 6 Fuel Oil as an Alternate Fuel |
| 32 | Incrementally Priced Boiler Fuel Customers |
| 35 | Flat Rate Gas Lights |
| 40 | Special Services Rate |
| 45 | Transportation Rate Applicable to Customers Normally Served on Rate 20 |
| 46 | Transportation Rate Applicable to Customers Normally Served on Rate 25 |
| 47 | Transportation Rate Applicable to Customers Normally Served on Rate 30 or 32 |

Company witness Dickey testified that the existing priorities of service should be retained in the event they are needed for an emergency curtailment due to gas supply shortages. However, he proposed that routine winter time curtailments due to weather be made in the order of rate classifications, beginning with Schedules 30/32, then Schedule 25, then Schedule 20, etc. Both the Public Staff and CUCA supported the Company's proposals in this regard.

The Commission concludes that the proposed reclassification of the rate schedules and the accompanying restructuring of routine curtailment priorities as proposed by the Company are reasonable and will not result in any undue hardship on any customer class.

Summer/Winter Differentials

Company witness Dickey proposed summer/winter differentials for residential and small commercial customers in Schedules 10, 12, 15, and 17 based on the levels approved by the Commission in the last general rate case for Piedmont Natural Gas Company. He proposed summer/winter differentials for commercial and industrial customers in Schedules 20, 25, 30, and 32 based on the customary savings in alternate fuel prices for the summer and winter seasons.

Public Staff witness Curtis proposed summer/winter differentials for all customers based on the costs of gas storage allocated to the various rate classes. He contended that there is no correlation between the differentials appropriate for Piedmont and those appropriate for Public Service because the rates needed to recover the storage costs from winter customers were not the same for the two companies and that Piedmont's storage costs per dt were higher than Public Service's storage costs.

The Commission notes that there are no summer/winter differentials currently in place for Public Service and that a transition to summer/winter differentials would be appropriate. The Commission also notes that the Public Staff raised the samé concerns regarding summer/winter differentials in the Piedmont case as it did in this case and that the discussions of the issue in both cases suggest that the cost of storage is a valid consideration in establishing such differentials although there may also be other valid considerations. The Commission concludes that the summer/winter differentials established in this proceeding should be at levels between those proposed by the Company and the Public Staff. They should also reflect the need to move the rates of return for the various rate classes closer to the overall rate of return and the need to avoid excessive increases for any given rate class.

## Customer Class Rates of Return

The Company proposed to adjust rates for its several rate classes by varying percentage increases and decreases 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 rates for residential (heat only) customers by 29.06% in the winter and for residential (year around) customers by 19.72% in the winter and 9.75% in the summer; to increase rates for commercial and small industrial customers (heat only) by 25.63% in the winter and for commercial and small industrial customers (year around) by 17.46% in the winter and 7.24% in the summer; and to decrease rates for most large commercial and industrial customers using in excess of 50 dt per day by an amount ranging from 10.11% to 17.04%. CUCA supported the rate design and rate levels proposed by the Company.

Company witness Dickey testified that the most important principle to be considered in designing rates is that rates must be designed to recover the Company's revenue requirement. He also listed other principles which should be considered: (1) cost of service; (2) value of service or competitive conditions existing in the marketplace; (3) historical rate structures and relationships between various rates; (4) the consumption characteristics of different classes of customers; (5) future prospects of maintaining sales levels to the various classes; (6) the need for conservation; (7) national and state energy policies; and (8) ease of administration.

Company witness Dickey presented a cost-of-service study in support of his proposed rate design. Witness Dickey explained that he used the United Method with a one-day peak demand in preparing the study. He also stated that he attempted to design the Company's rates so as to move the customer class rates of return closer to the system average rate of return shown on his cost-of-service study.

Public Staff witness Davis presented four cost-of-service studies based on two different methodologies, the United Method and the, Seaboard Method, with variations of each method using a one-day peak demand and a three-day sustained peak demand. Each of these studies was based on adjustments to revenues, expenses, and rate base as proposed by the Public Staff, and each produced results different from the other studies. CUCA contended that the Seaboard method should be specified by the Commission for use in this proceeding, and that the United Method tends to skew cost allocation against large industrial customers. CUCA also contended that rate levels should be adopted so as to equalize class rates of return.

The results of the various cost-of-service studies depend upon the assumptions used and upon the preparer's judgment in how to fairly allocate common costs among customer classes. For example, witness Dickey assigns no CD-2 demand expense to boiler fuel customers, whereas witness Davis does. Witness Davis contended that payment of the CD-2 demand charge to Transco permits the Company to take contract volumes each day of the year and, therefore, that it is fair to assign some of this cost to all customers. Witness Davis also noted that the returns for large commercial and industrial customers are overstated in the cost-of-service studies because they are based on the assumption that all sales to these rate classes will be made at tariff rates when, in fact, such customers have the option of negotiating their rates downward and thus reducing their rates of return.

The Commission is of the opinion that the cost-of-service studies presented by the parties are an important and relevant factor to be considered in designing rates in this proceeding. They are, however, only one of several considerations in rate design. Setting rates solely on the basis of equalized rates of return for all rate classes would clearly be unreasonable and inconsistent with the evidence presented. Rates of return for customers who have no alternate fuels readily available, such as residential customers, should not be directly compared to rates of return for those customers who do have alternate fuels readily available, such as boiler fuel customers. Rates of return for customers who cannot negotiate their rates with the Company or who cannot obtain supplies of cheaper gas under transportation rates should not be compared directly to rates of return for those customers who can and indeed do negotiate rates or obtain cheaper gas supplies under transportation rates. In short, the services provided to the different rate classes are not directly comparable, so the respective rates of return are not directly comparable either.

CUCA contends in this proceeding that the cost of the LNG plant should not be allocated to the large industrial customers as the Public Staff has done, and that such plant should be charged to low load factor customers such as the residential rate class. The Commission has discussed this issue at length in recent general rate orders (see Docket No. G-21, Sub 255 regarding North Carolina Natural Gas) and will not repeat its discussion here except to reiterate its conclusion that the LNG plant will improve the overall deliverability of gas and the integrity of the delivery system for the benefit of industrial customers as well as residential customers.

The rate design presented by Public Staff witness Curtis differs from the Company's proposed rate design in the amount of the increase to residential and commercial customers and the amount of the decrease to industrial customers. For example, witness Curtis recommends increasing rates for residential (heat only) customers by 9.58% in winter and for residential (year-around) customers by 4.59% in winter; decreasing rates for residential customers by 0.39% in summer; ·increasing rates for commercial and small industrial customers (heat only) by 8.10% in winter and for commercial and small industrial customers (year-around) by 1.97% in winter; decreasing rates for commercial and small industrial customers by 3.14% in summer; and decreasing rates for most large commercial and industrial customers using in excess of 50 dt per day by an amount ranging from 0.30% to 4.96%.

It is clear that the rate design proposals by the parties are similar in that they generally move rates in the same direction for the same classes of customers. The proposed percentage changes, however, are quite different and reflect the parties' views concerning the extent to which the industrial rates should reflect the cost of alternative fuels in today's markets. They also reflect differing views regarding the extent to which residential rates should be moved in order to achieve more nearly equal rates of return, and the extent to which large increases for certain residential rates should be avoided. CUCA contends that the Company will never have an opportunity to earn the overall rate of return found reasonable by the Commission if industrial rates are set at the levels proposed by the Public Staff.

The Company has proposed a winter rate of $3.35 per dt and a summer rate of $3.25 per dt under Rate Schedule 30. The Public Staff has recommended corresponding rates of $3.64 and $3.54. Under the Company's rate design proposals, the $.29 per dt difference would be recovered from customers served on other rate schedules. As discussed elsewhere herein concerning Rider D, testimony by both Company and Public Staff witnesses indicated that enough gas cost savings will probably be realized through spot market purchases to offset margin losses from negotiated sales. Witness Curtis emphasized that these spot market purchases can generate enough savings to enable the Company to earn full margin on sales to most customers even though they do not pay the filed tariff rate. The tariff rate is only a cap on the sales rate to those industrial customers with whom the Company must negotiate rates. If the tariff rate is not set at a reasonable level above the anticipated price of alternate fuel, the Company may have less incentive to obtain supplies of cheaper gas to offset negotiated sales losses. Furthermore, if the tariff rate is not set at a reasonable level above the anticipated price of alternate fuel and alternate fuel prices subsequently rise, the industrial customers with whom the Company must negotiate rates will have too low a ceiling on the level of negotiated rates available to them.

The Commission concludes that the rate design adopted herein should result in rates of return for each rate class which are closer to the overall rate of return but will also reflect the relative risk to the Company of serving each class of customers. While the cost-of-service studies can incorporate most of the ratemaking considerations described by witness Dickey and others in this proceeding, they cannot adequately reflect value of service considerations or priorities of interrupting service. The fact that the appropriate rate differentials between rate classes cannot be calculated precisely from cost-of-service studies reflects the uncertainties inherent in such studies. This is amply illustrated by the widely divergent rates of return resulting from the four cost-of-service methodologies utilized by the Public Staff. On the one hand, the relative priorities of service interruptions would require that residential service carry a higher rate of return than industrial service. On the other hand, the relative risks to the Company of installing facilities and incurring fixed costs to serve customers who may then switch to alternative fuels would require that industrial service carry a higher rate of return than residential service.

The Commission also concludes that the rate design adopted herein should establish industrial rate levels above the current levels of alternative fuel prices. While the Commission understands Public Service's desire to place at risk as little margin as possible, it is unwilling at this time to place the burden on the residential and small commercial rate classes to the extent proposed by the Company. The Commission is of the opinion that under the rate design adopted herein, the Rider D mechanism as proposed by the Company and as modified herein will give Public Service both the opportunity and the incentive to offset negotiated sales losses with savings obtained through purchases of cheaper gas on the spot market.

The Commission further concludes that the rate design adopted herein will result in a fair distribution of the overall rate increase granted herein and will result in rates of return for each rate class which are closer to the overall rate of return while still reflecting the relative risk to the Company of serving each rate class. Specifically, the rate design adopted herein will increase base rates for residential customers (heat only) by 21.1% in winter; increase rates for residential customers (year-around) by 15.1% in winter and by 9.1% in summer; increase rates for small commercial customers (heat only) by 10.9% in winter; decrease rates for small commercial customers (year-around) by 1.0% in winter and by 7.0% in summer; and decrease rates for most large industrial customers by an amount ranging from 4.8% to 11.0%. Such rate design will increase overall base rate revenues for residential customers by 15.3% and for small commercial customers by 1.2%. They will decrease overall base rate revenues for large industrial customers by an amount ranging from 5.9% to 8.2%.

Rider D

The Company proposed in this proceeding to establish Rider D - Purchased Gas Adjustment Procedures as a replacement for Rider C - Industrial Sales Tracker (the IST). Rider D is a tracking mechanism which enables the Company to negotiate lower rates with its customers and to recover any margin losses resulting from such negotiated rates through gas cost savings achieved by means of spot market purchases.

The proposed Rider D contains two sections. The first section revises the present purchased gas adjustment procedures in order to accommodate the changing gas supply climate. The revised procedures would allow the Company to dedicate gas purchased on the spot market to customers with whom the Company has negotiated lower prices to the extent necessary to recover lost margin resulting from the negotiated rates. The revised procedures would also take into account the possibility that Transco's commodity cost of gas may change monthly under the settlement currently proposed. Neither the Public Staff nor any other party opposed the revised purchased gas adjustment procedures.

The second section of Rider D as proposed by the Company was supported by CUCA and the Public Staff, although the Public Staff proposed certain modifications to it. The modifications proposed by the Public Staff were opposed by the Company and by CUCA. As proposed by Company witness Dickey, the second section of Rider D contains the following provisions:

1. Applicable to all commercial and industrial customers served under Rate Schedule 40 who would otherwise be served under Rate Schedules 20, 25, 30

and 32 and to those customers served under Transportation Rate Schedules 45, 46, and 47.

2. Gas cost savings in excess of margin losses, if any, would be placed in a deferred account for refund to customers. Margin losses in excess of gas cost savings, if any, would be absorbed by the Company.

3. Margin losses from negotiated sales would be computed on a per therm basis calculated as (unit margin approved in rate case minus actual unit margin) times actual quantity sold.

4. The Company retains margin earned from increased sales volumes and absorbs margin lost on decreased sales volumes.

5. The Company retains margin earned from sales to new customers and absorbs margin lost when current customers leave the system.

Through the testimony of witness Nery, the Public Staff generally agreed with the Company's proposals but recommended modifications in two areas: (1) that 10% of the gas cost savings be allocated "up front" to all customers other than those served under negotiated rates; and (2) that, if former customers who have service connections to their premises but purchased no gas during the test period return to the system, the total margin earned on such customers should be placed in the Rider D lost margin deferred account. Witness Nery contended that the investment to serve these former customers is already included in the Company's rate base and that any margin earned on resumption of service to such customers should be refunded to other customers who are already carrying the cost of that investment. Witness Nery cited the holding of the North Carolina Supreme Court in State ex rel. Utilities Commission v. N. C. Textile Manufacturers Association, Inc., 313 N.C. 215 (1985), (the NCNG decision) regarding the inclusion in the IST of margin on sales to new customers and opined that the NCNG decision does not require the inclusion in Rider D of margin earned on sales to new customers, but that fairness and equity do require the inclusion of margin earned on sales to former customers as described herein.

With regard to the 10% provision, the Commission notes that Public Service is buying spot market gas under Section 311 of the Natural Gas Policy Act and that this gas is designated as system supply. Nevertheless, until recently Transco would not allow such gas to be transported unless it was earmarked for industrial customers who, if they did not receive lower-priced gas, would leave the system. Now that FERC Order No. 436 has been issued and Transco has filed a settlement plan to go "open access," the rules have changed considerably and this spot market gas can be purchased for and allocated to all customers. Public Staff witness Nery recommended that 10 percent of the gas cost savings associated with spot market purchases be allocated directly to all customers with whom Public Service does not negotiate, primarily the residential and small commercial customers.

The Commission has considered the proposed Rider D in light of the NCNG decision and also in light of the intended effect of Rider D, and it concludes that margin earned on sales to new customers should not be included in the Rider D lost margin deferred account whether or not such new customers are former customers who have service connections already installed to their premises.

The Commission also concludes that the 10% provision proposed by the Public Staff conflicts with the intended effect of Rider D and should not be adopted. Nevertheless, the Commission is of the opinion that the non-Rider D customers will still receive a significant share of the gas cost savings, because it anticipates that the gas cost savings will exceed any margin losses under the rates established herein.

As proposed by Public Service, Rider D is based on the premise that the Company will be able to recover all of its margin losses due to negotiated sales to Rate Schedules 20, 25, 30, and 32 customers if it is able to obtain gas cost savings of an equal amount. Any excess savings would be refunded to customers while any unrecovered loss would be absorbed by the Company. Based on the rates established herein and on the estimated sales volumes, the total margin earned under Rate Schedules 20, 25, 30, and 32 will be approximately $17.9 million. Witness Nery's Exhibit No. 5 shows that the Company has achieved gas cost savings during the past 11 months of approximately $16.2 million. Under that scenario, the Company should be able to offset the hypothetical loss of the entire $17.9 million margin during a 12-month period. However, in order for the Company to lose the entire margin under the rates adopted herein, all gas sold to customers under Rate Schedules 20, 25, 30, and 32 would have to be sold at $2.76 per dt, the commodity cost of gas. The record does not support the contention that this could happen. Company witness Dickey testified that the lowest negotiated rates at which gas was sold in June and October 1986 were as follows:

| Rate Schedules | June | October |
|---|---|---|
| 20 | $3.33/dt | $2.74/dt |
| 25 | 3.17/dt | 2.80/dt |
| 30 | 2.81/dt | 2.23/dt |

The average negotiated rate for Rate Schedule 70 customers (comparable to Rate Schedule 30) for the month of June was $2.88/dt. All of the above rates for June 1986 are higher than the $2.76/dt commodity cost of gas, which indicates that some margin was earned on negotiated sales, in addition to those sales made at the filed tariff rates. Even in October 1986, with the lowest alternate fuel prices in seven years, the lowest negotiated rates were above the commodity cost of gas for customers whose alternate fuel is No. 2 fuel oil or propane. The lowest negotiated rate for Rate Schedule 70 (comparable to Rate Schedule 30) was $2.23/dt in October 1986, while the average negotiated rate was $2.59/dt. According to witness Nery October 1986 was the month when the price of No. 6 fuel oil was the lowest it had been since 1982.

From the foregoing analysis, the Commission concludes that Public Service can be expected to recover a substantial portion of its margin over an annual period by selling gas at a margin above the actual CD cost of gas to the majority of its Rider D customers who would otherwise be served under Rate Schedules 20, 25, 30, and 32. The Commission further concludes that whatever margin losses are experienced can reasonably be expected to be offset by gas cost savings from spot market purchases.

To the extent that the Company is able to purchase spot market gas at prices below the base cost of gas, it will credit the Lost Margin Deferred Account for any savings in gas costs. The Public Staff proposed that any excess gas cost savings in the Rider D lost margin deferred account be refunded directly to non-Rider D customers only, whereas the Company proposed that such savings in the Rider D lost margin deferred account be credited to the PGA deferred account. Refunds under the PGA mechanism are made to all customers whether or not they have negotiated rates. The Company contended that making refunds through the PGA deferred account would avoid major administrative problems and numerous increments or decrements to the base rates. CUCA contended that the Public Staff proposal to refund excess dollars in the Rider D lost margin deferred account to non-Rider D customers only was discriminatory and in violation of G.S. 62-140. The Public Staff contended that Rider D customers had already benefitted from gas cost savings when they negotiated lower rates with the Company and that refunds from the Rider D lost margin deferred account should then go only to non-Rider D customers. The Commission agrees with the Public Staff regarding refunds from the Rider D lost margin deferred account going to non-Rider D customers only, but is concerned about creating an undue administrative burden in making such refunds. Therefore, the Commission concludes that the Company should file a plan for making such refunds subject to further Commission review and approval. Furthermore, the Commission has carefully considered the discrimination issue raised by CUCA and concludes that it has no merit because the Rider D customers will have already received the benefit of cheaper spot market gas not available to non-Rider D customers. Any additional benefit of cheaper spot market gas beyond that necessary to serve Rider D customers should then go to non-Rider D customers by means of refunds from the Rider D lost margin deferred account.

The Public Staff further proposed that Rider D be considered an interim mechanism and that it be approved initially for only one year. The Company cautioned that Rider D should not be terminated or revised without consideration of its impact on the overall rate design of the Company. The Commission agrees with the Company and concludes that the parties should be prepared to review the effectiveness of Rider D as a part of its next general rate case.

Finally, consistent with its decision regarding refunds from the Rider D lost margin deferred account, the Commission concludes that upon termination of Rider C - Industrial Sales Tracker, the Company should file a plan, or alternative plans as appropriate, for a true-up of the IST deferred account including provisions for appropriate increments, decrements or refunds.

Transportation Rates

The Company proposed to continue full margin transportation rates in this proceeding, and to continue negotiating such transportation rates as a part of the Rider D mechanism. The Public Staff supported the proposal.

CUCA also supported the Company's proposal but qualified its support by reiterating that it still opposes full margin transportation rates in principle. CUCA based its support of the Company's proposal on its support of the margins proposed by the Company for industrial customers. Such margins would also be applicable to the transportation rates.

This issue has been discussed extensively in recent rate Orders by this Commission, and further discussions will not be repeated here. The Commission concludes that full margin negotiable transportation rates should be adopted for this proceeding and that adoption of such rates should not be contingent upon the level of margin established herein for industrial rates.

General

In addition to those revisions already discussed herein, the Company proposed various miscellaneous rate changes which were not opposed by any party. Such changes include in part: no increase for outdoor lighting schedules in this proceeding; increases in base facilities charges from $5/month to $6/month or $7/month for residential customers, from $8/month to $10/month or $11/month for small commercial customers, from $75/month to $100/month for large commercial and industrial customers in Schedules 20 and 25, and from $250/month to $300/month for large commercial and industrial customers in Schedules 30 and 32; increases in reconnection charges from $20 to $25; and continuation of negotiable rates under Schedule 40.

The Commission concludes that the rate revisions proposed by the Company are reasonable and appropriate for purposes of this proceeding except as modified herein. The base rates approved herein are just and reasonable and will generate the level of revenues necessary to provide a reasonable opportunity to achieve the overall rate of return approved herein. The base rates approved herein should be adjusted for any PGA adjustments and for any temporary increments or decrements currently in effect.

IT IS, THEREFORE, ORDERED as follows:

1. That Public Service Company of North Carolina, Inc., is hereby authorized to adjust and increase its rates and charges so as to produce an amount no greater than $200,933,645 from its North Carolina retail customers based on the Company's adjusted test year level of operations. Said amount represents an increase of $2,292,167 above the level of revenues which would have resulted from rates currently in effect based on the adjusted test year level of operations.

2. That Public Service Company of North Carolina, Inc., is hereby required to file appropriate tariffs in conformity with the base rates set forth in Appendix A attached hereto properly adjusted for any PGA adjustments and for any temporary increments or decrements currently in effect. Said tariffs shall be filed not later than 10 days after the date of this Order effective for service rendered on and after the date of this Order.

3. That Public Service Company of North Carolina, Inc., is hereby required to file a Rider D in the format attached hereto as Appendix B not later than 10 days after the date of this Order effective for service rendered on and after the date of this Order. The Company shall file monthly reports with the Commission and the Public Staff showing activity in the PGA Deferred Account and the Lost Margin Deferred Account.

4. That Rider C, the Industrial Sales Tracker (IST) mechanism approved in Docket No. G-5, Sub 200, is hereby terminated upon the effective date of this Order. The Company shall file with the Commission not later than 30 days after

the effective date of this Order a plan, or alternative plans as appropriate, for a true-up of the IST deferred account including provisions for appropriate increments, decrements or refunds.

5. That Public Service Company of North Carolina, Inc., shall notify its customers of the rates and of the Rider D mechanism approved herein by appropriate bill insert in the next billing cycle following the effective date of the new tariffs. The Company shall submit said bill insert to the Commission for approval not later than 10 days after the date of this Order.

6. That the tariffs filed in response to decretal paragraphs two and three above shall be subject to approval by further Order of the Commission.

7. That Public Service Company of North Carolina, Inc., is hereby directed to review and discuss the effectiveness of Rider D as a part of its next general rate case.

8. That Public Service Company of North Carolina, Inc., is hereby required to file with the Commission a plan, or alternative plans as appropriate, for making refunds from the Rider D lost margin deferred account to non-Rider D customers as discussed herein. Said plan or plans shall be filed not later than 30 days after the date of this Order.

9. That effective January 1, 1987, the federal income tax and the related gross receipts tax components of the rates and charges approved in this proceeding for Public Service shall be billed and collected on a provisional rate basis pending further investigation and final disposition of this matter concerning the impact of the Tax Reform Act of 1986 on the Company's cost of service.

10. That effective January 1, 1987, Public Service shall place in a deferred account the difference between revenues billed under the rates approved in this proceeding including provisional components thereof and revenues that would have been billed had the Commission in determining the attendant cost of service based the federal income tax component thereof on the Internal Revenue Code as now amended by the Tax Reform Act of 1986. It shall be assumed that all other parameters entering into the cost-of-service equation are held constant.

11. That prospective capitalization of Allowance for Funds Used During Construction shall be accomplished in a manner consistent with the guidelines set forth herein.

ISSUED BY ORDER OF THE COMMISSION.
This the 19th day of November 1986.

NORTH CAROLINA UTILITIES COMMISSION
Sandra J. Webster, Chief Clerk

(SEAL)

Appendix A

PUBLIC SERVICE COMPANY OF NORTH CAROLINA, INC.
Rates Approved in Docket No. G-5, Sub 207

| | Rate Schedule | | Rate Per Therm [1/] |
|---|---|---|---|
| 10 | Residential Heat Only | | |
| | Facilities Charge - Per Month | $ 7.00 | |
| | All gas - May - Oct | | $.54700 |
| | Nov - Apr | | .60700 |
| 12 | Residential - Year-Around | | |
| | Facilities Charge - Per Month | 6.00 | |
| | All gas - May - Oct | | .54700 |
| | Nov - Apr | | .57700 |
| 15 | Commercial & Small Ind. - Heat Only | | |
| | Facilities Charge - Per Month | 11.00 | |
| | All gas - May - Oct | | .46600 |
| | Nov - Apr | | .55600 |
| 17 | Commercial & Small Ind. - Year-Around | | |
| | Facilities Charge - Per Month | 10.00 | |
| | All gas - May - Oct | | .46600 |
| | Nov - Apr | | .49600 |
| 20 | Large Commercial & Industrial (Propane or No Alternate Fuel) | | |
| | Facilities Charge - Per Month | 100.00 | |
| | All gas - May - Oct | | .38000 |
| | Nov - Apr | | .40000 |
| 25 | Large Commercial & Industrial (No. 2 Oil as Alternate Fuel) | | |
| | Facilities Charge - Per Month | 100.00 | |
| | All gas - May - Oct | | .37000 |
| | Nov - Apr | | .39000 |
| 30 | Large Commercial & Industrial (Alternate Fuel Other Than No. 2 Oil or Propane) | | |
| | Facilities Charge - Per Month | 300.00 | |
| | All gas - May - Oct | | .34491 |
| | Nov - Apr | | .35491 |

## GAS - RATES

| | | | |
|---|---|---|---|
| 32 | Incrementally Priced Boiler Fuel | | |
| | Facilities Charge - Per Month | $300.00 | |
| | All gas - May - Oct | | .34491 |
| | Nov - Apr | | .35491 |
| 35 | Outdoor Lighting Service | | |
| | Single upright mantle - per month | 8.00 | |
| | Double inverted mantle - per month | 8.00 | |
| | Additional upright mantle - per month | 7.50 | |
| | Additional inverted mantle - per month | 4.00 | |
| 45 | Interruptible Transportation (Customers Normally Served on Rate 20) | | |
| | All gas - May - Oct | | .09492 |
| | Nov - Apr | | .11492 |
| 46 | Interruptible Transportation (Customers Normally Served on Rate 25) | | |
| | All gas - May - Oct | | .08492 |
| | Nov - Apr | | .10492 |
| 47 | Interruptible Transportation (Customers normally served on on Rate 30 or 32) | | |
| | All gas - May - Oct | | .05983 |
| | Nov - Apr | | .06983 |
| Rider A | Curtailment Priority Plan and Emergency Services | | |
| | Limited Emergency Service | | .70000 |
| | On-Peak Emergency Service | | .90000 |
| Reconnection Fees - To Restore Service | | 25.00 | |
| Reconnection Fees - For Gas Lights | | 5.00 | |
| Fee for service calls after normal operating hours | | 7.50 | |

[1] Excludes temporary items presently in effect

Appendix B

## RIDER - D
Purchased Gas Adjustment Procedures

### Definitions

"Long-Term Supplies" - Supplies from producers, pipelines, or other sources that have terms of one year or more.

"Short-Term Supplies" - Supplies from producers, pipelines or other sources that have terms of less than one year.

"Unit Margin" - Energy charge per unit of gas as shown in the Company's tariff (exclusive of temporary increments), less gross receipts tax on that energy charge and less the base cost of gas included in the Company's tariff sheets.

"Margin" - The unit margin times the sales quantities.

"Cost of Gas" - Includes all costs associated with long-term supplies; i.e., demand, commodity, storage, etc.

"Base Cost of Gas" - The commodity cost of gas included in the Company's current tariff sheets.

### PGA Deferred Account - Long-Term Supplies

It is anticipated that the cost of gas from Transco and other long-term suppliers will vary more often in the future than it has in the past as the gas industry approaches deregulation. In order to maintain reasonably stable rates in the future, the Company shall establish a purchased gas adjustment deferred account (PGA Deferred Account) which shall be used to accumulate variations from the base cost of gas established by this Commission.

Each month the Company shall compare its commodity cost of long-term gas to its base cost of gas and debit or credit the PGA Deferred Account for any difference. Periodically, the Company will file a request with the Utilities Commission under G.S. 62-133(f) to change its base cost of gas and/or to establish an increment or decrement in its rates which will zero out its PGA Deferred Account as ordered by the Commission. The Company will also file a request with the Commission to revise its tariff sheets in order to reflect changes as they occur in costs relating to demand and storage charges, etc.

### Lost Margin Deferred Account - Short-Term Supplies

The Company anticipates that it will have to continue to negotiate with commercial and industrial customers on its sales and transportation rates. All margin loss from those customers served under Rate Schedule 40 who would otherwise have been served under Rate Schedules 20, 25, 30, and 32 and from those customers served under Transportation Rate Schedules 45, 46, and 47 shall be accumulated in a Lost Margin Deferred Account. Such margin loss shall be based on rate levels established by the Commission in the Company's most recent general rate case.

The Company shall endeavor to purchase gas at the lowest reasonable prices at all times. To the extent that the Company is able to purchase short-term gas at prices below the base cost of gas, it will credit the Lost Margin Deferred Account for any savings in gas cost. Periodically, any credit balance in this account will be refunded to customers served under Rate Schedules 10, 12, 15, 17, 20, 25, 30, and 32 while any debit balance will be absorbed by the Company.

Reports

The Company shall file monthly reports of activity in the PGA Deferred Account and the Lost Margin Deferred Account with the Commission.

DOCKET NO. T-2556

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

| | |
|---|---|
| In the Matter of<br>Joseph Lee Hudson, d/b/a Jay's Mobile Home Moving and Repair Service, 425 Calhoun Wilmington, North Carolina 28401 - Application for Common Carrier Authority | FINAL ORDER OVERRULING EXCEPTIONS AND AFFIRMING RECOMMENDED ORDER |

HEARD IN: Commission Hearing Room, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on Monday, March 10, 1986, at 3:00 p.m.

BEFORE: Commissioner J. A. "Chip" Wright, Presiding; and Commissioners Robert K. Koger, Sarah Lindsay Tate, Edward B. Hipp, and A. Hartwell Campbell

APPEARANCES:

For the Applicant:

Ralph McDonald, Bailey, Dixon, Wooten, McDonald, Fountain & Walker, Attorneys at Law, Post Office Box 12865, Raleigh, North Carolina 27605-2865
For: Joseph Lee Hudson, d/b/a Jay's Mobile Home Moving and Repair Service

For the Protestants:

E. Gregory Stott, Attorney at Law, Post Office Box 131, Raleigh, North Carolina 27602
For: Marvin Malcolm Johnson, d/b/a Johnson's Mobile Home Services, Donald Ray Potter, d/b/a Potter's Mobile Home Service

BY THE COMMISSION: On February 12, 1986, both the Applicant, Joseph Lee Hudson, d/b/a Jay's Mobile Home Moving and Repair Service, and Protestants Marvin Malcolm Johnson, d/b/a Johnson's Mobile Home Services, and Donald Ray Potter, d/b/a Potter's Mobile Home Service, filed exceptions to the Recommended Order of Hearing Examiner Sharpe which was issued in this docket on January 28, 1986. On February 14, 1986, the Commission issued an Order scheduling exceptions for oral argument before the full Commission on March 10, 1986.

The matter came on for oral argument as scheduled on March 10, 1986, and counsel for the Applicant and Protestants were present and made oral argument.

Based upon a careful consideration of the Recommended Order of January 28, 1986, the oral argument of the parties before the full Commission on March 10, 1986, and the entire record in this proceeding, the Commission is of the opinion, finds and concludes that all the findings, conclusions and ordering paragraphs contained in the Recommended Order of January 28, 1986, are fully supported by the record; that the Recommended Order dated January 28, 1986, should be affirmed and adopted as the Final Order of the Commission; and that each of the exceptions thereto should be overruled and denied.

IT IS, THEREFORE, ORDERED:

1. That each and every exception of the Applicant and Protestants to the Recommended Order of January 28, 1986, be, and the same are hereby, overruled.

2. That the Recommended Order of January 28, 1986, be, and the same is hereby, affirmed and adopted as the Final Order of the Commission.

ISSUED BY ORDER OF THE COMMISSION.
This the 12th day of March 1986

NORTH CAROLINA UTILITIES COMMISSION
Sandra J. Webster, Chief Clerk

(SEAL)

DOCKET NO. T-2625

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

| In the Matter of | |
|---|---|
| Transit Homes of America, Inc., 4454 1/4 Industrial Street, P. O. Box 5155, Boise, Idaho 83705 - Application for Authority to Purchase and Transfer Certificate No. C-812 from Chandler Trailer Convoy, Inc., 8828 New Benton Highway, Little Rock, Arkansas 72209 | FINAL ORDER RULING ON EXCEPTIONS AND GRANTING APPLICATION |

HEARD IN: Commission Hearing Room 2115, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina 27602, on Monday, June 16, 1986, at 2:00 p.m.

BEFORE: Chairman Robert O. Wells, Presiding; and Commissioners Robert K. Koger, Sarah Lindsay Tate, Edward B. Hipp, and J. A. Wright

APPEARANCES:

For the Applicants:

J. Dickson Phillips III, Robinson, Bradshaw & Hinson, P. A., Attorneys at Law, 1900 Independence Center, 101 North Tryon Street, Charlotte, North Carolina 28246

BY THE COMMISSION: By application filed with the Commission on February 17, 1986, authority is sought for the sale and transfer of Common Carrier Certificate No. C-812 from Chandler Trailer Convoy, Inc. (Chandler), Little Rock, Arkansas, to Transit Homes of America, Inc. (Transit Homes), Boise, Idaho.

By Order dated March 12, 1986, the Commission allowed the following parties to intervene in this docket as protestant parties: Donald B. Montgomery; Billy D. Ivey III, d/b/a Riverside Mobile Home Movers; Thomas R. Mattison, d/b/a M&M Mobile Home Sales and Service; and Gerald R. Dearborn (Protestants).

On May 2, 1986, a Recommended Order was entered in this docket by Hearing Examiner Stallings wherein the application for the transfer of Certificate No. C-812 as well as the request for temporary operating authority in this docket was denied.

On May 18, 1986, counsel for and on behalf of the Applicants filed certain exceptions to the Recommended Order of May 2, 1986, and a request for oral argument thereon.

By Commission Order entered on May 21, 1986, oral argument on the Applicants' exceptions was scheduled for Monday, June 16, 1986.

On June 10, 1986, the Commission received a letter from counsel on behalf of the Protestants in this proceeding advising that said parties have accepted a judgment for $150,000 in settlement of their dispute with Chandler Trailer Convoy, Inc., and, therefore, request that they be allowed to withdraw from the proceeding. This motion for leave to withdraw protest is hereby allowed.

This matter came before the Commission for oral argument on June 16, 1986, and Applicants offered oral argument on their exceptions.

Upon careful consideration of the entire record in this proceeding, the oral argument of the Applicants, and the Request to Take Judicial Notice of Yellow Page Advertisement filed by Applicants on June 16, 1986, the Commission now makes the following

## FINDINGS OF FACT

1. The Applicants seek Commission approval of the sale and transfer of Certificate No. C-812 from Ghandler Trailer Convoy, Inc., to Transit Homes of America, Inc.

2. Larry E. Kling is the President and owner of Transit Homes, a corporation incorporated in the State of Idaho which has been in existence since July 1983.

3. Transit Homes has been engaged in the transportation of mobile homes since July 1983 and is experienced in the mobile home transportation business.

4. Transit Homes maintains 30 terminals throughout the United States and operates 215 vehicles, including eight which are Company-owned, for the transportation of mobile homes.

5. Within North Carolina, Transit Homes maintains terminals in Siler City and Salisbury and operates eight vehicles which are leased on a long-term basis for the transportation of mobile homes.

6. Transit Homes has provided financial statements indicating its ability to provide service on a continuing basis.

7. On February 3, 1986, in Docket No. T-2288, Sub 2, the Commission granted Chandler an authorized suspension of operations under Certificate No. C-812 until August 1, 1986.

8. Chandler Trailer Convoy, Inc., held itself out to transport mobile homes intrastate between points in North Carolina during the year 1985. Chandler advertised its services in the Raleigh, North Carolina, Yellow Pages under "Mobile Home Transporting" during 1985.

9. The Protestants in this docket have settled their dispute with Chandler Trailer Convoy, Inc., and have withdrawn as protestant parties in this proceeding.

WHEREUPON, the Commission reaches the following

## CONCLUSIONS

N.C.G.S. 62-111(e) provides the following:

> "The Commission shall approve applications for transfer of motor carrier franchises made under this section upon finding that said sale, assignment, pledge, transfer, change of control, lease, merger or combination is in the public interest,,will not adversely affect the service to the public under said franchise, will not unlawfully affect the service to the public by other public utilities, that the person acquiring said franchise or control thereof is fit, willing, and able to perform such service to the public under said franchise, and that service under said franchise has been continuously offered to the public up to the time of filing said application or in lieu thereof that any suspension of service exceeding 30 days has been approved by the Commission as provided in G.S. 62-112(b)(5)."

Upon consideration of the foregoing findings of fact and the entire record in this docket, the Commission concludes that the transfer of Certificate No. C-812 from Chandler to Transit Homes is in the public interest, will not adversely affect the service to the public under said franchise, will not unlawfully affect the service to the public by other public utilities, that Transit Homes of America is fit, willing, and able to perform such service to the public under said franchise, and that service under Certificate No. C-812 has been continuously offered to the public up to the time an authorized suspension was granted and the application herein was filed.

Accordingly, the Commission further concludes that Applicants' exceptions, to the extent they are adopted by the Order herein, should be allowed and the the application for approval of the transfer of Certificate No. C-812 from Chandler Trailer Convoy, Inc., to Transit Homes of America, Inc., should be granted.

IT IS, THEREFORE, ORDERED as follows:

1. That the exceptions to the Recommended Order filed in this docket by Transit Homes and Chandler on May 19, 1986, to the extent they are adopted by the Order herein, be, and the same are hereby, allowed.

2. That the application for the sale and transfer of Certificate No. C-812, together with the operating authority contained therein, as more specifically described in Exhibit B attached hereto and made a part hereof,

from Chandler Trailer Convoy, Inc., to Transit Homes of America, Inc., be, and the same is hereby, granted.

3. That Transit Homes shall maintain its books and records in such a manner that all the applicable items of information required in its prescribed Annual Report to the Commission can be readily identified from the books and records, and can be utilized by the Company in the preparation of said Annual Report. A copy of the Annual Report form shall be furnished to Transit Homes upon request to the Transportation Rates Division - Public Staff.

4. That, to the extent it has not already done so, Transit Homes shall file with the North Carolina Division of Motor Vehicles, Motor Carrier Safety Regulation Unit, evidence of insurance, list of equipment and designation of process agent, and file with the Commission a tariff of rates and charges and otherwise comply with the Rules and Regulations of the Commission prior to commencing operations under the authority acquired herein.

5. That unless Transit Homes complies with the requirements set forth in decretal paragraph four above and begins operating, as herein authorized, within a period of 30 days from the date this Order becomes effective and final unless such time is extended in writing by the Commission upon written request, the operating authority acquired herein will cease and determine.

6. That the motion seeking leave to withdraw protest filed in this docket on June 10, 1986, by the Protestants be, and the same is hereby, allowed.

ISSUED BY ORDER OF THE COMMISSION.
This the 23rd day of June 1986.

NORTH CAROLINA UTILITIES COMMISSION
Sandra J. Webster, Chief Clerk

(SEAL)

DOCKET NO. T-2625

Transit Homes of America, Inc.
4454 1/4 Industrial Street
Post Office Box 5155
Boise, Idaho 83705

EXHIBIT B

IRREGULAR ROUTE COMMON CARRIER AUTHORITY
Transportation of house trailers (mobile homes) and accessories between points and places throughout the State of North Carolina. Transportation of Group 21, boats and marine motors, parts, supplies and accessories therefor, when attached to or moving with such boats between all points and places in North Carolina over irregular routes.

DOCKET NO. P-161

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

| | | |
|---|---|---|
| In the Matter of | | |
| Application of GTE Sprint Communications Corporation | ) | ORDER GRANTING |
| for a Certificate of Public Convenience and | ) | CERTIFICATE OF |
| Necessity to Provide InterLATA Telecommunications | ) | PUBLIC CONVENIENCE |
| Services as a Public Utility Within the State of | ) | AND NECESSITY |
| North Carolina and for the Establishment of Initial | ) | SUBJECT TO |
| Rates | ) | COMPLIANCE WITH |
| | ) | COMPENSATION PLAN |

HEARD IN: Commission Hearing Room 217, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on September 5, 1985, at 9:30 a.m.

BEFORE: Commissioner Edward B. Hipp, Presiding; and Commissioners A. Hartwell Campbell and Julius A. Wright

APPEARANCES:

For the Applicant:

Ms. Phyllis A. Whitten, Attorney at Law, GTE Sprint Communications Corporation, 1818 L Street, N.W., Suite 500, Washington, D.C. 20036
and
Larry B. Sitton, Smith, Moore, Smith, Schell and Hunter, Attorneys at Law, P. O. Box 21927, Greensboro, North Carolina 27408
For: GTE Sprint Communications Corporation

For the Intervenors:

Michael W. Tye, Attorney, AT&T Communications of the Southern States, Inc., 1200 Peachtree Street, N.E., Atlanta, Georgia 30357
For: AT&T Communications of the Southern States, Inc.

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 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 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 June 21, 1985, GTE Sprint Communications Corporation (GTE Sprint, Company, or Applicant) filed an application for a certificate of public convenience and necessity to provide 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 July 18, 1985, scheduling the matter for hearing on September 5, 1985, at 9:30 a.m.

Notices or petitions to intervene were filed by AT&T Communications of the Southern States, Inc., on August 28, 1985; Southern Bell Telephone and Telegraph Company on August 12, 1985; and the Attorney General of North Carolina on June 24, 1985. Orders allowing these interventions were subsequently entered in this docket by the Commission.

The matter came on for hearing as scheduled and all parties were present and represented by counsel. The Applicant presented the testimony of Richard A. Purkey, Manager of State Regulatory Affairs, GTE Sprint, and Carolyn Ratti, Regulatory Analyst, GTE Sprint.

The Commission, having carefully reviewed the entire record in this proceeding, now makes the following

## FINDINGS OF FACT

1. GTE Sprint 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. GTE Sprint presently operates an interstate network within the bounds of North Carolina.

2. GTE Sprint 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 GTE Sprint in North Carolina are required to serve the public interest effectively and adequately and will not jeopardize reasonably affordable local exchange service.

4. GTE Sprint 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. GTE Sprint 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 pursuant to the compensation plan adopted by the Commission in Docket No. P-100, Sub 72. In accordance with such requirement, it is therefore appropriate that certification be granted conditionally, pending filing and approval of a plan detailing GTE Sprint's proposed methodology for determination of unauthorized intraLATA conversation minutes as required by the Commission's Order of February 22, 1985, in Docket No. P-100, Sub 72.

6. GTE Sprint proposes to reduce the intrastate access minutes by some percentage and assign this percentage reduction to the interstate jurisdiction.

7. The filed tariffs of GTE Sprint do 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.

8. GTE Sprint should file an appropriate undertaking for Commission approval regarding refund of customer deposits, prepaid accounts, processing fees, and hook-up fees.

9. Subject to the terms and conditions set forth herein, it is appropriate that GTE Sprint be conditionally certified as specified herein.

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 such 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 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 (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.

GTE Sprint seeks authority in this docket to provide interLATA long-distance telecommunications services as a public utility in North Carolina.

Based upon the foregoing findings of fact and the entire record in this proceeding, the Commission concludes that GTE Sprint 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 on the condition that the Company 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.

The Commission has established a compensation plan in Docket No. P-100, Sub 72, whereby OCCs are required to compensate the local exchange companies (LECs) for revenue losses resulting from the completion of unauthorized intraLATA calls. In accordance with such plan, the Commission set out in its Order of February 22, 1985, as one of the documentation requirements to be filed with the application for certification, that the Applicant should file a proposed plan for determining the unauthorized intraLATA conversation minutes occurring on its facilities each month. GTE Sprint did not file such a proposed plan. At the time that GTE Sprint filed its application for a certificate of public convenience and necessity, the compensation plan was only an interim plan. The Commission has since entered an Order in Docket No. P-100, Sub 72, on September 30, 1985, finalizing the compensation plan. Due to GTE Sprint's apparent uncertainty regarding the permanence of the compensation plan and associated filing requirements, the Commission will allow the Applicant an additional 10 days from the date of this Order in which to comply with the order and file the required plan for determining unauthorized intraLATA conversation minutes. Thus, the grant of intrastate interLATA operating authority made to GTE Sprint by this Order will be made on a conditional basis subject to final approval of a proposed compensation plan and payment of appropriate compensation for all unauthorized intraLATA traffic completed by GTE Sprint's customers on and after the date of this Order.

Another of the documentation requirements established in Docket No. P-100, Sub 72, required the filing of a plan detailing the Applicant's proposed methodology for determining the monthly quantity of intrastate access minutes on its system in North Carolina.

GTE Sprint proposes that, for reporting and access charge purposes, the apparent intrastate minutes on its network be discounted by some percentage to account for certain minutes that are allegedly interstate in nature. GTE Sprint gives the following rationale for the proposed discount: In order to pay interstate and intrastate access charges, GTE Sprint 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, GTE Sprint cannot precisely measure the quantity of minutes which should be allocated to each jurisdiction. By using billing records based on customers' addresses, GTE Sprint is able to calculate the apparent interstate and intrastate minutes of use. GTE Sprint contends that some of the apparent intrastate minutes are actually interstate minutes of use.

GTE Sprint described two types of situations in which customer minutes appear to be intrastate minutes on billing records but may instead be interstate minutes. These two situations involve "leaky" PBXs and resellers. According to GTE Sprint witness Purkey, the "leaky" PBX phenomenon occurs when a call is placed over private line facilities 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 GTE Sprint's system, the 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 GTE Sprint's network in North Carolina and then complete that call in North Carolina. As in the "leaky" PBX situation, the billing record would reflect that call as an intrastate call even though the call in fact is an interstate call. GTE Sprint contends that both of these situations occur because it 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.

The Attorney General and Public Staff 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 No. P-100, Sub 72, allowing telephone long-distance competition in this jurisdiction, and that it requests preferential treatment not requested by or granted to other long-distance telephone common carriers in this jurisdiction.

The Attorney General asserts that the proposal to discount minutes of use by a percentage is a policy that GTE Sprint and MCI have vigorously pursued in other states and at the national level. In fact, 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.

Furthermore, AT&T indicates that GTE Sprint 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 GTE Sprint is equally applicable to AT&T and its customers; therefore, GTE Sprint should not be allowed a percentage discount on the "leaky" PBX theory.

The Commission concludes that the Applicant's discount proposal is inconsistent with the intent of the Commission Order in Docket No. P-100, Sub 72, which allows long-distance telephone competition so long as reasonably affordable local telephone rates are not jeopardized. By arbitrarily assigning a percentage of intrastate use to interstate allocation without sampling, GTE Sprint 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 GTE Sprint should be treated differently from other certificated interLATA telecommunications carriers. AT&T, the Public Staff, and the Attorney General assert that the percentage discount proposed by GTE Sprint is unsupported by any study or written analysis but is merely based on an assertion by GTE Sprint 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 GTE Sprint, the Commission concludes that the position stated by the Attorney General, the Public Staff, and AT&T represents the sounder principle. Therefore, the Commission concludes that the proposal by GTE Sprint to discount by a percentage the apparent intrastate minutes of use should be denied.

In Sections 4.2 and 5.2 of its proposed tariff, GTE Sprint sets forth its regulations and rates for its Advanced WATS service. The Public Staff and Attorney General opposed the proposed WATS service, believing that the rates are geographically deaveraged. The usage rates are different depending on where the call is terminated. For instance, if a customer in Charlotte makes two calls, one to Winston-Salem and one to Asheboro, the call to Asheboro costs more than the call to Winston-Salem even though Asheboro is a slightly shorter distance. The connect charge is also different depending on where the customer lives. The Commission recognized the merit of continuing the statewide toll rate schedule in late 1983 prior to the divestiture of the Bell System and required AT&T and Southern Bell to maintain the then current toll-rate schedule on a divested intraLATA/interLATA basis. As a result, AT&T's toll rates continue to be applicable on a statewide basis.

In its Order of February 22, 1985, in Docket No. P-100, Sub 72, the Commission recognized that deaveraging may eventually be required but concluded that competitive interLATA carriers would initially be required to maintain carrier specific toll rates which would be available to all customers on a nondiscriminatory basis. The Commission concludes therefore that the deaveraged rates proposed by GTE Sprint must be revised in order to make the associated services available on the same basis to all subscribers from all locations served by GTE Sprint.

Sprint has not provided a special provision for subscribers using Telecommunications Devices for the Deaf (TDD) equipment. The Commission concludes that GTE Sprint should add to its tariff the discount provision with which AT&T and the LECs now comply. This requirement is consistent with the treatment of all other certified competitive long-distance carriers which did not voluntarily offer a discount to TDD users.

The Commission also requires GTE Sprint to delete its price list. In its February 22, 1985, Order, the Commission ruled that the rates initially filed by competitive carriers would be their maximum rates and, further, to reduce those rates would require a 14-day notice to the Commission and the carrier's customers. In Docket No. P-159 the Commission required United States Transmissions Systems, Inc., to delete its price list and file maximum rates in its tariff which would be effective for at least 14 days. The Commission sees no reason to depart from this procedure and thus will require GTE Sprint to list one rate for each service in its tariff which will establish the maximum rate for each service. The maximum rate must be in effect and charged for at least 14 days.

The Commission also requires GTE Sprint to identify in its tariff the areas where it offers equal access. Presently, GTE Sprint's tariff includes a list of the exchanges in which it subscribes to equal access and states that equal access is available in some end offices. If GTE Sprint wishes to list equal access availability in that manner, the Company must commit to and so state in the tariff that it will subscribe to equal access in all end offices in the listed exchanges as equal access becomes available. Otherwise, GTE Sprint should list equal access availability by office.

The Commission believes that the Applicant needs to list information regarding timing of calls. The Applicant's proposed tariff states that charges will be based on distance, time, and duration. However, it is unclear when the timing of a call starts (e.g., when the customer accesses the Applicant's switch, when the called party answers, etc.). The Commission believes that because the Applicant's rates are based upon the duration of the call it is essential for the tariff to state when the timing of a call begins and ends. Therefore, the Commission requires the Applicant to include specific information on the timing of calls in the tariff filed pursuant to this Order.

The Commission further concludes that, for the time being, GTE Sprint should be required to file an undertaking to refund, 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 changes need to be made in the Applicant's proposed tariff prior to approval thereof:

1. The Commission believes the Applicant needs to clarify its reference to special construction in Section 3.15 of its tariff. This section refers to cancellation of application for service but does not explain the provision of special construction. GTE Sprint should include a section in its tariff regarding the provision of special construction and/or 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 GTE Sprint 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. GTE Sprint 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.

GTE Sprint should additionally amend paragraph 2 of Section 3.15 of its tariff to refer to Sections 5.2.3 and 5.2.4 rather than Sections C.3 and C.4 for Connect Charge and Monthly Minimum Charge.

Further, GTE Sprint should delete paragraph 3 of Section 3.15 of its tariff. When the Applicant amends its tariff to include a section regarding the provision of special construction and/or special services, as discussed hereinabove, the language in paragraph 3 will be unnecessary. The provisions in paragraph 2 of Section 3.15 will adequately cover the cancellation of any special construction and/or special services, the rates and charges for such services having been stated elsewhere in the tariff.

2. Additionally, GTE Sprint should include a clear definition for "Local Distribution Area" in its tariff. Currently, there is no definition listed, but Sprint uses the term "Local Distribution Area" in its Advanced WATS service in Section 5.2.3. If GTE Sprint intends to use this term, it must be defined in the tariff.

3. GTE Sprint should also delete Section 4.2.7 paragraphs 2 and 3. These paragraphs discuss charges made when GTE Sprint, on behalf of the customer, asks the local telephone company or the vendor of subscriber-provided equipment to make a visit to the subscriber's premises to determine what equipment is causing the trouble a subscriber is having. In these cases GTE Sprint is acting as an agent, and as such, these services should fall under the terms of an agency agreement and not a tariff since these services are not considered public utility services. Because these services are agency type rather than

public utility type services, these provisions should be deleted from the tariff.

4. Additionally, GTE Sprint should clarify its language on Special Access Line. Currently, the provision reads that a customer must subscribe to a Special Access Line, which is a service obtained from the access tariff. Only Interexchange Carriers (ICs) may subscribe to the access tariff. If the customer is not an IC, then GTE Sprint would have to subscribe to the Special Access line for the customer. If GTE Sprint wishes to subscribe for the customer and also wishes to pass through that charge to the customer, then GTE Sprint must list its rate for that service in its tariff. GTE Sprint needs to clarify this provision in accordance with the above discussion.

5. Lastly, GTE Sprint should delete Section 3.4.3 which limits the period during which Sprint will give a refund for overpayment. The Commission believes that GTE Sprint should be willing to give a refund for overpayments at any time.

IT IS, THEREFORE, ORDERED as follows:

1. That GTE Sprint 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. GTE Sprint 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. GTE Sprint 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.

C. GTE Sprint shall not use or construct any facilities designed to bypass the access or local exchange facilities of the local exchange telephone companies.

D. GTE Sprint 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. GTE Sprint shall make tariff revisions indicated above and add 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. Such revised tariffs shall be filed with the Commission and with all parties not later than 10 days from the date of this Order, and five days shall be allowed for comments by the parties.

F. GTE Sprint shall within 10 days from the date of this Order file with the Commission its proposed plan for determining unauthorized intraLATA conversation minutes occurring on its facilities each month.

G. GTE Sprint shall not reduce the apparent intrastate access minutes by any percentage.

H. GTE Sprint shall file one rate in its tariff for each service which shall be the maximum rate, and that rate will be applicable for at least 14 days.

2. That this Order shall itself constitute the conditional certificate of public convenience and necessity granted to GTE Sprint by the North Carolina Utilities Commission to provide interLATA long-distance telecommunications services in North Carolina.

3. That tariffs filed by GTE Sprint under the conditions set forth in this Order shall become effective upon further Order of the Commission.

4. That GTE Sprint 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.

ISSUED BY ORDER OF THE COMMISSION.
This the 24th day of January 1986.

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

DOCKET NO. P-176

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

| | | |
|---|---|---|
| In the Matter of | | |
| Application by Mid-Atlantic Telephone Service, | ) | ORDER GRANTING |
| 1106 East Market Street, Greensboro, North | ) | CONDITIONAL CERTIFICATE |
| Carolina, for a Certificate of Public | ) | OF PUBLIC CONVENIENCE |
| Convenience and Necessity to Provide Intrastate | ) | AND NECESSITY |
| Long Distance Telecommunications Services in | ) | |
| North Carolina on a Resale Basis | ) | |

HEARD IN: Commission Hearing Room, Raleigh, North Carolina, on April 14, 1986

BEFORE: Commissioner Ruth E. Cook, Presiding; and Chairman Robert O. Wells and Commissioner Robert K. Koger.

APPEARANCES:

For the Using and Consuming Public:

Antoinette R. Wike, Public Staff Attorney, North Carolina Utilities Commission, 430 North Salisbury Street, Raleigh, North Carolina 27602

For the Using and Consuming Public:

Jo Anne Sanford, Special Deputy Attorney General, North Carolina Department of Justice, Raleigh, North Carolina 27602

BY THE COMMISSION: This matter arose on March 7, 1986, upon the filing of an application on behalf of Mid-Atlantic Telephone Service ("Mid-Atlantic" or "Applicant") seeking a certificate of public convenience and necessity to provide intrastate long distance telecommunications services in North Carolina on a resale basis. The Commission, being of the opinion that the application affects the public interest, issued an order on March 19, 1986, scheduling a hearing for the above time and place. Notice of intervention was filed by the Attorney General on April 8, 1986.

The matter came on for hearing, with the intervenors, Public Staff and Attorney General, represented by counsel. The Applicant was not represented by counsel. Thomas R. Woodson, President of Mid-Atlantic, and Lawrence R. Brown, Vice President and General Manager, were present and testified in support of the application.

Based upon the verified application, the evidence addressed at the hearing, and the entire record in this matter, the Commission makes the following

## FINDINGS OF FACT

1. The Applicant, Mid-Atlantic, is a sole proprietorship owned by T. R. Woodson and Associates and having its principal offices at 1106 East Market Street, Greensboro, North Carolina 27401. Mid-Atlantic proposes by its application to offer long distance telecommunications services to both business and residential customers throughout the State of North Carolina.

2. In addition to its two officers, Thomas R. Woodson and Lawrence R. Brown, Mid-Atlantic employs the services of a consultant, Mac Pyle, as an engineering and technical adviser, and a secretary, Glenda Bowers. Mr. Woodson is a registered professional engineer and an employee of AT&T engaged in defense contract work. Mr. Brown's background is in advertising and marketing. Mr. Pyle has ten years experience as a telecommunications engineer.

3. Mid-Atlantic has purchased and refurbished a used Datapoint 41 Port Infoswitch at a total cost of $20,000 to $30,000 and has leased nine WATS lines at a cost of approximately $2,000 per month in order to provide initial service. The switch was purchased four or five months ago, and the WATS lines were leased two or three months ago. There are no outstanding liens on the switch. Mid-Atlantic is currently testing the switch on an interstate basis

through the resale of interstate WATS. Service on the switch is provided by Datapoint on a labor and materials basis.

4. Mid-Atlantic has submitted tariffs containing rates and charges designed to be 20% below those of AT&T. According to Mr. Brown, the Applicant has no intention of requiring customer deposits or charging an origination fee or service fee for hook-ups. The Applicant's billing and collections will be handled by a third party.

5. At the present time, according to Mr. Woodson, Mid-Atlantic intends to terminate calls using only WATS and therefore is not subject to the Commission requirement of filing a compensation plan for unauthorized intraLATA calls. The Datapoint switch is capable of being programmed to route calls only over MTS or WATS.

6. Both Mr. Brown and Mr. Woodson indicated general familiarity with Commission orders regarding resale authority but not with the applicable access charges.

7. The Statement of Financial Condition of Thomas R. and Linda Woodson submitted with the application shows assets of approximately $805,000, consisting primarily of real estate holdings, and a net worth of approximately $552,000 as of June 30, 1985. Mr. Woodson testified that since that date he had completed another office building valued at approximately $300,000. Mr. Woodson further testified that none of the assets produced very much income.

## DISCUSSION OF EVIDENCE AND CONCLUSIONS

The North Carolina General Assembly has declared as a matter of policy that competitive offerings of intrastate long-distance telephone service may be in the public interest. House Bill 1365, 1983 Sess. L. 1054 (Reg. Session, 1984), amending G.S. 62-2 and 62-110. This legislation authorized the Commission to issue a certificate to any person applying to offer long-distance 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 General Assembly, the Commission instituted a rulemaking proceeding, Docket No. P-100, Sub 72, and on February 22, 1985, issued an Order Authorizing Intrastate Long-Distance Competition. In that order the Commission concluded, among other things, that 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." By subsequent orders dated September 30, November 25, and December 19, 1985, the Commission approved interLATA and intraLATA access charges and an intraLATA compensation plan for resellers and authorized intraLATA resale competition.

Thus, in order to grant the certificate of public convenience and necessity requested by this application, the Commission must find that the Applicant is both technically and financially capable of providing the proposed service. While the Commission is satisfied that Mid-Atlantic is proceeding in good faith in this matter, the Commission believes it appropriate that certain additional information be submitted before the certificate becomes effective.

The Commission, therefore, concludes that Mid-Atlantic should be required to submit the following information for review:

I. Financial

a. Financial Statements of T. R. Woodson & Associates for the calendar year 1985, or any other recent twelve-month period, including a statement of financial condition, a statement of changes in net worth, and an income statement.

b. Pro forma income statement of T. R. Woodson & Associates, including Mid-Atlantic, for the calendar year 1986.

II. Technical

Estimated data for the first six months of operation by month as a reseller of telecommunications service as follows:

A. Intrastate

1. Expenses

a. Number of Feature Group A minutes of use anticipated by service location, e.g., Greensboro, Winston-Salem, etc.

b. Average access expense per minute of use (include anticipated total switched access per minute and carrier common line charges)

c. Number and type of facilities other than access and associated billing. List OUTWATS, 800 service, PBX trunks, FX and private lines separately.

2. Revenue

a. Number of billable minutes of use by subscribers.
b. Number of subscribers.
c. Gross revenue from subscribers.

B. Interstate

1. Expenses

a. Number of Feature Group A minutes of use anticipated by service location, e.g., Greensboro, Winston-Salem, etc.

b. Average access expense per minute of use (include anticipated total switched access per minute and carrier common line charges).

c. Number and type of facilities other than access and associated billing. List OUTWATS, 800 service, PBX trunks, FX and private lines separately.

2. Revenue

a. Number of billable minutes of use by subscribers.
b. Number of subscribers.
c. Gross revenue from subscribers

C. General overhead and other common expenses (specify rent, depreciation, salaries, insurance, billing and collection services, etc.)

When the above information has been submitted by the Applicant, all parties to this proceeding will have ten days to file with the Commission their comments and recommendations for further action.

The Applicant will be further required to submit revised tariffs reflecting certain changes, most of which were agreed to at the hearing. These include the deletion of all references to customer deposits from Section B, the correction of originating cities in Section C, and the elimination of duplicative rate tables in Section D. Section E should also be deleted from the tariff, although, with the exception of Exhibit "A", it is pertinent to the application. Exhibit "A", Mid-Atlantic's plan for determining unauthorized intraLATA conversation minutes, is no longer necessary. Instead, Mid-Atlantic will be required to submit 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 local exchange companies (LECs), or (2) it possesses no facilities capable of completing intraLATA calls (other than those originated over 800 service) except over resold MTS or WATS leased from the LECs.

Pending receipt and review of the required additional information and tariff revisions, the Commission concludes that the Applicant should be granted a conditional certificate of public convenience and necessity. Upon satisfactory completion of the requirements set forth hereinabove, the Commission will issue a further order authorizing the Applicant to commence operations.

IT IS, THEREFORE, ORDERED as follows:

1. That the Applicant, Mid-Atlantic Telephone Service, be, and the same hereby is, granted a certificate of convenience and necessity pursuant to G.S. 62-110 to provide interLATA and intraLATA long distance telecommunications services in North Carolina on a resale basis, subject to the following terms and conditions:

A. That Mid-Atlantic 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 entered in Docket No. P-100, Sub 72, on February 22, 1985, October 25, 1985, December 19, 1985, and all other applicable Commission orders.

B. That Mid-Atlantic shall 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 over resold MTS or WATS leased from the LECs.

C. That, in the event of any change in Mid-Atlantic's operations which negates the affidavit filed pursuant to paragraph B, above, Mid-Atlantic shall compensate the local exchange companies for revenue losses resulting from the completion of unauthorized intraLATA calls by its customers according to the compensation plan adopted by the Commission in Docket No. P-100, Sub 72, subject to changes as approved by the Commission, and shall file with the Commission a proposed plan for determining unauthorized intraLATA conversation minutes occurring on its facilities each month.

D. That Mid-Atlantic shall not use or construct any facilities designed to bypass the access or local exchange facilities of the local exchange telephone companies.

E. That, upon commencement of operations, Mid-Atlantic shall not thereafter abandon or discontinue service under its intrastate certificate in North Carolina, unless it has received authority from the Commission to do so upon such terms and conditions as the Commission may prescribe.

F. That Mid-Atlantic shall file with the Commission within thirty days from the date of this Order the technical and financial information and revised tariffs prèscribed above under the Discussion of Evidence and Conclusions. Copies of the same shall be served on all parties and ten days shall be allowed for comments by the parties.

2. That this Order shall itself constitute the conditional certificate of public convenience and necessity to provide intrastate long distance telecommunications services in North Carolina on a resale basis granted to Mid-Atlantic by the North Carolina Utilities Commission.

3. That the tariffs filed by Mid-Atlantic under the conditions set forth in this Order, and the authority to commence operations under the certificate granted herein, shall become effective only upon further order of the Commission.

ISSUED BY ORDER OF THE COMMISSION.
This the 16th day of May 1986.
NORTH CAROLINA UTILITIES COMMISSION
(SEAL) Sandra J. Webster, Chief Clerk

DOCKET NO. P-137, SUB 1

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

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| In the Matter of<br>Application of Tel/Man, Inc., and Tel/Man, Inc. d/b/a Tel-Amco for a Certificate of Public Convenience and Necessity to Provide InterLATA and IntraLATA 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 September 27, 1985, at 9:30 a.m.

BEFORE: Commissioner Robert K. Koger, Presiding; Commissioners Sarah Lindsay Tate and Robert O. Wells

APPEARANCES:

For Tel/Man, Inc. and Tel/Man, Inc. d/b/a Tel-Amco:

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

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

Michael W. Tye, AT&T Communications of the Southern States, Inc., 1200 Peachtree Street, N.E., Atlanta, Georgia 30352

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

For the Attorney General:

Karen E. Long, Assistant Attorney General, N.C. Department of Justice, P.O. Box 629, Raleigh, North Carolina 27510
For: The Using and Consuming Public

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 June 20, 1985, Tel/Man, Inc., and Tel/Man, Inc., d/b/a Tel-Amco (Tel/Man or Applicant) 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, issued an Order in this docket on July 18, 1985, scheduling the matter for hearing on September 4, 1985 at 9:30 a.m.

Notices or petitions to intervene were filed by the Attorney General of North Carolina on July 24, 1985, by AT&T Communications of the Southern States, Inc., on August 28, 1985, and by Southern Bell Telephone and Telegraph Company on August 14, 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 the Applicant 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 3, 1985, upon motion from Applicant, the Commission rescheduled the hearing to September 27, 1985.

The matter came on for hearing as scheduled and all parties were present and represented by counsel. The Applicant presented the testimony of Charles Houser, Vice President, General Manager and Chief Operating Officer of Tel/Man, Inc.; and Nicholas L. Kottyan, Direct of Business Development and Regulatory Affairs for Tel/Man, Inc. and General Manager of the Tel-Amco Division.

During the course of the hearing the Public Staff moved to strike all references to intraLATA in both the application and the tariff. Also during the hearing, Applicant revised the original filed tariff. Near the close of the hearing the Public Staff moved that the Applicant file a late-filed exhibit reflecting the type of facility that Applicant leases such as Feature Group A, B, D or intraLATA FX or intraLATA PL or intrastate WATS or intrastate 800 from point to point, and where the dial tone originates, number of circuits and carrier. The Applicant resisted this motion claiming the information to be proprietary. The Attorney General joined with the Public Staff. The Commission ruled that the information could be filed on a confidential basis.

The Commission, having carefully reviewed the entire record in this proceeding, now makes the following

## FINDINGS OF FACT

1. Tel/Man 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. Tel/Man 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 Tel/Man in North Carolina are in the public interest and will not jeopardize reasonably affordable local exchange service.

4. Tel/Man 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. Tel/Man 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. Tel/Man 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.

Tel/Man seeks authority in this docket to provide both interLATA and intraLATA long distance telecommunications services as a public utility in North Carolina. Tel/Man 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 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 Tel/Man 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 (LECs) for revenue losses resulting from the completion of unauthorized intraLATA calls. In accordance with such plan the Commission set out in its Order of February 22, 1985, as one of the documentation requirements to be filed with the application for certification, that the Applicant should file a proposed plan for determining the unauthorized intraLATA conversation minutes occurring on its facilities each month. Tel/Man did not file any proposed methodology for determination of intraLATA conversation minutes with its application. The Commission recognizes that Tel/Man's failure to file such a proposed methodology may be due to a misconstruction of the Commission's February 22, 1985, Order in Docket No. P-100, Sub 72 as to the definition of a reseller and non-resale applicant. However, under the Orders of the Commission it is only calls routed over resold intrastate WATS or MTS that are exempt from the payment of compensation under the compensation plan. Tel/Man acknowledged through testimony of its witness Kottyan, that it was aware that the Commission's Orders require the payment of compensation for any intraLATA calls routed via services other than resold WATS or MTS of the LECs. Tel/Man also indicated that its switching equipment is capable of identifying the nature of a call; that is, whether it is interLATA or intraLATA, and also which facilities a call is routed over. Because of the possibility that Tel/Man misconstrued the filing requirements regarding the necessity to file a proposed plan for determining unauthorized intraLATA conversation minutes occurring on its facilities each month the Commission will allow the Applicant an additional ten (10) days from the date of this Order in which to comply and file such a plan. If Tel/Man only resells WATS and MTS of the LECs or intends to only resell WATS and MTS of the LECs it may file a sworn affidavit within ten (10) days 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. Thus, the grant of intrastate operating authority made to Tel/Man by this Order will be made on a conditional basis subject to (1) final approval of a proposed compensation plan and payment of appropriate compensation for all unauthorized intraLATA traffic completed by Tel/Man's customers on and after the date of Order, or (2) final approval of an appropriate affidavit as discussed hereinabove.

On January 6, 1986, Tel/Man filed a Motion for Interim Emergency Relief and Alternative Motion to File Amended Tariffs. In regard to emergency relief, Tel/Man requested that: (1) the Commission stay the effectiveness of its Order on Reconsideration of November 25, 1985, (2) if any level of access charges is to be implemented immediately, that such access charges be reduced by at least 50% from current levels, or (3) the 45% discount provided in the Commission's Order of September 30, 1985, be restored and allowed to all resellers. Tel/Man also requested that in the event the Commission declines to grant relief in any of the forms requested that Tel/Man be allowed to implement revised tariff rates and charges.

For the reasons set forth in the Order Denying Motions of NCLDA issued on February 7, 1986, in Docket No. P-100, Sub 72, the Commission hereby denies Tel/Man's Motion for Interim Emergency Relief.

As to Tel/Man's request to be allowed to implement revised tariff rates and charges, the Commission concludes that the Company's tariff, both as originally filed and as revised and amended, should be approved subject to the following amendments, terms and conditions:

Tel/Man should clarify its proposed tariff relating to travel features. Tel/Man set forth its proposal for Universal Travel Feature, Home/Call, and Local Access Travel Feature on page 8 of its tariff. Tel/Man needs to explain these offerings specifically to indicate how these calls are placed and how the three features differ from each other.

Tel/Man should delete the offerings of "Operator Assist" and "Customer Call" from its tariff at this time. Applicant proposed these offerings for the first time in its proposed tariff revisions filed on January 6, 1986. Denial of these offerings at this time is without prejudice to Tel/Man's submitting these provisions at a later time with adequate explanation as discussed above in reference to Tel/Man's proposed travel features.

Applicant 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. 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 Tel/Man's rates 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, the Company should include specific information regarding the timing of calls in the revised tariff to be filed pursuant to this Order.

In regard to Tel/Man's tariff revision to delete specific rates for Monthly Line Charges for its Direct WATS service, Applicant should further revise its tariff to state that the individual rates will be filed on a case by case basis for approval by the Commission prior to the provision of service.

The Applicant needs to clarify its tariff concerning the provision of "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 Tel/Man 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. Tel/Man should clarify the Special Services provision 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.

Prior to the filing of Tel/Man's latest tariff revisions, Applicant's tariff contained a provision granting a credit for directory assistance charges to blind persons or those incapable of using a directory. This provision was omitted from Tel/Man's proposed tariff revisions filed on January 6, 1986. Applicant should amend its tariff to include this provision.

Another revision in Tel/Man's January 6, 1986, tariff filing concerns Applicant's MAXI-WATS offering. Applicant now proposes that this tariff offering is only an interstate offering. This is contrary to what the Applicant originally filed. The Public Staff argues that unless Tel/Man is planning to block all intrastate calls, then MAXI-WATS is also an intrastate offering and rates for the service must be filed in the tariff and approved by the Commission. The Commission concludes that Applicant's MAXI-WATS offering should be an intrastate offering and the rates and charges for such service should be included in Tel/Man's North Carolina intrastate tariff. This decision is without prejudice to Tel/Man's right to subsequently file with the Commission seeking approval to discontinue this offering. Tel/Man gave no justification for not offering this tariff provision on an intrastate basis. Also since specific provisions of the MAXI-WATS offering refer to other North Carolina intrastate tariff provisions such as the "Universal Travel Feature," the "Operator Assist" program and the "On-Net" and "Off-Net" cities as shown on attachment 4, it is unclear how this offering can not be an intrastate offering.

Tel/Man proposes to offer an "On-Net" and "Off-Net" rate differential for calls billed under its Direct WATS and MAXI-WATS offerings. The Public Staff contends that this constitutes rate deaveraging. The Commission agrees with the Public Staff and concludes that the On-Net/Off-Net rate differential proposed by the Applicant should be eliminated from the tariff. The Commission recognized the merit of continuing the statewide toll rate schedule in late 1983 prior to divestiture of the Bell System and required AT&T and Southern Bell to maintain the then current toll-rate schedule on a divested interLATA/intraLATA basis. In the Order of February 22, 1985, in Docket No. P-100, Sub 72, the Commission recognized that deaveraging in North Carolina may eventually be required, but concluded that competitive interLATA carriers would initially be required to maintain carrier-specific toll rates which would be available to all customers on a nondiscriminatory basis.

Tel/Man has also proposed deaveraged rates in its Ameri-Call offering. Applicant's revised tariff provision proposes different rates for interLATA and intraLATA calls. As discussed above, the Commission has concluded that for the time being long-distance carriers should be required to maintain carrier-specific toll rates which are available to all customers on a nondiscriminatory basis. Therefore, the Commission concludes, that Tel/Man should revise its proposed rates and charges for its Ameri-Call offering to reflect uniform intrastate rates. Additionally, Tel/Man should eliminate footnote 3 to its Ameri-Call rate schedule which reads as follows: "The above IntraLATA rates include a 4.72¢ per minute subsidy to the local phone company when calls are completed not using their service."

The Commission also concludes that the following specific changes and revisions must be made in Tel/Man's proposed tariff for resale service prior to approval thereof:

1. Under section III.C.2.1 entitled "Limitations of Tel/Man Liability" Applicant should delete provision d.3. These provisions are civil matters and therefore should be deleted from the tariff.

2. Under section III.C.3.1 entitled "Customer Obligations" Applicant should delete or revise provisions b through k. These provisions inappropriately refer to Tel/Man equipment and Company facilities. Tel/Man's equipment is deregulated therefore the references to equipment should be deleted. The references to Company facilities should either be deleted or clarified by defining Company facilities as either switching equipment or access facilities leased from the local exchange companies.

3. Under section III.C.5.1 entitled "Payment and Billing Arrangements" provision h should be revised to comply with Rule R12-9 which states that interest at a rate of no more than 1% per month is the allowable rate.

4. Under section III.C.7.1 entitled "Cancellation by Tel/Man" provision 1) should be revised to comply with Rule R12-8 which provides that service shall not be discontinued until after at least five (5) calendar days written notice of discontinuance of service to the customer.

The Commission further concludes that, for the time being, Tel/Man 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 certified.

IT IS, THEREFORE, ORDERED as follows:

1. That Tel/Man 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. Tel/Man 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. Tel/Man shall compensate the local exchange companies for all revenue losses 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 changes to the plan as may be approved by the Commission.

c. Tel/Man shall not use or construct any facilities designed to bypass the access or local exchange facilities of the local exchange telephone companies.

d. Tel/Man 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. Tel/Man shall make the tariff provisions indicated above. Such revised tariffs shall be filed with the Commission and all parties not later than ten (10) days from the date of this Order. The parties may file comments on the revised tariffs, if any comments there be, not later than seven (7) days after the filing of such revised tariffs.

2. That this Order shall itself constitute the certificate of public convenience and necessity granted to Tel/Man 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 Tel/Man under the conditions set forth in this Order shall become effective upon further Order.

4. That Tel/Man 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.

ISSUED BY ORDER OF THE COMMISSION.
This the 26th day of February 1986.

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

DOCKET NO. P-137, SUB 1

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Applications of Tel/Man, Inc., for a Certificate )
of Public Convenience and Necessity to Offer ) ORDER RULING ON
Intrastate Telecommunications Services in the ) COMPENSATION PLAN
State of North Carolina )

BY THE COMMISSION: On February 26, 1986, the Commission entered an Order in this docket whereby Tel/Man, Inc. (Tel/Man, Applicant, Company) was required to file a proposed compensation plan for determining unauthorized intraLATA conversation minutes occurring on its facilities each month or, alternatively, to file an affidavit containing specified assurances that the Company could not route unauthorized intraLATA calls on its network. On March 18, 1985, Tel/Man filed a proposed compensation plan.

Southern Bell Telephone and Telegraph Company (Southern Bell) filed its response to Tel/Man's proposed compensation plan on April 2, 1986. Specifically Southern Bell takes issue with the Applicant's statement that it will make a monthly report of all intraLATA conversation minutes which are terminated over long-distance facilities other than MTS or WATS facilities leased from the local exchange carrier. Southern Bell asserts that such reporting may fail to report intraLATA calls completed over Feature Group A (FGA) facilities. Southern Bell further questions the procedure outlined by Tel/Man for determining the number of unauthorized intraLATA minutes of use. Southern Bell requests the Commission to require the Applicant to file a more specific and detailed explanation of the computer reports on which Tel/Man plans to rely and the basis for determining unauthorized intraLATA minutes of use.

On April 10, 1986, the Public Staff filed comments to Tel/Man's proposed compensation plan. The comments of the Public Staff were essentially identical to those filed by Southern Bell.

The Commission concludes that the proposed compensation plan filed by the Applicant is deficient and should be revised to provide for the reporting of all unauthorized intraLATA conversation minutes. Unauthorized intraLATA conversation minutes of use are defined as intraLATA conversation minutes completed over any facility other than MTS and WATS of the local exchange company. Further, the Commission believes that the procedure for determining the number of unauthorized intraLATA minutes of use is confusing and unclear. The Commission therefore concludes that Tel/Man should file a more detailed and complete explanation of the manner in which intraLATA conversation minutes subject to compensation will be calculated.

IT IS, THEREFORE, ORDERED that Tel/Man, Inc., be, and is hereby, required to file a revised compensation plan in conformity with the provisions of this Order not later than ten (10) days from the date hereof.

ISSUED BY ORDER OF THE COMMISSION.
This the 23th day of April 1986.

NORTH CAROLINA UTILITIES COMMISSION
Sandra J. Webster, Chief Clerk

(SEAL)

DOCKET NO. P-137, SUB 1

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Application of Tel/Man, Inc., for a Certificate )
of Public Convenience and Necessity to Offer ) ORDER APPROVING
Intrastate Telecommunications Service in the ) COMPENSATION PLAN
State of North Carolina )

BY THE COMMISSION: On February 26, 1986, the Commission issued an Order Granting Certificate of Public Convenience and Necessity Subject to Compliance with Compensation Plan for Tel/Man, Inc. (Tel/Man, Applicant). In said Order Tel/Man was required to file a proposed compensation plan. Pursuant to the February 26, 1986, Order, the Applicant filed a proposed compensation plan. Comments were filed on April 2, 1986, by Southern Bell Telephone and Telegraph Company and on April 10, 1986, by the Public Staff identifying deficiencies in Tel/Man's proposed plan.

On April 23, 1986, the Commission issued an Order Ruling on Compensation Plan outlining the deficiencies of Tel/Man's proposed compensation plan and requiring Tel/Man to file a revised compensation plan.

On May 9, 1986, Tel/Man filed a revised compensation plan. The Commission has carefully evaluated the May 9, 1986, compensation plan filed by the Applicant and concludes that the proposed plan is appropriate and should be implemented. The Public Staff has verbally concurred with the revised compensation plan.

IT IS, THEREFORE, ORDERED that the Compensation Plan filed by Tel/Man Inc., on May 9, 1986, be, and is hereby, approved by the Commission.

ISSUED BY ORDER OF THE COMMISSION.
This the 6th day of June 1986.

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

DOCKET NO. P-169

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

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| In the Matter of | | |
| Application of US TELECOM - Communications Services Company for a Certificate of Public Convenience and Necessity to Provide InterLATA Telecommunications Services as a Public Utility within the State of North Carolina and for the Establishment of Initial Rates | ) | ORDER GRANTING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY TO PROVIDE INTERLATA TELECOMMUNICATIONS SERVICES |

HEARD IN: Commission Hearing Room 217, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, Friday, November 1, 1985, at 9:30 a.m.

BEFORE: Commissioner Ruth E. Cook, Presiding; and Commissioners Edward B. Hipp and Julius A. Wright

APPEARANCES:

For US TELECOM - Communications Services Company:

Thomas K. Austin, Fruitt & Austin, Attorneys at Law, 1042 Washington Street, Raleigh, North Carolina 27605

William G. Milne, General Counsel, US TELECOM - Communications Services Company, 108 South Akard Street, Dallas, Texas 75202

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

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 30357
For the Public Staff:

Michael L. Ball, Staff Attorney, Public Staff, North Carolina Utilities Commission, Post Office Box 29250, Raleigh, North Carolina 27626-0520
For: The Using and Consuming Public

BY THE COMMISSION: This proceeding was initiated by US TELECOM - Communications Services Company (US TELECOM, Company, or Applicant) on August 26, 1985, by the filing of an application seeking a certificate of public convenience and necessity to provide intrastate interexchange telecommunications services in North Carolina.

On September 3, 1985, the Attorney General filed a notice of intervention in this docket. The Public Staff intervened in this docket by appearing at the hearing and its intervention is deemed recognized.

On September 12, 1985, the Commission entered an Order in this docket scheduling a public hearing to begin on November 1, 1985.

On September 18, 1985, the Attorney General filed a motion whereby the Commission was requested to require US TELECOM 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 (if any) as a condition to its certificate.

On September 23, 1985, AT&T Communications of the Southern States, Inc., filed a Petition for Leave to Intervene, which was granted by Order dated September 26, 1985. On October 21, 1985, Southern Bell Telephone and Telegraph Company filed a Petition to Intervene, which was granted by Order dated October 23, 1985.

On October 28, 1985, US TELECOM filed revisions to its proposed North Carolina tariff.

This matter came on for hearing as scheduled. US TELECOM presented the testimony of Robert C. Woods, Manager of Financial Planning and Analysis; Richard Smith, Director of Carrier Relations; and Sharon Tyler, Manager of Customer Service Internal Operations.

No other party presented any testimony at the hearing.

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

## FINDINGS OF FACT

1. US TELECOM 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.

2. US TELECOM is fit, capable, financially able, and technically qualified to render interLATA long distance telecommunications services as a public utility in the state of North Carolina.

3. The interLATA long distance telecommunication services proposed by US TELECOM in North Carolina are required to serve the public interest effectively and adequately and will not jeopardize reasonably affordable local exchange service.

4. US TELECOM has filed appropriate tariff provisions which 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 and a provision for free directory assistance service for those customers who are unable to use the telephone directory. Such tariff provisions are in the public interest.

5. US TELECOM agrees to abide by all applicable rules and regulations of the North Carolina Utilities Commission and the findings, conclusions, terms, and conditions set forth in all applicable Commission Orders.

6. US TELECOM agrees 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 pursuant to the compensation plan adopted by the Commission in Docket No. P-100, Sub 72.

7. US TELECOM should file an appropriate undertaking for Commission approval regarding refund of customer deposits, prepaid accounts, processing fees, and hook-up fees.

8. Subject to the terms and conditions set forth in this Order, it is appropriate that US TELECOM should be certificated to provide intrastate interLATA long distance telecommunications services in North Carolina.

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 such 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.

US TELECOM seeks authority in this docket to provide interLATA long distance telecommunications services as a public utility in North Carolina.

Based upon the foregoing findings of fact and the entire record in this proceeding, the Commission concludes that US TELECOM 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, as amended and presented at the hearing, should be approved subject to the following additional revisions:

The Commission believes that US TELECOM needs to clarify its provisions on equal access. The Company should identify the areas in its tariff where it is offering equal access.

The Commission also believes that US TELECOM needs to list more specific information regarding the timing of calls. The Company's proposed tariff states that charges will be based on duration, distance, and time of day. However, it is unclear when the timing of a call starts (e.g., when the customer accesses as the Applicant's switch, when the called party answers, etc.) and ends. The Commission believes that because the Company's rates are based upon the duration of the call, it is essential for the tariff to state when the timing of a call begins and ends. Therefore, US TELECOM should include specific information on the timing of calls in the revised tariff to be filed pursuant to this Order.

The Commission further concludes, and US TELECOM agreed at the hearing, that the Company's certificate should be granted subject to the following terms and conditions:

1. US TELECOM 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.

2. US TELECOM 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.

3. US TELECOM shall not use or construct any facilities designed to bypass the access or local exchange facilities of the local exchange telephone companies.

4. US TELECOM 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 US TELECOM 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. US TELECOM 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. US TELECOM shall compensate the local exchange companies for 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.

C. US TELECOM shall not use or construct any facilities designed to bypass the access or local exchange facilities of the local exchange telephone companies.

D. US TELECOM 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. US TELECOM shall make the tariff revisions indicated above. Such revised tariff shall be filed with the Commission and all parties not later than Friday, January 17, 1986. Comments regarding the revised tariff shall be filed by the parties, if any there be, not later than Friday, January 24, 1986.

2. That this Order shall itself constitute the certificate of public convenience and necessity granted to US TELECOM by the North Carolina Utilities Commission to provide interLATA long distance telecommunications services in North Carolina.

3. That the revised tariff to be filed by US TELECOM under the conditions set forth in this Order shall become effective upon further Order of the Commission.

4. That US TELECOM 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. Such undertaking to refund shall be filed in this docket not later than 20 days from the date of this Order.

ISSUED BY ORDER OF THE COMMISSION.
This the 6th day of January 1986.

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

DOCKET NO. P-159

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

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|---|---|
| In the Matter of<br>Application of United States Transmission Systems, Inc., for a Certificate of Public Convenience and Necessity to Provide InterLATA Telecommunications Services as a Public Utility Within the State of North Carolina and for the Establishment of Initial Rates | ORDER GRANTING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY |

HEARD IN: Commission Hearing Room 217, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on September 13, 1985, at 9:30 a.m.

BEFORE: Commissioner Ruth E. Cook, Presiding; and Commissioners Sarah Lindsay Tate and Edward B. Hipp

APPEARANCES:

For United States Transmission Systems, Inc.:

Sam Behrends IV, LeBoeuf, Lamb, Leiby and MacRae, Attorneys at Law, P.O. Box 750, Raleigh, North Carolina 27602
and
Jack R. Lebowitz, Attorney, United States Transmission Systems, Inc., 100 Plaza Drive, Secaucus, New Jersey 07096

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

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

Michael W. Tye, Attorney, AT&T Communications of the Southern States, Inc., P. O. Box 7800, 1200 Peachtree Street, N. E., Atlanta, Georgia 30357

For the Public Staff:

Theodore C. Brown, 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 United States Transmission Systems, Inc. (USTS or Company) on May 24, 1985, 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. The Company also requested temporary operating authority on an interim basis.

On June 6, 1985, the Attorney General intervened in this docket and filed a motion requesting the Commission to require USTS to file a bond to cover the Company's maximum yearly amount of customer deposits.

On July 2, 1985, the Public Staff filed a motion requesting the Commission to deny the request of USTS for interim operating authority and to require USTS to file a state-specific tariff.

On July 18, 1985, the Commission entered an Order in this docket scheduling a public hearing, requiring USTS to file a state-specific tariff, and denying the Company's motion for temporary operating authority.

USTS filed state-specific tariffs on August 2, 1985. Further tariff additions and revisions were filed on September 4, 1985.

Petitions to intervene were filed in this docket by Southern Bell Telephone and Telegraph Company and AT&T Communications of the Southern States, Inc. Orders allowing these petitions to intervene were subsequently entered by the Commission.

Upon call of the matter for hearing, the parties were present and represented by counsel. Donald P. Casey, Manager of the Rates, Tariffs and Agreements for USTS, presented testimony in support of the Company's application. No other party offered testimony.

The Commission, having carefully reviewed the entire record in this proceeding, now makes the following

## FINDINGS OF FACT

1. United States Transmission Systems, Inc. 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. USTS presently operates an interstate network within the bounds of North Carolina.

2. USTS 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 USTS in North Carolina are required to serve the public interest effectively and adequately and will not jeopardize reasonably affordable local exchange service.

4. USTS agrees to abide by all applicable rules and regulations of the North Carolina Utilities Commission and the findings, conclusions, terms, and conditions set forth in all applicable,Commission Orders.

5. USTS agrees to compensate the local exchange telephone companies pursuant to the compensation plan adopted by the Commission in Docket No. P-100, Sub 72, for all revenue losses resulting from the completion of unauthorized or incidental intraLATA calls made by its customers.

6. USTS may offer, subject to prior Commission review, promotional rates which are offered on a completely nondiscriminatory basis.

7. The filed tariffs of USTS 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 or a provision for free directory assistance service for those customers who are unable to use the telephone directory. The Company has agreed to include such provisions in its tariff which is in the public interest.

8. USTS should file an appropriate undertaking for Commission approval regarding refund of any 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 such 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 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 (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.

USTS seeks authority in this docket to provide interLATA long-distance telecommunications services as a public utility in North Carolina.

Based upon the foregoing findings of fact and the entire record in this proceeding, the Commission concludes that USTS 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 should be approved subject to the following amendments, terms and conditions:

In the tariff filed August 2, 1985, USTS sets forth its proposal relating to credit card service. In essence, the USTS 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 the USTS system over an 800 number. USTS contends that the services are different and therefore should not be directly compared.

The Public Staff and Attorney General opposed the proposed credit card service contained in the USTS tariff, believing that the rates are geographically deaveraged.

The Commission recognizes that the credit card service proposed by USTS is very similar to the one proposed by MCI. The Commission ultimately approved the MCI credit card proposal. The Commission recognizes and understands the technical problems associated with equalizing rates between the 800 and 950 travel service proposed by USTS. Therefore, the Commission concludes that intrastate 800 and 950 service may have separately tariffed rates.

The Commission is aware that USTS has deaveraged rates in other parts of its tariff, including the usage rates and the access charges for the USA 300 service, the USA 1500 service, and the Local Distribution Channel Charge for the Leased Channel Service. The Commission recognized the merit of continuing the statewide toll rate schedule in late 1983 prior to the divestiture of the Bell System and required AT&T and Southern Bell to maintain the then current toll-rate schedule on a divested intraLATA/interLATA basis. As a result, AT&T's toll rates continue to be applicable on a statewide basis.

Later, in the Order of February 22, 1985 in Docket No. P-100, Sub 72, the Commission recognized that deaveraging in North Carolina may eventually be required, but concluded that competitive interLATA carriers would initially be required to maintain carrier-specific toll rates which would be available to all customers on a nondiscriminatory basis. Therefore, the Commission concludes that the deaveraged rates proposed by USTS must be revised in order to make the associated services available to all subscribers from all locations served by the Company on the same basis.

USTS has not initially provided a special provision for certified hearing or speech impaired subscribers using TDD equipment or a directly assistance provision for those subscribers who are unable to use the telephone directory. However, USTS agreed during the hearing to add those two provisions to its tariff. The Commission concludes that these provisions are in the public interest and should be added prior to the Company's tariffs becoming effective.

USTS further agreed to make other changes in the tariff as listed below:

USTS agreed to delete the term "Extended Service Area" from its list of definitions.

USTS agreed to file a map to show what areas are considered local exchange areas.

Under "Use of Service," USTS agreed to modify Section 3.1.2 to read as follows:

> "Interconnection of USTS services with the services of other communications common carriers and with customer-provided communications facilities is permitted subject to the bypass prohibition of the North Carolina Utilities Commission."

USTS agreed to delete provisions 4, 6 and 8 under Section 3.3 entitled, "Customer Obligations." These provisions reference the provision of terminal equipment which is deregulated.

USTS also agreed to reduce the interest charge in Section 4.1.3.2, "Payment of Bills," from 1.5% to 1% to comply with Commission Rule R12-9.

The Company also agreed to change Item 1. under "Discontinuance of Service by USTS " and Item 1 under "Deposits and Establishment of Credit" in order to conform with the applicable provisions of Chapter 12 of the Commission Rules.

Under "Application of Special Access Surcharge" and "Leased Channel Service Surcharge," the Company agreed to determine if the USTS provisions are taken directly from the Intrastate Access Tariff, and if not, to change these provisions so that they comply with the Intrastate Access Tariff.

On Page 32, under "Usage Volume Discounts," the Company agreed to replace the example with one offered by the Public Staff.

USTS agreed to delete the entire tariff section concerning the Autodialer.

The Company agreed to clarify the tariff sections dealing with promotional offerings and the 20/20 Discount Program. If USTS intends to offer promotional rates from time to time under its tariff, the Company should amend such tariff to provide that 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.

USTS further agreed to add a provision under "Special Services" stating that special service rates will be filed with the North Carolina Utilities Commission. 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 USTS has a need to contract with a sepcific customer, the Company should advise the customer that the negotiated price must be filed with the Commission for review. USTS 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.

The Commission further concludes that the following additional changes need to be made in the USTS tariffs:

Under "Use of Service," Section 3.1.3 of the tariff should be deleted. This provision allows customers of USTS to share the Company's service on a non-profit basis and allows the Company to act as billing agent for those customers. Under the applicable North Carolina General Statutes, a firm which receives compensation for the provision of communications services to the public is considered to be a public utility. The Commission concludes that the proposed tariff provision could be construed to allow customers of USTS to act as public utilities without certification as required by law. Therefore, the Commission concludes that this provision should be deleted.

USTS shall not use or construct any facilities designed to bypass the access or local exchange facilities of the local exchange telephone companies. The Commission is concerned about certain provisions of the USTS tariff which refer to the use of customer-owned facilities in connection with USTS Universal Switching Arrangement, both 300 and 1500, and the USTS Leased Channel Service. Tariff provisions 5.1.2.2.c and 5.1.3.2.c in particular could be construed to allow bypass of the LECs' local networks. Customer-owned facilities may not be used to connect to the USTS network because of the Commission policy prohibiting bypass of LEC facilities. This policy was first stated in the AT&T-C certification case in Docket No. P-140 and has since been repeated in the February 22, 1985 Order in Docket No. P-100, Sub 72, and in the certification cases of all other long distance carriers. The Commission is of the opinion, and has herein ordered, that USTS should be subject to this same prohibition and that the proposed tariff should be modified to exclude the option of the use of customer-owned facilities as a means of connection between the customer and USTS.

USTS should also 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. 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 answer, etc.) and ends. The Commission believes that because the rates of USTS 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, the Company should include specific information regarding the timing of calls in the revised tariff to be filed pursuant to this Order. In a related matter, the Commission notes that the Company's tariffs do not detail what charges apply when a call starts in one rate period and ends in another rate period. The Commission concludes that USTS should clarify this provision in its tariff.

As decided by the Commission during the hearing in this docket, USTS may not have a price list in its tariff. The rates initially filed by the Company will become its ceiling rates and must be fully effective for at least fourteen (14) days before reductions or other charges may be considered.

USTS 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.

USTS shall compensate the local exchange companies for all revenue losses resulting from the completion of unauthorized intraLATA calls made by its customers. Such compensation shall be paid 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.

USTS 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.

The Commission further concludes that, for the time being, USTS should be required to file an undertaking to refund, rather than a bond, 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.

IT IS, THEREFORE, ORDERED as follows:

1. That USTS 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. USTS 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 entered in Docket No. P-100, Sub 72, and all other applicable Commission Orders.

B. USTS shall compensate the local exchange companies for all revenue losses resulting from the completion of unauthorized intraLATA calls made by its customers. Such compensation shall be paid pursuant to the compensation plan adopted by the Commission in Docket No. P-100, Sub 72, subject to any changes to the plan as may be approved by the Commission.

C. USTS shall not use or construct any facilities designed to bypass the access or local exchange facilities of the local exchange telephone companies.

D. USTS 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. USTS shall make the tariff revisions indicated above and shall add appropriate tariff provisions 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 and free directory assistance to those customers unable to use the telephone directory. Such revised tariffs shall be filed with the Commission and all parties not later than ten (10) days from the date of this Order. The parties may file comments on the revised tariffs, if any comments there be, not later than seven (7) days after the filing of such revised tariffs.

2. That this Order shall itself constitute the certificate of public convenience and necessity granted to USTS by the North Carolina Utilities Commission to provide interLATA long-distance telecommunications services in North Carolina.

3. That the tariffs to be filed by USTS under the conditions set forth in this Order shall become effective upon further Order.

4. That USTS 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.

ISSUED BY ORDER OF THE COMMISSION.
This the 24th day of February 1986.

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

DOCKET NO. P-174

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

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| In the Matter of | | |
| Application of The Western Union Telegraph Company | ) | ORDER GRANTING |
| for a Certificate of Public Convenience and Necessity | ) | CERTIFICATE OF |
| to Provide InterLATA Telecommunications Services as a | ) | PUBLIC CONVENIENCE |
| Public Utility Within the State of North Carolina and | ) | AND NECESSITY |
| for the Establishment of Initial Rates | ) | |

HEARD IN: Commission Hearing Room 217, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on March 17, 1986, at 2:00 p.m.

BEFORE: Commissioner Robert K. Koger, Presiding; and Commissioners Sarah Lindsay Tate and A. Hartwell Campbell

APPEARANCES:

For the Applicant:

Joseph E. Wall, Jordan, Price, Wall, Gray and Jones, P. O. Box 709, Raleigh, North Carolina 27602

Lawrence P. Keller, Associate Counsel, The Western Union Telegraph Company, 1827 L Street, N.W., Suite 1001, Washington, D. C. 20036
For: The Western Union Telegraph Company

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: This proceeding was initiated by The Western Union Telegraph Company (Western Union) on January 6, 1986, by the filing of an application with the North Carolina Utilities Commission seeking a certificate of public convenience and necessity to provide long-distance switched-voice telecommunications services as a public utility within the State of North Carolina.

On January 14, 1986, the Attorney General intervened in this docket and filed a motion requesting the Commission to require Western Union to post a bond to cover its estimated annual holdings in customer deposits and prepayments. Western Union filed a response in opposition to the Attorney General's motion on January 27, 1986. A petition to intervene was also filed by AT&T Communications of the Southern States, Inc., and an Order granting such petition was subsequently entered by the Commission.

Upon call of the matter for hearing, the Public Staff and Western Union were present and represented by counsel. Robert M. Fulton, Jr., Senior Director-Tariffs of Western Union, presented testimony in support of Western Union's application. No other party offered testimony.

The Commission, having carefully reviewed the entire record in this proceeding, now makes the following

## FINDINGS OF FACT

1. The Western Union Telegraph Company is regulated as a common carrier by the Federal Communications Commission and seeks a certificate of public convenience and necessity to provide long-distance telecommunications services as a public utility in North Carolina on an intrastate basis. Although it has requested statewide authority, Western Union has indicated that it will accept interLATA-only authorization during the period prior to such time that this Commission may authorize intraLATA service. Western Union presently operates as an interstate network within the bounds of North Carolina.

2. Western Union 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 Western Union in North Carolina are required to serve the public interest effectively and adequately, and will not jeopardize reasonably affordable local exchange service.

4. Western Union agrees to abide by all applicable rules and regulations of the North Carolina Utilities Commission and the findings, conclusions, terms, and conditions set forth in all applicable Commission orders.

5. Western Union agrees to compensate the local exchange telephone companies pursuant to the compensation plan adopted by the Commission in Docket No. P-100, Sub 72, for all revenue losses resulting from the completion of unauthorized or incidental intraLATA calls made by its customers.

6. Mr. Fulton testified that Western Union would make certain changes to its proposed North Carolina intrastate tariff as suggested by the Public Staff.

Western Union has filed a revised tariff with the Commission incorporating these changes.

7. Western Union's application contains a plan for determining monthly intrastate access minutes, and any unauthorized intraLATA conversation minutes that might be carried over its system.

8. Western Union should file an appropriate undertaking for Commission approval regarding refunds of any customer deposits, pre-paid 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 such 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 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.

Western Union seeks authority in this docket to provide interLATA long-distance telecommunication services as a public utility in North Carolina.

Based upon the foregoing findings of fact and the entire record in this proceeding, the Commission concludes that, subject to the conditions set forth in the ordering paragraphs below, Western Union should be granted a certificate of public convenience and necessity pursuant to G.S. 62-110 to provide interLATA long-distance telecommunication services as a public utility in North Carolina and that the Company's Tariff N.C.U.C. No. 2 should be approved.

IT IS, THEREFORE, ORDERED as follows:

1. That Western Union 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. Western Union 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 entered in Docket No. P-100, Sub 72, and all other applicable Commission Orders.

B. Western Union shall compensate the local exchange companies for all revenue losses resulting from the completion of unauthorized intraLATA calls made by its customers. Such compensation shall be paid pursuant to the compensation plan adopted by the Commission in Docket No. P-100, Sub 72, subject to any changes to the plan as may be approved by the Commission.

C. Western Union shall not use or construct any facilities designed to permit bypass of the access or local exchange facilities of the local exchange telephone companies by Western Union's long-distance switched-voice telecommunications service.

D. Western Union shall not hereafter abandon or discontinue service under its interLATA certificate in North Carolina, unless Western Union has received approval from the Commission to do so upon such terms and conditions as the Commission may prescribe.

2. That this Order shall be effective July 1, 1986, and shall constitute the certificate of public convenience and necessity granted to Western Union by the North Carolina Utilities Commission to provide interLATA long-distance telecommunications services in North Carolina.

3. That Western Union shall file its Tariff N.C.U.C. No. 2 within ten days from the date of this Order, with an effective date fifteen days from the date of this Order.

4. That Western Union 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, pre-paid accounts, processing fees, and hook-up fees on such terms and conditions that 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 effective date of this Order.

ISSUED BY ORDER OF THE COMMISSION.
This the 25th day of June 1986.

NORTH CAROLINA UTILITIES COMMISSION
Sandra J. Webster, Chief Clerk

(SEAL)

DOCKET NO. P-55, SUB 855
DOCKET NO. P-89, SUB 22

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

Docket No. P-55, Sub 855

In the Matter of
Continental Limousine Service, Incorporated, )
Post Office Box 2863, Winston-Salem, North )
Carolina 27102, )
Complainant )
)
vs. )
)
Southern Bell Telephone and Telegraph )
Company and BellSouth Advertising and )
Publishing Corporation, )
Respondents )
)
Docket No. P-89, Sub 22 ) ORDER DENYING MOTIONS TO
) DISMISS AND REQUIRING
In the Matter of ) ANSWER TO COMPLAINTS
Ferguson's Hardware, 2900 Hillsborough )
Street, Raleigh, North Carolina 27606, )
Complainant )
)
vs. )
)
Southern Bell Telephone and Telegraph )
Company and BellSouth Advertising and )
Publishing Corporation, )
Respondents )

BY THE COMMISSION: The above-captioned dockets involve complaints arising out of telephone yellow pages errors. For purposes of this Order the dockets will be considered together.

Procedural History

On December 12, 1984, Continental Limousine Service, Incorporated, of Winston-Salem filed a complaint against BellSouth Advertising and Publishing Company. The complaint letter stated that the basis of the complaint "is that BellSouth Advertising and Publishing Corporation knowingly published identical ads in the Winston-Salem telephone directory which utilized identical affiliate logos." The complaint stated that the remedy sought by Continental Limousine was "simply nonpayment for the ad in the Winston-Salem telephone directory."

On December 17, 1984, the Commission issued an Order serving the complaint on Southern Bell Telephone and Telegraph Company. On January 9, 1985, Southern Bell filed Answer in this docket and Motion to Dismiss. In its Answer, Southern Bell alleged that the complaint of Continental Limousine sought relief for an error allegedly committed by BellSouth Advertising and Publishing Company (BAPCO) in the 1984 Winston-Salem yellow pages; BAPCO is a Georgia corporation engaged in the publishing and advertising business which includes publishing and delivering telephone directories for telephone companies; Southern Bell did not sell, compile or publish the classified advertising complained of; BAPCO sold and published this advertising; as Southern Bell is not the entity which allegedly committed the advertising error, the Company should not have been served with the complaint. Southern Bell requested the Commission to dismiss the complaint against it.

Attached to Southern Bell's Answer and Motion to Dismiss was the affidavit of R. J. Booker, Manager-Director for BAPCO in Charlotte. Mr. Booker deposed that he had personal knowledge of the facts arising out of the complaint of Continental Limousine; that BAPCO is a wholly-owned subsidiary of BellSouth Corporation; that under an agreement dated December 30, 1983, between Southern Bell and BAPCO, Southern Bell granted BAPCO the exclusive right to publish telephone directories (alphabetical and classified) for all telephone exchanges in which the Company provides telecommunications services in Florida, Georgia, North Carolina and South Carolina; that as of January 1, 1984, BAPCO assumed the responsibility for publishing the telephone directories, including the sale of directory advertising in, the compilation, the printing and delivery of the directories, and the handling of advertiser complaints and the adjustments related thereto; that BAPCO, not Southern Bell, sold the directory advertising which is the subject of Continental Limousine's complaint; that no Southern Bell employee was involved in the sale, compilation or printing of the Complainant's advertising in the 1984 Winston-Salem yellow pages.

On February 7, 1985, the Public Staff-North Carolina Utilities Commission filed a Motion requesting that Southern Bell's Motion to Dismiss be denied and that BAPCO be made a party to this proceeding. The Public Staff also filed its Notice of Intervention in the docket.

On February 18, 1985, the Commission issued an Order serving complaint and the Public Staff's Motion to Dismiss on BAPCO; the Commission also served a copy of the Public Staff's Motion to Dismiss on Southern Bell. In its Order, the Commission noted that the formal complaint of Continental Limousine was filed against BAPCO and that the Commission served the complaint on Southern Bell and through inadvertence did not serve BAPCO.

On February 19, 1985, Southern Bell filed a reply to the Motion to Dismiss of the Public Staff. In its reply, Southern Bell stated that the Public Staff was asking the Commission to exceed its authority by asserting jurisdiction over a civil dispute between BAPCO and one of its customers. Southern Bell further alleged that the dispute arosé out of a contractual relationship between BAPCO and Continental and was properly a matter for the trial courts of the State and not subject to regulation by the Commission.

On March 8, 1985, BAPCO, through its general counsel, filed a letter with the Commission stating by way of special response that BAPCO was not subject to the jurisdiction of the Commission and that the Commission had no authority to direct that BAPCO satisfy the demands of the Complainant; that any claim which Continental Limousine may have in connection with the directory advertising complained of arose out of a private business contract between Continental and BAPCO and is not subject to the Commission's jurisdiction; that such jurisdiction belongs in the trial courts of North Carolina. BAPCO's counsel stated further that the Company was attempting to amicably settle the complaint.

On April 25, 1985, the Commission served the above-described Answers and Motions to Dismiss of Southern Bell and BAPCO upon the Complainant.

On May 10, 1985, Continental Limousine filed its response stating that it was not satisfied with the pleadings of Southern Bell and BAPCO and that it requested a hearing on its complaint.

On May 22, 1985, the Commission issued an Order scheduling oral argument on the matters raised in the Answer and Motion to Dismiss of Southern Bell and the special response of BAPCO. The Order noted that the complaint of Ferguson's Hardware in Docket No. P-89, Sub 22, would be scheduled for oral argument at the same time.

On March 19, 1985, Ferguson's Hardware of Raleigh filed its complaint against Southern Bell, alleging that its yellow page ad defined the location of its store on Hillsborough Street as being across the street from "NCSM", instead of being located across the street from "NCSU" (North Carolina State University). Ferguson's Hardware requested as relief that "Southern Bell absorb the total cost of the ad and credit us accordingly."

On March 26, 1985, the Commission issued an Order serving the complaint of Ferguson's Hardware on Southern Bell and BAPCO. The subsequent procedural history of the Ferguson's Hardware docket is practically identical to that of Continental Limousine and will not be discussed in detail. Suffice it to say that Southern Bell filed an Answer and Motion to Dismiss the complaint of Ferguson's Hardware and that BAPCO filed its "special response" stating that it was not under the jurisdiction of the Commission. On April 29, 1985, Ferguson's Hardware advised the Commission that the pleadings of Southern Bell and BAPCO were not satisfactory to it and the Complainant requested a hearing on its complaint. By Order issued May 22, 1985, the Commission scheduled oral argument in Ferguson's Hardware at the same time and place as the argument in Continental Limousine.

The Public Staff and the Attorney General have filed Notices of Intervention in these dockets.

The matter was heard by the full Commission on the Motions to Dismiss of Southern Bell and BAPCO. These Companies, the Public Staff, and the Attorney General were present and represented by counsel. At the conclusion of oral argument, the parties requested permission to file briefs with the Commission in support of their respective contentions. Southern Bell filed its brief on July 19, 1985, and BAPCO, the Public Staff, and the Attorney General filed their briefs on August 9, 1985.

Summary of Oral Argument and Briefs

The oral argument and the briefs of the parties can be summarized as follows:

BAPCO contends that the complaints against it should be dismissed for the following reasons: BAPCO is not a public utility and is engaged in unregulated activities, i.e., the publishing and distribution of telephone directories for telephone companies such as Southern Bell; even if BAPCO's acts were deemed to be those of Southern Bell, the complaints should be dismissed because yellow pages advertising is not a regulated activity; the nature of each complaint is a dispute between two private parties, the Complainant and BAPCO, over a matter which can only be heard in the civil courts of the State, in that the Complainant is seeking monetary damages which the Commission is not authorized to award.

Southern Bell contends that the complaints against it should be dismissed because Southern Bell did not sell or publish the advertisements in question; the Complainants entered into a private contract with BAPCO, which is a wholly-owned subsidiary of BellSouth Corporation; an order dismissing the complaints will have no effect on the Commission's ratemaking treatment of revenues that Southern Bell derives from its publishing contract with BAPCO; although the Commission withheld approval of the directory agreement between BAPCO and Southern Bell in Southern Bell's rate case, Docket No. P-55, Sub 834, this nonapproval does not permit the substitution of Southern Bell in the place of BAPCO; an order dismissing the complaints against Southern Bell will not affect the Commission's authority to hear disputes over white pages listings; and customers of BAPCO may pursue their disputes regarding yellow pages advertising in the civil courts of the State.

The Public Staff contends that yellow pages complaints have traditionally been heard by this Commission, and the fact that Southern Bell has transferred its yellow pages operations to BAPCO should not deprive yellow pages customers of their right of redress before the Commission. Southern Bell's action in transferring its directory publishing to BAPCO was a voluntary action on the part of Southern Bell. Furthermore, in Docket No. P-55, Sub 834, the Commission specifically disallowed the contract between Southern Bell and BAPCO. Southern Bell and BAPCO are wholly-owned subsidiaries of BellSouth and are therefore affiliated companies. The Commission can look into transactions of affiliated companies even though such companies, like BAPCO, are not regulated by the Commission. It would be unfair and improper to allow Southern Bell and BAPCO to avoid the Commission's jurisdiction by "hiding" behind their separate corporate identities.

The Attorney General contends that yellow pages advertising is an integral part of telephone service, and the local telephone company should be accountable to the Commission for yellow pages errors. The fact that Southern Bell has contracted with an outside source to publish the yellow pages directory does not relieve it of responsibility for poor service to customers whose yellow pages advertisements contain errors.

## The Decision of the Commission

The Commission is of the opinion, and so concludes, that the Motions to Dismiss of Southern Bell and BAPCO in these dockets should be denied and that Southern Bell and BAPCO be required to file Answers or offers of satisfaction to the complaints herein on or before February 3, 1986. In so deciding, the Commission has carefully considered the complaints, the Motions to Dismiss of Southern Bell and BAPCO, the various responses of the Attorney General and the Public Staff, the oral argument of the parties on July 1, 1985, and their briefs, and the judicial notice of various Commission dockets hereinafter set forth.

Prior to the formation of BAPCO and the transfer of directory publishing operations from Southern Bell to BAPCO, the Commission had exercised jurisdiction over yellow pages complaints from customers of Southern Bell, and Southern Bell had accepted and acknowledged the Commission's jurisdiction by filing Answers or Notices of Settlement of the complaints. Although the Commission had no jurisdiction to award monetary damages, such as loss of business income arising out of yellow pages errors, the Commission's complaint procedure usually resulted in bringing about some type of relief for the complainants, such as the correction of the ads or the cancellation of charges for the ads complained of.

As of January 1, 1984, BAPCO assumed responsibility for publishing telephone directories for the telephone exchanges throughout Southern Bell's service area. BAPCO and Southern Bell are wholly-owned subsidiaries of BellSouth and as such are affiliates of each other.

On February 3, 1984, Southern Bell filed a request with the Commission seeking the approval of the transfer of its directory operations assets to BAPCO. Docket No. P-55, Sub 839. In this docket, Southern Bell and the Public Staff entered into certain stipulations as follows:

> "1. The transfer of Southern Bell's directory related assets to BAPCO is approved; provided further,
>
> "2. No transfer price shall be approved or established in this docket. This issue shall be referred to the pending Southern Bell general rate case, Docket No. P-55, Sub 834, for resolution therein; provided further,
>
> "3. No decision regarding the appropriateness of the level of compensation provided for under the Directory Operations Agreement or the Services and Data Agreement shall be made in this docket. This matter shall be referred for decision in Docket No. P-55, Sub 834; provided further,
>
> "4. The Public Staff shall be permitted to audit the operations of BAPCO as they may relate to the compensation received by Southern Bell under agreements between the Company and BAPCO, and may use information so obtained, subject to protective agreements regarding proprietary information where appropriate, in future cases affecting the using and consuming public; provided further,
>
> "5. Southern Bell shall not cite this stipulation regarding the transfer of assets authorized herein in future cases to infer Public Staff approval of anything other than the transfer of said assets in principle; provided further,
>
> "6. The testimony filed by the parties in the instant docket (P-55, Sub 839) may be presented in support of their respective positions in said general rate case (P-55, Sub 834); and provided further,
>
> "7. Southern Bell reserves its contentions regarding the Commission's jurisdictional authority to prohibit the transfer of the directory assets and the legal necessity of the Company obtaining approval of such contracts and the proper regulatory treatment of directory advertising revenues as set forth in its Motion to Rescind

> for Approval in the instant docket, and such contentions shall not be deemed to be waived by its motion herein or the Order entered thereon."

The Commission issued an Order transferring the directory-related assets of Southern Bell to BAPCO subject to the stipulations of Southern Bell and the Public Staff. The Commission's Order further provided:

> "2. That the Commission's jurisdictional authority is not altered by this Order."

In the Southern Bell rate case, Docket No. P-55, Sub 834, the Commission's Order found and concluded that the contract between Southern Bell and BAPCO should not be approved in that proceeding. In discussing its reasons for expressly withholding its approval of the BAPCO contract, the Commission stated in part as follows:

> "In this proceeding, the Commission has been presented with a contract between Southern Bell and BAPCO, which is a wholly owned subsidiary of BellSouth Corporation, Southern Bell's parent company, providing 42.5% of net directory revenues to be paid as a publishing fee to Southern Bell. Both Southern Bell and BAPCO represent to this Commission that the 42.5% publishing fee will provide the same contribution to revenues for Southern Bell as would have been available from directory operations if BAPCO had not been formed.
>
> . . . . .
>
> "While all of the evidence shown above provides a clear basis for ordering that directory operations remain with the telephone company, the Commission does not intend in this proceeding to prevent BellSouth, through its subsidiary BAPCO, from entering into the advertising and publishing business. The Commission is, however, keenly aware of the current and potential threat to the revenue stream from directory operations which is available as an offset to local rates. The Commission believes, as has been said in the past, that directory revenues are generated because of the integral relationship of the directory to telephone service and that these revenues should not be siphoned off in any manner or for any purpose. The relationship between Southern Bell and BAPCO requires close scrutiny of any contract or similar arrangement between these companies to be sure that the profits of a nonregulated subsidiary are not maximized at the expense of the ratepayers.
>
> . . . . .
>
> "At the heart of any decision by this Commission regarding the proper rate-making treatment for directory revenues is the clear-cut decision of the North Carolina Supreme Court, upholding a prior decision of this Commission, that directory revenues are a proper offset of local rates and Judge Greene's statement in the Modification of Final Judgement, of which the Commission has taken judicial notice, that directory revenues will remain with the operating telephone companies to offset the cost of local service. [State of North Carolina ex rel. Utilities Commission v. Southern

> Bell, Utilities Commission v. Southern Bell, 307 N.C. 541 (1983)]; United States v. AT&T, 552 F. Supp. 131 (1982). It is, therefore, unnecessary to address again the question of who is to benefit from the directory revenues in the State of North Carolina.
>
> "It is, however, critical that this Commission be assured that none of the directory revenues available as an offset of local rates be lost or redirected to another subsidiary of Southern Bell's parent BellSouth due to any change made by the Company in the method to be used for publishing directories. There is a grave concern that approval of the contract at this time will result in a loss of revenues for North Carolina ratepayers.
>
> "At stake in this proceeding is the decision whether Southern Bell, in connection with BAPCO, will determine the rate-making treatment to be accorded directory revenues or whether the authority, obligation, and right to determine the rate-making treatment of these revenues will properly remain with this Commission. Approval of the contractual arrangement between BAPCO and Southern Bell, in light of the cap placed on revenues by the establishment of a percentage of revenues as a publishing fee, could serve to set a precedent of allowing Southern Bell, for rate-making purposes, to spin-off profitable pieces of its telecommunications services to separate subsidiaries, thereby circumventing a determination or review of the proper rate-making treatment of these services by this Commission. This means that the Commission could lose control, not only of directory revenues, but also of revenues from other areas and sources in the future.
>
> "For these and other reasons, the Commission finds that this important issue requires further examination and a historical test period to assure a fair decision regarding the arrangement between BAPCO and Southern Bell. This Commission, therefore, explicitly withholds approval of the contract between BAPCO and Southern Bell in this rate proceeding . . . ."

The question that the Commission must face in the instant proceeding is as follows: does the transfer of directory operations from Southern Bell to BAPCO deprive the Commission of jurisdiction over these yellow pages complaints? The Commission is of the opinion that it does not. As pointed out earlier, Southern Bell and BAPCO are wholly-owned subsidiaries of BellSouth and as such are affiliated companies. The Commission is authorized by law to examine transactions between affiliated companies, even though one of those companies may not be a public utility. G. S. 62-51; Utilities Commission vs. Intervenor Residents, 305 N.C. 62 (1982).

In a 1981 Order in a Southern Bell rate case, the Commission held that yellow pages advertising is an integral part of Southern Bell's public utility obligation and that revenues and costs associated with such advertising should be included in the Company's operating experience for ratemaking purposes. Docket No. P-55, Sub 784. In support of its decision including the yellow pages revenues and costs, the Commission stated:

> "The classified directory, in which advertising appears, is an integral part of providing adequate telephone service; thus, the

> absence of the classified directory would diminish the value of telephone service to the Company's customers."

On appeal of this Order by Southern Bell, the Supreme Court, in Utilities Commission v. Southern Bell, 307 N.C. 541 (1983), upheld the Commission's determination, stating in part as follows:

> ". . . we simply point out that the directory advertising operation of Southern Bell is not a separate enterprise from the transmission of telephone messages. The yellow pages are a very useful and beneficial component in providing telephone service to the public. In fact as Southern Bell points out on Page 137 in its February 1982, Raleigh, North Carolina Yellow Pages, '4 out of 5 [adults] Look in the Book.' On page 265 of that same book we find that every year the yellow pages are referred to "a total of almost 3.69 billion times." Indeed, the yellow pages are more than a convenience to newcomers in town who need a doctor, lawyer, plumber, electrician or any number of services. Newcomers could not be expected to begin in the front on the alphabetical listings and search until they find the desired service. In fact Southern Bell uses that very situation to promote the sale of its advertisements, 'Let newcomers get acquainted with you--Include all of your lines in these Yellow Page.'
>
> . . . . . .
>
> "The result is clear. Southern Bell enjoys a great advantage over all competitors in the field of directory advertising. In addition, this preferred position with all its benefits and revenues is directly related to and a result of the Company's public utility function. For these reasons we agree with the Utilities Commission and the Court of Appeals that the Commission does have the authority to include the expenses, revenues and investments related to directory advertising in its ratemaking proceedings." (307 N.C, at 545, 546)

In its decision, the Supreme Court further noted that the Commission has the authority pursuant to G.S. 62-42(5) to order a public utility to take the necessary action to secure reasonably adequate service for the public's need and convenience. The Court concluded:/

> "Undoubtedly yellow pages could fall within this provision." (307 N.C. 541, at 547.)

The Supreme Court further stated in this opinion the following:

> "We wish to point out that the yellow pages have never been and are not now regulated by the Utilities Commission. However, the fact that a specific activity of a utility is not regulated does not mean that the expenses and revenues from that activity cannot be included in determining the rate structure of the utility. In fact, the revenues and expenses from directory advertisements have historically been included in ratemaking determinations in this state." (Emphasis added) (307 N.C., at 544.)

Notwithstanding the Court's statement emphasized immediately above, the Commission must respectfully point out that the Commission has regulated yellow pages complaints for many years.

The Commission reaffirms its decisions that yellow pages advertising is an integral part of telephone service provided by Southern Bell under its public utility obligation. The fact that Southern Bell has voluntarily transferred its yellow pages operations to BAPCO should not excuse Southern Bell from its obligation and should not deprive yellow pages customers of their right of redress before this Commission. A public utility "cannot by contract deprive itself of, or impair, its power to perform its duty to serve the public properly." 65 Am. Jur. 2nd Public Utilities, Section 26; 73B CJS Public Utilities, Section 5; Soloman v. Wilmington Sewerage Company, 142 N.C. 439 (1906).

The Commission is of the opinion that BAPCO is a necessary party respondent in these complaint proceedings, since it acts as the agent or alter ego of Southern Bell with respect to the yellow pages advertising operations.

This Order will require Southern Bell and BAPCO to file Answers or offers of settlement to the complaints in these dockets pursuant to Commission Rule R1-9.

IT IS, THEREFORE, ORDERED as follows:

1. That the Motions to Dismiss filed by Southern Bell and BAPCO in this proceeding be, and the same are hereby, denied.

2. That BAPCO and Southern Bell be, and the same are hereby, party respondents in this proceeding.

3. That on or before February 3, 1986, Southern Bell and BAPCO shall file their Answers to the complaints in these dockets or offers of satisfaction with respect thereto, pursuant to Commission Rule R1-9.

ISSUED BY ORDER OF THE COMMISSION.
This the 15th day of January 1986.

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 Telephone and ) ORDER ESTABLISHING Telegraph Company's Goldsboro Exchange and ) EXTENDED AREA SERVICE Carolina Telephone Company's LaGrange Exchange )

HEARD IN: Wayne Center, Corner of George and Chestnut Streets, Goldsboro, North Carolina, on December 14, 1983, and 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., General Attorney, and Edward L. Rankin III, Attorney, 1012 Southern National Center, P.O. Box 30188, Charlotte, North Carolina 28230
and
Lawrence E. Gill, Attorney, 4300 Southern Bell Center, Atlanta, Georgia 30375

For Carolina Telephone and Telegraph Company:

Robert C. Voigt, Senior Attorney, and Jack W. Derrick, General Attorney, 720 Western Boulevard, Tarboro, North Carolina 27886

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

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

For the Public Staff:

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

BY THE COMMISSION: This matter arose upon the filing of petitions, resolutions, and letters submitted by Dr. Kent Denton, President of the LaGrange Chamber of Commerce in support of extended area service (EAS or toll free calling) between LaGrange and Goldsboro. On March 15, 1983, the Commission directed Southern Bell Telephone and Telegraph Company (Southern Bell) to conduct a cost study. By Order issued September 6, 1983, the Commission scheduled a public hearing in the LaGrange - Goldsboro area and required Carolina Telephone and Telegraph Company (Carolina Telephone) and Southern Bell to give notice of the hearing to their affected subscribers.

Carolina serves subscribers who reside in LaGrange and Southern Bell serves subscribers who reside in Goldsboro.

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 Public Witnesses

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. Among the individuals who testified as to their personal reasons for desiring EAS, there were also elected officials and spokesmen for various commercial and service organizations who stated their groups' reasons for favoring such a service.

The hearing was subsequently resumed in Raleigh for the purpose of taking the testimony of the witnesses for Southern Bell, Carolina Telephone, and AT&T.

### Southern Bell Telephone and Telegraph Company

Southern Bell offered testimony concerning the cost study which had been performed indicating that a monthly increase to Goldsboro subscribers of $.47 for residences and $1.18 for businesses would include the effect of toll revenue loss, and $.23 for residence and $.58 for businesses, excluding loss of toll revenues. The witness stated that the cost studies on this EAS were done in a period of predivestiture mode and have not been changed since the effects of divestiture on this EAS arrangement. Nevertheless, the witness stated that the Company believes the cost information is accurate. The witness suggested that a poll should be conducted to give the subscribers a chance to weigh the value of service against the additional charge.

### Carolina Telephone and Telegraph Company

Carolina Telephone Company offered testimony concerning the results of a calling study between LaGrange and Goldsboro along with rate increases applicable to the Company's LaGrange customers. The study revealed that 57.9% of the LaGrange customers made one or more calls to Goldsboro and that 10.6% of Southern Bell's Goldsboro customers made one or more calls to LaGrange. The rate increases applicable to LaGrange customers would be $1.65 per month for residential and $4.00 per month for business service.

AT&T Communications of the Southern States, Inc.

AT&T Communications of the Southern States, Inc. (AT&T), presented testimony to the effect 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. The witness further stated that two-way nonoptional 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. The witness contended that, under this arrangement, flat rate EAS charges offer no net savings to customers as a whole and could have stimulative effect that would increase network usage and access costs. Finally, AT&T proposed an alternative plan that 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, the witness 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 minute, 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, it runs contrary to pricing philosophy that recipients of an additional service should bear the cost, in that the revenue loss to Carolina would be borne by the Company's general body of ratepayers. Second, the proposal would be inconsistent with the Commission 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 servicę 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 charges paid by AT&T for this traffic.

On cross-examination, Mr. Friedlander conceded that the line termination charge is levied on a minites-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.

On April 5, 1985, the Commission issued an Order requiring Carolina and Southern Bell to poll their affected subscribers to determine their willingness to pay increased monthly rates associated with toll-free calling between LaGrange and Goldsboro. The polls were conducted using the following rates:

| | Goldsboro | LaGrange |
|---|---|---|
| 1 Party Residence | $ .23 | $1.65 |
| 1 Party Business | $ .58 | $4.50 |

The following results were submitted and presented to the Commission after they were analyzed by the Public Staff:

Polling Results

Carolina Telephone Company's LaGrange Exchange

| | | |
|---|---|---|
| 1. | Number of eligible voters | 2,381 |
| 2. | Number of ballots returned | 1,282 |
| 3. | Percent of ballots returned | 53.8% |
| 4. | Percent of ballots returned voting yes | 86.3% |
| 5. | Percent of eligible voters voting yes | 46.5% |

Southern Bell Telephone and Telegraph Company's Goldsboro Exchange

| | | |
|---|---|---|
| 1. | Number of ballots mailed | 27,737 |
| 2. | Number of ballots returned | 10,663 |
| 3. | Percent of ballots returned | 38.43% |
| 4. | Number of ballots returned voting in favor | 4,143 |
| 5. | Percent of ballots returned voting in favor | 38.85% |
| 6. | Percent of ballots mailed voting in favor | 14.93% |
| 7. | Number of ballots returned voting against | 6,451 |
| 8. | Percent of ballots returned voting against | 60.5% |
| 9. | Percent of ballots mailed voting against | 23.25% |
| 10. | Number of ballots returned but not counted | 69* |
| 11. | Percent of ballots returned but not counted | 0.65% |

*Ballots were not counted because these ballots did not have a signature, telephone number, and/or preference.

The Public Staff recommended that the Commission require Carolina Telephone and Southern Bell to implement the EAS without increasing the monthly rates at Goldsboro. Southern Bell requested and was granted two weeks to present further comments.

At the Regular Staff Conference of the Commission held on August 5, 1985, Southern Bell spoke in opposition to the Public Staff's recommendation. James R. Gadd, Regulatory Operations Manager for Southern Bell, stated that the Company has updated its cost study and now recommends that if the Commission decides to implement EAS, the following conditions should apply:

1. Residential customers in Goldsboro should be charged 21¢ per month for the implementation of EAS rather than 23¢ as indicated by the Company's original cost study;

2. EAS should not be implemented before September 1987, when a digital switch will be installed; and
3. Southern Bell would seek a waiver of the Modification of Final Judgment should the Commission so order.

On August 22, 1985, the Public Staff filed a response to Southern Bell's presentation at the August 5, 1985, Regular Staff Conference. The Public Staff's response stated that, based upon the relationship of the equipment expenses and loss of access charges to the total revenue requirement, the charge of 21¢ per month for residential subscribers used by Mr. Gadd is made up of a 04¢ component for equipment expenses and 17¢ for the access charge loss. Using Southern Bell's relationship between residence and business rates, the equipment expenses increase for business subscribers would be 10¢ per month and the access charge loss would be 43¢ per month. Moreover, the Public Staff stated that increases of 04¢ and 10¢ per month should be deemed to be de minimis by the Commission, and, therefore, the Commission should require that no increase be imposed by Southern Bell upon its Goldsboro subscribers due to the implementation of EAS to LaGrange and that the results of the poll taken of the Goldsboro exchange become irrelevant.

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 at 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, of the Southern States, 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 rural areas and Dobbs Court Subdivision, have 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. The testimony and polling results substantiate a need for the proposed EAS arrangement.

9. The monthly increases which the Goldsboro exchange subscribers of Southern Bell would incur are de minimis and Southern Bell should prepare to implement the EAS without imposing an increase on the Goldsboro exchange subscribers.

10. The cost study results submitted by Southern Bell indicate that the Company would incur no extraordinary reconfiguration costs in providing EAS between LaGrange and Goldsboro.

11. Southern Bell should immediately seek a waiver of the Modified Final Judgment to provide EAS between the LaGrange and Goldsboro exchanges.

12. Carolina Telephone Company should implement the EAS at the existing rates or at the rates in effect at the time the service begins.

13. The establishment of EAS between LaGrange and Goldsboro will have a negligible impact on AT&T"s North Carolina operations.

## CONCLUSIONS

The Commission concludes from all of the evidence and from the findings of fact based thereon that the public interest requires that toll free calling be established between the LaGrange and Goldsboro exchanges in order to maintain adequate communications service required to provide adequate health, educational, and law enforcement services and to promote economic development.

It is not unusual for a large exchange such as Goldsboro to be less interested in calling the small exchange such as LaGrange. However, in this case the Commission concludes that the need for the service by the LaGrange subscribers has been clearly demonstrated and that the public interest would be served by implementing the EAS. Moreover, the Commission concludes that the cost to Southern Bell is de minimis and that no increase should be imposed on the Goldsboro subscribers.

The Commission has carefully considered the arguments by AT&T and acknowledges that AT&T will experience some slight revenue reduction. However, AT&T will experience reductions in expenses such as access charges and billing and collection charges as a result of not having to render the service which will more than offset the revenue loss. The Commission concludes that there will be no significant impact on AT&T as a result of this decision. However, this case stands on its own merit and shall not be considered a precedent for future decisions involving interLATA EAS requests.

IT IS, THEREFORE, ORDERED as follows:

1. That Carolina Telephone and Telegraph Company and Southern Bell Telephone and Telegraph Company are hereby ordered and directed to establish EAS for toll free calling between the exchanges of LaGrange and Goldsboro on or before October 1987.

2. That within 30 days from the date of this Order Southern Bell shall seek a request for waiver of the Modified Final Judgment to provide the EAS between the Goldsboro and LaGrange exchanges and shall immediately notify the Commission as to the results of the request.

3. That the rates which Carolina shall charge for the extended area service shall be determined by application of Carolina's rates and tariffs approved by the Commission at the time of the implementation of the EAS.

4. That no charges shall be imposed by Southern Bell on Goldsboro subscribers since the Commission finds the proposed increases to be de minimis.

ISSUED BY ORDER OF THE COMMISSION.
This the 13th day of January 1986.

NORTH CAROLINA UTILITIES COMMISSION
Gail Lambert Mount, Deputy Clerk

(SEAL)

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 APPROVING EXTENDED AREA SERVICE

HEARD IN: J. W. Turlington Elementary School Auditorium, 116 West Prospect Street, Raeford, North Carolina, on Wednesday, October 29, 1985, at 7:00 p.m. and Commission Hearing Room 217, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on Thursday, October 30, 1985

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

APPEARANCES:

For the Respondent:

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

For the Public Staff:

James D. Little, 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 May 6, 1985, the Public Staff placed on the Commission Staff Conference Agenda a request of Raeford exchange subscribers for extended area service (EAS or toll-free calling) between the Raeford and Fayetteville exchanges. Both exchanges are served by Carolina Telephone and Telegraph Company. The Public Staff reported that the Raeford exchange subscribers have no EAS and that the result of the Public Staff's investigation indicates justification to pursue the EAS request.

On May 22, 1985, the Commission issued an Order Requiring Cost Study and Matrix Filings, which, among other things, required that the Company conduct a cost study on the implementation of EAS between Raeford and Fayetteville and file the results of the study with the Commission by August 1, 1985.

In a letter dated June, 1985, Carolina requested an extension of time for filing the required cost study to and including September 15, 1985. By Order dated July 2, 1985, the Commission granted Carolina an extension of time to and including September 1, 1985, to file the cost study.

On July 8, 1985, the Public Staff filed a motion requesting that, in view of the extension granted to Carolina Telephone, the Commission set a hearing date in this matter and establish testimony filing dates in order to avoid further delay in the hearing of this matter.

On July 24, 1985, the Commission issued an Order Scheduling Hearing to be held in Raeford, North Carolina, on Tuesday, October 29, 1985, beginning at 7:00 p.m. in the J. W. Turlington Elementary School Auditorium, 116 West Prospect Street, for the purpose of receiving the testimony of public witnesses. The public hearing was scheduled to resume at 11:00 a.m. on

Wednesday, October 30, 1985, in the Commission hearing room in Raleigh, North Carolina, for the purpose of receiving expert testimony from the parties.

The Commission further ordered that parties to this proceeding file their expert testimony on or before October 14, 1985, and stated that a further Order prescribing the Notice of Public Hearing and publication requirements would be issued upon receipt of the cost study to be filed by Carolina Telephone and Telegraph Company. By letter dated August 30, 1985, Carolina submitted the results of the cost study.

Based upon the application of the matrix contained in Carolina's tariffs (assuming October 15, 1985, regrouped rates for Fayetteville have become effective), the increase in monthly basic local rates for the Raeford exchange would be $4.52 for residence customers and $10.78 for business customers while the increases for the Fayetteville exchange would be $1.22 for residence customers and $2.91 for business customers. The Public Staff, after review of the cost study filed by Carolina, has concluded that the cost of providing EAS between Raeford and Fayetteville, excluding the toll revenue loss and savings, can be offset by increasing the basic monthly rates at Raeford by $4.52 for residence customers and $10.78 for business customers with no increase for subscribers in the Fayetteville exchange.

On October 2, 1985, the Commission issued an Order requiring public notice of the hearing to be published in general newspapers covering the Raeford and Fayetteville exchanges.

On October 29, 1985, the Commission held a hearing in Raeford to determine the interest of the local citizens in the proposed EAS. Approximately 1,000 residents appeared at the hearing and voiced overwhelming support for the EAS request. Only one person rose in opposition to the request. The following witnesses offered testimony of a very persuasive nature at the public hearing: John C. Howard, Director of Economic Development for the Raeford-Hoke Economic Development Commission; Sally Lowery; Tom Howell, President of the Raeford-Hoke Chamber of Commerce and Chairman of the Raeford-Hoke Economic Development Commission; Judge Warren Pate, Resident Judge in Raeford; Irene B. Grant; Ken Witherspoon, Director of the Hoke County Department of Social Services; Ralph Huff, Executive Vice President of a realty firm in Fayetteville; Polly D. Barnard; Avery Connell, a realtor and insurance agent; Adrian Williams, businessman; Bob Rogers, Hoke County Health Director; Charlotte Kelly; Steve Parker, Bank Executive Vice President; Jim Plummer; Buddy Blue; Barbara Buie, Director of the Hoke Reading Literacy Council; Flossie Robinson; Evelyn Manning, businessperson; Cahilda Rebecca McKenzie Lyons; Frank Baker, CPA; Kay Thomas; Willie Featherstone, Chairman of the Hoke County Agricultural Extension Service; Allen Edwards, Principal of the Upchurch Junior High School; Jean Powell, Assistant District Attorney; Renate Dahlin; Leonard T. Miller; Virginia Frye, businessperson; Kenneth Gregory, military serviceman; Charles Hottel; Carl Jordan, Financial Consultant; and Della Maynor, Hoke County Register of Deeds.

The hearing resumed in Raleigh on October 30, 1985, at which time the Public Staff presented the testimony of Leslie C. Sutton and Hugh L. Gerringer, Engineers with the Public Staff Communications Division. Carolina Telephone presented the testimony of Carlton R. Beaman, Director-Local Revenues, and E. D. Wooten, Manager-Industry Relations/Compensation.

On December 11, 1985, Carolina Telephone Company and the Public Staff filed briefs restating the evidence acquired during the investigation and hearing of this matter.

On December 19, 1985, the Commission, having reviewed all of the filings in this docket and taking into account the testimony of public witnesses and expert witnesses, issued an Order containing the following specific findings and conclusions, which the Commission hereby reaffirms:

1. That the level of interest in the proposed EAS is substantial.
2. That no hospital, medical, or dental services are provided in Hoke County.
3. That there are no shopping malls, movies, or entertainment centers in the County.
4. That residents of Raeford seem to believe that if they were able to call and be called by Fayetteville subscribers without paying a toll, more businesses, industries, and homeowners would locate in Hoke County, thus increasing the tax base and improving the quality of life of Raeford citizens.

Based on the evidence, the Commission concluded that a poll of the Raeford subscribers should be made using the basic local monthly rate increases that were stated at the hearing. The Commission made no decision in the December 19, 1985, Order as to whether or not Fayetteville should be polled. The Order stated that after analyzing the polling results the Commission would determine what further action should be taken.

The basic monthly rate increases used for polling the Raeford subscribers were as follows:

| Raeford | |
|---|---|
| Residence | Business |
| $ 4.52 | $10.78 |

On January 31, 1986, Carolina Telephone and Telegraph Company (Carolina) filed a letter stating the following polling results.

| | | |
|---|---|---|
| 1. | Number of eligible voters | 4953 |
| 2. | Number of ballots returned | 3297 |
| 3. | Percent of ballots returned | 66.6 |
| 4. | Percent of ballots returned voting in favor | 74.4 |
| 5. | Percent of ballots submitted to subscribers voting in favor | 49.5 |

On February 4, 1986, the Public Staff filed a Motion to Establish EAS. The motion suggests that the Commission immediately order the establishment of extended area service between Carolina Telephone and Telegraph Company's exchanges of Raeford and Fayetteville, applying the matrix increase only to Raeford, and requiring no increase to or vote by the Fayetteville customers. The motion states that the Public Staff had presented evidence during the hearing in Raleigh on October 30, 1985, showing that the incremental cost of providing this EAS would be covered by applying the matrix increases solely to

Raeford with no increase needed at Fayetteville. The evidence presented by the Public Staff further indicated that the matrix was simply out of kilter in this instance and alleged that to hold a vote in Fayetteville based on the matrix increase would mean certain death for the EAS and would be unfair to Raeford both from a practical and from a policy standpoint.

On February 10, 1986, Carolina Telephone and Telegraph Company filed a Response to Motion of Public Staff. In its Response, Carolina alleges that the Public Staff's recommendation not to increase rates in Fayetteville creates an unlawful preference and discriminatory rate in favor of those customers and would require the Company to vary from its authorized rate schedules in violation of G.S. 62-139. The Response acknowledges that the Commission can implement EAS between Raeford and Fayetteville based on public interest considerations and without a poll of Fayetteville. However, Carolina asserts that such action should be taken only by applying the lawful tariff rate for Fayetteville subscribers.

On February 24, 1986, Carolina Telephone filed a copy of an agenda item prepared by the Public Staff in Docket No. P-7, Sub 697.

Based upon the foregoing and the entire record in this proceeding, the Commission now makes the following

## FINDINGS OF FACT

1. 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 Raeford and Fayetteville exchanges, 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. Local interest in the proposed EAS was initially brought to the attention of the Commission by the Public Staff on May 6, 1985. On May 22, 1985, the Commission directed Carolina to conduct a cost study on the implementation of the proposed EAS arrangement and to file the matrix and cost study results with the Commission.

3. The Commission scheduled a hearing to be held in Raeford on October 29, 1985, and to be continued in Raleigh on October 30, 1985. Public notice of the hearing was duly given to Raeford and Fayetteville subscribers. Approximately 1,000 people attended the hearing in Raeford, many of whom testified voicing overwhelming support for the EAS arrangement. Only one individual appeared in opposition to the EAS.

4. The cost study results submitted by Carolina reveal that if the matrix-based tariffed rates were applied to both Raeford and Fayetteville, Carolina would dramatically overcollect the incremental cost of providing this EAS. If the tariffed rates were applied in Raeford only, the Company would recover the total cost of providing the service to both Raeford and Fayetteville.

5. The results of the polling of Raeford subscribers to determine their willingness to pay the tariffed rates reveal that of those subscribers

returning ballots, 74.4% favored the proposed EAS and were willing to pay monthly increases of $4.52 for residential subscribers and $10.78 for business subscribers.

6. Carolina contends that both Raeford and Fayetteville subscribers should pay the matrix-based tariffed rates.

7. The Public Staff contends that Carolina should not be allowed to significantly overcollect its cost. Such an overcollection would result if the Commission approved the matrix-based tariffed rates proposed by the Company for both Raeford and Fayetteville subscribers. Moreover, the Public Staff asserts that the tariffed rates are out of kilter in this instance and that to hold a vote in Fayetteville based on those rates would be certain death for the EAS and unfair to Raeford subscribers both from a practical and policy standpoint.

8. There is a clear and convincing need for the implementation of EAS between Raeford and Fayetteville in order to enhance and improve governmental, business, and social services and to promote economic development in Hoke County.

9. The public interest will best be served by the establishment of EAS between Raeford and Fayetteville. The recovery of the cost of providing this EAS can best be accomplished by applying the matrix-based tariffed rates to the Raeford subscribers only. No charge(s) shall be placed on Carolina's Fayetteville subscribers related to the provision of the Raeford-Fayetteville EAS pending further Commission Order.

WHEREUPON, the Commission reaches the following

## CONCLUSIONS

The Commission concludes from all of the evidence and findings of fact based thereon that the public interest requires that toll free calling be established between the Raeford and Fayetteville exchanges of Carolina Telephone and Telegraph Company in order to maintain adequate communications services necessary to provide adequate health, education and law enforcement services and to promote economic development in one of the poorest counties in this State. The testimony in this case clearly demonstrates a genuine need for the EAS in question on the part of Raeford subscribers in particular. Seldom, if ever, has the Commission seen community enthusiasm and organization for EAS demonstrated as well and as genuinely as in Raeford. Furthermore, the high level of interest demonstrated in this proceeding cut through economic, social, and racial lines. The need for EAS is also demonstrated by the fact that Hoke County has no hospitals, pediatricians, surgeons, dental or eye specialists, shopping malls, entertainment areas, movies, or general services of the type and number that most communities take for granted. Raeford subscribers are presently required to make long distance calls to Fayetteville in particular to contact and secure even the most essential of services, such as specialized medical treatment, business suppliers, banks, schools, and the like.

Having concluded that the proposed extended area service between Raeford and Fayetteville should be approved, the Commission will now address the issues concerning the incremental cost of providing such EAS and how such cost should be recovered from subscribers.

The Company and the Public Staff disagree as to the incremental cost of providing this service. The position of each party in this regard is presented in the table below. Also presented in the table are the proposed EAS revenues that would be produced by the respective rates that each party would have the Commission authorize in conjunction with the approval of the Raeford-Fayetteville EAS; and, the over recovery of cost that would result under various scenarios constructed from information contained in the record of this proceeding.

COMPARATIVE
REVENUE/COST SUMMARIZATION
Raeford - Fayetteville EAS
($ in Millions)

| | | Company[1] | | Public Staff[2] | |
|---|---|---|---|---|---|
| Line No. | Item | Including Loss of Toll | Excluding Loss of Toll | Using Analog Equipment | Using Digital Equipment |
| | (a) | (b) | (c) | (d) | (e) |
| 1. | Incremental Cost | $1.064 | $ .429 | $.272 | $.168 |
| 2. | Revenue From Proposed Rates | 2.104 | 2.104 | .353 | .353 |
| 3. | Overcollection of Cost | $1.04 | $1.675 | $.081 | $.185 |

With respect to the question regarding the propriety of inclusion of loss of toll revenue as a cost to be borne by the EAS subscribers, the Commission does not believe that it is appropriate to require new EAS subscribers to pay both the incremental cost of new EAS and the cost of old toll service which they no longer receive. However, the Commission is not unmindful of the fact, all other things remaining equal, that the Company will experience a transitory toll revenue short fall due to the impact of EAS. The supposition "all other things remaining equal", of course, is a simplifying assumption that at best is misplaced in today's vastly changed and rapidly changing telecommunications regulatory environment. Therefore, the Commission must carefully consider and weigh this question of toll revenue loss in conjunction with other dynamic economic events, including events that would tend to compensate for or moderate the transitory loss of toll revenue.

Public Staff witness Gerringer points out that "the toll trunking and toll switching equipment which was idled by elimination of the toll between the EAS points continues to carry toll traffic to other toll points. Therefore, the toll traffic and revenues will grow back to the level existing before EAS without any additional capacity costs being incurred by the telephone company.

[1] The Company's incremental cost estimate is based on the use of analog equipment.

[2] The Public Staff's cost estimates do not include the loss of toll revenue which the Company estimates to be $.635 million.

The availability of this temporarily idled capacity enables the telephone company to delay expenditures which would otherwise have been required to meet toll growth demands". The Commission agrees with witness Gerringer in this regard. Further, in assessing the need for immediate rate relief to cover this transitory loss of toll revenue it is insightful to examine the economic consequences of other Company tariffs which in substance allow the Company to automatically increase certain of its rates outside the context of a general rate case proceeding. For example, under existing tariffs on a semi-annual basis the Company is permitted to regroup any exchange to a higher rate group in order to reflect growth in the number of customers served by such an exchange. In October 1985 the Company regrouped approximately 38 exchanges. Such regrouping will produce additional revenues of approximately $936 thousand on an annual basis. There is relatively little or no offsetting cost associated with the additional revenues to be realized by the Company as a result of the regroupings. It is also noteworthy to observe that the Company in mid 1985 requested and was authorized significantly increased depreciation and amortization rates for use in determining operating income for financial reporting purposes. The Company did not request, has not requested, and did not receive a rate increase to cover those increased costs. Such action tends to support the Commission's general view that the overall profitability of the company remains in good standing and serves to enhance and assure its continued financial viability. Therefore, the Commission believes and so concludes that the transitory loss of toll revenue arising from the Raeford - Fayetteville EAS will not have a material impact on the Company's earnings and that such toll loss is not a proper cost to attribute to or recover from Raeford - Fayetteville subscribers. In this regard, the Commission takes judicial notice of the extremely relevant decision rendered by the Ohio Supreme Court in Arcadia Telephone Company v. Ohio Public Utilities Commission, 30 PUR 4th 131 (1979).

The Commission will next address the issue of the propriety of use of the Company's EAS Matrix for purposes of determining the appropriate incremental costs to be placed on Raeford - Fayetteville subscribers.

The EAS Matrix is a lawfully established tariff which remains in full force and effect. The goal of the Commission in approving the matrix concept was to provide an objective means whereby the Company would on average, within reasonable bounds, be permitted to recover the cost of providing EAS outside of the context of a general rate case proceeding. Thus, by virtue of its innateness the Matrix will at times underrecover and at times overrecover the cost of providing EAS. In the instant case, the Matrix under the Company's proposal would overrecover the incremental cost of providing EAS by approximately $1.675 million, excluding the transitory loss of toll revenue from the determination of the cost of providing such service. The overrecovery of costs is approximately $1.040 million if one assumes that the transitory loss of toll revenue should be included in the calculation of the cost of providing the Raeford - Fayetteville EAS. As previously stated, however, the Commission does not believe that such an assumption is proper. In this instance utilization of the EAS Matrix under the Company's costing approach exclusive of the transitory toll revenue loss issue, will result in the Company overrecovering its incremental cost by 490%. Under the Public Staff's least cost approach application of the EAS Matrix will result in the Company overrecovering its incremental cost by 1,252%. Due to the vast overcollection of cost that would otherwise result the Commission believes and so concludes that it is just and reasonable to defer authorization of rates based upon full implementation of the EAS Matrix in this instance until such time as a full, fair and complete investigation and inquiry into this matter can be made in the context of a general rate case investigation. Specifically, the Commission concludes that implementation of that portion of the EAS Matrix as it applies to the Company's Raeford subscribers should be approved. The Commission further concludes that implementation of that portion of the EAS Matrix as it applies to the Company's Fayetteville subscribers should be held in abeyance pending final resolution of this matter in the Company's next general rate case proceeding. Finally, the Commission concludes that the Company should be permitted to accrue as memorandum entries on its books of account the revenue it would have billed absent the Commission's suspension of that portion of the EAS Matrix related to its Fayetteville subscribers. In conjunction with adjudication of the Company's next general rate case proceeding the Commission will decide to what extent, if any, such accruals should be recovered from ratepayers and the extent to which, if any, such recovery if found to be warranted should be assigned to the Company's Fayetteville subscribers. The EAS as approved herein will not become effective until June 1987. Therefore, it is noted, should the Company find it necessary to file a general rate application prior to implementation of this EAS, it is quite possible that this matter can be resolved in finality prior to the establishment of the EAS; perhaps, through adjustments to the Company's matrix on a systemwide basis. It is clear, at the very least, that the Matrix as presently constructed needs further study and perhaps modification; particularly in those instances where EAS involves a very large and a very small exchange.

Before proceeding to other matters there is one final group of issues that needs to be addressed with respect to the incremental cost of providing the Raeford-Fayetteville EAS. Such issues concern the Public Staff's adjustments to the Company's calculation of the incremental cost of providing the EAS, exclusive of the transitory toll revenue loss. Suffice it to say that the Commission agrees with the Public Staff's reasoning as presented during the hearings held in this regard. The Commission, therefore, concludes that the level of incremental cost proposed by the Public Staff is proper for use herein.

IT IS, THEREFORE, ORDERED as follows:

1. That Carolina Telephone and Telegraph Company is hereby directed to establish EAS between the exchanges of Raeford and Fayetteville on or before July 1, 1987.

2. That Carolina shall charge to Raeford subscribers only the tariffed rates approved by the Commission and in effect at the time of implementation of the EAS. No charge(s) shall be placed on Carolina's Fayetteville subscribers related to the provision of the Raeford-Fayetteville EAS pending further Commission Order.

3. That Carolina shall accrue on its books of account the revenue it would have billed absent the Commission's suspension of that portion of the EAS Matrix related to its Fayetteville subscribers. In conjunction with adjudication of the Company's next general rate case proceeding the Commission will decide to what extent, if any, such accruals should be recovered from

ratepayers and the extent to which, if any, such recovery if found to be warranted should be assigned to the Company's Fayetteville subscribers.

ISSUED BY ORDER OF THE COMMISSION.
This the 10th day of March 1986.

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

Commissioner Sarah Lindsay Tate, Dissenting
Commissioner J. A. Wright, Concurring

DOCKET NO. P-7, SUB 688

COMMISSIONER TATE, DISSENTING. I concur in the decision that EAS should be granted between Raeford and Fayetteville. Clearly, the service is justified and warranted by public convenience and necessity. I dissent to the way the majority has implemented this EAS.

In granting this EAS, the Commission had before it two possible choices: (1) to apply Carolina Telephone and Telegraph Company's matrix to set rates for Raeford and Fayetteville, and (2) to use a cost study to set rates for Raeford and Fayetteville. The majority chose to do neither.

Carolina's matrix was adopted in a rate case in 1975 and has been consistently used in all EAS proceedings since that time. The matrix is a mechanism which averages the cost of providing EAS service and therefore eliminates the necessity of doing separate cost studies for each proposal. It is my view that since the matrix is a lawful Tariff adopted in a general rate case, it should not be changed except in a general rate case proceeding. Furthermore, since the matrix is an average, and will sometimes overcollect and at other times undercollect, it is both unfair and discriminatory to refuse to apply it only where an overcollection occurs. This ignores the occasions where EAS revenues were undercollected and guarantees that the matrix cannot operate properly. The uncontradicted testimony in the case is that the Company is currently experiencing an overall EAS revenue shortfall of $4,416,951 annually. The majority's decision will further exacerbate this problem.

Ah, but the majority says it has applied the matrix. Has it? With the matrix in operation, Raeford subscribers pay an additional $4.52 for residences and $10.78 for businesses while in Fayetteville, the residential increase should be $1.22 and $2.91 for businesses. Was this ordered? No. One half of the matrix was used - the Raeford half. But Fayetteville subscribers are not ordered to pay any increases; therefore, truly the matrix is not in effect.

At this point, the majority makes a "creative" accounting paper adjustment to make it appear that the matrix is in effect. Carolina is to set up an account which will reflect what would have been paid by Fayetteville customers if indeed the matrix had been applied. Note the Fayetteville subscribers will not pay what is required under the matrix, but we will pretend they did by entering what they should have paid in a deferred account. If this amount is ever paid, it will be paid by all of Carolina's subscribers, not by the

Fayetteville subscribers from whom it is due under a proper application of the matrix. Therefore, nobody in Fayetteville is mad and the Company has the dubious comfort of a paper adjustment on its books. The difficult decision as to whether that paper adjustment will ever become real is delegated by the Full Commission to three unknown Commissioners who will decide at some unknown time in the future. Sophistry supreme!

If the panel in the next Carolina case decides not to allow the paper adjustment, the matrix has been abandoned and Carolina will never collect the revenues due under the matrix. If the panel allows the adjustment, then all Carolina ratepayers will pay for what was due from Fayetteville.

In its Order the majority states that the Commission may, in Carolina's next general rate proceeding, require Carolina to forego such increased charges based upon Carolina's overall revenue requirement. This outcome is, I believe, unlikely since the Company is currently experiencing an overall EAS revenue requirement shortfall. Further, the basis for stating that the matrix rates exceed the actual costs of implementing the EAS arrangement are incremental cost studies performed by the Company and Public Staff. While the majority ordered the matrix rates for Raeford, two pages of the Order are devoted to a discussion of the cost studies which were not applied. The fact that the Company filed such studies only at the direction of the Commission and disclaimed the results of these incremental studies should be duly noted. Such studies do not reflect the total revenue requirements of the EAS arrangement but rather the incremental cost associated therewith. The majority has erroneously interpreted incremental costs to equate to total costs in its Finding of Fact No. 4. Incremental costs and total costs are obviously not the same. An incremental cost study considers only the additional new investment and related costs resulting from implementing an EAS arrangement. In contrast, a total cost or fully allocated cost study reflects existing investment and related costs previously devoted to other services as well as additional new investment and related costs required to provide the EAS service. The majority rejects the inclusion of lost toll revenues in determining the cost of providing EAS service and perhaps properly so. However, I believe the majority has done so using erroneous reasoning. In a properly conducted total or fully allocated cost study, it would be acceptable to exclude the loss of toll revenues from the study since the total costs devoted to providing such services have properly been considered in the study. However, an incremental study ignores existing costs previously recovered from toll service revenues. The toll revenues for service between Raeford and Fayetteville will clearly cease to exist upon implementation of EAS. However, upon implementation of EAS, the related costs will not cease to exist nor will they be subsequently recovered through future toll growth as the majority asserts. Specifically, as testified to by Company witness Beaman, the traffic sensitive costs related to cable facilities, circuit equipment and central office switching previously providing toll service between Raeford and Fayetteville will be diverted from toll use to the EAS arrangement. The separations studies routinely performed by the Company for toll settlement purposes will properly allocate these costs on a minutes of use basis from toll service to EAS. Indeed, it is very likely that traffic sensitive costs will increase rather than decrease as a result of the EAS arrangement since the flat EAS customer charge will serve to stimulate calling between Raeford and Fayetteville. The ultimate outcome of any change in allocation of nontraffic sensitive costs between toll service and EAS as a result of the Raeford and

Fayetteville EAS arrangement is debatable. The Company and Public Staff are not in agreement on this matter. The Company maintains that certain embedded nontraffic sensitive costs will be allocated from toll service to EAS as a result of the EAS arrangement. In contrast, the Public Staff asserts that such an allocation will not occur. The proper ratemaking treatment to be accorded nontraffic sensitive costs associated with toll service has been in the past, continues to be at present, and will undoubtedly be in the future a subject of much debate both at the federal regulatory level and the state regulatory level.

The FCC has a long-term goal of collecting the nontraffic costs allocable to interstate toll operations by means of a flat rate subscriber line charge. This Commission, though generally opposed to end user charges, will clearly have to examine the proper costing and pricing methodologies for nontraffic sensitive costs in its upcoming generic telecommunications proceedings. Thus a definitive statement regarding the final outcome of nontraffic sensitive costs in this case may be premature. However, it seems logical that, if certain nontraffic sensitive costs previously used for toll service between Raeford and Fayetteville are diverted to EAS service between the two areas, then a just and reasonable allocation of such costs is to assign such costs to those who benefit from the EAS arrangement.

I believe that the cost study results relied upon by the majority are inaccurate since incremental rather than fully allocated costs are used. Thus, this decision is an attempt to avoid an unpopular decision to avoid applying the matrix properly and to avoid stating that the matrix has been abandoned.

In conclusion, it is somewhat paradoxical that the majority states that the matrix rating scheme is out of kilter in this instance and endorses the Public Staff's incremental cost study but still does not render a decision based on those beliefs. Implementation of the Public Staff's incremental cost study findings would have lowered the cost of EAS to Raeford below the level imposed by the majority by approximately $81,000 annually. Further, if the majority genuinely considers the Public Staff's study to be correct, then establishing a deferred account in which to accrue the foregone Fayetteville revenues (based on the matrix) would be totally unnecessary. The decison is schizophrenic, and I must dissent.

Sarah Lindsay Tate, Commissioner

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 ) ERRATA ORDER
Telegraph Company's Exchanges of Raeford and )
Fayetteville )

BY THE COMMISSION: On March 10, 1986, the Commission entered an Order in this docket approving extended area service between the exchanges of Raeford and Fayetteville, North Carolina. The Commission has discovered that Finding of Fact Number 2 set forth in said Order was not included in its entirety.

Therefore, the Commission concludes that the Order of March 10, 1986, should be amended pursuant to this Errata Order to revise Finding of Fact Number 2 to read as follows:

> 2. Local interest in the proposed EAS was initially brought to the attention of the Commission by the Public Staff on May 6, 1985. On May 22, 1985, the Commission directed Carolina to conduct a cost study on the implementation of the proposed EAS arrangement and to file the matrix and cost study results with the Commission.

IT IS, THEREFORE, ORDERED that the "Order Approving Extended Area Service" entered in this docket on March 10, 1986, be, and the same is hereby, amended to revise Finding of Fact Number 2 to read as follows:

> 2. Local interest in the proposed EAS was initially brought to the attention of the Commission by the Public Staff on May 6, 1985. On May 22, 1985, the Commission directed Carolina to conduct a cost study on the implementation of the proposed EAS arrangement and to file the matrix and cost study results with the Commission.

ISSUED BY ORDER OF THE COMMISSION.
This the 13th day of March 1986.

NORTH CAROLINA UTILITIES COMMISSION
Sandra J. Webster, Chief Clerk

(SEAL)

DOCKET NO. P-118, SUB 39

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

| In the Matter of<br>Application of ALLTEL Carolina, Inc., for Authority to Adjust Its Rates and Charges Applicable to Intrastate Telephone Service in North Carolina | ) | ORDER GRANTING PARTIAL INCREASE IN RATES |
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HEARD IN: Pritchett Room, Anson County Library, 120 South Green Steet, Wadesboro, North Carolina, at 11:00 a.m. on October 1, 1986; W. Alexis Hood Meeting Room, Town Hall, 224 North Trade Street, Matthews, North Carolina, at 7:00 p.m. on October 1, 1986; Courtroom, Polk County Courthouse, Main Street, Columbus, North Carolina, at 11:00 a.m. on October 2, 1986; Meeting Room, Rural Hall/Stanleyville Branch Library, 7125 Broad Street, Rural Hall, North Carolina, at 7:00 p.m. on October 2, 1986; and the North Carolina Utilities Commission Hearing Room, Dobbs Building, Raleigh, North Carolina, on October 14, 16, and 17, 1986

BEFORE: Commissioner Robert K. Koger, Presiding; and Commissioners Sarah Lindsay Tate and Edward B. Hipp

APPEARANCES:

For ALLTEL Carolina, Inc.:

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

For the Using and Consuming Public:

Vickie L. Moir and Theodore C. Brown, Jr., Staff Attorneys, Public Staff - North Carolina Utilities Commission, Post Office Box 29520, Raleigh, North Carolina 27626-0520.

Karen E. Long, Lorinzo Joyner, and Lemuel Hinton, Assistant Attorneys General, North Carolina Department of Justice, P. O. Box 629, Raleigh, North Carolina 27602-0629.

BY THE COMMISSION: On April 30, 1986, ALLTEL Carolina, Inc. (ALLTEL, Company, or Applicant), filed an application with the Commission for authority to adjust its rates and charges for intrastate telephone service in North Carolina to become effective for service rendered on and after May 30, 1986. The Company also filed a depreciation rate report and P-1 data on April 30, 1986. The Company had earlier requested, and on April 14, 1986, received, Commission approval of certain changes in the P-1 data.

On May 23, 1986, the Commission issued an Order setting the matter for investigation, declaring the case to be a general rate case, requiring public notice, suspending the proposed rates, setting the matter for hearing, and establishing the test period to be the 12 months ended December 31, 1985.

On May 27, 1986, the Public Staff filed a Motion for Scheduling of Additional Public Hearing. On June 6, 1986, the Commission issued an Order scheduling an additional public hearing and rescheduling the previously scheduled out of town public hearings.

On June 13, 1986, a Petition for Leave to Intervene was filed by AT&T Communications of the Southern States, Inc. On September 4, 1986, the Attorney General filed a Notice of Intervention. On September 22, 1986, the Commission issued an Order Regarding Hearing Schedule in Raleigh and on October 9, 1986, issued a Further Order Regarding Hearing Schedule in Raleigh.

The public hearings came on as scheduled. The following public witnesses appeared and offered testimony regarding quality of service and/or comments on the proposed rate increase:

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| Wadesboro: | Phyllis W. Williams |
| Matthews: | Carol Hardin, Helen Blair, Ben Floyd, J. N. Yandell, and Daniel Lowell Peterson |
| Columbus: | Viola Foster, Thomas Teal, Charlie Wilson, Earl H. Brendall, Leo Hornsby, Verá Drehman, Alvin Drehman, Grace Pittman Pusey, Clayton Hoornstra, Paul Butler, and Patricia Duton |
| Rural Hall: | John Owen, Bonita Pound, James Pound, Ray C. Mathis, R. E. Dean, Charles Pulliam, C. E. Robertson, and Dean C. Plemmons |
| Raleigh: | L. B. Grimshaw, Phyllis W. Williams, and Harry D. Brown |

At the hearings held in Raleigh, the Company presented the testimony and exhibits of the following witnesses: John T. Dunbar, President of ALLTEL Service Corporation - Southern Region and Vice President and Director of ALLTEL Carolina, Inc.; Americo Cornacchione, Vice President, Accounting and Finance of ALLTEL Service Corporation - Southern Region and Secretary, Treasurer and Director of ALLTEL Carolina, Inc.; John D. Russell, President of John Russell Associates, Inc.; Raymond J. Brooks, Manager - State Regulatory Matters of ALLTEL Service Corporation; and Dr. James H. Vander Weide, President of Financial Strategy Associates and Research Professor of Finance at the Fuqua School of Business, Duke University. The Company also presented the rebuttal testimony and exhibits of Mr. Cornacchione.

The Public Staff presented the testimony and exhibits of the following witnesses: Leslie C. Sutton, Engineer - Communications Division; John T. Garrison, Jr., Engineer - Communications Division; James S. McLawhorn, Engineer - Communications Division; Danny P. Evans, Financial Analyst - Economic Research Division; and Jocelyn M. Perkerson, Staff Accountant - Accounting Division. The Public Staff filed Perkerson Exhibit I with certain schedules revised on October 21, 1986.

On November 3, 1986, the Company filed exhibits reflecting ALLTEL's position as amended at the public hearings.

Based on the foregoing, the application, the testimony and exhibits, and the entire record in this proceeding, the Commission now makes the following

## FINDINGS OF FACT

1. The Applicant, ALLTEL Carolina, Inc., is a public utility duly authorized to do business in North Carolina. ALLTEL is providing telecommunications service in North Carolina and, as such, is subject to the jurisdiction of this Commission. ALLTEL Carolina, Inc., 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, ALLTEL requested rates designed to produce additional gross annual revenues of $6,676,765 based on a test year ended December 31, 1985. This request was amended to $5,254,424 as shown in the Company's late-filed exhibits.

3. The test year for purposes of this proceeding is the 12 months ended December 31, 1985, adjusted for certain known changes based upon circumstances and events occurring up to the time of the close of the hearings in this docket.

4. The overall quality of service provided by ALLTEL Carolina, Inc., is adequate and has improved in most exchanges since the Company's last general rate case; however, there are still areas in which improvement is needed.

5. The appropriate intrastate jurisdictional allocation factors for use in this proceeding should reflect the first year's transition of the interstate Subscriber Plant Factor (SPF).

6. ALLTEL's reasonable original cost rate base is $64,048,654. This consists of telephone plant in service of $102,408,799, materials and supplies of $404,627, working capital allowance of $573,820, and Rural Telephone Bank stock of $1,636,071, reduced by accumulated depreciation of $28,464,336, customer deposits of $190,317, deferred income taxes of $12,292,602, and pre-1971 investment tax credits of $27,408.

7. ALLTEL's gross revenues for the test year under present rates after accounting and pro forma adjustments are $30,630,321.

8. The reasonable level of test year intrastate operating revenue deductions after accounting, pro forma, and end-of-period adjustments is $25,867,331.

9. The capital structure for ALLTEL which is reasonable and appropriate for use in this proceeding is:

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|---|---|
| Long-term debt | 53.98% |
| Preferred stock | 3.91% |
| Common equity | 42.11% |

10. The proper embedded cost of long-term debt is 8.29% and preferred stock is 7.51%. The reasonable rate of return for ALLTEL to be allowed on its common equity is 13.2%. Using a weighted average for the cost of long-term debt, preferred stock, and common equity, with reference to the reasonable capital structure heretofore determined, yields an overall just and reasonable rate of return of 10.33% to be applied to the Company's original cost rate

base. Such rate of return will allow the Company by sound management to maintain its facilities within the reasonable requirements of its customers and to compete in the market for capital on terms which are reasonable to its customers and to investors.

11. Based upon the foregoing, ALLTEL should be authorized to increase its annual level of gross revenues under present rates by $3,776,831 in order to be given a reasonable opportunity to earn the 10.33% rate of return on rate base which the Commission has found just and reasonable. This increased revenue requirement is based on the original cost of the Company's property and its reasonable test year operating revenues and expenses as previously determined and set forth in these findings of fact.

12. The rates, charges, and regulations to be filed pursuant to this Order in accordance with the guidelines contained herein and attached hereto as Appendix C, which will produce an increase in annual revenues of $3,776,831, shall become effective upon the issuance of a further Order.

13. The capital recovery schedule shown in Appendix B is just and reasonable.

## EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 1, 2, AND 3

The evidence supporting these findings of fact is found in the verified application, in prior Commission Orders in this docket, in the Company's late-filed exhibits, and in the record as a whole. These findings of fact are essentially informational, procedural, and jurisdictional in nature, and the matters which they involve are essentially uncontested.

## EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 4

The evidence concerning quality of service was presented by Company witness Dunbar, Public Staff witness McLawhorn, and approximately 19 public witnesses. The major service complaints of the public witnesses included service outages, double connections, static, line noise, wrong numbers reached, and call completion failures. At 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 Wadesboro, Matthews, Columbus, and Rural Hall hearings.

Company witness Dunbar testified that ALLTEL has addressed the underlying causes and has taken steps to assure long-term correction of the service problems as ordered by the Commission in Docket No. P-118, Sub 31, the Company's last general rate case. Primary areas singled out included but were not limited to: (1) improved preventative maintenance for both central office and outside plant; (2) training of employees; (3) supervision; (4) organizational structure; (5) reduced reliance on contractors; (6) reduced trouble reports; and (7) rehabilitation of existing outside plant.

On cross-examination, witness Dunbar stated that he accepted the service objectives proposed for ALLTEL as set forth in Public Staff witness McLawhorn's Appendix A. He further stated that the Company is "prepared to meet the objectives."

With respect to current levels of service, witness Dunbar testified that while he is satisfied with the improvement made thus far, he is not satisfied with every element of service provided to ALLTEL's customers, and he recognizes that there are areas where additional service improvement is needed. More specifically, he stated that the Company as well as the Public Staff should be concerned with the Company's failure to meet the "Out-of-Service Troubles Cleared Within 24 Hours" objective for several exhanges in 1986.

Public Staff witness McLawhorn testified that the Company met the Commission objectives in nearly every area for the Public Staff tests relating to call completion, noise, transmission, answertime, and public paystations. He also testified that the Company has consistently met the objectives for "Total Trouble Reports" and "Total Repeat Reports" for the first seven months of 1986; however, the Company has not consistently met the "Out-of-Service Cleared Within 24 Hours," "Regular Service Orders Completed Within 5 Working Days," and "Installation Appointments Not Met For Company Reasons" in many exchanges for 1986. Mr. McLawhorn concluded that the overall level of service is adequate, but that the Public Staff expects future improvement in those areas where the Company is not currently meeting the objectives on a consistent basis while the Company maintains current levels in those areas that are meeting the objectives. Witness McLawhorn also recommended adoption of the objectives set forth in his Appendix A as the proper guidelines to be used in evaluating ALLTEL's quality of service.

On cross-examination, witness McLawhorn reiterated the fact that the Public Staff was not satisfied with ALLTEL's performance in certain areas of its service. With respect to application of the quality of service objectives, Mr. McLawhorn stated that while the Public Staff does not expect every exchange to meet every objective every month, he would consider that the Company was not meeting the objective if a significant number of exchanges failed to meet the objective a significant number of times. Witness McLawhorn also indicated that judgment should be used in applying the objectives. He further testified that ALLTEL has a responsibility to coordinate efforts with connecting companies in remedying any problems affecting service located in the facilities of the connecting companies.

Based upon the evidence in this proceeding, the Commission concludes that the Company's overall quality of service is adequate and has improved significantly since the Company's last general rate case. The Commission recognizes, however, that in certain exchanges the Company is still not consistently meeting certain of the Commission's service objectives. Specifically, the Commission notes that in a number of exchanges the Company is not meeting the objectives related to "Out of Service Cleared Within 24 Hours" and "Regular Service Orders Completed Within 5 Working Days" and that the Company is failing to consistently meet the objective relating to "Installation Appointments Not Met For Company Reasons" in the great majority of exchanges. While the Commission recognizes that it may not be possible for ALLTEL to meet every objective in every exchange in every month, the Commission believes the Company should strive to do so. In evaluating the adequacy of the Company's service, the Commission will consider both the Company's overall success in meeting the objectives and the Company's success on an exchange basis. The Commission also recognizes that evaluating the service rendered by ALLTEL requires some judgment and that a number of factors must be considered which include, but are not limited to, past level of service, extraordinary circumstances, severity of the service problems being experienced, and number of subscribers affected by the problems. Based on the evidence in this case and applying impartial judgment, the Commission concludes that although the overall quality of service currently being provided by ALLTEL is adequate, the Company should make every reasonable effort to consistently meet all of the quality of service objectives established by this Commission.

The Commission further concludes that it would be unfair and unreasonable to penalize ALLTEL in this case for inadequate service by a downward adjustment of 25 basis points on common equity as recommended by the Attorney General in view of the significant improvement which has been demonstrated in the Company's overall quality of service since its last general rate case. The Commission believes that ALLTEL is fully committed to achieving further improvements in the Company's overall quality of service in order to consistently meet all of the quality of service standards and objectives set forth in Appendix A. Although a specific rate of return penalty has not been imposed in this case, the Commission has authorized a return on common equity at the lower end of the reasonable range in recognition of the fact that the Company needs to further improve its ability to consistently meet all of the quality of service standards adopted by the Commission.

The Commission also concludes that the operating service objectives recommended by Public Staff witness McLawhorn, which are attached to this Order as Appendix A, are reasonable and proper for use in evaluating the quality of service for ALLTEL Carolina, Inc., from this point forward. The' Commission notes that these objectives were proposed by the Public Staff and accepted at the hearing by the Company.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 5

The evidence supporting this finding of fact is contained in the testimony and exhibits of Public Staff witness Garrison, the minimum filing requirements filed by ALLTEL, and the Company's late-filed exhibits. Witness Garrison testified that the intrastate jurisdictional allocation factors originally filed by the Company in this case were based on its 1984 cost study. Thus, those factors did not reflect the transition over an eight-year period of the interstate SPF from its frozen level to a fixed level of twenty-five (25) percent. At the hearing and in its legal brief, the Company accepted the Public Staff's proposal to make an adjustment for the interstate SPF transition. Based on the foregoing, the Commission concludes, consistent with the decision in the recent general rate case for General Telephone Company of the South (Docket No. P-19, Sub 207), that an adjustment to reflect the interstate SPF transition is appropriate.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 6

Company witness Cornacchione and Public Staff witnesses Perkerson and Sutton presented testimony regarding ALLTEL Carolina's reasonable original cost rate base. The following table summarized the amounts which the Company and the Public Staff contend are proper for use in this proceeding:

| | Public Staff | Company | Difference |
|---|---|---|---|
| Telephone plant in service | $102,408,926 | $102,767,318 | $ (358,392) |
| Accumulated depreciation | (30,193,357) | (29,134,669) | 1,058,688 |
| Net plant | 72,215,569 | 73,632,649 | (1,417,080) |
| Average materials and supplies | 404,627 | 404,260 | 367 |
| Allowance for working capital | 573,820 | 586,581 | ( 12,761) |
| Rural Telephone Bank stock | 1,636,071 | 1,636,071 | --- |
| Customer deposits | (190,317) | (190,317) | --- |
| Pre-1971 investment tax credits | (27,408) | (27,408) | --- |
| Accumulated deferred income taxes | (12,292,609) | (11,314,269) | 978,340 |
| Total | $ 62,319,753 | $ 64,727,567 | ($ 2,407,814) |

As the table shows, the Company and the Public Staff agree on the amount of Rural Telephone Bank stock, customer deposits, and pre-1971 investment tax credits to be included in rate base. Therefore, the Commission concludes that these amounts are just and reasonable for setting rates in this proceeding.

The Commission notes that the Company agreed at the hearing with the methodology employed by the Public Staff to develop allocation factors to be used in this proceeding, but that some of the allocation factors shown by the Company on its late-filed exhibits do not precisely match those used by the Public Staff. The Commission concludes that the factors used by the Public Staff are appropriate. The amounts for average materials and supplies presented by each party differ only due to the allocation factor differences; therefore, the Commission concludes that the Public Staff's amount is correct.

The parties disagree on the appropriate level of telephone plant in service. The difference in the amounts proposed of $358,392 consists of two items.

First, the parties have used slightly different allocation factors for plant in service. Consistent with the discussion above, the Commission concludes that the allocation factors proposed by the Public Staff are correct for plant in service.

The next plant in service item on which the parties disagree is the methodology employed by the Public Staff to reduce rate base for excess profits included in the plant accounts. The Commission will now analyze the testimony related to this issue.

Public Staff witness Perkerson testified regarding this issue as follows:

> "Rate base and depreciation expense have been adjusted to reflect the effect of the disallowance of excess profits earned by ALLTEL Supply, Inc., formerly Buckeye Supply, between the years 1978 - 1983 on sales to ALLTEL Carolina, Inc. Since these two companies are affiliated, it is necessary to closely examine transactions between the companies and to make adjustments where appropriate. In the last rate case, Docket No. P-118, Sub 31, the Public Staff recommended and the Commission concluded that the supply company had earned excess profits on sales to ALLTEL Carolina, Inc., for the years mentioned above. My adjustment of $464,134 in the current case updates the

'elimination of the excess cost of plant purchased during those years, for plant surviving as of the end of the test period."

The Company asserts that the Public Staff did not consider all of the items related to the excess affiliated profits included in plant in service.

Company witness Cornacchione testified in this regard as follows:

> "The adjustment reduces rate base for an amount equal to the capitalized excess income surviving at December 31, 1985, less the accumulated depreciation representing one year of depreciation expense. Mechanically, the adjustment is correct. However, the accumulated deferred income taxes and the reserve for depreciation calculated and actually booked on this same investment was not reflected in the adjustment. If the capitalized amount is removed from rate base, then it is necessary and proper to remove the associated deferred taxes and the reserve for depreciation."

The Commission finds that witness Perkerson was generally correct in not including the accumulated depreciation and accumulated deferred income taxes in the calculation of the amount of excess profits to be removed from rate base. Prior to ALLTEL's last general rate case, the Commission had set rates based on plant which included excess affiliated profits; therefore, the depreciation and deferred taxes related to the excess profits were included in the cost of service on which rates were set. Since ALLTEL's ratepayers paid rates to cover the depreciation expense and deferred taxes, the accumulated balances of these items related to excess profits should not be eliminated from this calculation. The Commission does agree, however, that consideration should be given for the depreciation included on the Company's books related to excess profits since the Company's last general rate case Order, when the excess profits were excluded from plant in service. Therefore, the Commission concludes that the appropriate adjustment to exclude excess profits from the Company's plant in service is that proposed by the Public Staff, but that accumulated depreciation should be adjusted to reflect the fact that excess profits were eliminated by the Commission in the Company's last general rate case Order which was issued approximately two years ago.

Consistent with the Commission's conclusions elsewhere in this Order concerning the appropriate level of accumulated deferred income taxes, the Commission concludes that an adjustment to deferred income taxes for excess profits as proposed by the Company is inappropriate. The Commission has consistently used the per books accumulated deferred income taxes amount for ratemaking purposes, as proposed by the Public Staff, and is unpersuaded to deviate from that practice in this proceeding.

Based on the foregoing, the Commission concludes that the fair and reasonable level of plant in service to be used in setting rates in this proceeding is $102,408,799.

The next item from the table on which the witnesses disagree is accumulated depreciation. This difference of $1,058,688 is comprised of four items.

First, the allocation factors used by the parties differ. The Commission has discussed its rationale for accepting the Public Staff's allocation factors in previous paragraphs and therefore concludes that the Public Staff's allocation factors should be used to determine the appropriate level of accumulated depreciation.

The major difference between the parties in determining the proper level of accumulated depreciation is the proper ratemaking treatment to be afforded station apparatus equipment. At the request of the Public Staff during its investigation of the Company's application, ALLTEL conducted an audit of its station apparatus equipment. As a result of this audit, it was determined that $4,827,113 of this equipment was unaccounted for. At controvesy in this proceeding is how to treat this inventory loss for ratemaking purposes.

The Company treated the loss as an ordinary retirement, thereby reducing plant in service and accumulated depreciation by the amount of the loss. Additionally, the Company proposed to depreciate the remaining balance in plant in service, thereby increasing accumulated depreciation by this amount of annual depreciation, consistent with past · generally accepted ratemaking practices of increasing accumulated depreciation for any adjustments to end-of-period depreciation expense.

Conversely, the Public Staff reduced plant in service by the inventory loss, reduced accumulated depreciation by 50% of the loss, and increased an extraordinary retirement loss account by the remaining 50% of the loss. The Public Staff methodology does not allow a return on the extraordinary retirement account; however, the Public Staff does provide for the extraordinary retirement balance to be amortized over a five-year period. Additionally, the Public Staff does not provide recovery through depreciation expense of the remaining balance in the station apparatus equipment plant in service account. The Attorney General supports the position of the Public Staff regarding this issue.

Though the conflicting treatments afforded this matter by the parties are complex in nature and do not lend themselves to simple analytical comparisons, it is clear that the Public Staff's position would reduce the Company's gross revenue requirements in this proceeding. This reduction is generally accomplished by the denial of a return on investment equal to 50% of the inventory loss.

The Commission has given much consideration to this matter. The Public Staff asserts that its treatment is similar to that established for General Telephone of the South (General) several years ago by the Federal Communications Commission. It is not clear to the Commission that the facts in this case are similar to those in the General matter. The Commission further notes that Public Staff witness Perkerson testified that the same treatment proposed by the Company in this case was approved for Carolina Telephone and Telegraph Company.

The Public Staff and the Attorney General further assert that the accounting treatment proposed by the Public Staff is appropriate because the Company has overrecovered its costs due to the overstatement of the plant in service account. The preponderance of the evidence in this record simply does not adequately support this conclusion that the Company has overrecovered its costs related to this item and for that reason the Public Staff's treatment of the inventory loss must be rejected. Therefore, the Commission accepts the Company's treatment of the inventory loss and the consideration in accumulated depreciation for annual depreciation of the balance remaining in the station apparatus account. This conclusion is supported by the testimony and cross-examination of Company witness Cornacchione. In the opinion of the Commission, the evidence in this case is insufficient to support the accounting adjustments proposed by the Public Staff. On the basis of the facts presented in this case, the Commission believes that acceptance of the Public Staff's position would be unfair to the Company and would, in effect, amount to an unwarranted penalty. This is especially true in view of the fact that the Public Staff would continue to include the revenues produced by the station apparatus account in the cost of service but would exclude a portion of the expense (depreciation) required to produce those revenues. Such an outcome would obviously be unfair.

The Commission further notes that the adjustment made by the Company and approved by the Commission does treat the inventory loss as if it had been fully recovered through depreciation. This treatment results in less revenue requirements than if a portion of the loss had not been recovered through depreciation, which would nessitate extraordinary retirement treatment for the unrecovered loss portion.

The Company has made another adjustment to accumulated depreciation related to station apparatus equipment. At the hearing and in its late-filed exhibits, the Company increased amortization expense and accumulated depreciation for the recognition of a projected reserve deficiency related to this account. The Company estimated the reserve deficiency by comparing the expected book value of this investment at December 31, 1987, with the expected salvage value at this date. The Company made a similar adjustment for PBX equipment. The result of these adjustments is to include in rates generated from this proceeding a reserve deficiency amortization provision that allows the Company to recover the difference between the projected book value and salvage value at December 31, 1987, which is the point in time when these assets will no longer be subject to regulation.

Based on a detailed analysis of this adjustment, the Commission concludes that the inclusion of a reserve deficiency amortization in the Company's rates in this proceeding is unwarranted. It is not clear in the record what the appropriate transfer value should be for these assets at the time of deregulation; therefore, the Commission cannot make a quantification of a reserve deficiency. Nor can the Commission determine conclusively that a reserve deficiency will actually exist at December 31, 1987. For these reasons, the Commission rejects the Company's position regarding this matter in this proceeding.

The Company made another adjustment to accumulated depreciation due to the consideration in the end-of-period depreciation expense calculation of the necessity to replace the existing Mooresville crossbar switch with a new digital switch, if extended area service (EAS) is instituted between Mooresville, Davidson, and Charlotte. The Company asserts that if the EAS plan is approved, the current Mooresville switch will be replaced in 1988 instead of 1991, thereby and therefore increasing annual depreciation expense due to the decrease in the remaining life for this class of property. The Company further stated that it expected the customer poll conducted in Docket No. P-118, Sub 36, would be favorable to EAS implementation, and for that reason the Company was now moving ahead to replace the present switch at Mooresville. In its legal brief, the Company noted that the ballots returned to the Company as of November 10, 1986, favored passage of the EAS plan by about a two to one margin. On November 24, 1986, ALLTEL filed the final results of its poll of the Mooresville subscribers in Docket No. P-118, Sub 36. The final polling results were as follows:

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| Total ballots returned | 5260 |
| Total "Yes" votes | 3455 |
| Total "No" votes | 1805 |
| Percent "Yes" votes | 66% |
| Total number of ballots mailed | 9400 |

The Public Staff rejects this Company proposal. The Public Staff does not quarrel with the Company's projection that the Mooresville central office will be retired in 1988 if EAS is implemented but asserts that since the EAS has not been approved by the Commission this adjustment is legally improper and should not be made.

The Commission concludes that ALLTEL's position regarding replacement of the Mooresville central office is reasonable and that the depreciation rate proposed by the Company for Account 221.6 should be adopted in this proceeding. Company witness Cornacchione testified that, at the time of the hearing, the Company planned to accelerate the replacement of the Mooresville crossbar central office from 1991 to 1988, that the Company had contacted vendors to get a price for replacement of that switch, and that the Company was "...going full speed ahead to replace that office." On this basis, it is clear that the Company's plans for replacement of the Mooresville central office have changed and that the Mooresville switch will be replaced in 1988. This being the case, the Commission concludes that the appropriate ratemaking treatment for this change is to modify the remaining life of the crossbar switch to reflect its retirement in 1988 as proposed by the Company. The Commission believes that the EAS in question will soon be approved in Docket No. P-118, Sub 36, and will in fact be implemented on the basis of the extremely favorable polling results listed above.

Based on all the foregoing, the Commission concludes that the appropriate level of accumulated depreciation to be used in setting rates in this proceeding is $28,464,336.

The next difference of $(12,761) relates to the allowance for working capital. This difference relates to the application of the one-twelfth (1/12) formula to operating expenses and to the proper allocation factors to be used. Since the Commission has made only very slight adjustments to operating expenses to be included in the working capital formula, as spoken to elsewhere in this Order, then mechanically the formula method does not alter the working capital allowance recommended by the Public Staff. Additionally, the Commission has previously found the allocation factors proposed by the Public Staff to be proper. Based on the foregoing, the fair and reasonable level of working capital is $573,820, as proposed by the Public Staff.

The final item from the table on which the witnesses disagree is accumulated deferred income taxes.

A small difference between the parties involves allocation factors. Having already found the Public Staff allocation factors to be proper, the Commission concludes that the Public Staff's allocation factors should be used to determine the appropriate level of deferred income taxes to be deducted from rate base.

The other difference between the parties concerning accumulated deferred income taxes relates to an adjustment made by Public Staff witness Perkerson to eliminate a pro forma adjustment to accumulated deferred income taxes proposed by Company witness Cornacchione. The Company made an adjustment decreasing deferred income taxes which it contended was necessary because of adjustments increasing book depreciation expense due to increases in end-of-period depreciation. The Company stated that an increase in book depreciation expense would result in a decrease in the difference between tax depreciation expense and book depreciation expense. As a result of this, the Company concluded that the amount of tax deferred would also decrease, thereby necessitating an adjustment decreasing accumulated deferred income taxes.

Public Staff witness Perkerson testified in opposition to this point of view as follows:

> "It is true that an increase in book depreciation expense will narrow the gap between book and tax depreciation expense. However it is not true that such an adjustment will decrease the amount of deferred income tax existing at the end of the test period. No adjustment to book depreciation expense on a prospective basis will affect the amount of accumulated deferred income taxes at the end of the test period. The only effect will be to change the rate of growth of that amount in the future. An increase in book depreciation expense will decrease that rate of growth while a decrease in book depreciation expense will increase the rate of growth.
>
> "The Company's adjustment is improper because it would result in an understatement of the amount of deferred income taxes and would cause the ratepayers to pay a return on investment financed by cost-free capital contributed by the ratepayers."

The Commission finds that it would be improper to reduce accumulated deferred income taxes as proposed by Mr. Cornacchi.one for the reasons cited by witness Perkerson. The Commission has consistently treated accumulated deferred income taxes in the manner proposed by Public Staff witness Perkerson, and no other company has proposed any different treatment in recent cases. The Commission notes that this treatment is entirely consistent with past Commission decisions concerning accumulated deferred income taxes.

Based on all the foregoing, the Commission concludes that the proper level of accumulated deferred income taxes is $12,292,602.

The Commission further concludes that the original cost rate base to be used in setting rates in this proceeding is $64,048,654, as shown in the table below:

| Item | Amount |
|---|---|
| Telephone plant in service | $102,408,799 |
| Accumulated depreciation | (28,464,336) |
| Net plant | 73,944,463 |
| Average materials and supplies | 404,627 |
| Allowance for working capital | 573,820 |
| Rural Telephone Bank stock | 1,636,071 |
| Customer deposits | (190,317) |
| Pre-1971 investment tax credits | (27,408) |
| Accumulated deferred income taxes | (12,292,602) |
| Original cost rate base | $ 64,048,654 |

## 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 witness Cornacchione, Public Staff witnesses Perkerson and Garrison, and in the minimum filing requirements filed by the Company. In addition, the Commission takes judicial notice of the "Order Granting Partial Increase in Rates and Charges, Requiring Audit, and Requiring Service Improvements" for ALLTEL in Docket No. P-118, Sub 31, issued on December 19, 1984, as well as the "Final Order Granting Partial Rate Increase" in Docket No. P-26, Sub 88, issued for Heins Telephone Company on March 2, 1984.

The amounts proposed by the Public Staff and Company witnesses are shown in the table below:

| Item | Company | Public Staff | Difference |
|---|---|---|---|
| Local service revenue | $19,664,469 | $19,664,469 | $ - |
| Toll service and access revenue | 9,352,666 | 9,585,795 | 233,129 |
| Miscellaneous revenue | 1,510,465 | 1,510,465 | - |
| Uncollectibles | (60,489) | (60,489) | - |
| Total | $30,467,111 | $30,700,240 | $ 233,129 |

As the table shows, the Company and the Public Staff agree on the amounts of local service, miscellaneous, and uncollectible revenues; therefore, the Commission concludes that these amounts are just and reasonable for setting rates in this proceeding.

The difference in toll and access revenues is due to two items. First, the Public Staff adjusted the Company's toll and access revenues for the related effects of the adjustments made to the Company's intrastate rate base and operating expenses. Since the Commission has not accepted all of the adjustments proposed by either the Company or the Public Staff in computing intrastate rate base and operating expenses elsewhere, the Commission must calculate the effects on toll and access revenues for the adjustments related to these items approved herein.

Second, in its proposed Order, the Public Staff included Rural Telephone Bank (RTB) stock in the Company's net investment for calculating toll and access revenues. The Commission notes that in the Company's last general rate case, Docket No. P-118, Sub 31, RTB stock was included in the intrastate rate base, thus making the Company eligible to recover the intrastate toll and access jurisdictional amounts from the intrastate settlement pool.

In this Order, the Commission has again approved RTB stock for inclusion in the Company's intrastate rate base. The Commission concludes that the Company's investment in RTB stock is eligible for inclusion in the intrastate settlement pool and that said treatment should be reflected in determining toll service and access revenues in this proceeding.

Based on the foregoing, the Commission concludes that the proper level of end-of-period revenues is $30,630,321, as shown below:

| Item | Amount |
|---|---|
| Local service revenue | $19,664,469 |
| Toll service revenue | 6,139,635 |
| Access revenue | 3,376,241 |
| Miscellaneous revenue | 1,510,465 |
| Uncollectibles | (60,489) |
| Total | $30,630,321 |

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 8

The evidence concerning test year operating revenue deductions is found in the testimony and exhibits of Company witness Cornacchione and Public Staff witnesses Perkerson, Sutton, and Garrison. The following chart sets forth the amounts proposed by the Company and the Public Staff:

| Item | Company | Public Staff | Difference |
|---|---|---|---|
| Operating expenses | $ 15,316,589 | $ 15,310,141 | $ ( 6,448) |
| Depreciation | 8,310,481 | 7,572,887 | (737,594) |
| Other operating taxes | 1,784,628 | 1,787,580 | 2,952 |
| Income taxes | 349,260 | 1,188,714 | 839,454 |
| Total operating revenue deductions | $ 25,760,958 | $ 25,859,322 | $ 98,364 |

The difference in operating expenses relates to different allocation factors used by the parties and the effects from the CPE phasedown, as discussed elsewhere herein. Consistent with the Commission's decision to accept the Public Staff's allocation factors and the CPE methodology agreed to by the parties, the Commission concludes that $15,310,137 is the proper amount of operating expenses to be included in this proceeding.

The next item on which no consensus exists is depreciation expense. The difference of $737,594 arises from several adjustments proposed by the Public Staff.

First, the parties have used different allocation factors. The Commission has previously concluded that the Public Staff's allocation factors are correct.

Second, the parties disagree on the appropriate level of depreciation expense due to the different treatments of the station apparatus inventory loss, the Company's proposed reserve deficiency related to station apparatus and PBX equipment, and the retirement of the central office at Mooresville. These issues have all been discussed and considered under the Evidence and Conclusions for Finding of Fact No. 6. Consistent with these conclusions, the Commission concludes that the proper level of end-of-period depreciation expense is $7,732,895.

The parties disagreed on the proper level of other operating taxes due to two items. First, the Company included gross receipts taxes on the adjustment to miscellaneous revenues associated with nonregulated expenses. Since this adjustment was made for ratemaking purposes and does not involve consideration of revenues subject to gross receipts taxes, this adjustment to other operating taxes should not be made.

Second, the parties have different levels of other operating taxes due to different levels of revenues subject to gross receipts taxes. Since the Commission has not accepted the revenues subject to gross receipts taxes of either party, the Commission must calculate the appropriate level of gross receipts taxes based on the approved level of revenues.

Based on all the foregoing, the Commission concludes that the appropriate level of other operating taxes is $1,786,229.

The parties disagree on the appropriate level of income taxes due to their respective differences in rate base, revenues, expenses, and cost of capital. Since the Commission has not entirely adopted either party's position as to all these items, the Commission must compute income taxes based on the approved level of these items. Therefore, the Commission concludes that the appropriate level of income taxes is $1,038,070.

The Commission further concludes that the proper level of operating revenue deductions is $25,867,331, as shown in the table below:

| Item | Amount |
|---|---|
| Operating expenses | $15,310,137 |
| Depreciation expense | 7,732,895 |
| Taxes other than income | 1,786,229 |
| Income taxes | 1,038,070 |
| Total | $25,867,331 |

The federal income tax expense included in the cost of service in this case has been calculated based upon the Internal Revenue Code as it presently exists. The Commission takes judicial notice of the fact, however, that Congress has recently enacted the Tax Reform Act of 1986, a wide-ranging tax reform law which will, upon implementation, significantly reduce the federal tax rate of most, if not all, investor-owned public utilities (including ALLTEL) engaged in providing public utility services in North Carolina. This reduced federal tax rate, when effectuated, will have an immediate and favorable impact on the cost of providing public utility services to consumers in North Carolina. President Reagan signed the Tax Reform Act of 1986 into law on October 22, 1986.

By Order dated October 23, 1986, the Commission initiated a generic investigation in Docket No. M-100, Sub 113, to examine and quantify the benefits to be derived by the regulated utilities arising from the Tax Reform

Act of 1986. To this end, the Commission concludes that it is reasonable and appropriate to approve the federal income tax component allowed in the cost of service in this case on a provisional rate basis effective January 1, 1987. Therefore, ALLTEL shall bill and collect the federal income tax expense component of the rates and charges approved in this proceeding on a provisional rate basis pending further investigation and disposition of this matter, with accompanying deferred account for the amount of reduced federal taxes. Specifically, effective January 1, 1987, ALLTEL is hereby directed to place in a deferred account the difference between revenues billed under the rates approved in this proceeding, including provisional components thereof, and revenues that would have been billed had the Commission in determining the attendant cost of service in this case based the federal income tax component thereof on the Internal Revenue Code as amended by the Tax Reform Act of 1986, assuming all other parameters entering into the cost of service equation are held constant.

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

Two witnesses testified on the issues of capital structure, cost of equity, and overall rate of return. The Company presented the testimony and exhibits of Dr. James H. Vander Weide. The Public Staff presented the testimony and exhibits of Danny P. Evans.

Concerning capital structure, Dr. Vander Weide recommended the use of ALLTEL's per books capital structure, excluding short-term debt, at December 31, 1985. He updated this to June 30, 1986, at the hearing. Public Staff witness Evans recommended the use of the June 30, 1986, consolidated capital structure of the ALLTEL Corporation, the holding company which is the sole equity owner of ALLTEL Carolina, Inc. The two recommended capital structures and embedded cost rates are as follows:

| | PUBLIC STAFF<br>Percent | Embedded Cost |
|---|---|---|
| Long-term debt | 53.98 | 8.29 |
| Preferred stock | 3.91 | 7.51 |
| Common equity | 42.11 | |

| | COMPANY<br>Percent | Embedded Cost |
|---|---|---|
| Long-term debt | 58.34 | 9.29 |
| Preferred stock | 1.28 | 5.74 |
| Common equity | 40.38 | |

Public Staff witness Evans stated that ALLTEL is a wholly owned subsidiary of the ALLTEL Corporation. He thus noted several potential problems concerning the appropriate weighted cost of capital arising from the parent-subsidiary relationship. These were as follows: the increased difficulty of estimating the cost of equity to ALLTEL since its stock is not publicly traded; the existence of debt at both the parent and subsidiary levels; and the control of the subsidiary's capital structure by the parent company. Mr. Evans then stated that the stock of the ALLTEL Corporation is traded in a competitive market and further that its stock was evaluated on the basis of the operations of the total company. He concluded that the estimated cost of equity to the ALLTEL Corporation could be combined with the consolidated capital structure, which accounts for all the debt, preferred stock, and equity in the corporate system, to calculate a weighted cost of capital to the ALLTEL Corporation. Witness Evans further concluded that this was the appropriate overall weighted cost of capital for ALLTEL Carolina, Inc., to be used in this proceeding.

The Company objected to use of the consolidated capital structure because of the following: the lower embedded cost of debt as compared with ALLTEL's; the parent's investments in nontelephone operations; and the contention that the Company's per books capital structure was reasonable given the degree of business risk. During the hearing, it was noted that the embedded cost of debt of the parent company was also lower than that of ALLTEL and that the consolidated embedded cost of preferred stock was higher. Witness Evans also pointed out that the Commission has accepted the use of the consolidated capital structure in ALLTEL's last two general rate cases and that the Company had requested its use in the case prior to the last one.

Based upon the foregoing and for the reasons generally given by the Public Staff, the Commission concludes that the capital structure and associated embedded cost rates as presented by the Public Staff are reasonable and appropriate for use in this proceeding. No compelling evidence has been offered in this case by ALLTEL which would justify rejection of the consolidated capital structure which the Commission has adopted in Alltel's last two general rate cases. Therefore, the reasonable capital structure and associated embedded cost rates which are appropriate for use in this proceeding are as follows:

| Item | Percent | Cost Rate |
|---|---|---|
| Long-term debt | 53.98 | 8.29% |
| Preferred atock | 3.91 | 7.51% |
| Common equity | 42.11 | |
| Total | 100.00 | |

As to the issue of the appropriate overall rate of return that the Company should be allowed an opportunity to earn, witness Vander Weide originally recommended 11.68% based on a cost of equity of 15.25%. At the hearing, Dr. Vander Weide updated his testimony and lowered his recommended overall return to 11.25% based on a cost of equity range of 14.0% to 14.5%.

Company witness Vander Weide employed the risk premium approach and the discounted cash flow (DCF) method to estimate the cost of equity to ALLTEL. Dr. Vander Weide acknowledged that he was unable to apply either of these methods directly to ALLTEL since its stock is not publicly traded and its bonds are not rated.

For his risk premium approach, Dr. Vander Weide estimated the expected market yield on ALLTEL's long-term debt based on the average yield for Moody's A-rated public utility bonds. To this he added a risk premium of 3.5 to 5.5 percentage points to determine his estimated cost of equity. Dr. Vander Weide stated in his summary that the interest rate on these bonds had declined to about 9.5% since his prefiled testimony was written. He was unaware, however, that the Commission had recently approved a loan agreement that allowed ALLTEL to borrow approximately $5.5 million at a cost rate of 71 basis points above the rate on seven-year U. S. Treasury obligations, which at the time of the hearing were yielding around seven percent to 7.5 percent

For his DCF approach, witness Vander Weide selected two groups of companies chosen to be of comparable total risk to ALLTEL. These were a group of eight non-Bell telephone companies and the seven regional Bell holding companies. Dr. Vander Weide applied a quarterly version of the DCF incorporating a 5% adjustment for flotation costs and market pressure. It was noted that this adjustment increased his DCF estimate by approximately 30 basis points. Dr. Vander Weide acknowledged that this would be applied not only to new issues of common stock but to the entire equity asset base. To estimate the growth component of the DCF, witness Vander Weide relied solely on the five-year estimates of future earnings per share growth reported by the Institutional Brokers Estimate System (IBES). He agreed, however, that the DCF method requires one to estimate the future growth in dividends per share specifically. Based on his updated analysis, Dr. Vander Weide concluded that the cost of equity to ALLTEL was in the range of 14.0% to 14.5%. The Public Staff presented a cross-examination exhibit showing Dr. Vander Weide's DCF results for the eight non-Bell telephone companies from his testimony in the last general rate case for Heins Telephone Company. The exhibit asserted that if Dr. Vander Weide had applied the same methodology in this case, he would have obtained an estimated cost of equity range of 12.15% to 13.44% for this group of companies.

Public Staff witness Evans recommended an overall rate of return of 10.06%, based on an estimated cost of equity of 12.56%. The use of the consolidated capital structure allowed Mr. Evans to apply the DCF method directly to the ALLTEL Corporation and to thus explicitly incorporate the information generated by investor transactions in a competitive market. To provide a check on these results as well as to obtain additional information, Mr. Evans also applied the DCF method to three groups of companies selected to be investments of comparable risk to the ALLTEL Corporation. The first two groups consisted of seven non-Bell independent telephone companies and the seven regional Bell holding companies. The third group was composed of 12 nonutility companies operating in competitive environments that exhibited similar risk to the ALLTEL Corporation on the basis of three measures of risk to equity investors: Value Line's beta and safety rank and Standard and Poor's stock rank. Witness Evans incorporated both historical and forecasted growth rates in earnings per share, dividends per share, and book value per share in his DCF analysis. Based upon his analysis, Mr. Evans concluded that a reasonable estimate of the cost of equity to the ALLTEL Corporation was in the range of 12.1% to 12.9% and that the best single estimate was 12.5%. Witness Evans made a flotation cost adjustment of six basis points based on the percentage of new equity obtained through issues of new common stock in the primary market. Including this adjustment, he recommended a cost of equity for ALLTEL of 12.56%. Witness Evans stated that Dr. Vander Weide's flotation cost adjustment, quarterly DCF, and use of the IBES earnings per share growth rates were the main factors attributing to his higher DCF cost of equity estimates.

In its legal brief, the Attorney General recommends that the Commission allow ALLTEL a rate of return on common equity of 12.31% after consideration of a penalty for inadequate service of 25 basis points.

The determination of the appropriate fair rate of return for ALLTEL 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 ratepayers and investors and meet the test set forth in G.S. 62-133(b)(4):

> "...(to) enable the public utility by sound management to produce a fair return for its shareholders, considering changing economic conditions and other factors, as they then exist, to maintain its facilities and services in accordance with the reasonable requirements of its customers in the territory covered by its franchise, and to compete in the market for capital funds on terms which are reasonable and which are fair to its customers and to its existing investors."

The 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. In State ex rel. Utilities Commission v. General Telephone Company of the Southeast, 281 N.C. 318, 370-71, 189 S.E. 2d 705 (1972), the North Carolina Supreme Court said:

> "The apparent precision with which experts, both for the utility and the protestants, compute a fair return is somewhat illusory. The habitual bickering and theorizing of such witnesses over the relative merits of methods of computing cost of equity capital, such as the earnings-to-price ratio or the discounted cash flow, lends a false appearance of certainty to the ultimate decision which is for the Commission."

See also State ex rel. Utilities Commission v. Duke Power Company, 305 N.C. 1, 23, 287 S.E. 2d 786 (1982) ("the determination of what constitutes a fair rate of return requires the exercise of subjective judgment by the Commission...").

The foregoing discussion indicates a considerable difference between the Company and the Public Staff in both the methodologies used and the results obtained concerning the cost of equity to ALLTEL. The Commission finds that the reasonable rate of return for ALLTEL to be allowed on its common equity in this proceeding is 13.2%. Combining this with the appropriate capital structure and cost of debt heretofore determined yields an overall just and reasonable rate of return of 10.33% to be applied to the Company's original cost rate base. Such a rate of return will enable ALLTEL by sound management to produce a fair return for its stockholders, to maintain its facilities and services in accordance with the reasonable requirements of its customers, and to compete in the market for capital funds on terms which are reasonable and fair to customers and existing investors.

The authorized rate of return on common equity of 13.2% 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 December 1984, when ALLTEL was allowed a rate of return on common equity of 14.5% after imposition of a rate of return penalty of 0.5% for inadequate service. Furthermore, current interest rates are stable and the cost of financing is clearly lower than it has been in several years. The Company is a financially healthy utility. For instance, Company witness Vander Weide testified that although ALLTEL's bonds are not rated by either Moody's or Standard and Poor's, he compared the Company to A-rated public utilities. On the other hand, the Commission is well aware of the many changes now occurring in the telecommunications industry which serve to increase risk. The return on common equity of 13.2% allowed in this case is 130 basis points less than the 14.5% rate of return ALLTEL was allowed in its last general rate case. This is a reduction of almost nine percent in the Company's allowed rate of return.

The Commission believes that the rate of return on common equity of approximately 14.25% requested by the Company is clearly excessive, while the rate of return on common equity of 12.56% recommended by the Public Staff is too conservative. Therefore, it is the judgment of the Commission, after weighing the conflicting testimony offered by the expert witnesses, that the reasonable and appropriate rate of return on common equity for ALLTEL is 13.2%. This allowed rate of return has been set at the lower end of what the Commission considers to be the reasonable range for ALLTEL in recognition of the fact that the Company needs to further improve its ability to consistently meet all of the quality of service standards adopted by the Commission. In view of the significant improvement which has been demonstrated in the Company's overall quality of service since its last general rate case, the Commission rejects the rate of return penalty proposed by the Attorney General. It is well settled law in this State that it is for the administrative body, in an adjudicatory proceeding, to determine the weight and sufficiency of the evidence and the credibility of the witnesses, to draw inferences from the facts, and to apprise conflicting evidence. Commissioner of Insurance. v. Rate Bureau, 300 N.C. 381, 269 S.E. 2d 547 (1980). State ex rel. Utilities Commission v. Duke Power Company, 305 N.C. 1, 287 S.E. 2d 786 (1982). The Commission has followed these principles in good faith in exercising its expert judgment in determining the fair and reasonable rate of return in this proceeding. The determination of the appropriate rate of return is not a mechanical process and can only be made after a study of the evidence based upon a careful consideration of a number of different factors weighed and tempered by the Commission's impartial judgment.

The Commission cannot guarantee that ALLTEL will, in fact, achieve the levels of return on rate base and common equity herein found to be just and reasonable. Indeed, the Commission would not guarantee the authorized rates of return even if it could. Such a guarantee would remove necessary incentives for the Company to achieve the utmost in operational and managerial efficiencies. The Commission believes, and thus concludes, that the rates of return approved in this docket will afford the Company a reasonable opportunity to earn a fair and reasonable return for its stockholders while providing adequate and economical service to ratepayers.

## EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 11

The Commission has previously discussed its findings of fact and conclusions regarding the fair rate of return in Findings of Fact Nos. 9 and 10, which ALLTEL should be afforded the opportunity to earn.

The following schedules summarize the gross revenues and the rates of return which the Company should have a reasonable opportunity to achieve based upon the determination 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. These schedules are based on the earnings level approved for the Applicant.

### SCHEDULE I
### ALLTEL CAROLINA, INC.
### NORTH CAROLINA INTRASTATE OPERATIONS
### STATEMENT OF OPERATING INCOME
### For the Test Year Ended December 31, 1985

| | Present Rates | Increase Approved | Approved Rates |
|---|---|---|---|
| Operating revenues: | | | |
| Local service | $19,664,469 | $3,776,831 | $23,441,300 |
| Toll service | 6,139,635 | | 6,139,635 |
| Access revenue | 3,376,241 | | 3,376,241 |
| Miscellaneous revenue | 1,510,465 | | 1,510,465 |
| Uncollectible revenue | 60,489 | 8,158 | 68,647 |
| Total operating revenue | $30,630,321 | $3,768,673 | $34,398,994 |
| Operating revenue deductions: | | | |
| Maintenance | $ 7,432,159 | $ -- | $ 7,432,159 |
| Depreciation | 7,732,895 | -- | 7,732,895 |
| Traffic | 813,687 | -- | 813,687 |
| Commercial | 1,610,195 | -- | 1,610,195 |
| General office | 3,981,420 | -- | 3,981,420 |
| Other operating expenses | 1,457,451 | -- | 1,457,451 |
| Interest on customer deposits | 15,225 | -- | 15,225 |
| Other operating taxes | 1,786,229 | 121,351 | 1,907,580 |
| State and federal income taxes | 1,038,070 | 1,795,942 | 2,834,012 |
| Total revenue deductions | $25,867,331 | $ 1,917,293 | $27,784,624 |
| Net operating income | $ 4,762,990 | $ 1,851,380 | $ 6,614,370 |

## SCHEDULE II
## ALLTEL CAROLINA, INC.
## NORTH CAROLINA INTRASTATE OPERATIONS
## STATEMENT OF RATE BASE AND RATE OF RETURN
## For the Test Year Ended December 31, 1985

| Item | Amount |
|---|---|
| Plant in service | $ 102,408,799 |
| Accumulated depreciation | (28,464,336) |
| Net plant | $ 73,944,463 |
| Average materials and supplies | 404,627 |
| Allowance for working capital | 573,820 |
| Rural Telephone Bank stock | 1,636,071 |
| Customer deposits | (190,317) |
| Pre-1971 investment tax credits | (27,408) |
| Accumulated deferred income taxes | (12,292,602) |
| Total original cost rate base | $64,048,654 |
| Rates of Return | |
| Present rates | 7.44% |
| Approved rates | 10.33% |

## SCHEDULE III
## ALLTEL CAROLINA, INC.
## NORTH CAROLINA INTRASTATE OPERATIONS
## STATEMENT OF CAPITALIZATION AND RELATED COSTS
## For the Test Year Ended December 31, 1985

| Item | Capitalization Ratio (%) | Original Cost Rate Base | Embedded Costs (%) | Net Operating Income |
|---|---|---|---|---|
| | | Present Rates | | |
| Long-term debt | 53.98 | $ 34,573,464 | 8.29 | $ 2,866,140 |
| Preferred stock | 3.91 | 2,504,302 | 7.51 | 188,073 |
| Common equity | 42.11 | 26,970,888 | 6.34 | 1,708,777 |
| Total | 100.00 | $ 64,048,654 | | $4,762,990 |
| | | Approved Rates | | |
| Long-term debt | 53.98 | $ 34,573,464 | 8.29 | $ 2,866,140 |
| Preferred stock | 3.91 | 2,504,302 | 7.51 | 188,073 |
| Common equity | 42.11 | 26,970,888 | 13.20 | 3,560,157 |
| Total | 100.00 | $ 64,048,654 | | $6,614,370 |

## EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 12

Company witness Brooks presented testimony concerning ALLTEL's proposed rate structure. According to Mr. Brooks' testimony, he used a residual allocation technique which first looked at service currently offered in the Company's tariff other than basic service rates, which were treated as the base for allocating the residual dollars remaining after all other services were evaluated and repriced. He commented that this technique was used to lessen, to the extent possible, the impact on basic service rates.

The Company filed tariffs with its original application which would produce $6,676,770 in additional annual revenue. Mr. Brooks proposed increases in the Company's local exchange rates, nonrecurring service charges, directory listings service, maintenance of service charge, local directory assistance charge, and a monthly recurring inside wiring maintenance charge.

In the summary of his testimony which he gave prior to his cross-examination, witness Brooks indicated that through a recent investigation he found that his proposal to charge a recurring rate element for inside wiring maintenance was not workable because of the Company's inability to determine the ownership of individual inside wires and requested that the tariff for inside wiring maintenance proposed by him be withdrawn.

Additionally, witness Brooks commented that subsequent to the filing of his testimony he conducted a review of the average test year calling scopes of all of the Company's exchanges and found that both the Mooresville exchange and the Peachland/Polkton exchange should be regrouped into the next higher rate group. As a part of his review, he indicated that the upper limits of the rate bands for rate groups 6 and 7 needed to be raised to a higher level to maintain the integrity of the existing individual rate groups as they pertain to the value of service concepts.

Based upon the evidence of record regarding rate design and tariff proposals, the Commission concludes that rates designed in accordance with the guidelines discussed herein and attached hereto as Appendix C will be just and reasonable.

## EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 13

The evidence presented in this case supporting this finding of fact is contained in the testimony and exhibits of Company witnesses Russell and Cornacchione and Public Staff witnesses Perkerson and Sutton. Though there were many differences in the depreciation and amortization rates originally filed by the parties, most of the items of difference were agreed to at the public hearings and reflected in subsequent late-filed exhibits. The Commission has hereinabove approved an appropriate end-of-period level of depreciation expense and accumulated depreciation to be used in setting rates in this proceeding. Therefore, based on these prior conclusions, the Commission concludes that the depreciation and amortization schedules shown on Appendix B should be approved.

IT IS, THEREFORE, ORDERED as follows:

1. That the Applicant, ALLTEL Carolina, Inc., be, and hereby is, authorized to increase its local service rates and charges so as to produce additional annual gross revenues of $3,776,831 from North Carolina subscribers based on test year operations.

2. That ALLTEL is hereby called upon to propose specific tariffs reflecting changes in rates, charges, and regulations to recover the revenues approved herein, in accordance with the guidelines established by this Commission in the Evidence and Conclusions for Finding of Fact No. 12 and Appendix C within 10 days from the date of this Order. These proposals and workpapers supporting such proposals shall be provided to the Commission (five

copies are required) and the Public Staff (formats such as Item 30 of the minimum filing requirement, N.C.U.C. Form P-1, are suggested). At the time of such filing, the Company shall also file with the Commission a proposed customer notice to inform the customers of ALLTEL Carolina, Inc., of the actions taken herein.

3. That the Public Staff may file written comments concerning the Company's tariffs within five working days of the date on which they are filed with the Commission.

4. That the rates, charges, and regulations necessary to produce the annual gross revenues authorized herein shall become effective upon the issuance of a further Order approving the tariffs and customer notice filed pursuant to ordering paragraph 2 above.

5. That ALLTEL be, and hereby is, ordered to make every fair and reasonable effort to improve the quality of service currently being provided to its subscribers and take appropriate steps to remedy the service problems described herein.

6. That the Company shall conduct further follow-up investigations, take corrective action regarding the service complaints of each public witness who testified in this case, and shall file its reports of those actions with this Commission within 60 days from the date of this Order.

7. That the service objectives recommended by the Public Staff which are attached to this Order as Appendix A are approved and adopted as the appropriate standards to be used henceforth in evaluating the quality of service being provided by the Company. All previously approved and/or ordered service objectives requirements are henceforth rescinded.

8. That the Company shall make every fair and reasonable effort to consistently meet the objectives stated in Appendix A on an exchange, district, and Company basis.

9. That effective January 1, 1987, the federal income tax and the related gross receipts tax components of the rates and charges approved in this proceeding for ALLTEL shall be billed and collected on a provisional rate basis pending further investigation and final disposition of this matter concerning the impact of the Tax Reform Act of 1986 on the Company's cost of service.

10. That effective January 1, 1987, ALLTEL shall place in a deferred account the difference between revenues billed under the rates approved in this proceeding including provisional components thereof and revenues that would have been billed had the Commission in determining the attendant cost of service based the federal income tax component thereof on the Internal Revenue Code as now amended by the Tax Reform Act of 1986, assuming all other parameters entering into the cost of service equation are held constant.

11. That the depreciation rates and amortization schedule shown on Appendix B be, and hereby are, approved.

ISSUED BY ORDER OF THE COMMISSION.

This the 25th day of November 1986.

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

APPENDIX A
APPROVED SERVICE OBJECTIVES FOR
ALLTEL CAROLINA, INC.

| DESCRIPTION | OBJECTIVE |
|---|---|
| Intraoffice completion rate | 99% or more |
| Interoffice completion rate | 98% or more |
| Direct distance dialing completion rate | 95% or more |
| EAS transmission loss (dialed test no.) | 95% or more between -2 to -10dbm |
| Intrastate toll transmission loss (dialed test no.) | 95% or more between -3 to -12dbm |
| EAS trunk noise | 95% or more 30 dbrnc or less |
| Intrastate toll trunk noise | 95% or more 33 dbrnc or less |
| Operator "0" answertime | 90% or more within 10 secs |
| Directory assistance answertime | 85% or more within 10 secs |
| Public paystations found out-of-order on test | 10% maximum |
| Business office answertime | 90% or more within 20 secs |
| Repair service answertime | 90% or more within 20 secs |
| Total customer trouble reports | 8.0 or less per 100 access lines |
| Repeat reports | 1.60 reports or less per 100 access lines |
| Out-of-service troubles cleared within 24 hours | 95% or more |
| Regular service orders completed within 5 working days | 90% or more |
| New service held orders not completed within 14 working days | 0.1% or less of total access lines |
| Regrade application held orders not completed within 14 working days | 1.0% or less of total access lines |
| Installation appointments Not met for Company reasons | 5.0% or less |

## APPENDIX B
## ALLTEL CAROLINA APPROVED DEPRECIATION RATES
## AND AMORTIZATION AMOUNTS

| | | | Remaining | Future | |
|---|---|---|---|---|---|
| | | Reserve | Life | Net. Salv. | Rate |
| Account | Description | % | Yrs. | % | % |
| 212.0 | Buildings | 33.85 | 21.00 | 2.00 | 3.05 |
| 221.0 | Central Office Eqpt. | | | | |
| 221.1 | Trunk Carrier | 30.59 | 7.50 | 0.00 | 9.25 |
| 221.2 | Microwave | 6.04 | 10.00 | 0.00 | 9.40 |
| 221.3 | Subs. Mobile Radio | 3.67 | 7.80 | 0.00 | 12.35 |
| 221.4 | Subs. Carrier | 6.92 | 8.00 | 0.00 | 11.64 |
| 221.5 | Step | 41.26 | 3.00 | 0.00 | 19.35 |
| 221.6 | Crossbar | 46.49 | 2.40 | 0.00 | 22.30 |
| 221.7 | Electronic | 50.03 | 0.50 | 45.00 | 9.94 |
| 221.8 | Digital | 4.55 | 17.00 | 0.00 | 5.61 |
| 231.0 | Station Apparatus | 82.60 | 1.00 | 7.50 | 9.83 |
| 232.0 | Station Connections | | | | |
| 232.1 | Subs. Sta. Conn. | 42.83 | 5.75 | 0.00 | 9.94 |
| 232.2 | Key Systems | 62.10 | 5.75 | 0.00 | 6.59 |
| 232.4 | Subs Mobile Radio | 61.63 | 5.75 | 0.00 | 6.67 |
| 232.5 | TTY & Data | 42.42 | 5.75 | 0.00 | 10.01 |
| 232.6 | Alarm Systems | 43.81 | 5.75 | 0.00 | 9.77 |
| 234.0 | PBX | 31.82 | 4.00 | 9.76 | 14.61 |
| 235.0 | Paystations | 37.67 | 5.00 | 0.00 | 12.47 |
| 241.0 | Poles | 40.91 | 14.60 | (10.00) | 4.73 |
| 242.1 | Aerial Cable | 32.68 | 16.80 | (15.00) | 4.90 |
| 242.2 | Underground Cable | 19.81 | 12.90 | (5.00) | 6.60 |
| 242.3 | Buried Cable | 19.50 | 21.20 | (5.00) | 4.03 |
| 243.0 | Aerial Wire | (57.94) | 5.00 | (25.00) | 36.59 |
| 244.0 | Conduit | 22.28 | 37.01 | 0.00 | 2.10 |
| 261.0 | Furn. & Off. Eqpt. | 29.27 | 11.00 | 0.00 | 6.43 |
| 264.1 | Vehicles | 38.14 | 3.00 | 35.00 | 8.95 |
| 264.2 | Tools & OWE | 59.70 | 5.00 | 10.00 | 6.06 |

### AMORTIZATIONS

| | | |
|---|---|---|
| 221.7 | Electronic | $237,904 |

## APPENDIX C
## ALLTEL CAROLINA, INC.
## Docket No. P-118, Sub 39
## Rate Design and Tariff Design Guidelines

1. The Company's proposal to regroup Mooresville and Peachland/Polkton into rate groups 4 and 5, respectively, is approved.

2. The upper calling scope limits of rate groups 6 and 7 should be set at 150,000 and 245,000, respectively.

3. The service charges shown below are just and reasonable.

| | Residence | Business |
|---|---|---|
| Service Order (Primary) | $ 24.00 | $ 26.00 |
| Service Order (Secondary) | 11.00 | 15.00 |
| Central Office Work Charge | 17.00 | 20.00 |
| Premises Visit Charge | 15.00 | 15.00 |
| Inside Wiring Charge | 24.00 | 26.00 |
| Equipment Work Charge | 5.00 | 7.00 |
| Jack Outlet Charge | 5.00 | 5.00 |
| Maintenance Service Charge | | |
| 1st 1/2 hour | 31.61 | 31.61 |
| each addtional 1/4 hour | 8.30 | 8.30 |

4. A charge of $.30 for directory assistance inquiries exceeding three calls per month is allowed.

5. The directory listing charges should be increased to the levels proposed by the Company.

6. The Company's request to withdraw its tariff proposal for inside wiring maintenance is allowed.

7. The annual increase in revenues allowed herein should be effected through individual categories of service as shown below:

| Category of Service | Annual Revenue Increase |
|---|---|
| Basic Local Exchange | $ 3,330,073 |
| Local Directory Assistance | 20,419 |
| Service Connection Charges | 396,628 |
| Directory Listings | 29,711 |
| | $ 3,776,831 |

DOCKET NO. P-140, SUB 9
DOCKET NO. P-100, SUB 86
DOCKET NO. P-100, SUB 65

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

DOCKET NO. P-140, SUB 9

In the Matter of
Application of AT&T Communications of the Southern States, Inc., for an Adjustment of Its Rates and Charges Applicable to Intrastate Telephone Service in North Carolina

and

DOCKET NO. P-100, SUB 86

In the Matter of
Investigation of Intrastate WATS and 800 Service Rates and Charges of All Local Exchange Telephone Companies Under the Jurisdiction of the North Carolina Utilities Commission

and

DOCKET NO. P-100, SUB 65

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

NOTICE OF
DECISION
AND ORDER

HEARD IN: Commission Hearing Room 2115, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on March 25, 26, 27, and 28, 1986, and April 1, 2, 3, and 4, 1986

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 J. A. Wright

APPEARANCES:

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

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Wade H. Hargrove, Tharrington, Smith & Hargrove, Attorneys at Law, 209 Fayetteville Street Mall, Raleigh, North Carolina 27602

For Carolina Telephone and Telegraph Company:

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

For Southern Bell Telephone and Telegraph Company:

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

For Carolina Utility Customers Association:

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For First Union Corporation:

Samuel Behrends, IV, Attorney at Law, LeBoeuf, Lamb, Leiby & McRae, Post Office Box 750, Raleigh, North Carolina 27602

For MCI Telecommunications, Inc.:

Hugh Stevens, Attorney at Law, Sanford, Adams, McCullough & Beard, Post Office Box 389, Raleigh, North Carolina 27602

For North Carolina Long Distance Association:

Linda Markus Daniels, Attorney at Law, Walter E. Daniels, P.C., Post Office Drawer 13039, Research Triangle Park, North Carolina 27709

For the Using and Consuming Public:

Michael L. Ball and Theodore C. Brown, Jr., Staff Attorneys, Public Staff - North Carolina Utilities Commission, Post Office Box 29520, Raleigh, North Carolina 27626-0520

Fred Gamin, Assistant Attorney General, and Jo Anne Sanford, Special Deputy Attorney General, North Carolina Department of Justice, Raleigh, North Carolina 27602

BY THE COMMISSION: On October 28, 1985, in Docket No. P-140, Sub 9, AT&T Communications of the Southern States, Inc. (AT&T Communications, Company, or Applicant) asked for authority to adjust all of its intrastate interLATA rates and charges for Channel Services, Wide Area Telecommunications Service (WATS), 800 Service, and Long Distance Message Telephone Service (MTS) and to introduce a charge for verification and interrupt service for MTS customers. The Company's proposed charges would produce an annual gross revenue increase of $10,403,178. As part of the filing, AT&T requested emergency interim rate relief of approximately $6,300,000.

On November 25, 1985 the Commission entered an Order in Docket No. P-140, Sub 9, declaring the application to be a general rate case under N.C.G.S. § 62-137, suspending the proposed tariffs for interim and permanent relief, and scheduling an oral argument on the interim rate relief request. On December 6, 1985, the Commission issued an Order granting the interim rate relief, which by Order dated December 18, 1985, was affirmed to be in the form of an interim suspension of the $25.00 special access surcharge on WATS and 800 Service access lines.

On December 12, 1985, Southern Bell Telephone and Telegraph Company (Southern Bell) filed tariffs, with an effective date of February 1, 1986, to adjust the Company's intrastate intraLATA rates and charges for WATS and 800 Service. Under the proposals of AT&T Communications and Southern Bell, intraLATA and interLATA WATS and 800 Service would be tariffed and provided separately, rather than jointly under the uniform statewide tariffs heretofore in effect. By Order dated December 30, 1985, the Commission concluded that the request of AT&T Communications for adjustments in its WATS and 800 Service rates should be separated from its general rate case and docketed in another proceeding, Docket No. P-100, Sub 86, for consideration in conjunction with Southern Bell's proposed tariff changes in intraLATA WATS and 800 Service; the Commission further concluded that all local exchange companies under the jurisdiction of the Commission should be made parties to Docket No. P-100, Sub 86. The December 30, 1985, Order suspended the rates and tariffs on WATS and 800 Service and set Docket No. P-100, Sub 86, for hearing on March 4, 1986, in the Commission Hearing Room, Dobbs Building, Raleigh, North Carolina.

Motions for intervention were filed by North Carolina Long Distance Association (NCLDA), North Carolina Attorney General, Carolina Utility Customers Association (CUCA), MCI Telecommunications Corporation (MCI), Carolina Telephone and Telegraph Company (Carolina), Southern Bell, First Union Corporation, and Central Telephone Company (Central).

In the application filed on October 28, 1985, the Applicant sought permanent authority to adjust and increase its rates and charges for intrastate long-distance telephone service effective November 27, 1985. The Commission, being of the opinion that the application constituted a general rate case, concluded that the rates and charges should be suspended for up to 270 days, and the Commission on November 25, 1985, issued a general Order suspending the proposed rates.

On February 4, 1986, the North Carolina Long Distance Association filed a Motion to combine all AT&T Communications rate matters into one hearing. Other parties filed responses and pleadings, and the Commission upon consideration of all of the factors denied the Motion to combine on February 21, 1986.

On March 25, 1986, in the Commission Hearing Room the case came on for hearing and the following persons sponsored by the North Carolina Attorney General gave testimony: William C. Corley, Assistant SBI Director, and Samuel J. Rule, Director of Telecommunications for the State of North Carolina. Lawrence Whyte testified for the Village of Fearrington, North Carolina. The following witnesses testified for AT&T Communications: R. E. Fortenberry, Vice President, Regulatory Affairs; Marion R. McTyre, District Manager, Accounting Regulatory; John A. Sturgis, District Manager, Capitol Recovery of AT&T Communications, Inc.; Charles E. Willis, Manager, State Pricing and

Implementation Department; Robert A. Friedlander, District Manager in the State Pricing and Implementation Organization; and Steve Vinson, District Manager, Treasury Department of AT&T Communications, Inc. Edgar L. Honeycutt, Jr., Staff Manager in Rates Organization of Southern Bell, testified for Southern Bell; David B. Denton, Segment Manager-Rates, testified for Southern Bell; Charles Houser, Vice President and General Manager of Tel/Man, Inc., testified in behalf of his company and the NCLDA; Louis R. Jones, Burlington Industries, testified in behalf of his company and the Carolina Utility Customer Association; George E. Mattingly, Vice President of First Computer Services, Inc., in charge of telecommunications for First Union Corporation, testified on behalf of First Union Corporation. The Public Staff presented the testimony and exhibits of the following witnesses: William W. Winters, Supervisor of Communications, Public Staff Accounting Division; Jocelyn Perkerson, Accountant with the Public Staff; Leslie C. Sutton, Engineer with the Communications Division of the Public Staff; George T. Sessoms, Director of the Economic Research Division of the Public Staff; and John T. Garrison, Jr., Communications Engineer with the Public Staff. AT&T Communications presented the testimony and exhibits of Marion R. McTyre in rebuttal.

Based on the foregoing, the application, the testimony and exhibits received into evidence at the hearing, and the entire record in this proceeding, the Commission now makes the following

## FINDINGS OF FACT

1. The Applicant, AT&T Communications of the Southern States, Inc., is a public utility duly authorized to do business in North Carolina. The Applicant is providing telecommunications service in North Carolina and is subject to the jurisdiction of this Commission. AT&T Communications is properly before the Commission in this proceeding, pursuant to G.S. § 62-133, for a determination of the justness and reasonableness of its proposed rates and charges.

2. In its original application, AT&T Communications requested rates designed to produce gross annual revenues of approximately $316,331,434 based upon a test year ended June 30, 1985. By its revised application, the Company requested rates designed to produce annual gross revenues of approximately $316,372,609 and an increase in annual revenues of $10,269,452. However, during the hearing, the Company, in order to reflect a downward adjustment to its cost of capital, reduced its request for an increase in revenues to $9,630,940.

3. The test year for purposes of this proceeding is the 12 months ended June 30, 1985.

4. The overall quality of service provided by AT&T Communications is adequate.

5. Facilities (including associated materials and supplies, cash working capital, accumulated depreciation, deferred income taxes, and unamortized investment tax credits) leased by AT&T to Southern Bell Telephone and Telegraph Company under the Shared Network Facilities Agreement (SNFA), as well as facilities leased to others, should be included in rate base in this proceeding. The related revenues and expenses should also be included in the cost of service.

6. The reasonable working capital allowance to be included in the Company's rate base is $4,957,731.

7. AT&T Communications has an original cost rate base used and useful in providing service to its customers in North Carolina of $53,240,445. This rate base consists of telephone plant in service of $83,855,573 plus cash working capital of $4,957,731 and materials and supplies inventory of $289,934 plus unamortized employee expense of $407,014 and unamortized divestiture-related work force reduction expense of $36,129 less the depreciation reserve of $23,819,263, deferred income taxes of $12,434,997, and unamortized investment tax credits of $51,676.

8. The representative end-of-period interLATA toll revenues, miscellaneous revenues, and uncollectible revenues for AT&T Communications in this proceeding are $307,111,951, $9,133,772, and $2,752,765, respectively, resulting in a net revenue level of $313,492,958 for the test year under present rates.

9. The representative level of end-of-period access expenses and billing and collection expenses is $233,423,090.

10. The reasonable level of test year operating revenue deductions for AT&T Communications after accounting, pro forma, and end-of-period adjustments is $310,318,926, consisting of operating expenses of $297,375,905, which includes $6,790,506 for investment currently consumed through actual depreciation on an annual basis, plus taxes other than income of $11,501,995 and income taxes of $1,441,026. The depreciation rates as set forth in Appendix A are hereby authorized for the Company to use in calculating its depreciation expense for rate-making purposes.

11. The capital structure for AT&T Communications which is reasonable and proper for use in this proceeding is:

| Item | Ratio |
|---|---|
| Long-term debt | 35.89% |
| Preferred stock | 5.90% |
| Common equity | 58.21% |
| Total | 100.00% |

12. The Company's proper embedded costs of long-term debt and preferred stock are 8.16% and 7.57%, respectively. The reasonable rate of return for AT&T Communications to earn on its common equity is 15.00%. Using the capital structure, heretofore determined, with the cost rates for long-term debt, preferred stock, and common equity yields an overall fair rate of return of 12.11% to be applied to the Company's rate base. Such rate of return will enable AT&T Communications by sound management to produce a fair return for its shareholders, to maintain its facilities and service in accordance with the reasonable requirements of its customers, and to compete in the market for capital funds on terms which are reasonable and fair to the customers and to the investors.

13. In order for the Company to have a reasonable opportunity to earn the 12.11% rate of return on its rate base which the Commission has found just and reasonable, the Commission finds that it is reasonable and appropriate at this

time to allow AT&T Communications a reduction in access charges of $6,445,345 on an annual basis which should be produced by the elimination of $23.32 of the $25.00 special access surcharge which was charged by the local exchange companies to AT&T Communications prior to the waiver of such charge as was allowed by the Commission in granting interim rate relief to AT&T Communications. The Commission finds that it is both reasonable and appropriate to allow the local exchange companies to reinstate a $1.68 special access surcharge on WATS and 800 Service for AT&T Communications which is the only carrier known to have been subject to the $25.00 access surcharge.

## EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 13

On December 18, 1985, the Commission issued an Order in Docket Nos. P-140, Sub 9 and P-100, Sub 65 granting interim rate relief to AT&T Communications through the suspension of the $25.00 WATS and 800 Service special access surcharge imposed on the Company by the local exchange companies (LECs). The $25.00 surcharge was temporarily suspended effective January 1, 1986, pending hearing on AT&T Communications' request for permanent rate relief. In making this determination, the Commission found that the suspension of the $25.00 access surcharge tariff would not significantly impact the earnings levels of the LECs in an adverse manner. Further, at the time of AT&T Communications' filing in this docket, the Commission determined the effect of the interim suspension to be approximately $6.3 million on an annual basis. On January 10, 1986, AT&T Communications updated its end-of-period figures with the result being that the annual revenue impact of the $25.00 interim suspension of the special access surcharge is approximately $6.9 million rather than $6.3 million.

In Docket No. P-100, Sub 86, which was established for the joint consideration of the proposed changes of AT&T Communications and Southern Bell and the other LECs with regard to interLATA and intraLATA WATS and 800 Service rates and in conjunction with Docket No. P-140, Sub 9, the Commission, by Order issued May 2, 1986, requested the parties to enter into a written stipulation to the effect that such companies would waive their statutory rights pursuant to G.S. § 62-134 and G.S. § 62-135 to place their proposed rates into effect under bond six months after their proposed effective date and without bond upon tolling of the 270-day maximum suspension period. Further, the Commission Order of May 2, 1986, stated that the interim relief granted to AT&T Communications through the suspension of the $25.00 access surchage on WATS and 800 service would continue. The Commission made these requests in view of the fact that it will soon conduct a comprehensive review of the current level and structure of access charges during hearings beginning July 8, 1986, in Docket Nos. P-100, Sub 65, and P-100, Sub 72. In considering the assertions of AT&T Communications and many of the parties to Docket Nos. P-100, Sub 86, and P-140, Sub 9, that the present level of access charges constitutes one of the primary reasons underlying the need for rate relief by AT&T Communications, the Commission concluded that it would be appropriate to defer final decisions in these two dockets until after the Commission reviews access charges. In making its request for a written stipulation, the Commission also allowed the parties to the proceedings in Docket Nos. P-100, Sub 86, and P-140, Sub 9, to file written objections to such a stipulation. Based upon the various comments filed by the parties to these proceedings in this regard, the Commission finds that it is appropriate to go ahead and decide the general rate case application of AT&T Communications at this time; however, the Commission concludes that it would be inappropriate to engage in any major rate restructuring at this time since any changes in the current level and structure of rates could require further restructuring if changes are made in the LECs' access charge levels.

Based upon the above mentioned evidence, the Commission concludes that at this time the most appropriate way to effectuate the rate relief needed by AT&T Communications is to require the LECs to eliminate $23.32 of the $25.00 special access surcharge which was charged by the LECs to AT&T Communications prior to the waiver of this charge as was allowed by the Commission in granting interim rate relief to AT&T Communications. Such action results in the reinstatement of a $1.68 special access surcharge per WATS and 800 Service access line by the LECs on AT&T Communications. Such charge will be subject to change depending upon the outcome of the access charge hearings to be conducted in early July 1986. In reaching these decisions, it is not the intention of the Commission to have the parties in these proceedings believe that the Commission finds no need for rate restructuring. Rather, the Commission finds that at this time due to the fact that the access charge hearings will be held in July 1986 and that the decisions in those proceedings may very well require rate restructuring, it is best to wait until after the access charge hearings are completed to allow the Commission to rule on the rate proposals of the LECs and AT&T Communications in a more orderly manner.

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
AT&T COMMUNICATIONS OF THE SOUTHERN STATES, INC.
STATEMENT OF OPERATING INCOME
North Carolina Intrastate Operations
Twelve Months Ended June 30, 1985

| Item | Present Rates | Increase Approved | Approved Rates |
|---|---|---|---|
| Revenues: | | | |
| Toll revenues | $307,111,951 | - | $307,111,951 |
| Miscellaneous revenues | 9,133,772 | - | 9,133,772 |
| Uncollectibles | (2,752,765) | - | (2,752,765) |
| Net revenues | 313,492,958 | - | 313,492,958 |
| Revenue Deductions: | | | |
| Operating expenses: | | | |
| Access charges | 211,377,992 | (6,445,345) | 204,932,647 |
| Billing and collection | 22,045,098 | - | 22,045,098 |
| Maintenance | 8,043,846 | - | 8,043,846 |
| Depreciation | 6,790,506 | - | 6,790,506 |
| Traffic | 11,001,231 | - | 11,001,231 |
| Commercial | 9,111,975 | - | 9,111,975 |
| General office | 5,423,322 | - | 5,423,322 |
| Operating rents | 19,197,867 | - | 19,197,867 |
| Relief and pensions | 3,263,160 | - | 3,263,160 |
| Other expenses | 1,120,908 | - | 1,120,908 |
| Total | 297,375,905 | (6,445,345) | 290,930,560 |
| Taxes other than income | 11,501,995 | - | 11,501,995 |
| State and federal income taxes | 1,441,026 | 3,173,688 | 4,614,714 |
| Total revenue deductions | 310,318,926 | (3,271,657) | 307,047,269 |
| Net operating income | $ 3,174,032 | $ 3,271,657 | $ 6,445,689 |

## SCHEDULE II
## AT&T COMMUNICATIONS OF THE SOUTHERN STATES, INC.
## STATEMENT OF RATE BASE AND RATE OF RETURN
North Carolina Intrastate Operations
Twelve Months Ended June 30, 1985

| Item | Amount |
|---|---|
| Plant in service | $ 83,855,573 |
| Materials and supplies | 289,934 |
| Cash working capital | 4,957,731 |
| Unamortized employee displacement expense | 407,014 |
| Unamortized divestiture-related expense | 36,129 |
| Total | 89,546,381 |
| Less: Depreciation reserve | (23,819,263) |
| Deferred income taxes | (12,434,997) |
| Unamortized investment tax credits | (51,676) |
| Total | (36,305,936) |
| Original cost rate base | $ 53,240,445 |
| Rate of Return | |
| Present rates | 5.96% |
| Approved rates | 12.11% |

## SCHEDULE III
## AT&T COMMUNICATIONS OF THE SOUTHERN STATES, INC.
## STATEMENT OF CAPITALIZATION AND RELATED COSTS
North Carolina Intrastate Operations
Twelve Months Ended June 30, 1985

| Item | Capital-ization Ratio % | Original Cost Rate Base | Embedded Cost | Net Operating Income |
|---|---|---|---|---|
| | Present Rates - Original Cost Rate Base | | | |
| Long-term debt | 35.89% | $19,107,996 | 8.16% | $1,559,212 |
| Preferred stock | 5.90% | 3,141,186 | 7.57% | 237,788 |
| Common equity | 58.21% | 30,991,263 | 4.44% | 1,377,032 |
| Total | 100.00% | $53,240,445 | | $3,174,032 |
| | Approved Rates - Original Cost Rate Base | | | |
| Long-term debt | 35.89% | $19,107,996 | 8.16% | $1,559,212 |
| Preferred stock | 5.90% | 3,141,186 | 7.57% | 237,788 |
| Common equity | 58.21% | 30,991,263 | 15.00% | 4,648,689 |
| Total | 100.00% | $53,240,445 | | $6,445,689 |

An Order setting forth the evidence and conclusions in support of this decision will be issued subsequently. The Commission will consider the time for filing notice of appeal in this proceeding to run from the date of issuance of such Order.

IT IS, THEREFORE, ORDERED as follows:

1. That the $25.00 special access surcharge on WATS and 800 Service which was charged to AT&T Communications by the local exchange companies before interim rate relief was granted is hereby reduced to a charge by the LECs of $1.68 per month per WATS and 800 Service access line. The resulting decrease of $23.32 in the special access surcharge billed to AT&T Communications will produce an access charge reduction for AT&T Communications of $6,445,345 on an annual basis as authorized herein. The $1.68 special access surcharge on WATS and 800 Service is hereby effective upon the issuance of this Order. This charge is subject to further review and/or modification pending the Commission's final decision regarding such matters now pending in Docket Nos. P-100, Sub 65, and P-100, Sub 72.

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's decision to reinstate a $1.68 per month special access surcharge on WATS and 800 Service.

3. That the annual depreciation rates attached hereto as Appendix A be, and hereby are, approved effective January 1, 1985.

4. 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 in Docket Nos. P-140, Sub 9, P-100, Sub 86 and P-100, Sub 65.

5. That AT&T Communications and Southern Bell Telephone and Telegraph Company on behalf of themselves and the LECs shall file for Commission approval proposed customer notices giving notification of the Commission decision as set forth herein. Such proposed notice shall be filed within 10 days of the issuance date of this Order.

ISSUED BY ORDER OF THE COMMISSION.
This the 9th day of June 1986.

NORTH CAROLINA UTILITIES COMMISSION
Sandra J. Webster, Chief Clerk

(SEAL)

DOCKET NO. P-140, SUB 9
DOCKET NO. P-100, SUB 86
DOCKET NO. P-100, SUB 65

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

DOCKET NO. P-140, SUB 9

In the Matter of
Application of AT&T Communications of the Southern States, Inc., for an Adjustment of Its Rates and Charges Applicable to Intrastate Telephone Service in North Carolina

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Investigation of Intrastate WATS and 800 Service Rates and Charges of All Local Exchange.Telephone Companies Under the Jurisdiction of the North Carolina Utilities Commission

and

DOCKET NO. P-100, SUB 65

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 IN
INTRASTATE WATS
AND 800 SERVICE
SPECIAL ACCESS
SURCHARGE

HEARD IN: Commission Hearing Room 2115, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on March 25, 26, 27, and 28, 1986, and April 1, 2, 3, and 4, 1986

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 J. A. Wright

APPEARANCES:

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

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Wade H. Hargrove, Tharrington, Smith & Hargrove, Attorneys at Law, 209 Fayetteville Street Mall, Raleigh, North Carolina 27602

For Carolina Telephone and Telegraph Company:

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

For Southern Bell Telephone and Telegraph Company:

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

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

For Carolina Utility Customers Association:

Jerry B. Fruitt and Thomas K. Austin, Fruitt & Austin, Post Office Box 12547, Raleigh, North Carolina 27605

For First Union Corporation:

Samuel Behrends, IV, Attorney at Law, LeBoeuf, Lamb, Leiby & McRae, Post Office Box 750, Raleigh, North Carolina 27602

For MCI Telecommunications, Inc.:

Hugh Stevens, Attorney at Law, Sanford, Adams, McCullough & Beard, Post Office Box 389, Raleigh, North Carolina 27602

For North Carolina Long Distance Association:

Linda Markus Daniels, Attorney at Law, Walter E. Daniels, P.C., Post Office Drawer 13039, Research Triangle Park, North Carolina 27709

For the Using and Consuming Public:

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Fred Gamin, Assistant Attorney General, and Jo Anne Sanford, Special Deputy Attorney General, North Carolina Department of Justice, Raleigh, North Carolina 27602

BY THE COMMISSION: On October 28, 1985, in Docket No. P-140, Sub 9, AT&T Communications of the Southern States, Inc. (AT&T Communications, Company, or Applicant) asked for authority to adjust all of its intrastate interLATA rates and charges for Channel Services, Wide Area Telecommunications Service (WATS), 800 Service, and Long Distance Message Telephone Service (MTS) and to introduce a charge for verification and interrupt service for MTS customers. The Company's proposed charges would produce an annual gross revenue increase of $10,403,178.. As part of the filing, AT&T requested emergency interim rate relief of approximately $6,300,000.

On November 25, 1985, the Commission entered an Order in Docket No. P-140, Sub 9, declaring the application to be a general rate case under N.C.G.S. § 62-137, suspending the proposed tariffs for interim and permanent relief, and scheduling an oral argument on the interim rate relief request. On December 6, 1985, the Commission issued an Order granting the interim rate relief, which by Order dated December 18, 1985, was affirmed to be in the form of an interim suspension of the $25.00 special access surcharge on WATS and 800 Service access lines.

On December 12, 1985, Southern Bell Telephone and Telegraph Company (Southern Bell) filed tariffs, with an effective date of February 1, 1986, to adjust the Company's intrastate intraLATA rates and charges for WATS and 800 Service. Under the proposals of AT&T Communications and Southern Bell, intraLATA and interLATA WATS and 800 Service would be tariffed and provided separately, rather than jointly under the uniform statewide tariffs heretofore in effect. By Order dated December 30, 1985, the Commission concluded that the request of AT&T Communications for adjustments in its WATS and 800 Service rates should be separated from its general rate case and docketed in another proceeding, Docket No. P-100, Sub 86, for consideration in conjunction with Southern Bell's proposed tariff changes in intraLATA WATS and 800 Service. The Commission further concluded that all local exchange companies under the jurisdiction of the Commission should be made parties to Docket No. P-100, Sub 86. The December 30, 1985, Order suspended the rates and tariffs on WATS and 800 Service and set Docket No. P-100, Sub 86, for hearing on March 4, 1986, in the Commission Hearing Room, Dobbs Building, Raleigh, North Carolina.

Motions for intervention were filed by the North Carolina Long Distance Association (NCLDA), North Carolina Attorney General, Carolina Utility Customers Association (CUCA), MCI Telecommunications Corporation (MCI), Carolina Telephone and Telegraph Company (Carolina), Southern Bell, First Union Corporation, and Central Telephone Company (Central).

In the application filed on October 28, 1985, the Applicant sought permanent authority to adjust and increase its rates and charges for intrastate long-distance telephone service effective November 27, 1985. The Commission, being of the opinion that the application constituted a general rate case, concluded that the rates and charges should be suspended for up to 270 days, and the Commission on November 25, 1985, issued a general Order suspending the proposed rates.

On February 4, 1986, the North Carolina Long Distance Association filed a Motion to combine all AT&T Communications' rate matters into one hearing. Other parties filed responses and pleadings, and the Commission upon consideration of all of the factors denied the Motion to combine on February 21, 1986.

On March 25, 1986, in the Commission Hearing Room the case came on for hearing and the following persons sponsored by the North Carolina Attorney General gave testimony: William C. Corley, Assistant SBI Director, and Samuel J. Rule, Director of Telecommunications for the State of North Carolina. Lawrence Whyte testified for the Village of Fearrington, North Carolina. The following witnesses testified for AT&T Communications: R. E. Fortenberry, Vice President, Regulatory Affairs; Marion R. McTyre, District Manager, Accounting Regulatory; John A. Sturgis, District Manager, Capitol Recovery of AT&T Communications, Inc.; Charles E. Willis, Manager, State Pricing and

Implementation Department; Robert A. Friedlander, District Manager in the State Pricing and Implementation Organization; and Steve Vinson, District Manager, Treasury Department of AT&T Communications, Inc. Edgar L. Honeycutt, Jr., Staff Manager in Rates Organization of Southern Bell, testified for Southern Bell; David B. Denton, Segment Manager-Rates, testified for Southern Bell; Charles Houser, Vice President and General Manager of Tel/Man, Inc., testified in behalf of his company and the NCLDA; Louis R. Jones, Burlington Industries, testified in behalf of his company and the Carolina Utility Customers Association; George E. Mattingly, Vice President of First Computer Services, Inc., in charge of telecommunications for First Union Corporation, testified on behalf of First Union Corporation. The Public Staff presented the testimony and exhibits of the following witnesses: William W. Winters, Supervisor of Communications, Public Staff Accounting Division; Jocelyn Perkerson, Accountant with the Public Staff; Leslie C. Sutton, Engineer with the Communications Division of the Public Staff; George T. Sessoms, Jr., Director of the Economic Research Division of the Public Staff; and John T. Garrison, Jr., Communications Engineer with the Public Staff. AT&T Communications presented the testimony and exhibits of Marion R. McTyre in rebuttal.

On June 9, 1986, the Commission issued a Notice of Decision and Order in these dockets which stated that AT&T Communications should be allowed an opportunity to earn a rate of return of 12.11% 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, AT&T Communications was allowed a reduction in access charges of $6,445,345 on an annual basis. Southern Bell Telephone and Telegraph Company was required to file a revised access service tariff on behalf of the local exchange companies consistent with the Commission's decision to reinstate for AT&T Communications a $1.68 per month special access surcharge on WATS and 800 service. On June 25, 1986, Southern Bell filed the required revised special access surcharge tariff in accordance with the Commission's Order.

Based on the foregoing, the application, the testimony and exhibits received into evidence at the hearing, and the entire record in this proceeding, the Commission now makes the following

## FINDINGS OF FACT

1. The Applicant, AT&T Communications of the Southern States, Inc., is a public utility duly authorized to do business in North Carolina. The Applicant is providing telecommunications service in North Carolina and is subject to the jurisdiction of this Commission. AT&T Communications is properly before the Commission in this proceeding, pursuant to G.S. § 62-133, for a determination of the justness and reasonableness of its proposed rates and charges.

2. In its original application, AT&T Communications requested rates designed to produce gross annual revenues of approximately $316,331,434 based upon a test year ended June 30, 1985. By its revised application, the Company requested rates designed to produce annual gross revenues of approximately $316,372,609. Such sum reflects a proposed increase in annual revenues of $10,269,452. However, during the hearing, the Company, in order to reflect a downward adjustment to its cost of capital, reduced its request for an increase in revenues to $9,630,940.

3. The test year for purposes of this proceeding is the 12 months ended June 30, 1985.

4. The overall quality of service provided by AT&T Communications is adequate.

5. Facilities (including associated materials and supplies, cash working capital, accumulated depreciation, deferred income taxes, and unamortized investment tax credits) leased by AT&T Communications to Southern Bell Telephone and Telegraph Company under the Shared Network Facilities Agreement (SNFA), as well as facilities leased to others, should be included in rate base in this proceeding. The related revenues and expenses should also be included in the cost of service.

6. The reasonable working capital allowance to be included in the Company's rate base is $4,957,731.

7. AT&T Communications has an original cost rate base used and useful in providing service to its customers in'North Carolina of $53,240,445. This rate base consists of telephone plant in service of $83,855,573 plus cash working capital of $4,957,731 and materials and supplies inventory of $289,934 plus unamortized employee expense of $407,014 and unamortized divestiture-related work force reduction expense of $36,129 less the depreciation reserve of $23,819,263, deferred income taxes of $12,434,997, and unamortized investment tax credits of $51,676.

8. The representative end-of-period interLATA toll revenues, miscellaneous revenues, and uncollectible revenues for AT&T Communications in this proceeding are $307,111,951, $9,133,772, and $2,752,765, respectively, resulting in a net revenue level of $313,492,958 for the test year under present rates.

9. The representative level of end-of-period access expenses and billing and collection expenses is $233,423,090.

10. The reasonable level of test year operating revenue deductions for AT&T Communications after accounting, pro forma, and end-of-period adjustments is $310,318,926, consisting of operating expenses of $297,375,905, which includes $6,790,506 for investment currently consumed through actual depreciation on an annual basis, plus taxes other than income of $11,501,995 and income taxes of $1,441,026. The depreciation rates as set forth in Appendix A are hereby authorized for the Company to use in calculating its depreciation expense for ratemaking purposes.

11. The capital structure for AT&T Communications which is reasonable and proper for use in this proceeding is:

| Item | Ratio |
|---|---|
| Long-term debt | 35.89% |
| Preferred stock | 5.90% |
| Common equity | 58.21% |
| Total | 100.00% |

12. The Company's proper embedded costs of long-term debt and preferred stock are 8.16% and 7.57%, respectively. The reasonable rate of return for AT&T Communications to earn on its common equity is 15.00%. Using the capital structure, heretofore determined, with the cost rates for long-term debt, preferred stock, and common equity yields an overall fair rate of return of 12.11% to be applied to the Company's rate base. Such rate of return will enable AT&T Communications by sound management to produce a fair return for its shareholders, to maintain its facilities and service in accordance with the reasonable requirements of its customers, and to compete in the market for capital funds on terms which are reasonable and fair to the customers and to the investors.

13. In order for the Company to have a reasonable opportunity to earn the 12.11% rate of return on its rate base which the Commission has found just and reasonable, the Commission finds that it is reasonable and appropriate at this time to allow AT&T Communications a reduction in access charges of $6,445,345 on an annual basis which should be produced by the elimination of $23.32 of the $25.00 special access surcharge which was charged by the local exchange companies to AT&T Communications prior to the waiver of such charge as was allowed by the Commission in granting interim rate relief to AT&T Communications. The Commission finds that it is both reasonable and appropriate to allow the local exchange companies to reinstate a $1.68 special access surcharge on WATS and 800 Service for AT&T Communications which is the only carrier known to have been subject to the $25.00 access surcharge.

## EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 1, 2, AND 3

The evidence supporting these findings of fact is found in the verified application filed October 28, 1985, in prior Commission Orders in these dockets, and in the record as a whole. These findings are jurisdictional in nature and uncontested.

## EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 4

Finding of Fact No. 4 is uncontested, as there was no evidence presented that the overall quality of service by AT&T Communications is other than good.

## EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 5

The evidence for this finding of fact is found in the testimonies and exhibits of Company witness McTyre and Public Staff witnesses Winters, Perkerson, and Sessoms.

Public Staff witness Winters proposed that the Commission include in rate base the leased portion of certain joint-use facilities which the Company treated as nonregulated and excluded from rate base. Witness Winters likewise included in the cost of service the revenues and expenses related to these facilities. In his exhibits, witness Winters added to the Company's rate base its investment in certain leased facilities amounting to $24,605,651 along with the associated materials and supplies of $97 and cash working capital of $2,066,770, reduced by the associated accumulated depreciation of $5,958,864, deferred income taxes of $4,829,469, and unamortized investment tax credits of $26,536. These figures are as provided by the Company per a data request from the Public Staff except that the Public Staff has made its own calculation of working capital and has excluded from rate base the plant under construction associated with these leased facilities. Also, witness Winters included in the cost of service the associated joint-use facilities' revenues of $9,013,945 and operating expenses and taxes of $6,854,484.

The leased facilities adjustment by witness Winters includes investment leased to Southern Bell under the Shared Network Facilities Agreement and investment to be leased to Carolina resulting from AT&T Communications' purchasing some joint-use equipment from Carolina. According to witness Winters in addition to the SNFA facility related contracts between AT&T Communications and Southern Bell there are other contracts between these two companies for the provision of certain services with the provider being reimbursed on the same basis as the SNFA that have also been reflected in his adjustment. The SNFA resulted from the fact that at divestiture there were certain facilities used by both AT&T Communications and Southern Bell to provide utility service that could not be divided, the ownership of these joint-use facilities went to the party of predominant use with the other receiving the right to continue using the facilities under contract - the SNFA. These contracts provide that the owner will be reimbursed for the cost incurred in providing the facility, including a return on the investment involved. The overall return that is currently being earned on the SNFA investment is 12.75% which was established by the Federal Communications Commission (FCC). According to witness Winters the lease contracts with Carolina are analogous to the SNFA leases, except they are not mandated by the Modification of Final Judgment and are not related to the divestiture of the Bell operating companies. Carolina agreed with the Public Staff that the revenues to be paid by Carolina to AT&T Communications under these lease contracts should be included as a part of the Company's representative level of test period revenues and included in determining the Company's revenue requirements.

All of the contracts at issue in this case require that the lessee pay the lessor the expenses and taxes related to the leased investment, a return on the investment, and an allowance for working capital. The amounts included by witness Winters in his proposal were not contravened by the Company except to the extent that the Public Staff adjusted the levels of the working capital allowance, revenues, and taxes related to both the SNFA and the other lease contracts to reflect the 11.76% overall rate of return proposed by the Public Staff. The return allowed on the leased facilities was adjusted by the Public Staff due to witness Winters' understanding that the Company will change the terms of the contracts so that the returns earned in the future will be the return granted by this Commission in this proceeding. The issue between the Company and the Public Staff is one of regulatory philosophy as to whether the effects of these leases as proposed by witness Winters should be included in rate base and the cost of service for setting rates in this proceeding.

Witness Winters contends that the Uniform System of Accounts requires that leased facilities transactions be recorded in the regulated utility accounts, and this point was agreed to by Company witness McTyre on cross-examination. Witness Winters also contends that the ratepayers are at risk for the capital recovery of these investments if the lessors should cease to rent these facilities. In this regard witness Winters testified as follows:

> "These transactions are inherently part of the utility operations and should be treated as such in this proceeding. The ratepayers of AT&T

> are at risk for the capital recovery of this investment if Southern Bell ceases to rent these facilities, because the investment and expenses related to the leased facilities would no longer be separated from the utility investment and expenses. If these facilities should be left high and dry and if AT&T were no longer able to use them, the capital loss would revert to the ratepayers of AT&T through either depreciation on unused capacity or abandonment losses. Since the facilities are utility related and the ratepayers are at risk for the eventual recovery of the investment, it is essential that these facilities and the related revenues and expenses be included in the cost of service to reduce the revenue requirement..."

Witness Winters also testified on cross-examination that his treatment of the leased facilities was in accordance with principles established in the Democratic Central Committee court decision, 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).

The Company contends that the leased facilities are nonutility and that the North Carolina Statutes require that only investment intended to serve customers should be included in rate base. The Company contends that these facilities in question are leased to other utilities and not to customers. Therefore, the Company believes the investment is not required to be included in rate base nor are the related revenues and expenses required to be included in the cost of service.

Further, it is the contention of the Company that the FCC's rules regarding separations procedures which address property rented to a nonaffiliated company, state quite plainly that if the investment in such facilities and rental revenues received from such facilities are substantial, they may be excluded from the utility company's operations. Thus, it is the Company's opinion that since the leased facilities investment is substantial the property involved and the revenues and expenses associated therewith are not required by the Separations Manual or by the FCC to be considered for ratemaking purposes. Therefore, the Company excluded the leased facilities investment from rate base and the associated revenues and expenses from the cost of service in this proceeding.

Although the leased facilities at issue are leased to other companies, these same facilities are also used by AT&T Communications in its telephone operations. According to the testimony of witness Winters, the Company recorded on its books the transactions related to the leased facilities as being utility in nature, yet for ratemaking purposes the Company has chosen to treat these same transactions as applicable to other operations. The Commission agrees with the Public Staff that these transactions arising out of the joint-use of certain facilities are inherently part of the utility operations and concludes that the leased property covered by the contracts is utility property.

There is no evidence in the record to contravene the Public Staff's contention that the ratepayers of AT&T Communications are at risk for the capital recovery of the leased investment if the lessors should terminate the leases for equipment that could not be used by the Company. The ratemaking principles applicable to this situation are clearly put forth in an excerpt from the Democratic Central Committee decision referred to by witness Winters as follows:

> "We think two accepted principles which have served comparably to effect satisfactory adjustments in other aspects of ratemaking can do equal service hére.
>
> "One is the principle that the right to capital gains on utility assets is tied to the risk of capital losses. The other is the principle that he who bears the financial burden of particular utility activity should also reap the benefit resulting therefrom. The justice inherent in these principles is self-evident, and each already occupies a niche in the law of ratemaking..."

Before divestiture all the Southern Bell and AT&T Communications joint-use facilities utility-related investment was included in rate base for ratemaking purposes and the associated revenues and expenses were included in the cost of service. In the last general rate case for Southern Bell in Docket No. P-55, Sub 834, which was its first case after divestiture, the Commission agreed with Southern Bell that it was appropriate to include the effects of the SNFA contracts relating to the lease of facilities to AT&T Communications in the rate base and the cost of service for ratemaking purposes. In this proceeding, the rent expense which AT&T Communications incurs for the use of facilities it is leasing from Southern Bell under the SNFA and the other companies with which it has similar arrangements was included in the cost of service by AT&T Communications.

Based upon the foregoing, the Commission concludes that it is appropriate to include the leased facilities in rate base and the related revenues and expenses in the cost of service. Further based upon the Commission's decision with regard to capital structure and rates of return as discussed in the Evidence and Conclusions for Findings of Fact Nos. 11 and 12 the Commission concludes that is is proper to make adjustments to the amounts as proposed by the Public Staff in order to reflect the 12.11% overall rate of return granted by the Commission in this proceeding. Therefore, the reasonable amounts to be included in the Company's rate base and the cost of service to recognize inclusion of the effects of the leased facilities contracts are as follows:

## Rate Base Adjustments

| Item | Amount |
|---|---|
| Plant in service | $24,605,651 |
| Materials and supplies | 97 |
| Cash working capital | 2,074,106 |
| Depreciation reserve | (5,958,864) |
| Deferred income taxes | (4,829,469) |
| Unamortized investment tax credits | (26,536) |
| Total rate base adjustment | $15 864 985 |

## Income Statement Adjustments

| Item | Amount |
|---|---|
| Miscellaneous revenues | $9,133,772 |
| Operating and maintenance expenses | 5,173,079 |
| Taxes other than income | 338,320 |
| Income taxes | 1,402,087 |
| Total net operating income adjustment | $2 220 286 |

## EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 6

The evidence and conclusions for this finding of fact is found in the testimonies and exhibits of Company witness McTyre and Public Staff witness Perkerson. This finding of fact relates to the difference between the Company and the Public Staff regarding the level of investor funds advanced for operations to be included in rate base and allowed to earn a rate of return.

Working capital, in the amount of $4,167,402, was included by the Company as a component of rate base. It was based exclusively on operations other than those relating to the leased facilities agreements.

The Public Staff recommended a level of funds advanced by investors in the amount of $4,152,382. Of this amount, $2,085,612 related to operations other than the leased facilities agreements, and $2,066,770 related to the leased facilities agreements.

The major areas of difference between the Company and the Public Staff were:

1. Different dollar amounts reflecting adjustments made by the Public Staff to the Company's end-of-period cost of service;

2. The Company's use of the composite wage lag for the "other" components of the cost of service as opposed to the Public Staff's calculation of individual lags for the specifically identifiable "other" components of the cost of service;

3. Inclusion of interest expense, preferred dividends, and income available for common equity as components of the cost of service by the Public Staff; and

4. Inclusion by the Public Staff of a working capital allowance for the investment, revenues, and expenses related to the leased facilities agreements.

The first area of difference between the Company and the Public Staff was end-of-period dollar amounts of the cost of service used as a basis for calculating the level of investor funds advanced for operations. The Company used end-of-period amounts which reflected its pro forma adjustments. The Public Staff used end-of-period amounts which reflected the recommended adjustments of all the Public Staff witnesses. The end-of-period cost of service for operations other than leased facilities used by the Public Staff was $299,044,200 and for leased facilities the amount was $19,518,144. The end-of-period cost of service used by the Company for operations other than leased facilities was $306,131,450. The Company as previously discussed in the Evidence and Conclusions for Finding of Fact No. 5 did not include costs related to leased facilities in its filing.

According to witness McTyre, the major difference between his calculation of the working capital allowance and that of the Public Staff was primarily due to the Public Staff's use of end-of-period amounts that included Public Staff adjusted levels of the cost of service. According to the Company's brief filed in this docket, it does not disagree with the Public Staff's methodology changes but does request that adjustments be made to the working capital allowance as recommended by witness Perkerson to remove the effect of any disallowance on the part of the Commission of any Public Staff adjusted amount which had been used by witness Perkerson in her calculation.

Based on all the findings of fact wherein the Commission has made its own determination of the proper levels of revenues, expenses, rate base, capital structure, and embedded costs of long-term debt and preferred stock, the Commission finds that the proper level of the end-of-period cost of service for use in this proceeding is $307,143,146 for operations other than leased facilities and $19,637,971 for leased facilities. The use of these amounts for the cost of service in this proceeding and the Public Staff's methodology for calculating working capital will result in a reasonable level of investor funds advanced for operations other than leased facilities of $2,883,625 and a reasonable level of investor funds advanced for the leased facilities operations of $2,074,106.

The next area of difference is the Company's use of the composite wage lag for the "other" components of the cost of service. Witness McTyre stated that these costs, in the amount of $13,427,920, represented only 3% to 4% of the total cost of service and the expense involved in completing an in-depth lead-lag study was not, therefore, in the opinion of the Company, justifiable.

The Company provided a lag day calculation for wages, revenues, access, billing and collection, ICO contracts, operating rents, relief and pensions, and taxes. For the "other" components of service, however, the Company applied the composite lag for wages which was 16.13 days.

Witness Perkerson, in addition to adjusting certain of the lag days as calculated for the items mentioned above, developed lag days for advertising, independent company marketing contracts, Bell Labs directly funded research, Bell Labs basic research, general expenses charged from AT&T Corporate, transmission power, data processing, maintenance charges paid to Southern Bell under SNFA, outside attorney fees, shop repair, accidents and damages, long-term debt interest expense, and preferred dividends. These lags as developed by witness Perkerson were based on data filed by the Company in response to Public Staff data requests and a voucher study performed by the Public Staff. There were some items of "other" for which a specific lag could be developed. For certain of the "other" items a composite lag had to be calculated. According to witness Perkerson, the composite lag was calculated using those items of expense which bore the closest relationship to the expense for which the composite lag would be used. Detailed schedules in support of the composite lags were provided in the exhibits filed by witness Perkerson. Witness Perkerson stated that her purpose in calculating the lag days for the "other" components of the cost of service was to reflect as nearly as possible the actual receipt and payment policies of the Company in her calculation of a working capital allowance.

An essential part of the minimum filing requirements, for most companies appearing before this Commission for a rate increase, is a lead-lag study based on the actual receipt and payment policies of the Company. This Commission uses the information provided in the lead-lag study as the basis for determining the proper level of working capital to be included in rate base and allowed to earn a return. This Commission further believes that the lead-lag study is the most appropriate means for determining the proper level of working capital. It is essential, therefore, that a "lead" or a "lag" be established for every component of the cost of service that can be specifically identified. This Commission, based on the information above, finds that the methodology used by the Public Staff in the calculation of lag days to be used in the calculation of the working capital allowance is proper and just. A revenue lag of 43.42 days and an expense lag of 39.21 days with a net interval of 4.21 lag days are appropriate for use in this proceeding for the Company's nonleased operations.

The third area of difference between the Company and the Public Staff is the inclusion of interest expense, preferred dividends, and income available for common equity by the Public Staff.

Witness McTyre stated that these items were not included by the Company since, based on their end-of-period amounts which reflected a loss, there was no income available for common equity to be included.

Witness Perkerson stated that due to her use of the end-of-period cost of service, which did not reflect a loss, these components of the cost of service had been included in the calculation of a composite lag for determining the working capital allowance.

Interest expense and preferred dividends are items of cost that are recovered through rates. Each month ratepayers pay rates, a portion of which is related to covering interest expense and preferred dividends. Although the money to pay interest and preferred dividends is collected from the ratepayers monthly, the company pays the interest and preferred dividends monthly, quarterly, semiannually or annually as required by the issuing terms of the notes, bonds, and stock. The treatment of these costs should be no different from any other costs incurred by the Company. Failure to include these costs in a lead-lag study would produce a working capital allowance that is greater than needed by the amount of the respective collections of these items from the mid-point of the service period to the actual date of the payment of interest and preferred dividends.

It is also important to note that the equity investors of a company expect and should be allowed the opportunity to earn a return on their investment for every day that their money remains invested in the Company. By including income available for common equity as a component of the cost of service in a lead-lad study, with zero lag days, this opportunity to earn a return is recognized and provided for.

The Commission therefore finds the position of the Public Staff which includes interest expense, preferred'dividends, and income available for common equity as components of the cost of service for the lead-lad study to be the appropriate methodology for this proceeding. Further, the Public Staff methodology in this regard is consistent with the methodology adopted by the Commission in all proceedings before this Commission in the past.

The last area of difference is the inclusion by the Public Staff of the operations related to leased facilities agreements and, consequently, a working capital allowance related to the leased investment, revenues, and expenses.

According to witness Perkerson, she calculated a working capital allowance for the leased operations based on the inclusion of these operations by witness Winters. She further indicated that her calculation was based on data provided by the Company in response to data requests. The working capital allowance calculated by the Public Staff for leased operations is $2,066,770 and was calculated using the same methodology as was used for operations other than the leased operations.

The Company did not include information on a working capital allowance for the leased operations.

Based on the information above and the Commission's decision set forth in the Evidence and Conclusions for Finding of Fact No. 5, the Commission finds that a working capital allowance for the leased facilities operations in the amount of $2,074,106 is appropriate for use in this proceeding.

The use of end-of-period amounts as a basis for the lead-lag study is a departure from the normal procedure of per book amounts accepted by this Commission in the past. As mentioned earlier, both the Company and the Public Staff used end-of-period amounts with the Public Staff using amounts which reflected Public Staff recommended adjustments.

Witness Perkerson provided in-depth testimony as to why she used end-of-period amounts as a basis for the lead-lag study. She stated that she had used end-of-period amounts for all items except interest expense, preferred dividends, income taxes, and income available for common equity due to the unusual circumstances of the significant net operating loss reflected in the per books numbers of the Company. She stated that her use of the end-of-period amounts provided the best basis for calculating a working capital allowance that would be reflective of the current operations of the Company.

Witness Perkerson also explained her reason for not using true end-of-period amounts for interest expense, preferred dividends, income taxes, and income available for common equity. She explained that working capital is a component of rate base. Rate base is necessary for the calculation of interest expense and interest expense is necessary for the calculation of income taxes. Further, income taxes and interest expense are both components of the cost of service in calculating the working capital allowance. Due to the circular nature of this problem, witness Perkerson testified that it was necessary, for the purposes of the lead-lad study only, to use a rate base excluding the working capital allowance to determine the level of interest expense, preferred dividends, net income available for common equity and income taxes to be used in the lead-lag study.

This Commission believes and reaffirms its opinion that per books is the reasonable and appropriate basis for the calculation of a working capital allowance in all but the most unusual of circumstances. Based on the facts presented in this proceeding and discussed above, the Commission finds the significant per books loss to be a highly unusual circumstance. It is therefore determined that for the purposes of this proceeding only, the end-of-period amounts used by the Public Staff provide the most reasonable basis for calculating a working capital allowance that is reflective of current operations. This decision is not intended nor should it be misinterpreted as a setting of precedence for the use of end-of-period amounts as a basis for calculating the working capital allowance by other companies appearing before this Commission.

In conclusion, based upon all the evidence and conclusions in this proceeding, the Commission finds that $4,957,731 is the reasonable working capital allowance to be included in the Company's rate base.

## EVIDENCE AND CONCLUSION FOR FINDING OF FACT NO. 7

The evidence for this finding of fact is found in the testimonies and exhibits of Company witnesses McTyre, Fortenberry, and Vinson and Public Staff witnesses Winters, Perkerson, Sessoms, and Sutton. The following table sets forth the net original cost rate base as proposed by the parties:'

| Item | Company | Public Staff | Difference |
|---|---|---|---|
| Plant in service | $59,249,922 | $83,855,573 | $24,605,651 |
| Capitalized right-to-use fees | - | 1,361,594 | 1,361,594 |
| Plant under construction | 1,128,245 | - | (1,128,245) |
| Materials and supplies | 289,837 | 289,934 | 97 |
| Cash working capital | 4,167,402 | 4,152,382 | (15,020) |
| Unamortized employee expense | - | 407,014 | 407,014 |
| Total | 64,835,406 | 90,066,497 | 25,231,091 |
| Less: Depreciation reserve | (19,291,136) | (23,819,263) | (4,528,127) |
| Deferred income taxes | (7,605,528) | (12,434,997) | (4,829,469) |
| Unamortized investment tax credits | (25,140) | (51,676) | (26,536) |
| Total | (26,921,804) | (36,305,936) | (9,384,132) |
| Original cost rate base | $37,913,602 | $53,760,561 | $15,846,959 |

The first difference between the parties is $24,605,651 in plant in service resulting from Public Staff witness Winters' adjustment for the inclusion of leased facilities in the Company's rate base. As discussed in the Evidence and Conclusions for Finding of Fact No. 5, the Commission finds that it is proper to include the investment associated with the leased facilities in this proceeding.

The next difference of $1,361,594 in capitalized right-to-use fees results from Public Staff witness Winters' adjustment to allow for the inclusion in rate base of the unamortized portion of computer software costs associated with the Company's traffic service position systems (TSPS) and 4-electronic switching systems (4-ESS). The right-to-use fees represent payments to AT&T Technologies for the development and use of computer software used in the provision of AT&T Communications' service to the public.

The Company has a policy of expensing all software costs relating to TSPS and 4-ESS which is consistent with prior Bell System and Southern Bell practices, accordingly witness McTyre accounted for these fees as expenses. The Public Staff however recommended that the Company be required to capitalize, rather than expense these fees.

Witness Winters testified that the Company's practices in this regard do not recognize that these programs will provide service for a greater length of time than the current period. Witness Winters capitalized the computer software costs which he considered applicable to future periods in the amounts of $740,173 relating to TSPS and $621,421 relating to 4-ESS. Further, he included expenses of $296,069 relating to TSPS and $47,437 relating to 4-ESS to recognize the amortization of the right-to-use fees associated with the TSPS over 3.5 years and the 4-ESS over 14.1 years.

Company witness McTyre, under cross-examination, agreed that right-to-use fees could benefit future ratepayers but that he would be uncertain as to the length of any benefit period. It would not necessarily be over the life of the associated plant, according to witness McTyre.

Witness Winters testified under cross-examination that,

> "...if you have to reprogram... to make a switch serve the function of increasing its capacity to be used by future customers...that is something that is going to...benefit ratepayers or the Company or whoever over a period of much greater time than one year, and I would assert that it would be over...the remaining life of that switch. It's a switch that ultimately provides the service and the computer programs just allow that switch to do what it was made to do."

In his direct testimony witness Winters stated that General Telephone Company of the South (General), Central Telephone Company (Central), ALLTEL Carolina Telephone Company (ALLTEL), and Continental Telephone of North Carolina (Continental) account for right-to-use fees in the same manner as he is proposing for AT&T Communications. However, during cross-examination witness Winters acknowledged that Southern Bell and Carolina elected to, and are permitted by the Commission to, expense their right-to-use fees and further stated that he had "no problem at all that Southern Bell and Carolina expense it."

AT&T Communications' witness McTyre testified that the software programs in question may have a useful life of less than one year. Public Staff witness Winters testified that while he was not familiar with all these programs, he believes some might have a useful life of more than one year. However, witness Winters, readily acknowledged that to the extent these software programs had a useful life of less than one year, his recommendation to capitalize their costs would defer the cost burden to future ratepayers and that would result in an inequity to those ratepayers.

Presently, the Uniform System of Accounts does not require right-to-use fees to be capitalized. In fact, the FCC has issued a Notice of Proposed Rule Making asking for comment on whether the Uniform System of Accounts should be modified to treat this question in a specific way for all telephone companies. The Commission recognizes that right-to-use fees are being handled differently by the following telephone companies operating in North Carolina: General, Central, ALLTEL, and Continental capitalize these fees and Southern Bell and Carolina expense these fees. The Commission concludes that in this proceeding it is reasonable and appropriate to allow AT&T Communications to expense its right-to-use fees as there has been no firm showing by the Public Staff that the computer software costs in question will benefit the Company's ratepayers over the remaining life of the equipment with which the software is used. Thus the Commission finds that it is proper to include $1,361,594 associated with right-to-use fees in the cost of service in this proceeding. Further, the Commission recognizes that in the future it may be appropriate to require all the telephone companies under its jurisdiction to handle these fees in a different manner than presently allowed depending upon the outcome of the FCC Proposed Rule Making to address the treatment of right-to-use fees.

The next difference of $1,128,245 in plant under construction results from Public Staff witness Sessoms' adjustment to remove construction work in progress (CWIP) from rate base. Witness Sessoms cited N.C.G.S. § 62-133(b)(1) which among other considerations, directs the Commission to determine whether CWIP inclusion is "...reasonable and prudent expenditures ...in the public interest and necessary to the financial stability of the utility in question...." It was his opinion that the CWIP issue of inclusion in general is clearly more relevant for electric utilities constructing generating facilities, due to the long construction periods and the large investment in noncash earning plant characteristic of this type of construction as opposed to short-term telephone plant construction. Nevertheless, he pointed out that the CWIP amount at issue in this proceeding represents less than 3% of the Public Staff's recommended rate base and that the overall rate of return he recommended would produce a 6.9X interest coverage.

The Company made no attempt to bear the burden of proof of its position that the CWIP it requested in rate base was necessary, other than simply the request for inclusion through the prefiled and supplemental testimony of Company witness McTyre. Furthermore, the Company's brief filed in this docket makes no mention of the Company's reasoning concerning the inclusion of CWIP in rate base. The Commission finds that the level of CWIP compared to the level of rate base and the pre-tax interest coverage implicitly allowed in this Order allow the Company financial stability without including the requested CWIP in rate base. Consequently, the Commission concludes that the inclusion of CWIP is not necessary to the financial stability of the Company and denies the inclusion of any CWIP in rate base in this proceeding.

The next difference of $97 in materials and supplies is associated with the Public Staff's adjustment to include in rate base the investment associated with leased facilities. As previously discussed in the Evidence and Conclusions for Finding of Fact No. 5, the Commission finds that the leased facilities investment should be included in rate base. Thus the appropriate level of materials and supplies for setting rates in this proceeding is $289,934.

The next difference of $15,020 is the result of an adjustment to cash working capital proposed by Public Staff witness Perkerson. One component of the Public Staff's recommended level of cash working capital of $2,066,770 is associated with the leased facilities included in rate base. The remaining component, $2,085,612 is the difference in the calculation of the working capital allowance necessary to support the utility operations exclusive of leased facilities. The Commission as discussed in the Evidence and Conclusions for Finding of Fact No. 6 concludes that the appropriate level for cash working capital is $4,957,731.

The next difference of $407,014 results from Public Staff witness Winters' adjustment to capitalize a portion of employee displacement costs. In regard to this adjustment witness Winters testified as follows:

> "AT&T included in its supplemental filing the pro forma revenue and expenses related to the purchase of certain assets from CT&T. Included in the expenses were $610,521 paid to CT&T to compensate that Company's employees for expenses related to the transfer of employment. These expenses are a one-time cost to AT&T and, in my opinion, should not be charged entirely to current ratepayers. I propose to the Commission that this one-time cost be amortized over a three-year period and that the unamortized balance be included in rate base."

The Commission finds that there is no contravening testimony to this adjustment and concludes that rate base should be increased by $407,014. Such treatment by the Commission recognizes the nonrecurring nature of this expense and allows for the amortization of these employee displacement costs over a three-year period which the Commission finds to be an appropriate amortization period.

The next difference of $4,528,127 in the depreciation reserve results from two adjustments made by the Public Staff. Public Staff witness Winters increased the depreciation reserve by $5,958,864 for accumulated depreciation on the leased facilities he included in rate base, and Public Staff witness Sutton decreased the depreciation expense by $1,430,737 for his adjustment to depreciation rates used in his calculation of the end-of-period depreciation expense.

The Commission concluded in the Evidence and Conclusions for Finding of Fact No. 5 that it is appropriate to include leased facilities in rate base and now concludes that the $5,958,864 increase in the depreciation reserve proposed by witness Winters is just and reasonable. The Commission also concluded in the Evidence and Conclusions for Finding of Fact No. 10 that the depreciation adjustment proposed by witness Sutton is just and reasonable and further concludes that the appropriate level for the depreciation reserve is $23,819,263 for setting rates in this proceeding.

The remaining differences of $4,829,469 in deferred income taxes and $26,536 in pre-1971 unamortized investment tax credits result from the inclusion of leased facilities in rate base. As discussed in the Evidence and Conclusions for Finding of Fact No. 5, the Commission concludes that the leased facilities should be included in rate base and thus finds that deferred income taxes of $12,434,997 and pre-1971 unamortized investment tax credits of $51,676 are the proper amounts to be included in rate base.

Further, as discussed in the Evidence and Conclusions for Finding of Fact No. 10 the Commission finds that it is also appropriate to include in rate base the unamortized portion of the adjustment to expenses for divestiture-related work force reductions in the amount of $36,129. The Commission concludes that the original cost rate base appropriate for setting rates in this proceeding is $53,240,445, as follows:

| Item | Amount |
|---|---|
| Plant in service | $83,855,573 |
| Materials and supplies | 289,934 |
| Cash working capital | 4,957,731 |
| Unamortized employee displacement expense | 407,014 |
| Unamortized divestiture related expense | 36,129 |
| Total | $89,546,381 |
| Less: Depreciation reserve | (23,819,263) |
| Deferred income taxes | (12,434,997) |
| Unamortized investment tax credits | (51,676) |
| Total | (36,305,936) |
| Original cost rate base | $53,240,445 |

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 8

The evidence concerning the proper level of operating revenues was presented through the testimonies and exhibits of Company witness McTyre and Public Staff witnesses Garrison and Winters.

The following table sets forth the amount proposed by the Company and the Public Staff:

| Item | Company | Public Staff | Difference |
|---|---|---|---|
| Toll revenues | $306,103,157 | $298,939,453 | $(7,163,704) |
| Miscellaneous revenues | - | 9,013,945 | 9,013,945 |
| Uncollectibles | (2,743,686) | (2,679,213) | 64,473 |
| Net revenues | $303,359,471 | $305,274,185 | $ 1,914,714 |

The first item on which the parties disagree is toll revenues. The Public Staff's toll revenues shown in the above table reflect the Public Staff's $8,172,498 reduction to account for the Public Staff's position in Docket

No. P-100, Sub 86, relating to the provision of intraLATA and interLATA WATS and 800 Service while AT&T Communications' toll revenue amount reflects no adjustment for its position in this regard. The remaining $1,008,794 difference regarding toll revenues reflects the different end-of-period toll revenue levels calculated by AT&T Communications and the Public Staff.

The Public Staff's calculation of the appropriate level of toll revenues was accomplished in three steps. First, the Public Staff calculated end-of-period toll revenues, second, it found the level of network settlements paid to the local exchange companies that must be subtracted from end-of-period toll revenues, and third, it included the effect of their position in Docket No. P-100, Sub 86, regarding WATS and 800 Service.

In regard to the end-of-period toll revenue determination, both AT&T Communications and the Public Staff calculated the end-of-period toll revenues separately for MTS, WATS and 800 Service, and Directory Assistance using a regression analysis. This method is consistent with methods adopted by the Commission in past decisions. However, the results of the calculations presented by the two parties differ. One difference affecting each type of toll service is due to different software programs used by AT&T Communications and the Public Staff in performing their regression analyses.

The other differences regarding MTS revenues, as pointed out by Public Staff witness Garrison were that AT&T Communications excluded third number billed revenues in performing its regression calculation, AT&T Communications used the wrong percentage to reduce the MTS revenues in its regression calculation due to the change in the gross receipts tax rate, which became effective on January 1, 1985, and the Company's regression analysis did not reflect the revenues at the June 30, 1985, level, rather they reflect a mid-June 1985 level.

With respect to WATS and 800 Service revenues, Public Staff witness Garrison testified that the results of AT&T Communications' and the Public Staff's regression analysis differ because AT&T Communications used the wrong percentage to reduce the WATS and 800 Service revenues due to the change in the gross receipts tax rate and because AT&T Communications' regression analysis did not reflect the end-of-period time frame. Additionally, witness Garrison testified that the Directory Assistance end-of-period revenues for AT&T Communications and the Public Staff are approximately equal.

In the determination of the appropriate end-of-period private line revenues, AT&T Communications used a regression analysis just as it did in determining the other toll revenue levels. The Public Staff adopted an approach similar to that used in determining intraexchange private line revenues. Briefly, that approach uses actual end-of-period units rather than a regression analysis to determine the revenues produced from private line services.

AT&T Communications failed to offer any evidence to dispute witness Garrison's testimony regarding the flaws in AT&T Communications' revenue determination for MTS, WATS and 800 Service, and Directory Assistance. Indeed, in its cross-examination of witness Garrison, AT&T Communications admitted that its regression analysis used for MTS, WATS and 800 Service, Directory Assistance, and Private Line does not appropriately reflect the end-of-period time frame. In addition, AT&T Communications failed to provide any evidence indicating that its software program used in performing its regression analysis is more appropriate than the Public Staff's in this case. Further, in its brief AT&T Communications pointed out that, if the Commission did accept the Public Staff's adjustment of approximately $1.0 million, it would be necessary to also adjust witness McTyre's associated access and billing and collection expense levels. Based upon the evidence, the Commission concludes that the end-of-period MTS, WATS and 800 Service, Directory Assistance, and Private Line revenue levels as calculated by the Public Staff are appropriate for use in this proceeding. Furthermore, the Commission agrees with the Company that it will also be necessary for the Commission to adjust the Company's access and billing and collection expenses upward as it would be improper to increase revenues without increasing the directly associated expenses, that is since the Commission has adopted the Company's recommended level of access and billing and collection expenses for use in this proceeding as discussed in the Evidence and Conclusions for Finding of Fact No. 9.

The determination of the network settlement amounts paid by AT&T Communications was not contested by the Public Staff or any other party to this proceeding. Therefore, the Commission concludes that the network settlement amounts used by AT&T Communications and adopted by the Public Staff are appropriate.

The Public Staff's last step in determining the appropriate level of toll revenues for AT&T Communications was its calculation of the effect of its proposals in Docket No. P-100, Sub 86, regarding the provision of WATS and 800 Service. In that docket the revenue effects of the recommendations of the Public Staff is a reduction in WATS and 800 Service revenues of $8,172,498. The Commission has decided that it will not at this time decide the issues which have been raised in Docket No. P-100, Sub 86, rather the Commission will wait until after the access charge hearings in Docket Nos. P-100, Sub 65, and P-100, Sub 72, which began July 8, 1986, before considering the redesign of WATS and 800 Service rates. Therefore, the Commission concludes that the most representative and reasonable level of toll revenues for AT&T Communications in this proceeding is $307,111,951.

The next item on which the parties disagree is miscellaneous revenues. The entire difference in miscellaneous revenues relates to the adjustment proposed by Public Staff witness Winters to include the effects of leased facilities in rate base and the cost of service. The Commission found in the Evidence and Conclusions for Finding of Fact No. 5 that the effects of the leased facilities transactions should be included and that the appropriate level of miscellaneous revenues for setting rates in this proceeding is $9,133,772, which reflects the 12.11% overall rate of return approved by the Commission.

The final difference on which the parties disagree is uncollectibles. This difference $64,473 results entirely from the different levels of toll revenues recommended by the parties. Since the Commission has calculated its own level of toll revenues, the Commission concludes that the appropriate level of uncollectibles for setting rates in this proceeding is $2,752,765, determined using an uncollectible rate of .009.

## EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 9

The evidence for this finding of fact is contained in the testimonies and exhibits of AT&T Communications' witnesses McTyre, Friedlander, and Willis and Public Staff witness Garrison. This finding of fact addresses the issue of the proper level of access and billing and collection expenses which represent approximately 75% of AT&T Communications' total cost of providing service in North Carolina and is the most confusing, controversial, and prominently discussed single issue in this entire general rate case proceeding. The difference between the access and billing and collection expense figures calculated by the Public Staff and those relied upon by AT&T Communications results from the different methodologies used by each party to compute these expenses. The Public Staff calculated its proposed level of access and billing and collection expenses by determining the expenses associated with the toll revenues determined for AT&T Communications and then added an amount to reflect miscellaneous access and billing and collection expenses not directly attributable to the Company's toll revenue units. AT&T Communications relied on what it actually paid for the test year and made various accounting and pro forma adjustments to the actual test year booked amounts.

AT&T Communications witness McTyre presented evidence showing access expenses of $210,576,607 and billing and collection expenses of $22,014,953, totaling $232,591,560. Company witness McTyre calculated the amount for the access expenses and billing and collection expenses by making adjustments to the per books expense figures for the following items:

1. Removed expense transactions applicable to periods prior to the test year but booked during the test year and adjusted to reflect actual levels incurred during the test year but booked outside the test year;

2. Adjusted for the Directory Assistance revenue increase effective September 24, 1984, which changed from 20 cents per message to 50 cents per message; and

3. Matched expenses with end-of-period revenue adjustments.

In addition, the access expenses were also adjusted by witness McTyre to reflect the carrier common line charge reductions which were made effective on November 2, 1984, and then again on September 1, 1985, plus an adjustment was made for the access charge reduction for directory assistance effective November 2, 1984. Further, Company witness McTyre made adjustments to billing and collection expenses for billing reductions effective March 28, 1985, applicable to ALLTEL, Carolina, Central, Continental, General, and Southern Bell. The Company's $232,591,560 recommended level of access and billing and collection expenses was derived from the official Company books of account which are kept in the ordinary course of business and in accordance with the Uniform System of Accounts. According to the testimony of witness McTyre, the Public Staff spent many days examining AT&T Communications' records, yet it did not review the Company's books to investigate the levels of access and billing and collection expenses, nor did it directly challenge his testimony regarding the level of these expenses which were recorded on the Company's books. In determining the proper levels of both revenues and expenses, witness McTyre took the booked amounts, made adjustments and brought them to end-of-period levels by adding incremental amounts to each based on test year growth. The Company believes this approach is consistent with the way the Commission has determined end-of-period toll revenues and expenses for Southern Bell and other telephone companies in previous general rate cases. In rebuttal testimony, witness McTyre presented an exhibit comparing the level of access and billing and collection expenses paid by AT&T Communications to access revenues reported to the toll pool by the local exchange companies for the test period. This comparison showed that toll pool revenues are virtually the same as the expenses filed by AT&T Communications for the test period once the access revenues reported to the toll pool are adjusted for access revenue credits booked during the test year but applicable to months prior to the test year.

The Public Staff used a different methodology from the Company. The Public Staff methodology reflects a strict revenue price-out along with an overstatement of MTS minutes of use. The overstatement of MTS minutes of use in calculating access and billing and collection expenses is intended to compensate for miscellaneous access and billing and collection expenses which cannot be directly attributed to a strict revenue price-out methodology. Witness Garrison testified that he had used this methodology before in determining the cost of gas in a natural gas case. Public Staff witness Garrison testified that the proper levels of access expenses are $203,637,476, excluding the Public Staff's proposed adjustments for WATS and 800 Service rate changes, and billing and collection expenses are $20,762,774, totalling $224,400,250, which is approximately $8.2 million less than the adjusted booked data presented by witness McTyre. The Public Staff's recommendations in Docket No. P-100, Sub 86, regarding WATS and 800 Service, will further reduce its recommended level of access expenses by $9,830,880 to $193,806,596. In determining his proposed access and billing and collection expense levels, Public Staff witness Garrison did not investigate the details underlying the expense levels which were actually incurred by AT&T Communications, recorded on the Company's books and sent to the toll pool. Witness Garrison testified that the Company's approach did not properly match the access and billing and collection expenses to end-of-period revenues being that he did not believe the access expenses per books necessarily match the revenues per books. Instead, witness Garrison developed his numbers based on a price-out of sample data that was used by AT&T Communications for purposes of estimating the revenue impact of its proposed rates. It was the Company's contention that this data by its very nature does not reflect all access charges incurred by the Company in providing its intrastate services. Thus, in the opinion of the Company it is inappropriate for use in the manner utilized by Public Staff witness Garrison.

A price-out of a particular service is performed by multiplying the volume or number of units of each tariff element at a given point in time by the existing and/or proposed rates. It is a method which is used to approximate the revenue impact to be expected from those rates. Theoretically, if total actual volumes or units were used in a price-out and the cost studies associated with the service included all access expenses incurred by the Company, it would be possible to estimate accurately the access charges associated with each class of service. However, the price-outs which were used in the instant proceeding by the Public Staff for estimating actual total access expense levels were not based on total actual volumes but were based on sample data and then annualized. In addition, the cost studies associated with the price-outs do not incorporate all access expenses incurred by AT&T

Communications. AT&T Communications supplied this cost data to the Public Staff in the P-1 minimum filing requirements material and in response to data requests without knowing how the Public Staff intended to use the information. Therefore, AT&T Communications may have unknowingly contributed to the confusion in this regard. According to witness McTyre an attempt to determine total access expenses by using a price-out methodology in these circumstances will lead to inaccurate and misleading results. Thus the Company believes that the Public Staff has arrived at an erroneous level of access expense. However, the Company admitted that if it had provided total access costs in its cost studies, the Public Staff's estimates would have closely approximated AT&T Communications' actual access and billing and collection expenses. Witness McTyre specifically addressed these issues in his rebuttal testimony:

> "One major problem with witness Garrison's "price-out" is that it does not include all the access and billing expenses which AT&T Communications incurs. Examples of such omissions were listed in Exhibit 2 of my original testimony summary. Those items that were readily quantified accounted for $7.7 million of the differences between witness Garrison's estimates and my end-of-period access and billing expense. I will describe additional items later in my testimony.
>
> "Another significant deficiency is that witness Garrison relies on the estimated and sample data that was developed for determining rates as a means for establishing AT&T's revenue requirement. In developing rates, composite transport rates are assumed based on estimated or sample data. To the extent actual average mileage is different, actual access expense will be different. Therefore, it is inappropriate to use such estimated data to determine AT&T's access expenses when actual data is readily available.
>
> * * *
>
> "Based on test period data, the average local transport rate is higher than the average assumed in the estimate. This more accurate composite rate would result in an additional $3.0 million in access expense that was not included in witness Garrison's MTS and WATS/800 switched access expense figure."

The difference of approximately $8.2 million between AT&T Communications' access and billing and collection expenses and that which has been recommended by the Public Staff can be attributed to several factors as testified to by witness McTyre. First, while a price-out of the estimated units for each service will be helpful in determining the revenues to be derived from the associated rates, it will not necessarily reflect the totality of access expenses incurred by the Company. According to witness McTyre, the access expense associated with official services is one such example. Official service access costs are treated as general overhead expenses and are not reflected as costs to be recovered from any particular service. Thus, a unit price-out for private line services would not reflect the cost of special and switched access incurred by AT&T Communications in providing its official services which, according to witness McTyre, amounted to $1.9 million ($1.7 million identified in his summary exhibit no. 2 and $.2 million was identified in his rebuttal exhibit no. 2). In this regard, witness Garrison argued that the Company has somewhat overstated this particular access expense difference since in his opinion the $1.7 million should be allocated between the intrastate and interstate jurisdictions. In rebuttal testimony witness McTyre argued that witness Garrison's approach on this subject was inappropriate since the Company books access charges separately between intrastate and interstate as it does with toll revenues.

Second, in the opinion of the Company the Public Staff's price-out simply failed to consider some of the access expenses incurred by AT&T Communications. Examples of these omissions as testified to by witness McTyre include access for private line optional features of $.7 million for bridging and data conditioning (identified in summary exhibit), MTS busy hour minute of capacity of $.5 million (identified in summary exhibit), WATS and 800 extensions/extenders of $4 million ($3.7 million in summary exhibit and $.3 million in rebuttal exhibit), customer certified exemptions of $.2 million (identified in summary exhibit), account activity charges of $1.8 million ($.9 million in summary exhibit and $.9 million in rebuttal exhibit), and local transport of $3 million (identified in rebuttal exhibit) as previously mentioned and a number of other items which were identified by the Company but remained unquantified, such as program development charges, special access connection charges, special access minimum service period charges, private line connection charges, and private line minimum service charges. In his additional supplemental testimony, witness Garrison agreed that the $2.1 million as pointed out by the Company relating to private lines optional features access, MTS busy hour minutes of capacity, and the account activity charges were indeed representative amounts for these expense items and that they had been omitted from his calculations. As to the $.2 million amount for customer certified exemptions, witness Garrison testified that if the units he used, which were supplied by the Company, to determine the private line surcharge costs were correct then no additional adjustment would be necessary. In regard to the issue of WATS and 800 extensions/extenders (the line that extends from the WATS serving office to the end user's central office), witness McTyre discovered during the course of analyzing the Company's access bills that AT&T Communications had incurred an access expense for this item in the amount of approximately $4 million, but, unknowingly, had not included it in its WATS cost study. Consequently, since the Public Staff utilized the same unit cost information that was used by AT&T Communications, witness Garrison's calculation could not have included the $4 million access expense associated with WATS and 800 extension/extenders. Nevertheless, this amount is an actual expense incurred by AT&T Communications and was included in witness McTyre's total booked access and billing and collection expense number. Conversely, had AT&T Communications used a higher number in its unit cost study, the Public Staff would likewise have reflected a higher access expense level. Witness Garrison testified that the switched access costs that he attributed to WATS and 800 Service were somewhat overstated which has the effect of partially offsetting the $4 million but, he stated that he could not determine how much he had overstated his switched access costs for WATS and 800 Service, therefore he could not determine how much of the $4 million dollars relating to the WATS and 800 extensions/extenders he had omitted from his calculation.

Third, the unit price-out is derived from a sample or portion of actual volumes. For MTS, witness Garrison used a sample from the CMDS data base that consisted of 5% of the total volumes for two months of the test year (October 1984 and March 1985). Then based on the usage in the sample, he calculated the access costs for the sample and then applied the resulting factor of cost per dollar of revenue to his MTS end-of-period revenue level to determine his access and billing and collection costs. Thus, witness Garrison used a sample which represents 17% of the test year to estimate the other 83% of the test period access and billing and collection expenses relating to MTS. He testified that he would have preferred a 100% sample but that the data was simply not available. A one-month sample (October 1984) was used for WATS and 800 Service. Thus, witness Garrison used a sample representing 8% of the test year access and billing and collection expenses to estimate the other 92% of the test period access and billing and collection expenses relating to WATS and 800 service. The Public Staff's usage pattern for private lines is based on the same end-of-period units as were used in its calculation of private line revenues. The private line volumes were based on AT&T Communications' units billed by Southern Bell grossed up for the entire industry. The Public Staff's usage pattern for developing its cost per dollar of revenue factor for Directory Assistance is also based on sample data. Although such samples may be the best information that is readily available for determining the impact of proposed rates, the Company believes it is inherently imprecise when used for purposes of calculating total access and billing and collection expenses. Public Staff witness Garrison conceded that the use of sample data could cause a deviation of 2% - 3% compared to the actually incurred expenses. This would equate to a deviation of up to $5 to $7 million when compared to AT&T Communications' actual access expense.

Public Staff witness Garrison readily admitted in his prefiled additional supplemental testimony that the use of a strict price-out methodology would not accurately determine access expenses:

> "...[I]n determining the Access and Billing and Collection expenses for AT&T using the methodology I employed, I recognized just as AT&T has, that merely tying these expenses to revenue units would result in some understatement of the Access and Billing and Collection expenses because there are miscellaneous Access and Billing and Collection expenses which cannot be directly attributable to a strict revenue price-out. Therefore, I used an approach which resulted in $9.6 million more Access and Billing and Collection expenses than would be directly attributable to a strict revenue unit price-out..."

According to the testimony of witness Garrison, his $9.6 million excess above using a strict revenue price-out was done in his calculation of the access expenses associated with MTS revenues. In his calculation of the access expense associated with MTS revenues, he used the minutes of use billed to AT&T Communications' customers instead of the conversation minutes. Because conversation time is rounded up to the next whole minute which results in what is called billed time, on average the billed minutes of use are greater than the conversation minutes of use. Further, since access charges are figured on conversation minutes rather than billed minutes the result of witness Garrison's calculation of access charges using billed minutes resulted in his $9.6 million overstatement in access charges associated with MTS revenues. Thus, it is witness Garrison's position that this overstatement more than offsets the omissions in his calculation as pointed out by the Company and thus he believes his level of access and billing and collection expense is appropriate.

The issue to be addressed by this Commission is whether the estimated or actual adjusted expense figures should be used in determining what is the representative ongoing level of access and billing and collection expenses to be used in this proceeding. The Commission believes that the evidence indicates that, on a theoretical basis, the methods employed by AT&T Communications and the Public Staff should, if performed with all the required data, result in approximately the same level of access and billing and collection expenses. However, the Commission finds that the arguments presented by the Public Staff in support of its figures are somewhat lacking in that many doubts as to the appropriateness of the Public Staff's resulting recommendation have been raised by the Company through the summary and rebuttal testimony of witness McTyre and in its cross-examination of witness Garrison. The Public Staff has neither alleged nor attempted to prove that AT&T Communications did not incur and pay the access and billing and collection expenses that the Company's witnesses testified to as being what the Company did in fact pay for these expenses. Further, the evidence indicates that the Public Staff's unit cost price-out approach does not encompass the totality of access expenses incurred by AT&T Communications in providing its intrastate services. In the absence of proof to the contrary, the Commission finds that it is indeed appropriate to accept the expense figures as presented by AT&T Communications. Further, the Commission notes that the access expenses utilized by AT&T Communications is corroborated by the adjusted access revenues reported to the intrastate toll pool by the local telephone companies.

Having given careful consideration to the evidence presented in this regard, the Commission is compelled to rely on the expenses actually paid by AT&T Communications adjusted for the various accounting and proforma adjustments previously set out in the discussion of the Company's methodology and also adjusted for the Commission's adjustment which goes hand in hand with the Commission's toll revenue adjustment to bring toll revenues to their proper end-of-period level as discussed in the Evidence and Conclusions for Finding of Fact No. 8. Using the information supplied by the Company in its proprietary filing made on November 21, 1985, the Commission has made its own adjustment to increase the Company's proposed level of access and billing and collection expenses by $831,530 to match its adjustment of $1,008,794 to toll revenues as discussed in Finding of Fact No. 8. Thus, the Commission finds that the appropriate amounts of access and billing and collection expenses for use in this proceeding are $211,377,992 and $22,045,098, respectively. These figures do not reflect any changes for WATS and 800 Service as the Commission has decided to delay the restructuring of WATS and 800 Service until after the access hearings which began July 8, 1986. The Commission's access expense figure under present rates does include the $25.00 special access surcharge expense associated with WATS and 800 Service access lines which amounts to approximately $6.9 million.

In closing, the Commission is mindful of the Company's testimony that access bills are received by AT&T Communications on a daily basis and literally consist of hundreds and sometimes even thousands of pages. Thus, the Commission recognizes that a complete analysis of all these expenses would take considerable time and significant resources. The Commission understands that both witness McTyre and witness Garrison agree that more detailed and complete reporting requirements should be implemented in order to facilitate a reconciliation of the access expenses of the interexchange carriers with the access revenues of the toll pool. The Commission is hopeful that these reporting requirements can be considered in the access charge proceedings.

## EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 10

The evidence for this finding of fact is found in the testimonies and exhibits of Company witnesses McTyre, Vinson, and Fortenberry and Public Staff witnesses Winters, Garrison, and Sutton.

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 |
|---|---|---|---|
| Expenses: | | | |
| Access charges | $210,576,607 | $193,806,596 | $(16,770,011) |
| Billing and collection | 22,014,953 | 20,762,774 | (1,252,179) |
| Maintenance | 6,530,467 | 6,682,252 | 151,785 |
| Depreciation | 6,512,816 | 6,790,506 | 277,690 |
| Traffic | 11,408,245 | 11,001,231 | (407,014) |
| Commercial | 9,111,975 | 9,111,975 | - |
| General office | 5,299,860 | 5,423,322 | 123,462 |
| Operating rents | 17,536,350 | 19,197,867 | 1,661,517 |
| Relief and pensions | 3,136,911 | 3,263,160 | 126,249 |
| Other expenses | 1,116,992 | 1,157,037 | 40,045 |
| Total expenses | 293,245,176 | 277,196,720 | (16,048,456) |
| Other taxes: | | | |
| Gross receipts taxes | 9,752,364 | 9,524,931 | (227,433) |
| Property taxes | 225,483 | 518,672 | 293,189 |
| FICA | 1,153,637 | 1,197,606 | 43,969 |
| Total other taxes | 11,131,484 | 11,241,209 | 109,725 |
| State and federal income taxes | (1,029,171) | 7,451,244 | 8,480,415 |
| Total | $303,347,489 | $295,889,173 | $(7,458,316) |

The Company and the 'Public Staff agree that the proper level of commercial expenses to be included in the Company's cost of service is $9,111,975. There being no evidence to the contrary, the Commission concludes that this amount is reasonable and proper.

The difference in the access charges is made up of two Public Staff adjustments - a decrease of $9,830,880 relating to WATS and 800 Service rate proposals of the Public Staff, and a decrease of $6,939,131 relating to witness Garrison's calculation of the end-of-period level of access charges. The Commission discussed these adjustments, totaling $16,770,011, in the Evidence and Conclusions for Finding of Fact No. 9 and found these adjustments to be improper.

The difference of $1,252,179 in billing and collection expenses between the Company and the Public Staff is due to the adjustment by the Public Staff to reflect its determination of the end-of-period level of billing and collection expenses. This adjustment to decrease billing and collection expense was discussed and found inappropriate by the Commission in the Evidence and Conclusions for Finding of Fact No. 9.

The difference of $151,785 in maintenance expenses between the schedules of the Company and the Public Staff is the combination of two adjustments made by the Public Staff. The first adjustment, an increase of $1,513,379, results from those maintenance expenses associated with the leased facilities added to the operating expenses of the Company by the Public Staff. This area of concern was discussed and this adjustment was found reasonable and proper by the Commission in the Evidence and Conclusions for Finding of Fact No. 5. The remaining adjustment, a decrease of $1,361,594, relates to the unamortized portion of the capitalized right-to-use fees which were transferred by the Public Staff to the Company's rate base to allow for the Public Staff's position that these expenses should be capitalized. The Commission discussed the treatment of the right-to-use fees in the Evidence and Conclusions for Finding of Fact No. 7 and found that the Public Staff's adjustment was improper in this proceeding.

The next difference of $277,690 in depreciation expenses is the combination of two Public Staff adjustments to the Company's position, an increase of $1,708,427 related to the inclusion of leased facilities and a decrease of $1,430,737 related to utility operations exclusive of leased facilities. The depreciation adjustment of the Public Staff for the effects of the leased facilities transaction is discussed in the Evidence and Conclusions for Finding of Fact No. 5, wherein the Commission found the depreciation expense adjustment of $1,708,427 to be proper for ratemaking purposes.

The other depreciation expense adjustment in the amount of $1,430,737 was made by Public Staff witness Sutton. The depreciation rate increases proposed by Company witness Sturgis result in an annual level of depreciation expense of $6,512,816, while the depreciation rate increases proposed by witness Sutton result in an annual level of depreciation expense of $5,082,079. These figures are both exclusive of the depreciation expense of $1,708,427 associated with the leased facilities investment.

The schedule of depreciation rates recommended for AT&T Communications by witness Sutton is based upon FCC Order No. 85-568, Prescription of Revised Depreciation Rates for various AT&T Communications jurisdictions. In that order, released October 23, 1985, the FCC prescribed a schedule of depreciation rates it determined to be appropriate for AT&T Communications' North Carolina jurisdiction. As requested by AT&T Communications, the FCC made these new depreciation rates effective January 1, 1985.

According to the testimony of witness Sturgis, the difference between the Company's and the Public Staff's depreciation rates is basically due to the FCC's and Public Staff's use of vintage group methodology on basically the pre-1982 plant versus AT&T Communications' use of the straight line or equal life group methodology. The schedule of depreciation rates recommended for AT&T Communications by witness Sturgis is the same as the schedule of depreciation rates submitted to the FCC for review on May 11, 1984. The FCC staff reviewed AT&T Communications' proposed schedule of depreciation rates and the Company's rationale in support of its schedule of proposed rates. On October 23, 1985, the FCC released its order in FCC Order No. 85-568 prescribing a schedule of depreciation rates for AT&T Communications' North Carolina jurisdiction retroactive to January 1, 1985. That schedule of rates is the schedule of rates recommended by Public Staff witness Sutton.

Subsequent to the FCC's prescription order, AT&T Communications filed a Request for Reconsideration Motion with the FCC requesting a prescription of the schedule of rates originally filed by AT&T Communications. At the close of the (April 4, 1986) hearings in these dockets, the FCC had not acted upon AT&T Communications' reconsideration motion. However, on April 18, 1986, the FCC released FCC Order No. 86-185 denying AT&T Communications' petition for the reconsideration of the FCC's prescription order.

Upon cross-examination, witness Sutton stated that the FCC had preempted the state commissions from using methods and prescribing depreciation rates different than those prescribed by the FCC. The Commission takes judicial notice of the order issued in FCC 82-581, so called Second Preemption Order, released January 6, 1983. Paragraph 14 of that order states, "Section 220(b) says the Commission 'shall' make depreciation prescriptions, and that carriers 'shall not' charge depreciation different than that prescribed by the Commission". However, in a United States Supreme Court decision in Louisiana Public Service Commission v. Federal Communications Commission et al., -U.S.- (1986), released on May 27, 1986, the Court ruled that the The Communications Act of 1934 (Act) denies the FCC the power to dictate to the states what depreciation rates must be used by state commissions in setting rates for intrastate telephone service.

While the Commission is cognizant of the United States Supreme Court decision issued on May 27, 1986, which ruled that the individual states should be allowed to fix intrastate depreciation rates rather than being required to adopt the FCC promulgated depreciation rates, the Commission also realizes that the Public Staff made no alternative proposals with regard to depreciation rates other than to adopt those of the FCC which has been what the Commission was required to do since the issuance of FCC Order No. 85-568. In view of the FCC's April 18, 1986, ruling which once again resulted in a denial of AT&T Communications' depreciation rate proposals and the fact that the Public Staff made no real arguments as to what were the proper depreciation rates to be used other than to accept the FCC depreciation rates, the Commission finds that it is proper at this time to adopt the schedule of depreciation rates that are consistent with the FCC and agreed to by the Public Staff. The appropriate schedule of depreciation rates for use in this proceeding are set forth in Appendix A and are to be effective as of January 1, 1985.

The Company and the Public Staff differed by $407,014 in their relative positions on traffic expense relating to the transfer of certain assets to AT&T Communications from Carolina Telephone and Telegraph Company. This difference occurs because of the Public Staff's inclusion of the unamortized portion of capitalized employee displacement costs in the Company's rate base as discussed in the Evidence and Conclusions for Finding of Fact No. 7 wherein the Public Staff treatment of these costs was found appropriate by this Commission.

Most of the remaining differences in expenses between the Company and the Public Staff are all associated with the inclusion of leased facilities in the Company's rate base. These differences are: general office expense, $123,462; operating rent expense, $1,661,517; relief and pension expense, $126,249; other expenses, $40,045; gross receipts taxes, $1,162; property taxes, $293,189; and FICA taxes $43,969. The leased facilities adjustments were discussed in the Evidence and Conclusions for Finding of Fact No. 5 and the inclusion of these adjustments was found proper by this Commission.

Further, the Commission notes from the cross-examination testimony of Company witness McTyre that the Company had a nonrecurring expense of $54,194 for divestiture-related work force reductions which was not reflected as an operating revenue deduction difference between the Company and the Public Staff. In response to questioning from the Public Staff, witness McTyre agreed that this expense was nonrecurring and as such would not be incurred in the future on an ongoing basis. Being that this is a one-time expense as acknowledged by witness McTyre, the Commission concludes that it would be appropriate to amortize this expense over a three-year period; thus it is proper to include the unamortized portion of this expense, $36,129, in rate base and to include $18,065 in other expenses in this proceeding.

The Commission, based on the above discussions, concludes that the appropriate level of operating expenses for setting rates in this proceeding is $290,930,560.

The next category of difference is other taxes. The first item of other taxes on which the parties disagree is gross receipt taxes. This difference of $227,433 results from three adjustments made by the Public Staff. Gross receipts taxes were increased by $1,162 due to including the effects of leased transactions in the cost of service and by $32,191 due to the end-of-period toll revenue adjustment proposed by Public Staff witness Garrison. Gross receipts taxes were decreased by $260,786 due to the WATS and 800 Service adjustment proposed by witness Garrison. Since the Commission has not adopted the Public Staff's adjustment relating to WATS and 800 Service in the amount of $260,786 but has adopted the other two adjustments, the Commission finds and concludes that the appropriate level of gross receipts tax for setting rates in this proceeding is $9,785,717.

The final item of operating revenue deductions on which the parties disagree is state and federal income taxes. This difference of $8,480,415 results from the tax effects of the revenue and expense adjustments proposed by the Public Staff and from the interest synchronization adjustment proposed by witness Winters. Of the $8,480,415 difference, $8,409,468 is applicable to the income tax effects of the adjustments to revenues and expenses and $70,947 is applicable to the jurisdictional interest expense adjustment.

With regard to witness Winters adjustment to income taxes to reflect jurisdictional interest expense in the calculation of income tax expense for ratemaking purposes, witness Winters testified as follows:

> "The amount of interest expense applicable to the North Carolina intrastate operations is a function of the rate base, the capital structure, and the embedded cost of debt. I have used these components exclusive of the leased facilities and the investment financed by Job Development Investment Tax Credits (JDITC) included in rate base to arrive at the appropriate level of interest expense to be used in calculating income tax expense in this proceeding. The leased facilities must be excluded from this calculation because any

> adjustment to taxes or any other expense would have to be offset by an adjustment to revenues since the contract allows for any increase in expenses to be recovered from the lessee. The investment financed by Job Development Investment Tax Credits is excluded because of the Commission's policy related to this item established in prior cases."

The Commission finds that witness Winters' methodology for calculating jurisdictional interest expense is appropriate for setting rates in this proceeding. The Public Staff's treatment of JDITC is consistent with the Commission's policy to remove the hypothetical interest expense relating to plant financed by JDITC from the interest expense deduction used in the calculation of income tax expense. Further, based upon the Commission's determination as to the proper levels of rate base, capital structure, rates of return, operating revenues and operating revenue deductions, the Commission finds the proper amount of state income taxes to be $282,206 and federal income taxes to be $1,158,820.

In summary, the Commission concludes that the appropriate level of operating revenue deductions to be included in the cost of service in this proceeding is as follows:

| Item | Amount |
|---|---|
| Operating expenses | $297,375,905 |
| Taxes other than income | 11,501,995 |
| State and federal income taxes | 1,441,026 |
| Total operating revenue deductions | $310,318,926 |

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 11 AND 12

The evidence for these findings of fact is in the testimonies and exhibits of AT&T Communication witness Steve R. Vinson, District Manager in the Treasury Department of AT&T Communications, Inc., and Public Staff witness George T. Sessoms, Jr.

Witness Vinson recommended a hypothetical capital structure. He also recommended that the cost rate of AT&T Communications' funded debt be assigned to the long-term debt component. Specifically, he recommended that a capital structure consisting of 65% common equity and 35% long-term debt at a cost rate of 6.82% was appropriate for the Commission to adopt for AT&T Communications in this proceeding. Witness Vinson concluded that since AT&T Communications is most like an industrial firm from a business risk perspective, the correct frame of reference for evaluating how business and financial risk can be balanced is the typical debt ratio of an industrial firm. Accordingly, he showed that the Standard and Poor's (S&P) 400 Industrials averaged a common equity ratio of 65.2%, preferred stock ratio of 2.7%, long-term debt ratio of 30.5%, and minority interest ratio of 1.5% at the end of 1983. Witness Vinson also noted that S&P had recently revised its benchmark debt ratios for Group IV telephone companies for a AA bond rating to the 25%-35% level. Additionally, witness Vinson cited that as of July 31, 1985, the capital structure of AT&T Communications equaled 63.6% common equity and 34.6% long-term debt and "is reasonably close to the levels of debt and equity I am recommending...."

Witness Sessoms disagreed with the Company's use of its proposed hypothetical capital structure. He cited that the long-term debt of AT&T

Communications is not rated at all by S&P, and that the debt of AT&T consolidated is rated AA even though the consolidated debt ratio is a little higher than the benchmark debt ratios for a AA bond rating which were previously cited. Witness Sessoms also referenced the Company's comments in its P-1 minimum filing requirements which stated that "...the capital structures of the individual AT&T Companies are not managed directly." Thus, witness Sessoms concluded that whatever the capital structure happened to be for AT&T Communications it should not be used as support for a recommendation. Witness Sessoms further cited that AT&T enjoyed a much higher share of the toll market than S&P 400 Industrial firms possess in the markets in which they operate.

Witness Sessoms recommended that the actual capital structure of AT&T consolidated at September 30, 1985, be employed for setting revenue requirements. This capital structure consisted of common equity of 58.21%, preferred stock of 5.90% at a cost of 7.57%, and long-term debt of 35.89% at a cost of 8.16%. Witness Sessoms pointed out that this capital structure was actual, accounts for all the common equity, preferred stock, and long-term debt of the AT&T system, and must be the basis for investment decision-making when determining the risk due to leverage. It was witness Sessoms' opinion that this capital structure which financed the assets involved in the less risky regulated and more risky nonregulated business endeavors of AT&T was certainly a reasonable recommendation for the capital structure of the regulated portion. Witness Sessoms presented evidence showing that AT&T actually finances with a leverage level somewhere between the leverage levels exhibited by diversified but mostly local telephone companies and the S&P 400 Industrials.

The Commission recognizes the benefits of the parent subsidiary relationship and concludes that at this point in time the most reasonable capital structure for use in this proceeding and the associated embedded cost rates for AT&T Communications are as follows:

| Item | Percent | Cost Rate % |
|---|---|---|
| Long-term debt | 35.89% | 8.16 |
| Preferred stock | 5.90% | 7.57 |
| Common equity | 58.21% | - |
| Total | 100.00% | |

This capital structure is the AT&T consolidated capital structure at September 30, 1985, and the associated embedded cost rates match to the same point in time.

In regard to the cost of common equity, witness Vinson recommended in his original prefiled testimony that 16.2% was the fair and reasonable rate of return on the Company's common equity. However, during the hearing, witness Vinson testified that a 15.4% cost of common equity reflected more current capital market conditions.

Witness Vinson determined the cost of common equity by performing a Discounted Cash Flow (DCF) analysis on two separate groups of companies. The first group consisted of firms selected from the S&P 400 Industrials which were currently paying dividends, had five or more security analyst estimates, growth rates of less than 22%, and for which the calculated cost of common equity was greater than the contemporaneous 9.50% yield on risk free government bonds.

For the 280 companies meeting this criteria, the DCF analysis indicated a cost of equity of 15.93%. Witness Vinson also calculated a DCF result for a second group of companies from the S&P 500 (Industrials and Utilities), after a screening process which eliminated all but 49 of these firms. The screening process first eliminated all companies with less than an AA S&P bond rating. Then the coefficient of variation (CV) of net income for the remaining firms was calculated from 1980-1984 actual data. Witness Vinson then estimated the CV of net income for AT&T Communications. Those firms with an actual CV of net income similar to the estimated CV of net income for AT&T Communications resulted in a DCF estimate for the cost of common equity equaling 15.96%.

Witness Vinson also subtracted from his two DCF estimates a risk free rate to derive an estimated risk premium. Then, the estimated risk premium was added back to the risk free rate resulting in an indicated cost of equity of 15.04% to 15.07%. From his studies, witness Vinson concluded that the bare-bones market cost of equity equaled 15.04% to 15.70%. Witness Vinson added a 32 basis point adjustment to account for market pressure and fees and expenses associated with issuing new stock. Witness Vinson recommended that the allowed return on common equity be set at 15.4%.

Under cross-examination, witness Vinson testified that only one of the companies in his comparable group was a regulated public utility. However, he testified that the qualitative and quantitative considerations he used indicated that such exclusion was appropriate, even though the estimates were used for the regulated public utility, AT&T Communications, compared to actual figures for other companies. Further, on cross-examination, witness Vinson argued that it was inappropriate to consider the various risk factors for AT&T Communications without considering the competitive market in which AT&T Communications now exists, yet he admitted that he had performed no market analysis to determine the degree of competition to which AT&T Communications is subject. Additionally, witness Vinson testified that the Institutional Broker's Estimate System was the only source of the growth rates employed in his DCF estimate.

Witness Sessoms recommended 14.4% as the appropriate return on common equity that AT&T Communications should be allowed an opportunity to earn. As a basis in the formulation of his recommendation, witness Sessoms derived a group of companies comparable in risk to AT&T consolidated and employed the DCF method with respect to the group. The members of the comparable group were selected on the basis of various risk measures exhibited by each company in relation to those exhibited by AT&T consolidated. The Value Line Investment Survey served as the universe of the companies. The Value Line Safety Rank, Beta Value, S&P Stock Rating, and S&P Bond Rating and/or Moody's Bond Rating were all considered. These comparisons resulted in 29 comparable risk companies, 15 of which were utilities. Witness Sessoms' DCF method resulted in an indicated cost of common equity ranging from 13.9% to 15.0% for the group comparable in risk and thus to AT&T consolidated. However, witness Sessoms testified that to the extent provision of intrastate interLATA toll service by AT&T Communications in North Carolina subjects equity holders to less risk than risk incurred by AT&T consolidated in other business endeavors such as customer premise equipment, computers, software, etc., then use of AT&T consolidated in determining investment risk and the related required return would tend to overestimate the risk and cost of common equity for purposes of this proceeding. Consequently, for this reason, and in light of continuing improvement in the capital markets since the time of his analysis, witness Sessoms recommended that the lower to midpoint of his range be employed by the Commission as the cost of common equity for AT&T Communications.

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. 2nd 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 AT&T Communications should have the opportunity to earn on its original cost rate base is 12.11%. Such a just and reasonable rate of return will yield a fair return on common equity of 15.00%.

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. 13

On December 18, 1985, the Commission issued an Order in Docket Nos. P-140, Sub 9, and P-100, Sub 65, granting interim rate relief to AT&T Communications through the suspension of the $25.00 WATS and 800 Service special access surcharge imposed on the Company by the local exchange companies (LECs). The $25.00 surcharge was temporarily suspended effective January 1, 1986, pending hearing on AT&T Communications' request for permanent rate relief. In making this determination, the Commission found that the suspension of the $25.00 access surcharge tariff would not significantly impact the earnings levels of the LECs in an adverse manner. Further, at the time of AT&T Communications' filing in this docket, the Commission determined the effect of the interim suspension to be approximately $6.3 million on an annual basis. On January 10, 1986, AT&T Communications updated its end-of-period figures with the result being that the annual revenue impact of the $25.00 interim suspension of the special access surcharge is approximately $6.9 million rather than $6.3 million.

In Docket No. P-100, Sub 86, which was established for the joint consideration of the proposed changes of AT&T Communications and Southern Bell and the other LECs with regard to interLATA and intraLATA WATS and 800 Service rates and in conjunction with Docket No. P-140, Sub 9, the Commission, by Order issued May 2, 1986, requested the parties to enter into a written stipulation to the effect that such companies would waive their statutory rights pursuant to G.S. § 62-134 and G.S. § 62-135 to place their proposed rates into effect under bond six months after their proposed effective date and without bond upon tolling of the 270-day maximum suspension period. Further, the Commission Order of May 2, 1986, stated that the interim relief granted to AT&T Communications through the suspension of the $25.00 access surcharge on WATS and 800 service would continue. The Commission made these requests in view of the fact that it will conduct a comprehensive review of the current level and structure of access charges during hearings beginning July 8, 1986, in Docket Nos. P-100, Sub 65, and P-100, Sub 72. In considering the assertions of AT&T Communications and many of the parties to Docket Nos. P-100, Sub 86, and P-140, Sub 9, that the present level of access charges constitutes one of the primary reasons underlying the need for rate relief by AT&T Communications, the Commission concluded that it would be appropriate to defer final decisions in these two dockets until after the Commission reviews access charges. In making its request for a written stipulation, the Commission also allowed the parties to the proceedings in Docket Nos. P-100, Sub 86, and P-140, Sub 9, to file written objections to such a stipulation. Based upon the various comments filed by the parties to these proceedings in this regard, the Commission finds that it is appropriate to go ahead and decide the general rate case application of AT&T Communications at this time; however, the Commission concludes that it would be inappropriate to engage in any major rate restructuring at this time since any changes in the current level and structure of rates could require further restructuring if changes are made in the LECs' access charge levels.

Based upon the above mentioned evidence, the Commission concludes that at this time the most appropriate way to effectuate the rate relief needed by AT&T Communications is to require the LECs to eliminate $23.32 of the $25.00 special access surcharge which was charged by the LECs to AT&T Communications prior to the waiver of this charge as was allowed by the Commission in granting interim rate relief to AT&T Communications. Such action results in the reinstatement of a $1.68 special access surcharge per WATS and 800 Service access line by the LECs on AT&T Communications. Such charge will be subject to change depending upon the outcome of the access charge hearings to be conducted in early July 1986. In reaching these decisions, it is not the intention of the Commission to have the parties in these proceedings believe that the Commission finds no need for rate restructuring. Rather, the Commission finds that at this time due to the fact that the access charge hearings are in process and that the decisions in those proceedings may very well require rate restructuring, it is best to wait until after the access charge hearings are completed to allow the Commission to rule on the rate proposals of the LECs and AT&T Communications in a more orderly manner.

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
AT&T COMMUNICATIONS OF THE SOUTHERN STATES, INC.
STATEMENT OF OPERATING INCOME
North Carolina Intrastate Operations
Twelve Months Ended June 30, 1985

| Item | Present Rates | Increase Approved | Approved Rates |
|---|---|---|---|
| Revenues: | | | |
| Toll revenues | $307,111,951 | - | $307,111,951 |
| Miscellaneous revenues | 9,133,772 | - | 9,133,772 |
| Uncollectibles | (2,752,765) | - | (2,752,765) |
| Net revenues | 313,492,958 | - | 313,492,958 |
| Revenue Deductions: | | | |
| Operating expenses: | | | |
| Access charges | 211,377,992 | (6,445,345) | 204,932,647 |
| Billing and collection | 22,045,098 | - | 22,045,098 |
| Maintenance | 8,043,846 | - | 8,043,846 |
| Depreciation | 6,790,506 | - | 6,790,506 |
| Traffic | 11,001,231 | - | 11,001,231 |
| Commercial | 9,111,975 | - | 9,111,975 |
| General office | 5,423,322 | - | 5,423,322 |
| Operating rents | 19,197,867 | - | 19,197,867 |
| Relief and pensions | 3,263,160 | - | 3,263,160 |
| Other expenses | 1,120,908 | - | 1,120,908 |
| Total | 297,375,905 | (6,445,345) | 290,930,560 |
| Taxes other than income | 11,501,995 | - | 11,501,995 |
| State and federal income taxes | 1,441,026 | 3,173,688 | 4,614,714 |
| Total revenue deductions | 310,318,926 | (3,271,657) | 307,047,269 |
| Net operating income | $ 3,174,032 | $ 3,271,657 | $ 6,445,689 |

SCHEDULE II
AT&T COMMUNICATIONS OF THE SOUTHERN STATES, INC.
STATEMENT OF RATE BASE AND RATE OF RETURN
North Carolina Intrastate Operations
Twelve Months Ended June 30, 1985

| Item | Amount |
|---|---|
| Plant in service | $ 83,855,573 |
| Materials and supplies | 289,934 |
| Cash working capital | 4,957,731 |
| Unamortized employee displacement expense | 407,014 |
| Unamortized divestiture-related expense | 36,129 |
| Total | 89,546,381 |
| Less: Depreciation reserve | (23,819,263) |
| Deferred income taxes | (12,434,997) |
| Unamortized investment tax credits | (51,676) |
| Total | (36,305,936) |
| Original cost rate base | $ 53,240,445 |
| Rate of Return | |
| Present rates | 5.96% |
| Approved rates | 12.11% |

SCHEDULE III
AT&T COMMUNICATIONS OF THE SOUTHERN STATES, INC.
STATEMENT OF CAPITALIZATION AND RELATED COSTS
North Carolina Intrastate Operations
Twelve Months Ended June 30, 1985

| Item | Capital-ization Ratio % | Original Cost Rate Base | Embedded Cost | Net Operating Income |
|---|---|---|---|---|
| | Present Rates - Original Cost Rate Base | | | |
| Long-term debt | 35.89% | $19,107,996 | 8.16% | $1,559,212 |
| Preferred stock | 5.90% | 3,141,186 | 7.57% | 237,788 |
| Common equity | 58.21% | 30,991,263 | 4.44% | 1,377,032 |
| Total | 100.00% | $53,240,445 | | $3,174,032 |
| | Approved Rates - Original Cost Rate Base | | | |
| Long-term debt | 35.89% | $19,107,996 | 8.16% | $1,559,212 |
| Preferred stock | 5.90% | 3,141,186 | 7.57% | 237,788 |
| Common equity | 58.21% | 30,991,263 | 15.00% | 4,648,689 |
| Total | 100.00% | $53,240,445 | | $6,445,689 |

IT IS, THEREFORE, ORDERED as follows:

1. That the $25.00 special access surcharge on WATS and 800 Service which was charged to AT&T Communications by the local exchange companies before

interim rate relief was granted is hereby reduced to a charge by the LECs of $1.68 per month per WATS and 800 Service access line. The resulting decrease of $23.32 in the special access surcharge billed to AT&T Communications will produce an access charge reduction for AT&T Communications of $6,445,345 on an annual basis as authorized herein. This charge is subject to further review and/or modification pending the Commission's final decision regarding such matters now pending in Docket Nos. P-100, Sub 65, and P-100, Sub 72.

2. That the Notice of Decision and Order issued June 9, 1986, be, and hereby is, affirmed.

3. That the annual depreciation rates attached hereto as Appendix A be, and hereby are, approved effective January 1, 1985.

4. 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 in Docket Nos. P-140, Sub 9; P-100, Sub 86; and P-100, Sub 65.

ISSUED BY ORDER OF THE COMMISSION.
This the 16th day of July 1986.

NORTH CAROLINA UTILITIES COMMISSION
(SEAL) Gail L. Mount, Deputy Clerk

APPENDIX A
SCHEDULE OF ANNUAL DEPRECIATION RATES APPROVED
FOR AT&T COMMUNICATIONS' NORTH CAROLINA OPERATION
EFFECTIVE JANUARY 1, 1985

| Account No. | Class of Plant | Reserve (%) | Remaining Life (Yrs.) | Fut. Net Salvage (%) | Rate (%) |
|---|---|---|---|---|---|
| 212 | Buildings | 26.0 | 44.0 | 3 | 1.6 |
| 221.4 | Crossbar | 42.4 | 3.5 | 0 | 16.5 |
| 221.5 | Circuit Other | 35.5 | 8.5 | (1) | 7.7 |
| 221.51 | DDS Circuit | 24.6 | 9.1 | (4) | 8.7 |
| 221.67 | Radio | 58.3 | 8.9 | (10) | 5.8 |
| 221.75 | Oper Elect Eqpmt | 17.9 | 3.5 | 1 | 23.2 |
| 221.79 | Electronic | 12.9 | 14.1 | 1 | 6.1 |
| 235 | Pub Tel Eqpmt | 0.0 | 11.9 | 0 | 8.4 |
| 241 | Pole Lines | 26.4 | 9.8 | (42) | 11.8 |
| 242.1 | Aerial Cable | 12.3 | 15.5 | 8 | 5.1 |
| 242.2 | UG Cable | 22.3 | 19.5 | 15 | 3.2 |
| 242.3 | Buried Cable | 22.8 | 16.0 | (4) | 5.1 |
| 242.4 | Submarine Cable | 37.1 | 17.6 | (3) | 3.7 |
| 244 | Conduit | 16.8 | 54.0 | (10) | 1.7 |
| 261 | Furn & Off Eqpmt | 18.0 | 11.4 | 5 | 6.8 |
| 261.3 | Computers | 75.5 | 2.8 | 5 | 7.0 |
| 262 | Other Comm Eqpmt | 0.0 | 7.3 | 0 | 13.7 |
| 264.1 | Motor Vehicles | 59.0 | 1.6 | 15 | 16.3 |
| 264.3-5 | Tools & Owe | 16.7 | 8.1 | 9 | 9.2 |

DOCKET NO. P-19, SUB 207

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

| In the Matter of<br>Application of General Telephone Company of the South for Authority to Adjust Its Rates and Charges Applicable to Intrastate Telephone Service in North Carolina | )<br>)<br>)<br>) | ORDER GRANTING PARTIAL INCREASE IN RATES AND REQUIRING SERVICE IMPROVEMENTS |
|---|---|---|

HEARD IN: Union County Courthouse, Monroe, North Carolina, on July 21, 1986, at 7:00 p.m.

Commission Hearing Room 2115, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on July 22, 23, and 24, 1986

City Hall Council Chambers, Durham, North Carolina, on July 23, 1986, at 7:00 p.m.

BEFORE: Commissioner Robert K. Koger, Presiding; and Commissioners Edward B. Hipp and Julius A. Wright

APPEARANCES:

FOR GENERAL TELEPHONE COMPANY OF THE SOUTH:

Dale E. Sporleder, Vice President - General Counsel, and Mary U. Musacchia, Attorney, General Telephone Company of the South, 4100 North Roxboro Road, Durham, North Carolina 27704

and

William P. Daniels, Attorney at Law, Newsom, Graham, Hedrick, Bryson and Kennon, P.O. Box 2088, Durham, North Carolina 27702

FOR THE CITY OF DURHAM:

Carolyn D. Johnson, Assistant City Attorney, City of Durham, 101 City Hall Plaza, Durham, North Carolina 27702

FOR THE USING AND CONSUMING PUBLIC:

Theodore C. Brown, Jr., Staff Attorney, Public Staff - North Carolina Utilities Commission, P.O. Box 29520, Raleigh, North Carolina 27626-0520

BY THE COMMISSION: On February 14, 1986, General Telephone Company of the South (General, Applicant, Company, or GTS), filed an application in this docket seeking to adjust its rates and charges for exchange telephone service in the State of North Carolina. At the same time, General filed an application for interim rates to offset depreciation rates subject to refund in the amount of $1,815,056.

On March 7, 1986, the Public Staff filed a motion resisting the request for interim rate relief and asked the Commission to deny same and to set the application for permanent rate relief for investigation, notice, and hearing.

On March 13, 1986, the Commission entered an Order wherein the application for interim rate relief was denied, the application for permanent rate relief was declared to be a general rate case pursuant to G.S. § 62-137, and the rate relief was suspended for a period up to 270 days from the proposed effective date pursuant to G.S. § 62-134.

On March 19, 1986, the Commission entered an Order setting times and dates for hearings, and specifically set a hearing for the public in Monroe, North Carolina, on Monday, July 21, 1986, at 7:00 p.m., in the Multi-Purpose Room, Room 115, Union County Courthouse, 500 North Main Street. Also, a public hearing was set for Wednesday, July 23, 1986, at 7:00 p.m., in the City Council Chambers, City Hall, 101 City Hall Plaza, Durham, North Carolina. The main portion of the case for expert testimony was scheduled to commence on Tuesday, July 22, 1986, at 2:00 p.m. in the Commission Hearing Room 2115, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina.

On April 14, 1986, AT&T Communications of the Southern States, Inc., filed notice of intervention, and on April 18, 1986, the Commission allowed the intervention.

On May 12, 1986, the City of Durham filed notice of intervention, and on May 14, 1986, the Commission allowed the intervention.

On June 9, 1986, an Order was issued by the Commission scheduling a pre-trial conference on July 14, 1986, at 2:00 p.m. in the Commission Hearing Room 2160, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina.

At the pre-trial hearing on July 14, 1986, it was agreed by the parties that a trial memorandum setting out the positions of the parties as to issues agreed to and not agreed to would be submitted to the Commission.

On July 21, 1986, at the Union County Courthouse, in Monroe, North Carolina, the following public witnesses gave their respective testimony: Glen T. Youngblood, Frank Hawfield, T. Bruce Walters, and David Lee.

On July 22, 1986, in the Commission Hearing Room, Dobbs Building, Raleigh, North Carolina, at 2:00 p.m., the main case started, and the Company presented the exhibits and testimony of the following witnesses: Bruce M. Holmberg, Vice President - Revenue Requirements for GTS; Richard J. Nordman, Controller of GTS; Alfred A. Banzer, Manager of Pricing and Tariffs, GTS; William L. Francis, General Manager for North Carolina, GTS; Jerry L. Austin, Treasurer of GTS; and Dr. John L. O'Donnell, Professor of Financial Administration and Chairman of the Department of Finance and Insurance, Michigan State University.

The Public Staff presented the testimony and exhibits of the following witnesses: Lafayette Morgan, Jr., Staff Accountant, Accounting Division; William J. Willis, Jr., Communications Engineer, Communications Division; Leslie C. Sutton, Communications Engineer, Communications Division; Wendolyn M. Comes, Staff Accountant, Accounting Division; Kevin W. O'Donnell, Public

Utility Financial Analyst, Economic Research Division; and James D. McLawhorn, Communications Engineer, Communications Division.

GTS presented the testimony and exhibits of the following rebuttal witnesses; Peter L. Green, Vice President for Corporate Development and Treasurer of GTE Directories Corporation; Ronald L. Roberts, Manager of Operations Support-Customer Service; Ronald E. White, Vice President and Senior Consultant with Foster Associates, Inc.; and Charles Edward Graham, Manager of Capital Recovery.

The Public Staff presented the testimony and exhibits of Kevin W. O'Donnell, Public Utility Financial Analyst, Economic Research Division, in surrebuttal.

On July 23, 1986, a public hearing was held at 7:00 p.m. in the City Council Chambers of City Hall, in Durham, North Carolina, and the following public witnesses gave their respective testimony: Marvin Hockett, Steve Bader, John Ehmann, Robert L. Clodfelter, Annie Bostick, Melinda Warren, Danny Clodfelter, James Fitz William, Judy Cook, Valerie Rosenquist, Paul Leubke, and Willie Lovett.

Based on the foregoing, the application, the testimony and exhibits received into evidence at the hearing, and the entire record in this proceeding, the Commission now makes the following

## FINDINGS OF FACT

1. The Applicant, General Telephone Company of the South, is a public utility duly authorized to do business in North Carolina, is providing telecommunications service in North Carolina, and, as such, is subject to the jurisdiction of this Commission. General Telephone Company of the South is properly before the Commission in this proceeding pursuant to G.S. § 62-133 for a determination of its proposed rates and charges.

2. In its application filed February 14, 1986, General requested rates designed to produce an increase in gross annual revenues of approximately $11,582,053 based upon a test year ended September 30, 1985. In its latest filing the Company requested an increase in annual gross revenues of approximately $6,607,882 which the Company proposed to achieve through increases in rates for local service.

3. The test year for purposes of this proceeding is the 12 months ended September 30, 1985.

4. The overall quality of service provided by General was slightly inadequate during the period studied by the Public Staff, but is definitely showing positive trends of improvement. In consideration of such slightly inadequate service, approval of the Company's proposal to increase its paystation rate from 20¢ to 25¢ per local call will be deferred for a period of no less than six months.

5. General's reasonable original cost rate base used and useful in providing service to its customers in North Carolina is $122,042,517. This rate base consists of telephone plant in service of $193,669,209; less a

negative working capital allowance of $560,562; accumulated depreciation of $48,154,965; customer deposits of $463,238; accumulated deferred income taxes of $22,037,927; and excess profits on affiliated sales of $410,000.

6. General's total end-of-period net operating revenues for the test year under present rates and after accounting, pro forma, and end-of-period adjustments are $59,872,132.

7. The schedule of depreciation rates shown in Appendix B is just and reasonable.

8. The reasonable level of test year operating revenue deductions for General after accounting, pro forma, and end-of-period adjustments is $46,549,691, which includes $13,604,146 of actual investment currently consumed through reasonable actual depreciation. In addition, the appropriate net operating income effect of the CPE phase out is $(515,372).

9. The capital structure for General which is reasonable and proper for use in this proceeding is:

| Item | Ratio |
|---|---|
| Long-term debt | 47.00% |
| Preferred stock | 3.00% |
| Common equity | 50.00% |
| Total | 100.00% |

10. Under conditions of adequate quality of service, the Company should be allowed a rate of return on original cost rate base of 11.82% which will allow the Company a reasonable opportunity to earn 9.79% on its long-term debt, 8.89% on its preferred stock, and a return on common equity of 13.90%.

11. An increase of $3,299,961 over end-of-period test year gross revenues is required for the Company to have a reasonable opportunity to earn the 11.82% overall rate of return which the Commission has found just and reasonable, under conditions of adequate service quality. This increased revenue requirement is based on the original cost of the Company's property and its reasonable test year operating revenues and expenses as previously determined and set forth in these findings of fact.

12. Prior to any future general rate case filing, GTS should file a detailed plan with the Commission demonstrating the basis for all costs charged to the Company's North Carolina operations from GTE Service Corporation.

13. The Company should work with the Public Staff in developing schedules and reports that adequately and reasonably present the results of General Telephone Directories Corporation's total Company and North Carolina operations.

14. The rates, charges, and regulations to be filed pursuant to this Order in accordance with the guidelines contained herein, which will produce an annual increase in local service revenues of $3,299,961, will be just and reasonable.

## EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NOS. 1-3

The evidence supporting these findings of fact is found in the verified application, in prior Commission Orders in this docket, and in the record as a whole. These findings are essentially procedural and jurisdictional in nature and are uncontested and uncontroverted.

## EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 4

The evidence concerning the Applicant's quality of service was presented by Company witness Francis, Public Staff witness McLawhorn, and approximately 16 public witnesses.

The majority of the testimony given at the public hearings by customers was directed to the amount of the proposed increase in rates, billing problems, service outages, call completion problems, station noise, a lack of extended area service from Durham to Chapel Hill and Raleigh, insufficient quantity of paystations, handling and response time of service orders, and response time of repair service.

Company witness Francis testified that during the time period reviewed by Public Staff witness McLawhorn, the Company experienced high growth in access lines in its service area. He stated that in order to meet this growth, the Company implemented a digital conversion program and an outside plant construction program that was "extremely ambitious during the 1985/86 time frame." He further testified that this high growth coupled with the high level of construction "ultimately led to some decline in service levels." Witness Francis also testified that certain service levels have improved in the last six to eight months. With regard to the Public Staff's proposed service objectives for the Company contained in Appendix A to witness McLawhorn's testimony, witness Francis testified that he accepted the proposed objectives and that the Company is committed to meeting those service objectives on a consistent basis.

Public Staff witness McLawhorn testified that the results of his investigation showed that the Company had not consistently met the objectives for total trouble reports, repeat reports, out-of-service troubles not cleared within 24 hours, regular service order completions, new service installation appointments not met for Company reasons, and business office answertime. Witness McLawhorn stated that some of these indicators had improved in recent months, but that he was unable to determine that a positive long-term trend had been established. With regard to witness Francis' testimony that high growth rates and construction of new facilities contributed to a decline in service, witness McLawhorn testified that in Raleigh and Cary, both Southern Bell exchanges in the Triangle area adjacent to the Durham exchange, access line growth had been extremely high, yet the Raleigh exchange did not miss the Commission's objective for total trouble reports during any month from 1983-1985, and Cary missed the objective only during three (3) months in 1985.

Based on his evaluation of the service being provided by GTS to its North Carolina customers, witness McLawhorn concluded that the Company's overall quality of service was inadequate and recommended that the Commission adjust the Company's rate of return on equity to compensate subscribers accordingly.

The Commission concurs with Public Staff witness McLawhorn's evaluation that during the period studied the Company's level of service was not completely adequate. However, the Commission concludes that most if not all of the quality of service tests performed and evaluated by the Public Staff indicate that the Company's quality of service is clearly improving. There has definitely' been a positive trend of improvement in the Company's quality of service during the last six months in particular. The Commission strongly encourages the Company to continue to make every reasonable effort to establish consistently adequate service. The Commission believes that the Company is in fact completely committed to this endeavor.

Nevertheless, in recognition of the slightly inadequate service provided by the Company during the period studied by the Public Staff, the Commission concludes that General should not be allowed to increase its paystation rates for no less than six months from the effective date of this Order. Since in setting rate levels as the result of this Order, General will be required to include the revenue impact of the paystation increase, the Company will effectively be penalized for inadequate service by at least $71,503, the approximate six months' value of the paystation increase. The Commission requests the Public Staff to continue to monitor and study the Company's quality of service during the next six months. Unless the Public Staff continues to find and assert a trend of inadequate service in the Company's territory during the next six months and petitions the Commission to continue to deny authority for General to increase its coin telephone rate, the Company is hereby authorized to increase its paystation rate from 20¢ to 25¢ per local call six months from the effective date of the rate increase allowed by this Order.

The Commission also concludes that the recommended operating service objectives contained in witness McLawhorn's Appendix A are reasonable and proper for use in evaluating the quality of service for General Telephone of the South from this point forward. The Commission notes that these objectives were proposed by the Public Staff and accepted at the hearing by the Company.

## EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 5

Company witness Nordman and Public Staff witness Comes presented testimony and exhibits regarding the Applicant'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 | $193,669,209 | $193,669,209 | $ -0- |
| Telephone plant under construction | -0- | -0- | -0- |
| Less: | | | |
| Accumulated depreciation | 49,855,937 | 48,154,965 | 1,700,972 |
| Net telephone plant | 143,813,272 | 145,514,244 | (1,700,972) |
| Allowance for working capital | (560,562) | (560,562) | -0- |
| Less: | | | |
| Accumulated deferred income taxes | 22,037,927 | 22,037,927 | -0- |
| Customer deposits | 463,238 | 463,238 | -0- |
| Excess profits on affiliated sales | 410,000 | 410,000 | -0- |
| Original cost rate base | $120,341,545 | $122,042,517 | $(1,700,972) |

The Company's final position on the proper rate base to be utilized herein this proceeding reflects its adoption of several of the Public Staff's adjustments to rate base. At the Public Staff's recommendation, the Company reduced telephone plant in service by accounts payable related to plant in service; increased accumulated deferred taxes to reflect normalization of tax basis adjustments; deducted net excess profits on sales from Automatic Electric, an affiliate, from rate base; and removed telephone plant under construction from rate base. In addition, the Company accepted the Public Staff's adjustments to the allowance for working capital. There being no evidence to the contrary, the Commission concludes that the proper levels of these items are as follows: telephone plant in service, $193,669,209 (net of accounts payable of $92,547); telephone plant under construction, $0; allowance for working capital, $(560,562); accumulated deferred taxes, $22,037,927; customer deposits, $463,238; and excess profits on affiliated sales, $410,000.

In computing a fair and reasonable rate base, the only area in which the Company and the Public Staff disagree is the proper level of accumulated depreciation. The difference relates to the appropriate depreciation rates to apply in determining end-of-period depreciation expense. Consistent with the Commission's conclusions under Evidence and Conclusions for Finding of Fact No. 7 concerning the adoption of Vintage Group Remaining Life Capital Recovery System for use in this proceeding, the Commission concludes that the appropriate and reasonable level of accumulated depreciation is $48,154,965, as proposed by the Public Staff.

In summary, the Commission concludes that the proper level of original cost rate base to be included in this proceeding is $122,042,517, consisting of the following:

| Item | Amount |
|---|---|
| Telephone plant in service | $193,669,209 |
| Telephone plant under construction | -0- |
| Less: Accumulated depreciation | 48,154,965 |
| Net telephone plant | 145,514,244 |
| Allowance for working capital | (560,562) |
| Less: Accumulated deferred income taxes | 22,037,927 |
| Customer deposits | 463,238 |
| Excess profits on affiliated sales | 410,000 |
| Original cost rate base | $122,042,517 |

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 6

Evidence concerning the proper level of end-of-period operating revenues was presented through the testimony and exhibits of Company witnesses Nordman, Green, and Roberts and Public Staff witnesses Comes and Willis. The following table sets forth the amounts proposed by the Company and the Public Staff:

| Item | Company | Public Staff | Difference |
|---|---|---|---|
| Local service | $34,410,367 | $ 34,410,367 | $ -0- |
| Toll service | 11,784,358 | 11,286,775 | 497,583 |
| Access revenue | 8,598,344 | 8,202,436 | 395,908 |
| Miscellaneous | 5,499,726 | 6,172,688 | (672,962) |
| Uncollectibles | 158,842 | 158,842 | -0- |
| Total operating revenue | $60,133,953 | $ 59,913,424 | $ 220,529 |

The Company, in its hearing memorandum, adopted the Public Staff's recommended levels of local service revenue and uncollectibles. The Commission finds these amounts to be reasonable and proper. The remaining categories of total operating revenues were contested.

The Company and the Public Staff differ on the amount of intrastate toll and access revenues. The differences between the Company and the Public Staff relate to the effect of accounting adjustments to the rate base, operating expenses, and capital structure. Shown below is a summary of these adjustments and their effect on toll and access revenues.

| Public Staff Adjustments | Toll | Access |
|---|---|---|
| Depreciation expense on maintenance capitalized | $ (2,097) | $ (1,748) |
| Accumulated depreciation related to maintenance capitalized | 536 | 455 |
| Depreciation expense on end-of-period plant in service | (277,466) | (231,225) |
| Accumulated depreciation related to end-of-period plant in service | 70,918 | 60,181 |
| Adjustment to interest expense for income tax purposes | (289,474) | (223,571) |
| Total | $(497,583) | $(395,908) |

Since the Commission has accepted the Public Staff's level of rate base and depreciation expense elsewhere in this Order, the Commission concludes that Public Staff witness Comes' adjustments to toll and access revenues for these items are appropriate. The Commission has not accepted either the Public Staff's or the Company's proposed capital structure under Evidence and Conclusions for Finding of Fact No. 9; therefore, the Commission's interest expense to be included in the intrastate toll and access revenues calculation is different from that recommended by the Public Staff and the Company and must be calculated accordingly. Based on the foregoing, the proper end-of-period toll and access revenues are $11,433,785 and $8,315,976, respectively.

The difference in miscellaneous revenues as proposed by the Company and the Public Staff relates to the proper level of directory revenues. The Public Staff contended that the publishing rights fee paid by General Telephone Directories Corporation (Directory Corporation), an affiliate of the Applicant, should be adjusted so that ratepayers receive a fair and reasonable benefit from directory advertising revenue and so that the Directory Corporation's return on equity is limited to that granted the telephone operating company. Therefore, the Public Staff proposed a 65% publishing rights fee, as opposed to the 54% rate utilized by the Applicant. In addition, the Public Staff proposed that the going level of directory revenues should be based on more current directory rates than those used by the Company.

Public Staff witness Comes presented testimony regarding the level of benefit which should be passed on to ratepayers. She stated that were it not for the structural separation of the directory publishing function from the telephone operating company, the Company would earn only the return on equity granted by the Commission on its investment in directory operations and the ratepayers would benefit directly from any cost savings or economies of scale generated. Witness Comes testified that "due to the fixed publishing rights fee, the Directory Corporation has retained the earnings associated with cost savings and economies of scale." Under cross-examination, Company witness Green admitted that any cost minimization is to the benefit of the Directory Corporation and that the ratepayers do not share in any cost savings or economies of scale.

Witness Comes testified that the Directory Corporation had consistently earned returns on average stockholder equity in excess of the returns on equity granted by the Commission. The following table summarizes these returns.

| Years | GTE Directories Corporation Achieved Return on Average Stockholder's Equity | Returns Granted by the Commission |
|---|---|---|
| 1980 | 34.35% | 12.85% |
| 1981 | 30.12% | 13.5 - 16.59% |
| 1982 | 36.37% | 15.0 - 16.30% |
| 1983 | 27.86% | 15.0 - 16.6% |
| 1984 | 33.22% | 14.5 - 15.0% |
| 1985 | 29.07% | 15.0% |

Further, witness Comes pointed out that in previous proceedings for General, in Docket Number P-19, Sub 158, and Docket No. P-19, Sub 163, the Commission followed a procedure similar to that proposed by Public Staff in this proceeding.

Company rebuttal witness Green argued that return on equity was not an appropriate measure of the Directory Corporation's profitability and, further, that one could not compare the return on equity of a publishing business with the return on equity of a telephone operating company. Witness Green stated that earnings as a percentage of sales was a more appropriate measure of profitability of the Directory Corporation. Witness Green did not offer any explanation for the North Carolina operations' rise in earnings as a percentage of sales from the 1972 level of 4.8% to the 1985 level of 10%.

Exhibits attached to witness Comes' testimony present the following analysis of directory rights fees paid by GTE Directories Corporation:

| Item | Directory Rights Fees % |
|---|---|
| North Carolina Operations | 54.00% |
| Nonaffiliated Operations | 63.06% |
| Affiliated Operations | 54.90% |
| Total Operations | 58.33% |

These exhibits also show that net income as a percent of sales was consistently greater for the North Carolina operations than for the total company operations.

In addition to the testimony regarding the publishing rights fee, Public Staff witness Comes testified that the gross advertising revenues less uncollectibles to which that percentage is applied should be based on the April 1986 billings for the Durham directory rather than the April 1985 billings as used by the Company in its filing. Witness Comes stated that the 1986 billings provided a more reasonable estimate of the ongoing level of directory advertising revenue.

The Commission concludes that the directory operations are an integral part of the local telephone operations of GTS and that the Company's ratepayers are entitled to receive the benefit of these operations. State ex rel. Utilities Commission v. Southern Bell, 307 N.C. 541 (1983). It is clear that establishing a fixed publishing rights fee prevents the ratepayers from benefiting on an equitable basis from any economies of scale or cost savings generated after the fee is established. Therefore, it is necessary to continually evaluate the reasonableness of the publishing rights fee, particularly in general rate case proceedings.

The Commission has given much thought to the proper level of directory revenues that should be retained by the Applicant and used in setting appropriate rates in this proceeding. The Commission notes that the telephone directory advertising arena is changing, with an increase in both demand for services and in the number of firms willing to offer said services. Concurrently, the Commission has given consideration to the achieved level of earnings experienced by GTE Directories and its stockholders. Based on the foregoing, the Commission concludes that the proper directory rights fees to be utilized in establishing the Applicant's retained end-of-period directory revenues is 58.33% rather than the 54% recommended by the Company. This level of directory rights fees is equal to the average experienced by the Directory Corporation for its total company operations during 1985. Utilization of a directory publishing rights fee of 58.33% in this proceeding will serve to share the benefit of any cost savings and economies of scale between the Directory Corporation and the customers of GTS on an equitable and fair basis. During calendar year 1985, GTE Directories Corporation paid an average directory publishing rights fee of 58.33% to its affiliated and nonaffiliated customers. The Commission concludes that a fee of 58.33% of directory publishing revenues is fair and reasonable to all parties and is appropriate for use in this proceeding.

Regarding the appropriate ongoing level of gross directory advertising revenues, the Commission concludes that the April 1986 billings for the Durham directory provide a more reasonable estimate of the ongoing level than the April 1985 billings. The Commission reaches this conclusion for the reasons given by Public Staff witness Comes in her testimony. Consistent with these findings, the Commission finds that the appropriate level of miscellaneous revenues to be used in this proceeding is $5,870,846.

In summary, the Commission concludes that the proper level of end-of-period operating revenues for use in this proceeding is $59,872,132, consisting of the following:

| Item | Amount |
|---|---|
| Local service | $34,410,367 |
| Toll service | 11,433,785 |
| Access revenue | 8,315,976 |
| Miscellaneous | 5,870,846 |
| Uncollectibles | 158,842 |
| Total operating revenues | $59,872,132 |

## EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 7

The evidence as to the Applicant's proper depreciation rates is contained in the testimony and exhibits of Company witnesses Graham and White and Public Staff witness Sutton.

Annual depreciation expenditures are dependent upon the development of depreciation parameters (projected useful life, reserve, future net salvage) and the selection of a capital recovery system. In this case, General and the Public Staff are in agreement on the parameters but disagree on the capital recovery system to be used.

The Company presented two rebuttal witnesses, Graham and White, on the proper capital recovery system to be used. Witness Graham testified as to the history of the implementation of Equal Life Group (ELG) depreciation rates for the Company's North Carolina properties and presented documentation supporting the parameters. Witness White's testimony addressed (1) principles of depreciation accounting; (2) group depreciation methods, procedures, and techniques; (3) the computation of depreciation accruals using the ELG procedure as compared to the Vintage Group (VG) procedure; and (4) the cost and fairness of the ELG procedure to current ratepayers.

Public Staff witness Sutton opposed the use of the ELG system, and supported instead the VG capital recovery process. Witness Sutton presented two reasons for his opposition to the use of ELG. First, he stated that ELG adds complexity to the capital recovery process. Secondly, he stated that ELG is inherently unfair to current ratepayers.

The Commission will first consider the complexity issue. Company witness Graham testified that the use of ELG does not add to the complexity of the capital recovery process and further stated that the Company will incur the same level of expense to properly maintain property records for the determination of ELG depreciation rates as it would for any other recognized method of determining depreciation rates.

Regarding the unfairness issue raised by the Public Staff, witness Sutton maintains that ELG is inherently unfair to current ratepayers since it burdens current ratepayers with higher revenue requirements associated with the larger annual depreciation accruals inherent in the ELG procedure in the early years. Both witnesses Sutton and White agree that the ELG capital recovery system is characterized by larger annual accruals in the early years followed by smaller annual accruals in future years.

The Company witness notes that the total depreciation expense recognized over the life of a particular plant investment is the same under either of the two capital recovery systems, but that admittedly ELG generates a higher level of depreciation expense in the early years of the plant's life. The Public Staff asserts that, since regulated utility rates are established on an end-of-period cost of service basis in general rate case proceedings, then any material change in the cost of service, such as the impact on depreciation expense caused by the ELG system progressing from year 1 to year 2 of a plant's life, would result in the regulated utility either over- or underrecovering its cost of service. This fundamental ratemaking principle is clearly demonstrated in Company witness White's testimony. Company witness White's testimony shows that, based on the investment in plant example contained in his exhibits, the ELG cost recovery system would generate a revenue requirement approximately 11% greater than that generated by the VG cost recovery system in the first year of the plant's life. Second, this demonstration shows that the revenue requirement for year 2 under the ELG methodology is approximately 22% less than that generated by this system in year 1. Therefore, under the ELG methodology, the Applicant's rates would be established in year 1 at a level substantially greater than that experienced over the life of the property investment and would result in the Applicant over-recovering its cost of service, assuming no other changes in the Applicant's cost of service and that rates set on the depreciation expense generated in year 1 are not adjusted in subsequent years. The Commission notes that the VG capital recovery system also generates a pronounced decline from year 1 to year 2 in depreciation expense, but that said decline is less than that produced by the ELG methodology.

Company witness White testified that cost allocation is the standard to be used in establishing depreciation rates, and not consideration of revenue requirements. Generally, sound utility ratemaking principles would agree. However, a direct and unavoidable conflict occurs when the level of a cost declines during the period of time that the utility is collecting revenues based on rates set to recover the cost level before the decline. In this situation, the approved rates would over-recover the utility's cost of service. One remedy to this situation which has been widely used is cost levelization or amortization over a period of years.

In four general rate proceedings for telephone companies in the last four years, the Commission has addressed the ELG capital recovery issue. In two of those cases (Sandhill Telephone Company, Docket No. P-53, Sub 47 (1983), and Southern Bell Telephone and Telegraph Company, Docket No. P-55, Sub 816 (1983)), decisions were rendered in an environment in which the Commission had the freedom to allow or deny the use of ELG. In both cases the Commission denied the use of ELG. Decisions in the other two cases were rendered in an environment in which the Commission either did not have the freedom due to FCC and Court action to deny the use of ELG or had no alternative proposal presented to it.

In view of the recent decision of the U.S. Supreme Court in the case of Louisiana Public Service Commission v. Federal Communications Commission, 106 Sup. Ct. 1890 (1986) entered on May 27, 1986, the Commission now finds itself in a position where it has the latitude to allow or deny the use of ELG. Further, unlike the recent AT&T general rate case heard by this Commission and decided before the U.S. Supreme Courts' action, the Public Staff has given the Commission an alternative proposal to the Company's ELG proposal. Based on all of the foregoing, the Commission concludes that the VG capital recovery system, as proposed by the Public Staff, is appropriate for determining fair and reasonable depreciation rates for the Applicant. In making this decision, the Commission has weighed the merits of each of the capital recovery systems proposed by the parties in terms of their ability both to allocate cost and to generate a reasonable ongoing level of revenue requirements. The Commission makes this decision without prejudice to the right of any party to propose other depreciation methods either in 1987, when the Applicant's depreciation rates are scheduled to be reviewed, or in the Company's next general rate case.

## EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 8

The evidence supporting this finding of fact is found in the testimony and exhibits of Company witnesses Nordman, White, and Graham and Public Staff witnesses Comes and Sutton. The following table summarizes the amounts which the Company and the Public Staff contend are the proper levels of operating revenue deductions to be used in this proceeding.

| | Company | Public Staff | Difference |
|---|---|---|---|
| Operating expense: | | | |
| Maintenance | $14,445,326 | $14,444,612 | $ 714 |
| Depreciation | 15,277,032 | 13,604,146 | 1,672,886 |
| Traffic | 2,965,299 | 2,965,259 | 40 |
| Commercial | 3,569,204 | 3,569,135 | 69 |
| General office | 3,836,034 | 3,835,812 | 222 |
| Rents | (6,055,692) | (6,055,692) | |
| Other excluding rents | 3,786,851 | 3,786,821 | 30 |
| Interest on customer deposits | 32,993 | 32,993 | |
| Total operating expense | 37,857,047 | 36,183,086 | 1,673,961 |
| Operating Taxes Other Than Income: | | | |
| Payroll | 919,559 | 919,559 | |
| Gross receipts | 1,482,354 | 1,466,332 | 16,022 |
| Property | 1,667,333 | 1,667,333 | |
| Other taxes | (9,444) | (9,444) | |
| Total taxes other than income | 4,059,802 | 4,043,780 | 16,022 |
| State income tax | 836,813 | 820,599 | 16,214 |
| Federal income tax | 5,201,807 | 5,084,959 | 116,848 |
| Total operating expenses and taxes | $47,955,469 | $46,132,424 | $1,823,045 |

The Company and the Public Staff were in agreement as to the net operating income effect of CPE capping. However, the Commission notes that this adjustment should reflect the capital structure and overall cost of capital found to be fair elsewhere in this Order. Therefore, consistent with the methodology employed by both parties, and the capital structure and overall cost of capital found to be fair elsewhere herein, the Commission concludes that the appropriate net operating income effect of CPE capping is $(515,372).

The differences in operating expenses between the Company and the Public Staff all relate to the appropriate depreciation rates for use in this proceeding. The $1,673,961 difference in total operating expenses represents the difference between the ELG depreciation rates proposed by the Company and the VG depreciation rates proposed by the Public Staff. The difference in operating expenses other than depreciation totalling $1,075 represents the portion of the depreciation adjustment charged to those accounts through the clearing process. The difference in gross receipts tax relates to the differences between toll revenues as proposed by the Company and the Public Staff. Finally, the difference in state and federal income tax relates to the different levels of operating revenues, operating expenses, and interest expense proposed by the Company and the Public Staff. Other than differences regarding the proper level of these items for purposes of calculating income taxes, the Company and the Public Staff differed in their treatment of interest expense associated with the job development investment tax credits (JDITC).

The Commission found under Evidence and Conclusions for Finding of Fact No. 7 that the depreciation rates proposed by the Public Staff, based on the Vintage Group method, are just and reasonable. Therefore, the Commission concludes that the Public Staff's proposed levels of operating expenses are appropriate for use herein.

The Commission concluded under Evidence and Conclusions for Finding of Fact No. 6 that the level of toll revenues was different from that proposed by either party. Consistent with that finding, the Commission concludes that the proper level of gross receipts tax is $1,471,066.

Regarding interest expense associated with JDITC, Public Staff witness Comes testified that the recent clarification of Regulation 1.46-6 of the Internal Revenue Service made it clear that interest synchronization would not result in a reduction in cost of service and, thereby, cause the loss of investment tax credits. She further stated that Section 62-133 of North Carolina Public Utilities Law requires the Commission to set rates as low as possible. Based on these two facts, witness Comes concluded that the Commission was obligated to compute income taxes based on interest synchronization without a reduction for the interest expense associated with JDITC as proposed by the Company.

In rebuttal, Company witness Nordman stated that the Public Staff's treatment of JDITC resulted in a penalty to the utility by reducing the income taxes it would be permitted to collect through rates. Witness Nordman did not give specific reasons for characterizing the treatment as a penalty rather than as fair and reasonable to all parties.

The Commission concludes that the Public Staff's treatment of interest expense associated with JDITC is just and reasonable for the reasons given by Public Staff witness Comes in her testimony and that such treatment results in equitable ratemaking treatment for all parties.

Based on the foregoing and the capital structure found to be reasonable elsewhere herein, the Commission concludes that the proper level of state income taxes under present rates is $871,135 and that the proper level of federal income taxes is $5,446,956.

In summary, the Commission finds that the proper level of test year operating revenue deductions to be included in this proceeding is $46,549,691 consisting of the following:

| Item | Amount |
|---|---|
| Operating expenses: | |
| Maintenance | $14,444,612 |
| Depreciation | 13,604,146 |
| Traffic | 2,965,259 |
| Commercial | 3,569,135 |
| General office | 3,835,812 |
| Rents | (6,055,692) |
| Other excluding rents | 3,786,821 |
| Interest on customer deposits | 32,993 |
| Total operating expense | 36,183,086 |
| Operating taxes other than income: | |
| Payroll | 919,559 |
| Gross receipts | 1,471,066 |
| Property | 1,667,333 |
| Other taxes | (9,444) |
| Operating taxes other than income | 4,048,514 |
| State income tax | 871,135 |
| Federal income tax | 5,446,956 |
| Total operating expense and taxes | $46,549,691 |

In addition, the Commission concludes that the proper level of net operating income effect of CPE capping is $(515,372).

## EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 9

The evidence for this finding of fact is contained in the direct and rebuttal testimony and exhibits of Company witness Jerry L. Austin, the rebuttal testimony and exhibits of Company witness Dr. John L. O'Donnell, and the direct and surrebuttal testimony and exhibits of Public Staff witness Kevin W. O'Donnell.

The Company recommended that the Commission employ the Company's capitalization ratios at March 31, 1986, proformed to reflect the Company's April 1986 issue of $10 million of common equity to GTE Parent Company. The Public Staff also used the Company's pro forma capital structure at March 31, 1986, but adjusted the capital structure due to the existence of double leverage within the GTE system. Specifically, the Public Staff adjusted the equity component in the GTS capital structure by the GTE Parent Company's capitalization ratios. The following chart compares the two capital structures and cost rates:

PUBLIC STAFF

| | Percent | Embedded Cost |
|---|---|---|
| Common Equity | 43.78 | |
| GTE Preferred | 2.51 | 8.60 |
| GTE Long-Term Debt | 9.03 | 12.05 |
| Preferred Stock | 1.40 | 8.89 |
| Long-Term Debt | 43.28 | 9.79 |

COMPANY

| | Percent | Embedded Cost |
|---|---|---|
| Common Equity | 55.32 | |
| Preferred Stock | 1.40 | 8.89 |
| Long-Term Debt | 43.28 | 9.79 |

Public Staff witness O'Donnell stated that the capital structure proposed by the Company was inappropriate for use in setting revenue requirements, due to the existence of double leverage within the GTE Corporation system. Thus, the main disagreement between the Company and Public Staff in the area of the proper capital structure to be employed in this proceeding centers around the relevancy of the relationship between GTE Parent Company and its wholly owned subsidiary, General Telephone of the South. Company witness Austin states in his direct testimony, "GTS is a separately constituted legal and financial entity. It possesses an identifiable capital structure distinct from that of either its parent organization or any of its affiliates." In contrast Public Staff witness O'Donnell testified that, "GTS is a wholly owned subsidiary of GTE and it is this relationship that complicates the issue of the appropriate capital structure to use in this proceeding." Public Staff witness O'Donnell further testified that the Commission should not neglect the effect of double leverage since doing so will allow GTE Parent Company to achieve excess returns through its GTS subsidiary at the expense of the Applicant's North Carolina ratepayers.

The Company filed the rebuttal testimony of witnesses Jerry L. Austin and John L. O'Donnell. Basically, this testimony attempts to disclaim Public Staff witness O'Donnell's use of double leverage in establishing an appropriate capital structure to be used in this proceeding. Company witness O'Donnell stated, "The fact the parent raised capital from different sources is irrelevant." Witness Austin reiterated several of company witness O'Donnell's points in his rebuttal testimony, but he also added that the double leverage approach failed to distinguish between the subsidiaries' varying risk characteristics and also that double leverage results in a misallocation of a company's resources. The overall concept from both of these rebuttal testimonies was that Public Staff witness O'Donnell's double leverage argument lacked any theoretical support and that the cost of capital for GTS was determined solely in the market.

After considering all the evidence presented by the parties on this issue, it is evident that the central issue to be resolved is whether and to what extent, if any, the impact of the affiliated parent-subsidiary relationship between the Applicant and GTE Parent Company should be recognized. The

Commission has given much deliberation to this issue. After taking into account the relationship between the Applicant and GTE Parent Company, and after weighing the financial composition and relative risk of all the affiliated companies owned by GTE Parent Company, the Commission concludes that the fair and reasonable capital structure for setting rates in this proceeding is as follows:

| Item | Percent |
|---|---|
| Long-term debt | 47.00% |
| Preferred stock | 3.00% |
| Common equity | 50.00% |
| Total | 100.00% |

The Commission further concludes that the appropriate embedded cost rate for long-term debt is 9.79% and for preferred stock is 8.89%.

## EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 10

The evidence supporting this finding of fact is found in the direct and rebuttal testimony and exhibits of Company witnesses Jerry L. Austin and John L. O'Donnell, as well as the direct and surrebuttal testimony and exhibits of Public Staff witness Kevin W. O'Donnell.

Company witness Austin employed the risk premium approach and the discounted cash flow (DCF) method in his recommendation of the proper return on equity to GTS. In his risk premium approach, witness Austin added a risk premium of 5.4% to the current expected yields at the time of filing of 10.88% to 11.0% to arrive at an expected return on equity of 16.3%. In his DCF analysis, witness Austin first developed three groups of companies that, in his judgment, were of comparable risk to GTS. With these groups of comparable companies, witness Austin performed a standard and quarterly DCF analysis to arrive at a cost of equity to GTS of 15.5%. From the results of both methods, witness Austin recommended the Commission adopt a 15.50% return on equity for GTS. However, at the time of the hearing witness Austin updated his recommendation by lowering his recommended return on equity to 14.5%.

Company witness O'Donnell also employed the risk premium and DCF methods in his recommendation of the cost of equity to GTS. In his risk premium analysis, Dr. O'Donnell combined a 5.28% risk premium to the December 1985 new utility Aa bond yields of 11.00% to arrive at an estimate of 16.28%. In his DCF analysis, Dr. O'Donnell used five groups of companies that he used as benchmarks to estimate the return on equity for GTS. By combining the DCF results from his five benchmark groups with his historical risk premium estimate, Dr. O'Donnell derived an average of 15.62% which he rounded to his recommendation of 15.60%. At the time of the hearing, Dr. O'Donnell also updated his testimony and lowered his recommended return on equity to 14.50%.

Public Staff witness O'Donnell used the DCF method in his analysis of the proper cost of equity to GTS. Witness O'Donnell developed three groups of comparable companies that were classified as follows: Group A, seven independent telephone companies covered by Value Line; Group B, the seven recently divested Bell holding companies; and Group C, 27 utility companies similar to GTE in four risk parameters. From his DCF analysis, witness O'Donnell developed a cost of equity range of 13.20% to 13.80% with a recommendation of 13.50%. He then made one adjustment for the selling expense incurred for issuing new common stock. In this adjustment, witness O'Donnell added .05% to his recommendation of 13.50% to arrive at his final recommendation of 13.55%. However, based on Public Staff witness McLawhorn's finding of inadequate service, the Public Staff recommended a return on equity penalty.

In response to Public Staff witness O'Donnell's direct testimony, the Company sponsored the rebuttal testimony of witnesses Austin and Dr. O'Donnell. Both of these witnesses had several criticisms of Public Staff witness O'Donnell's DCF analysis. The first criticism was of witness O'Donnell's use of GTE consolidated in the DCF model. The second criticism came from Dr. O'Donnell when he asserted that witness O'Donnell should have further separated the companies in his Groups A and B. The third criticism was of Public Staff witness O'Donnell's use of historical data combined with forecasted data. Another criticism was of his use of the current dividend in the dividend yield of his DCF model. The final criticism of witness O'Donnell's return on equity analysis was of his flotation cost adjustment. Both Company witnesses asserted that witness O'Donnell had misapplied the DCF method and had understated the true cost of equity to GTS.

As a result of the Company's rebuttal testimony, Public Staff witness O'Donnell filed surrebuttal testimony with the Commission in an attempt to clear up the questions that had been raised concerning his prefiled direct testimony. In his direct testimony, witness O'Donnell explained his reason for using GTE consolidated in his DCF analysis when he stated, "One must also remember that the nonregulated business endeavors of GTE which are of higher risk than the provision of local telephone service will only overestimate the cost of equity for GTS." In response to the Company's contention that witness O'Donnell should have separated the companies in his Groups A and B according to risk, witness O'Donnell stated, "By comparing GTE to the industry I feel that I have derived a much better proxy of a market required rate of return for the average telephone holding company. Dr. O'Donnell separated companies within the industry solely on his own personal perception of risk in the industry." Witness O'Donnell also considered that the Company's argument against historical data was illogical since he believed that investors are aware of historical operating results and base their estimates of future growth upon these historical operating results. Witness O'Donnell also criticized company witness Austin's claim that he misapplied the DCF model by using the current dividend in the dividend yield. Witness O'Donnell stated that he was careful in his selection of the proper dividend to use in the DCF model and that most of the companies within his comparable groups increased their dividends during his 24-week pricing period. In his surrebuttal testimony witness O'Donnell stated, "As a result, the price that investors were willing to pay for most of these stocks reflected the realization that they would receive only the current dividend for the majority of the next year." In response to the Company's last argument concerning his flotation cost adjustment, witness O'Donnell noted that the Commission can only allow GTS to recover known and actual costs and since "market pressure" was neither known nor identifiable then GTS has no right to recover any unquantified cost. In addition he believed that, if there was any "market pressure" with the issue of new common stock, then investors would take it into account when pricing the

Company's stock which in turn would then be reflected in the dividend yield. Furthermore, witness O'Donnell felt that witness Austin's flotation cost adjustment contradicted his capital structure testimony.

The determination of the appropriate, fair and reasonable rate of return for the Company is of great importance and must be made with great care because whatever return is allowed will have an immediate impact on the Company, its stockholders, and its customers. In the final analysis, the determination of a fair rate of return must be made by this Commission, using its own impartial judgment and guided by the testimony of expert witnesses and other evidence of record. Whatever return is allowed must balance the interests of the ratepayers and investors and meet the test set forth in G.S. § 62-133(b)(4):

> "...[to] enable the public utility by sound management to produce a fair 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 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. 2nd 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 impartial judgment to ensure that all parties involved are treated fairly and equitably.

Based on the entire record in this docket, the Commission finds and concludes that the fair rate of return that General Telephone Company of the South should have the opportunity to earn on its original cost rate base is 11.82%, provided that the overall quality of the Company's service is maintained on a consistently adequate basis. Such rate of return will yield a fair return on common equity of approximately 13.9%. The rate of return on common equity of 13.9% is consistent with the normalized capital structure and all of the accounting adjustments approved in this proceeding.

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 a 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 returns approved herein will afford the Company a reasonable opportunity to earn a fair and reasonable return for its stockholders while providing adequate and economical service to ratepayers. The Commission can do no more.

It should be noted that since the Commission has concluded that the Company's quality of service was slightly inadequate during the period reviewed by the Public Staff and that the Company should not be allowed to increase the paystation charge for six months, as discussed under Evidence and Conclusions for Finding of Fact No. 4, then General will not be allowed an opportunity to earn the return found to be fair, had service been adequate, for at least the initial six-month period after the effective date of this Order. This adjustment for slightly inadequate service is supported by the quality of service studies conducted by the Public Staff, as spoken to elsewhere in this Order. The Commission believes this action to be a more appropriate measure to adjust for such service problems than the rate of return penalty advocated by the Public Staff. The Commission believes that GTS is working diligently to correct its service problems and that the Company's overall quality of service is showing a definite trend of improvement. For that reason, a rate of return penalty would be inappropriate in this case.

## EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 11

The Commission has previously discussed its findings of fact and conclusions regarding the fair rate of return which General should be afforded the opportunity to earn, provided that the Company's quality of service is adequate.

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. These schedules are based on the earnings level approved for the Applicant, once adequate service has been maintained consistently, and on the associated approved increase in paystation charges, as discussed elsewhere in this Order. Therefore, the Company should have a reasonable opportunity to achieve this level of earnings after the service adjustment approved herein has been lifted, upon the consistent achievement of an adequate level of service.

## SCHEDULE I
## GENERAL TELEPHONE COMPANY OF THE SOUTH
## North Carolina Intrastate Operations
## STATEMENT OF OPERATING INCOME
## For the Test Year Ended September 30, 1985

| Line No. | Item | Present Rates | Increase Approved | After Approved Increase |
|---|---|---|---|---|
| 1. | Operating Revenues: | | | |
| 2. | Local service | $34,410,367 | $3,299,961 | $37,710,328 |
| 3. | Toll service | 11,433,785 | | 11,433,785 |
| 4. | Access revenue | 8,315,976 | | 8,315,976 |
| 5. | Miscellaneous | 5,870,846 | | 5,870,846 |
| 6. | Uncollectibles | 158,842 | 10,603 | 169,445 |
| 7. | Total operating revenues | $59,872,132 | $3,289,358 | $63,161,490 |
| 8. | Operating Revenue Deductions: | | | |
| 9. | Operating Expense: | | | |
| 10. | Maintenance | 14,444,612 | | 14,444,612 |
| 11. | Depreciation | 13,604,146 | | 13,604,146 |
| 12. | Traffic | 2,965,259 | | 2,965,259 |
| 13. | Commercial | 3,569,135 | | 3,569,135 |
| 14. | General office | 3,835,812 | | 3,835,812 |
| 15. | Rents | (6,055,692) | | (6,055,692) |
| 16. | Other excluding rents | 3,786,821 | | 3,786,821 |
| 17. | Interest on customer deposits | 32,993 | | 32,993 |
| 18. | Operating Taxes Other Than Income: | | | |
| 19. | Payroll | 919,559 | | 919,559 |
| 20. | Gross receipts | 1,471,066 | 105,917 | 1,576,983 |
| 21. | Property | 1,667,333 | | 1,667,333 |
| 22. | Other taxes | (9,444) | | (9,444) |
| 23. | Total Operating Taxes Other Than Income | 4,048,514 | 105,917 | 4,154,431 |
| 24. | State income taxes | 871,135 | 191,006 | 1,062,141 |
| 25. | Federal income taxes | 5,446,956 | 1,376,520 | 6,823,476 |
| 26. | Total operating revenue deductions | 46,549,691 | 1,673,443 | 48,223,134 |
| 27. | Net operating income | 13,322,441 | 1,615,915 | 14,938,356 |
| 28. | Income effect of CPE Capping | (515,372) | -0- | (515,372) |
| 29. | Net Operating Income for a Return | $12,807,069 | $1,615,915 | $14,422,984 |

SCHEDULE II
GENERAL TELEPHONE COMPANY OF THE SOUTH
North Carolina Intrastate Operations
STATEMENT OF RATE BASE AND RATE OF RETURN
For the Test Year Ended September 30, 1985

| Line No. | Item | Amount |
|---|---|---|
| 1. | Telephone plant in service | $193,669,209 |
| 2. | Telephone plant under construction | 0 |
| 3. | Accumulated depreciation reserve | (48,154,965) |
| 4. | Net telephone plant | 145,514,244 |
| 5. | Working capital | (560,562) |
| 6. | Less: Accumulated deferred income taxes | 22,037,927 |
| 7. | Customer deposits | 463,238 |
| 8. | Excess profits on affiliated sales | 410,000 |
| 9. | Original cost rate base | $122,042,517 |
| 10. | Rates of Return | |
| 11. | Present | 10.49% |
| 12. | Approved | 11.82% |

SCHEDULE III
GENERAL TELEPHONE COMPANY OF THE SOUTH
North Carolina Intrastate Operations
STATEMENT OF CAPITALIZATION AND RELATED COSTS
For the Test Year Ended September 30, 1985

| Line No. | Item | Capital-ization Ratio (%) | Original Cost Rate Base | Embedded Costs (%) | Net Operating Income |
|---|---|---|---|---|---|
| | | Present Rates - Original Cost Rate Base | | | |
| 1. | Long-term debt | 47.00% | $ 57,359,983 | 9.79% | $ 5,615,542 |
| 2. | Preferred stock | 3.00 | 3,661,276 | 8.89 | 325,487 |
| 3. | Common equity | 50.00 | 61,021,258 | 11.25 | 6,866,040 |
| 4. | Total | 100.00% | $122,042,517 | | $12,807,069 |
| | | Approved Rates - Original Cost Rate Base | | | |
| 5. | Long-term debt | 47.00% | $ 57,359,983 | 9.79% | $ 5,615,542 |
| 6. | Preferred stock | 3.00 | 3,661,276 | 8.89 | 325,487 |
| 7. | Common equity | 50.00 | 61,021,258 | 13.90 | 8,481,955 |
| 8. | Total | 100.00% | $122,042,517 | | $14,422,984 |

## EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 12

The evidence supporting this finding of fact is found in the testimony of Public Staff witness Comes. Public Staff witness Comes testified that her audit of the Service Corporation's activities revealed an increasing amount of employee time being devoted to nonregulated activities. In order to provide assurance that the general services and licenses expense is properly allocated between regulated and nonregulated operations, witness Comes proposed that the Service Corporation modify its annual time study. She suggested that the existing study be revised to show the percentage of employees' time devoted to regulated, nonregulated, and combined (i.e., projects that could be classified as both regulated and nonregulated) operations within the existing telephone operations category. According to witness Comes, this revision would provide the most efficient means to evaluate the allocation of general services and licenses costs.

The Commission is concerned that the GTE Service Corporation's costs supported by the North Carolina ratepayers of GTS are established at proper levels, using reasonable techniques of cost assignment and allocation. Therefore, the Commission concludes that the Applicant should file a detailed plan demonstrating the basis for all costs charged to the Applicant's North Carolina operations from GTE Service Corporation. Said plan should be filed before any future general rate case filing. One acceptable plan would be for the Service Corporation to revise its annual time study in the manner proposed by Public Staff witness Comes.

## EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 13

The evidence supporting this finding of fact is found in the testimony of Public Staff witness Comes and the rebuttal testimony of Company witness Green.

Public Staff witness Comes stated that the Company had gradually reduced the amount of information included in its annual telephone directory publishing agreement report from the original standards set in Docket No. P-19, Sub 123, in 1971. Witness Comes pointed out that in 1984 the Company replaced its fully allocated income statement with a statement of gross profit. Witness Comes contended that in order for the Commission staff and the Public Staff to properly monitor the directory operations the Company must provide a more detailed annual report.

In his rebuttal testimony, Company witness Green stated that the Company had ceased providing a fully allocated income statement in 1984. The reason he cited for this change was that providing the Commission with more than a statement of gross profit would be misleading since costs other than directory expenses are not directly traceable to the North Carolina operations. In addition, he contended that any allocation of other expenses would be arbitrary and, therefore, misleading.

On cross-examination, witness Green stated that the Company would follow any allocation method and reporting requirements ordered by the Commission. He also listed several possible bases for allocating the indirect expenses; revenues, number of advertisers in the state, and number of pages produced for that state.

The Commission is concerned about the adequacy of accounting records and reports necessary to properly evaluate directory operations and concurs with the Public Staff's contention that a more detailed annual report is necessary. The Commission therefore concludes that the Public Staff and the Company should work together to prepare recommended reporting guidelines. These guidelines should be compiled in a report for filing with the Commission.

## EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 14

Company witness Banzer and Public Staff witness Willis presented testimony concerning General's proposed rate structure.

Witness Banzer described the Company's overall pricing policies in developing the rate schedules he proposed in the proceeding. In general, these policies and principles are as follows: (1) provide telecommunication products and services· at reasonable price levels; (2) distribute the revenue requirements in a fair manner such that charges for residential local service will not impede the overall objective of promoting universal service; (3) give consideration in developing revenue requirement distribution of. the options large business customers have in the area of interconnection for local and toll access.

The pricing principles, according to witness Banzer, were subsequently applied to formulate changes in recurring rates for basic local exchange services, nonrecurring charges for operator verification and busy interrupt, operator assistance for local calls and local directory assistance calls, service connection charges, the coin telephone charge, directory listing charges, touch calling service, rotary line service, custom calling service, direct inward dialing service, identified outward dialing service, and local private line service.

Public Staff witness Willis expressed recommendations on the Company's rate proposals with which he differed including: (1) local rate relationships; (2) the local directory assistance charge; (3) service charges; (4) local coin telephone charge; (5) touch call service; and (6) the level of charges for local private lines.

Prior to the beginning of the hearing held in Raleigh, the Company filed a Hearing Memorandum which delineated its agreements and disagreements with the Public Staff's proposed rate design criteria. It agreed that additional gross revenues should be spread based upon Public Staff witness Willis' Exhibit No. 5 including the proposed local exchange rate relationship and disagreed with witness Willis' proposals which included: (1) the local coin rate; (2) service connection charges; (3) touch call service; and (4) maintenance of service timed labor charges.

Company witness Banzer recommended that the local paystation rate be increased from $.20 per local call to $.25 per local call, whereas witness Willis recommended that the rate remain at $.20 per local call.

Witness Banzer indicated in his rebuttal testimony that the Company has always advocated that coin service be self-supportive through the rates charged. Witness Banzer further stated that the Company had provided a cost study to the Public Staff which proved that a rate of 25 cents per local call will cover the full cost of supporting a public paystation. Witness Banzer also mentioned that a cost study was provided pursuant to a request by the Public Staff which included the effect of the application of toll separation factors which indicated that public paystation service receives contribution from toll services. Witness Banzer stated that it was the Company's position that any contribution received through the use of paystations should benefit the general body of ratepayers, not the casual users of paystations.

Additionally, he stated that Southern Bell, which serves adjacent areas to General, has a local coin rate of 25 cents. Witness Banzer commented that allowing General to increase its rate by a nickel to the level of 25 cents will minimize possible customer confusion as customers move between the serving areas.

Public Staff witness Willis based his recommendation to keep the local coin rate at 20 cents per local call on the Company's cost study which utilized separation factors and allocated portions of the investment to toll services. Witness Willis stated that this study indicated that a charge of 20 cents per local call covers all of the Company's expenses and provides a contribution to local services at the present rate.

The Commission believes that it is reasonable for General to be allowed to increase its local coin rate from 20 cents to 25 cents. This local coin rate is consistent with the rate allowed for Southern Bell Telephone and Telegraph Company and Continental Telephone Company of North Carolina in recent general rate proceedings. The Commission also notes that customer owned coin-operated phones operating in North Carolina are allowed to charge 25 cents per local call. Thus it seems perfectly reasonable to allow General to increase its coin rate to 25 cents. However, consistent with previous findings of the Commission regarding the adequacy of service provided by General during the test year and assuming a continuation of the current trend of improved service, this increased charge may be implemented six months from the effective date the rates become effective in this case. This finding corresponds to the Commission's conclusion that General did not consistently maintain adequate service to its customers during the period evaluated and studied by the Public Staff in this case, but that there has been a positive trend of improvement in the Company's overall quality of service during the last six months in particular.

Company witness Banzer and Public Staff witness Willis differed on the proposed level of charges for the residential central office work charge which affects both the minimum service connection charge and the service reconnect charge. Witness Banzer proposed to set all service charges based upon an updated cost study and to place the full cost on the cost causer.

During cross-examination witness Banzer was asked if he thought residential rates were subsidized and he responded affirmatively. Witness Banzer was then asked, "If the Company subsidizes the residential monthly recurring rates to subsidize universal service, isn't it logical that it would also subsidize the nonrecurring charges?" Witness Banzer indicated that this would give false signals to the customer. When asked, "If a person out there, a potential subscriber, is unable to obtain his basic service because of a high entry fee there, then the monthly subsidized rate can't benefit the potential subscriber then, can it?" Witness Banzer answered, "Not if he cannot afford to get service, no." Witness Banzer, during cross-examination agreed that if the current level of installation charges is a deterrent and if rates are reduced to make it financially easier for a customer to have telephone service installed, this would increase the total number of customers receiving service.

Witness Willis, in his prefiled testimony, indicated that he had no opposition to the Company's cost studies but had several recommendations concerning the application of the Company's proposed charges. Witness Willis specifically mentioned the Company's proposal to increase its current level of residential central office work charge from $14.57 to $26.95 and the effect that this would have on the minimum charge to obtain basic residential service and the cost for residential service restoration. According to witness Willis the current minimum residential service connection charge of $34.48 and the current residential restoration charge of $21.76 would increase to $52.10 and $37.90, respectively. During cross-examination witness Willis stated that his main concern with the Company's proposals for the minimum residential service connection charge and the residential restoration charge was the absolute amount of the proposed increase. Witness Willis indicated that he had studied the minimum service connection charges for four major North Carolina telephone companies and their average charge was $35.68. Witness Willis stated that his recommendation for General's minimum service connection charge of $39.72 is 11.3% greater than the four-company average of $35.68.

During cross-examination, witness Willis indicated that he was recommending an increase from $34.48 to $39.72. Further, it was his recommendation that the residential service restoration charge be increased from $21.76 to $25.52, a 17.3% increase.

The Commission concludes that the residential central office work charge should be increased from $14.57 to $17.60. Although the cost evidence provided by the Company is persuasive, the Commission believes that the proposed increase is too extreme to be accomplished in one general rate proceeding. The approved increase is less than that proposed by the Company to reflect the Commission's concern regarding universal service. The Commission is of the opinion that the level of installation charges does impact universal telephone service and that a more moderate increase is warranted in this case. The Commission does, however, believe that an increase in the residential central office work rate is justified. The approved increase will allow this charge to be priced closer to cost. The Commission finds the Public Staff's proposed charge for residential service restoration of $25.52 appropriate. The Commission believes that the Company's proposal represents too burdensome an increase in this charge and that the Public Staff proposal represents a reasonable increase in this service for purposes of this case. The Commission notes that General's proposed charge would exceed applicable charges for similar services provided by other local exchange companies in the state.

Company witness Banzer proposed to include touch call as part of basic service. Witness Banzer stated that it is his opinion that touch call is no longer a novelty and that customers consider it a part of basic service, not an add-on to basic service. Witness Banzer proposed to leave the choice of selecting rotary dial or touch calling service up to the customer.

In his prefiled testimony, Public Staff witness Willis indicated that the Company's proposal to use touch calling as a standard offering would necessitate shifting approximately $825,000 of annual revenue to basic exchange customers. According to his testimony this action, with no revenue requirement change, would cause the yearly cost of residential one-party line service equipped with rotary dial equipment to increase by approximately $6.00 per year. Witness Willis also stated that, if approved, a large number of customers would be unable to benefit from touch calling service unless they were to change their existing equipment to accommodate touch calling service.

It was his recommendation that the rates for touch calling service remain unchanged.

The Commission concludes that the charges for touch call service should not be eliminated in this case. The Commission believes that elimination of this charge would have a significant impact on rotary subscribers of the Company and such rate change may not be justified. The Commission does however conclude that the charges should be reduced. The Commission thus finds touch call charges of $1.00, $1.50, and $2.00 appropriate for residential, business, and PBX subscribers, respectively.

Witness Banzer proposed increases for the Company's maintenance of service charge. Likewise he proposed to use this same tariff structure which has a specific charge for the first 30 minutes of activities and another charge for each additional 30 minutes or fraction thereof for a new tariff entitled "Relocation of Drop."

Witness Willis recommended that the Company recover its costs in both tariff proposals by charging a flat charge of $26.25 and $.55 per minute for the actual time spent to either discover that the fault is in the customer's premises equipment or for the actual time spent performing a relocation of a drop. It was his contention that many on-site work activities can be concluded in a relatively short period of time and that customers will be overcharged in situations where they are charged for a full 30 minutes increment of work where only a fraction of the increment is required to complete the work.

The Commission concludes that the Company's proposed maintenance of service charges are reasonable. It is the Commission's opinion that charging for labor cost by the minute may be too burdensome and may be more costly than beneficial. The Commission does not believe that 30-minute time intervals proposed by the Company are unreasonable and therefore finds the Company's proposal just and reasonable.

Witness Banzer stated in his rebuttal testimony that all of the other rate proposals put forth by the Public Staff and discussed by witness Willis were acceptable to General other than those discussed above.

Based upon all the evidence of record regarding rate design and tariff proposals, the Commission concludes that the rates designed in accordance with the guidelines set forth in Appendix C attached hereto will be just and reasonable.

IT IS, THEREFORE, ORDERED as follows:

1. That General Telephone Company of the South, be, and is hereby, allowed to increase its local service rates and charges by $3,299,961 above the revenue level that would have resulted from rates currently in effect based on test year units; except that the Company shall not increase its paystation rate for local calls for a period of not less than six months due to slightly inadequate service during the period of time discussed in this Order.

2. That the Applicant be, and hereby is, ordered to continue to make every fair and reasonable effort to improve the quality of service currently

being provided to its subscribers and to continue to take appropriate steps to remedy the service problems described herein.

3. That the recommended operating statistics and objectives found in Public Staff witness McLawhorn's direct testimony and also attached to this Order as Appendix A, shall be used in evaluating quality of service for the Applicant henceforth from the effective date of this Order. All previous Commission ordered service objective requirements are hereby rescinded.

4. That the annual depreciation rates, attached hereto as Appendix B, be, and hereby are, approved effective retroactive to January 1, 1986.

5. That the Applicant be, and hereby is, ordered to file a detailed plan with the Commission demonstrating the basis for all costs charged to the Company's North Carolina operations from GTE Service Corporation. Said plan should be filed prior to any future general rate case.

6. That the Public Staff and the Company shall work together in developing appropriate records and reports to be filed on behalf of GTE Directories Corporation.

7. That the Applicant be, and hereby is, required to propose specific tariffs reflecting changes in rates, charges, and regulations to effect the increase in revenues approved herein in accordance with the guidelines set forth in Appendix C attached hereto within five working days of the date of this Order. [Five copies required]. Workpapers supporting such proposals should also be filed with the Commission. [Five copies required]. (Formats such as item 30 of the minimum filing requirement, N.C.U.C. Form P-1 are suggested). Comments with respect to the Company's rate schedule proposals shall be filed within five working days thereafter.

8. That the Public Staff be, and the same is hereby, requested to continue to monitor and study the Company's quality of service during the next six months. The Company shall not increase its paystation rate during such period of time, but may increase its paystation rate from 20¢ to 25¢ per local call six months from the effective date of the rate increase allowed by this Order, unless the Commission shall, by further Order, continue to deny such increase upon motion of the Public Staff based upon a finding that the Company's overall quality of service was inadequate during said six month period of time.

9. 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 Ordering Paragraph 7 above.

ISSUED BY ORDER OF THE COMMISSION.
This the 16th day of September 1986.

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

## APPENDIX A
## GENERAL TELEPHONE COMPANY OF THE SOUTH
## SERVICE OBJECTIVES

| DESCRIPTION | OBJECTIVE |
|---|---|
| Intraoffice completion rate | 99% or more |
| Interoffice completion rate | 98% or more |
| Direct Distance Dialing completion rate | 95% or more |
| EAS transmission loss (dialed test no.) | 95% or more between -2 to -10dbm |
| Intrastate toll transmission loss (dialed test no.) | 95% or more between -3 -12dbm |
| EAS trunk noise | 95% or more 30 dbrnc or less |
| Intrastate toll trunk noise | 95% or more 33 dbrnc or less |
| Operator "0" answertime | 90% or more within 10 secs |
| Directory assistance answertime | 85% or more within 10 secs |
| Public Paystations Found out-of-order on test | 10% maximum |
| Business Office Answertime | 90% or more within 20 secs |
| Repair Service Answertime | 90% or more within 20 secs |
| Total customer trouble reports | 8.0 or less per 100 access lines |
| Repeat Reports | 1.60 reports or less per 100 access lines |
| Out-of-service troubles cleared within 24 hours | 95% or more |
| Regular service orders completed within 5 working days | 90% or more |
| New service installation appointments not met for Company reasons | 5% or less |
| New service held orders not completed within 14 working days | 0.1% or less of total access lines |
| Regrade application held orders not completed within 14 working days | 1.0% or less of total access lines |

## APPENDIX B
## GENERAL TELEPHONE COMPANY OF THE SOUTH
## APPROVED DEPRECIATION RATES

| | | | Rem. | Future | R.L. |
|---|---|---|---|---|---|
| Account | Description | Reserve | Life | Net Salv | Rate |
| | | % | Yrs. | % | |
| 212 | Buildings | 9.8 | 37.0 | 10.0 | 2.2 |
| 221 | Swbd. Eq. Dig. | (3.0) | 2.5 | 35.0 | 27.2 |
| 221 | Auto Swit. | Amortization | | | |
| 221 | A.M.R.E. | Amortization | | | |
| 221 | Auto. Swit. Dig. | 7.1 | 18.8 | 2.0 | 4.8 |
| 221 | Circuit Eq. | 17.8 | 9.8 | 5.0 | 7.9 |
| 221 | Radio Eq. | 63.7 | 3.9 | 0.0 | 9.3 |
| 231 | Telephone App. | | | | 12.8 |
| 231 | TTY | | | | 7.6 |
| 234 | Radio Te. | | | | 0.0 |
| 234 | Large PBX | | | | 20.5 |
| 235 | Coin Tel. | | | | 12.8 |
| 241 | Pole Lines | 35.1 | 20.0 | (25.0) | 4.5 |
| 242.1 | Aerial Cable | 42.9 | 17.8 | 5.0 | 2.9 |
| 242.2 | Aerial Fiber | 1.4 | 30.0 | (5.0) | 3.5 |
| 242.1 | Undgrd. Cable | 23.9 | 22.0 | (5.0) | 3.7 |
| 242.2 | Undgrd. Fiber | 0.6 | 35.0 | (5.0) | 3.0 |
| 242.3 | Buried Cable | 12.1 | 21.0 | 0.0 | 4.2 |
| 242.3 | Buried Fiber | 1.8 | 30.0 | (5.0) | 3.4 |
| 243 | Aerial Wire | 12.5 | 5.3 | (65.0) | 28.8 |
| 244 | Conduit | 21.5 | 50.0 | (1.0) | 1.6 |
| 261 | Furniture | 10.3 | 13.6 | 20.0 | 5.1 |
| 261 | Office Eq. | 19.9 | 8.8 | 20.0 | 6.8 |
| 261 | Data Proc. Eq. | 7.0 | 6.0 | 0.0 | 15.5 |
| 262 | Other Comm. Eq. | | | | 14.4 |
| 264 | Vehicles | 42.9 | 5.8 | 26.0 | 5.4 |
| 264 | Aircraft | 17.7 | 6.8 | 60.0 | 3.3 |
| 264 | Shop Eq. | 29.7 | 7.1 | 2.0 | 9.6 |
| 264 | Tolls | 24.6 | 16.2 | 2.0 | 4.5 |
| | Inside Wiring | Amortization | | | |
| | Invt. Adj. Sta. App. | Amortization | | | |

APPENDIX C
GENERAL TELEPHONE OF THE SOUTH
Docket No. P-19, Sub 207
RATE DESIGN GUIDELINES

1. The following schedule of price relationships for monthly rates directly related to basic exchange access lines should be adopted.

| | |
|---|---|
| Business one-party line rate to residential one-party line rate ratio | 2.5:1.0 |
| Business one-party line rate equipped with rotary line service | 1.3:1.0 |
| Manual access line rate not equipped with rotary line service to the business one-party line rate ratio | 1.2:1.0 |
| Automatic trunk rate to business one-party line rate | 1.75:1.0 |

2. The following schedule of nonrecurring charges should be adopted:

SERVICE CONNECTION CHARGES

| | | Residential Rates | Business Rates |
|---|---|---|---|
| A. | Service Order | | |
| | 1. Primary | $25.15 | $26.45 |
| | 2. Secondary | 10.95 | 11.60 |
| | 3. Records only | 9.95 | 10.40 |
| B. | Premises Visit, each | 13.10 | 13.10 |
| C. | Central Office Work, each | 17.60 | 26.95 |
| D. | Inside Wiring, each | 19.70 | 29.10 |
| E. | Equipment Work, each | 15.15 | 15.15 |
| F. | Service Restoration | 25.52 | 38.55 |
| G. | Station Connection | 6.85 | 6.85 |
| H. | Station Handling | 5.25 | 5.25 |
| | PBX & Centrex Stations | | 3.65 |
| I. | Telephone Number Change (Centrex CU, PBX or Key System Requiring a Premises Visit) | | 2.25 |

## RESIDENCE OR BUSINESS

| | |
|---|---|
| Maintenance of Service Charge | |
| First 30 Minutes | $43.50 |
| Each Additional 30 Minutes | 16.45 |
| Relocation of Drop | |
| First 30 Minutes | 43.50 |
| Each Additional 30 Minutes | 16.45 |
| Customer Return Plan | 15.85 |
| Return Check Charge | 15.00 |
| Jacks | |
| Ancillary device | 21.00 |
| Data equipment programmed | 40.00 |

3. Assuming a continuation of the current trend of improved service, the local coin telephone charge should be increased to 25 cents six months after the effective date of the increase in rates allowed herein. The revenues associated with the increase in coin telephone charges from 20 cents to 25 cents amount to approximately $143,006 annually.

4. The Company's present touch calling service rates should be reduced to the following rates:

| | |
|---|---|
| Residential | $1.00 |
| Business | $1.50 |
| PBX Trunk | $2.00 |

5. The local private line rates proposed to be increased by the Company should not exceed an increase of 30% over the present rates.

6. The remaining rate changes should be consistent with the proposals of the Public Staff with the exception of basic local exchange rates. The Company and Public Staff agreed upon substantially all of the remaining rate design issues and upon the methodology to be used to design basic local exchange rates. The Commission finds this methodology reasonable. However, the revenue requirements approved herein differ from the Company's proposed and Public Staff's proposed. Therefore, the basic exchange rates should be modified from the proposed levels to produce the revenue requirements approved herein.

DOCKET NO. P-84, SUB 24

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

| | | |
|---|---|---|
| In the Matter of<br>Application by Two-Way Radio of Carolina, Inc.<br>to Discontinue Manual Mobile Service in Gastonia,<br>Statesville, and Shelby, North Carolina | )<br>)<br>) | ORDER DENYING<br>APPLICATION |

HEARD IN: Iredell County Hall of Justice, Statesville, North Carolina, on Wednesday, February 5, 1986, at 7:00 p.m.

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

APPEARANCES:

For Two-Way Radio of Carolina, Inc.:

Jerry B. Fruitt, Fruitt and Austin, Attorneys at Law, Post Office Box 12547, Raleigh, North Carolina 27605.

For the Using and Consuming Public:

Antoinette R. Wike, Chief Counsel, Public Staff-North Carolina Utilities Commission, Post Office Box 29520, Raleigh, North Carolina 27626-0520.

BY THE COMMISSION: This matter arose upon receipt of a letter dated November 21, 1985, filed by Two-Way Radio of Carolina, Inc. (hereinafter referred to as "Two-Way" or "Company") requesting authority to discontinue the provision of manual mobile service to 17 subscribers with 26 mobile units at Gastonia, Statesville, and Shelby, North Carolina, effective February 1, 1986.

In its letter, Two-Way stated the following reasons for its belief that it would not be able to continue providing the subject service:

1. Gastonia Telephone Answering Service (Gastonia TAS), Two-Way's 24-hour dispatching service, is the only service in Gaston County capable of performing this function.

2. Gastonia TAS dispatches calls in Gastonia and Statesville for Two-Way's Channel 11 manual mobile service.

3. Gastonia TAS has started a fully-interconnected Direct Dial Paging Service of its own to which Two-Way has lost some 100 customers.

4. Two-Way will soon ask the Commission to issue a show cause order against Gastonia TAS, as it believes Gastonia TAS to be in violation of North Carolina law.

5. Two-Way believes that these actions will result in the cancellation of the agreement for dispatching between Two-Way and Gastonia TAS.

6. Interexchange channel costs for extending Gastonia and Statesville facilities to Charlotte make the use of a Charlotte telephone answering service unrealistic.

Two-Way further stated that it is able to offer alternate services in the form of Automatic Dial Service and repeater service and that cellular service is available in Gaston County.

In addition to the foregoing, Two-Way pointed out that it is furnishing manual mobile service under cost and that the Company is planning a statewide area paging system.

The Commission initially considered the matter at its Regular Staff Conference on December 9, 1985. The Commission approved Two-Way's proposal and required the Company to notify each affected subscriber that the manual service would be discontinued effective February 1, 1986. In response to the notice, the Commission received written requests for hearing from several subscribers and reconsidered the matter at its Regular Staff Conferences on January 6 and 13, 1986. In order to receive testimony from those subscribers and other interested parties, the Commission issued an Order on January 15, 1986, scheduling a public hearing for February 4, 1986, in Statesville and postponing discontinuation of the manual mobile service pending investigation and hearing. By Order dated January 16, 1986, the Commission rescheduled the hearing to February 5, 1986.

The matter came on for hearing at the time and place shown above. Two-Way presented the testimony and exhibits of its President, Allen L. Guin, in support of the requested discontinuance of service. The following individuals, subscribers of Two-Way, testified in opposition to the request: Glenn C. Moore, Hunter McMillan, Clarence Felker, Ralph Brown, Larry Watts, B. B. McCormick, and Butch McCormick. Thomas Cleveland Huffstickler, Jr., of Gastonia TAS, also testified.

Mr. Guin testified that Two-Way has been providing manual mobile service in the Gastonia-Statesville-Shelby area since 1961 and has held a certificate to provide the service since 1966. The Company currently serves 17 customers with a total of 27 units. Service is provided by means of an antenna on Anderson Mountain, a dispatcher in Gastonia, and Foreign Exchange (FX) lines from Gastonia to Shelby and Statesville. Two-Way proposes to devote the VHF channel now used for manual mobile service to wide area paging which would serve more subscribers. In addition to paging, the Company offers automatic dial service and repeater service as options to its manual mobile subscribers.

Mr. Guin stated that the manual service is under cost and outdated. He sponsored an exhibit which purports to show the development of a rate per unit per month for manual mobile service to 27 units based on estimated expenses including an increase in dispatching contract expenses. He also sponsored exhibits which consisted of maps showing the areas Two-Way proposes to cover by means of paging, automatic dial, and repeater services.

On cross-examination, Mr. Guin testified that the Company's customer premises equipment (CPE) and interconnect equipment associated with manual mobile service is old, while the common or base station equipment was acquired only two and a half to three years ago. Mr. Guin also testified that the basic rate of $15 per month for manual mobile service has been in effect since 1961 and that the Company has never sought to increase such rate. He conceded that of the costs shown on his exhibit only those associated with FX lines, dispatching, and possibly tower rental would be avoided if manual service were discontinued.

Mr. Guin testified that Two-Way had as many as 50 manual mobile units on Channel 11 in the 1970's, but that the Company probably has not made any effort recently to increase the number of units receiving such service. The witness also admitted that Two-Way sent an "ill-advised" letter to its subscribers in 1985 proposing to discontinue manual service in April of that year. The letter was later withdrawn. Mr. Guin further stated that the Company had planned from early 1985 to put in other equipment and had applied for an FCC license for automatic dial service and repeater service in anticipation of using the VHF channel for wide area paging. According to Mr. Guin, Two-Way serves some 8,000 paging units and only 250 to 350 mobile units of any kind. He agreed that revenues from mobile service were only a small part of the Company's total 1984 revenues of $1.9 million.

With regard to the so-called options available to manual mobile subscribers, Mr. Guin acknowledged that VHF coverage is "somewhat greater" than UHF coverage and that repeater service uses a UHF channel. He also acknowledged that repeater service is not interconnected with the landline telephone network but noted that, if the subscribers shared repeater service under a cooperative arrangement, there would be no legal barriers to such interconnection. Finally, Mr. Guin acknowledged that cellular service is currently an option only in Gastonia and only with a Charlotte telephone number.

Mr. Moore testified that he has been a subscriber of Two-Way's manual mobile service for about ten years. He has one unit, which he uses full time in his dairy farm equipment business. He leases his equipment and his bill averages $60 per month. Mr. Moore also subscribes to answering service in Statesville. Manual mobile service enables him to cover most of his eighteen-county territory, with the exception of Stanley County and east of Monroe. Mr. Moore also discussed his inability to use the present manual service in some areas around Charlotte because of interference from a paging service. Mr. Moore stated that the difficulty has arisen within the last few months. With regard to the option of automatic dial service, Mr. Moore explained that, assuming he puts in five channels, a caller cannot call him unless the caller knows which area he is in and the telephone number for the area and unless he has picked up the channel for that area on his unit. Mr. Moore nevertheless stated that he would pay $45 per month for automatic dial service if he could get the same coverage as on the VHF channel. He also stated that he would consider paging if it would give him the range he needs but that repeater service would not give him that range. Moreover, Mr. Moore needs two-way conversations with his customers. Finally, Mr. Moore testified that his business has depended on manual mobile service and he has run it that way. If such service is discontinued, he probably will not be able to take care of the 300 customers he has today. Mr. Moore stated that if could get additional units, he could give his customers better service.

Mr. McMillan testified that he has been a subscriber since 1972 and uses a mobile unit in his crane. He is a one-man operation and has no office. He also has a unit in his pickup truck. He has been well pleased with the service he has had. Mr. McMillan stated that he pays Gastonia TAS $51 per month for answering service in addition to the $15 he pays Two-Way for manual mobile serv.ice. He also pays Two-Way $28 per month for maintenance on one unit and $58 per month for rental and maintenance on the other.

Mr. McMillan stated that he first heard that Two-Way was thinking of discontinuing manual service about three years ago when he bought a truck with a mobile phone in it and tried to have the unit switched to his name. Two-Way told him the Company would come and take the phone out. Mr. McMillan said he had asked for a second unit for his car about five years ago, but was unable to get service. He finally got a second unit because he bought the truck.

With regard to the options proposed by Two-Way, Mr. McMillan testified that he has two pagers now but they are not like two-way conversation, that there is no Gastonia number with cellular service, and that he has not seen repeater service work and besides he has no office. The most important thing, he said, is the customers' ability to call him. Mr. McMillan covers about the same territory as Mr. Moore and would pay a higher rate to keep the range he has now.

Mr. Felker testified that he has been a Two-Way subscriber since 1979 and has one mobile unit. He asked about a year and a half ago if another unit was available and was told by a serviceman that it was not. Mr. Felker is in the construction business and does not have an office. He operates as far as 60 to 70, but mainly 30 to 40 miles, from Statesville. He believes he would pay more to get the range if the Commission approved an increase for manual service. Mr. Felker currently leases his unit for $58 a month and his average monthly bill for the past six years has been around $100.

Mr. Felker testified that none of the options discussed would offer him the kind of service in terms of range which he enjoys today. A pager would be no good to him at all. Nor would repeater service. He needs to talk directly to customers and suppliers. He stated that cellular might be all right if it were in the area. He understands that automatic dial would probably cover Iredell County, but Two-Way has not guaranteed him it would go all the way to the north end or to the far south. Nevertheless, Mr. Felker stated that he would have no problem with automatic dial if it had the VHF range. He talked to Two-Way last February or March about changing over to automatic dial, but refused the Company's offer to install such service in his truck on a six-month trial basis and remove the manual unit.

Finally, Mr. Felker stated that he would take another unit for another truck tommorrow, perhaps even at a higher price, because he operates from the telephone. The telephone he has is worth more to him than another man and vehicle.

Mr. Brown testified that he has been a subscriber of Two-Way for ten or twelve years. His businesses include Lake Norman Security Systems and his service trucks work in the Charlotte, Gastonia, Shelby, North Wilkesboro, Winston-Salem, and Concord areas. He has three units and, although he would like to have more, he has not tried to get them because he has understood the service was going to be changed to automatic dial. Mr. Brown stated that automatic dial service would be fine if it had the same range. He has tried one automatic dial unit and it works well in Statesville, but does not get too far out of town. He has also tried repeater service, which gives him the range but has holes in it. Mr. Brown further stated that he does not use the telephone the way Mr. Felker does, but when he needs two-way conversations he really needs them. Cellular is not an option because it is not available in Statesville yet. Mr. Brown's bill for manual service is around $85 per month. He would not mind an increase in rates.

Mr. Brown further testified that he runs an answering service in Statesville which would be available to replace Gastonia TAS as dispatcher for Two-Way. He has discussed this arrangement with Mr. Guin.

Larry Watts testified that he and his partner, Dr. Rogers, practice veterinary medicine in Iredell and Alexander Counties and the edge of Yadkin, Wilkes, Caldwell, and Catawba Counties. He bought his first manual mobile unit in 1977 and the second in 1978. His bill is $58 per month. He is currently trying both paging and repeater services at no charge.

Dr. Watts stated that the pager does not cover the range, does not reach Alexander County at all, and he assumes that automatic dial would not cover the range either since he was told the pager would reach a little farther than automatic dial service. As for repeater service, it works well within the circles shown on Mr. Guin's map, and beyond the range in high places, but it does not work in low places. He has not considered cellular, because it is not available. Finally, Dr. Watts testified that he needs two-way conversation. Automatic dial would suit his needs, if it had the range. He would have no problem paying three or four times the current rate to keep manual service.

Mr. B. B. McCormick testified that he is President of Piedmont Construction and Water Company and a long-time subscriber of Two-Way. He owns two manual units and rents one. He has tried UHF automatic dial service, and it will not reach six miles. Piedmont covers three counties. He would not object to automatic dial service, if it covered those counties. Repeater, cellular, paging, and automatic dial service as currently offered would not give him the same kind of service he has today. Mr. McCormick further stated that he has tried to get additional manual units, but has been unable to do so and that he would not mind paying a little more for manual service.

Mr. Butch McCormick testified that he is Vice President of Piedmont Construction and Water Company. He has tried repeater service and it has pretty good range, but nothing like the range he has now. The biggest problem is after office hours. Mr. McCormick further stated that in the water business he needs to be able to call from the field to servicemen at home whenever an emergency occurs. He has not seen anything to match the manual system he has now.

Mr. Huffstickler testified that his business is the Answering Service of Gastonia and he has provided dispatching service for Two-Way for seventeen years. He is also Two-Way's agent for mobile service and pager service in Gaston County. Mr. Huffstickler stated that he charges Two-Way $250 per month for dispatching. Answering service goes hand in hand with mobile and he provides no answering services free of charge. He is also compensated by Two-Way for soliciting new customers, demonstrating mobile units, keeping track of minutes of use, and furnishing power to charge up pagers.

Mr. Huffstickler stated that he did not think a manual unit had been installed in Gastonia in the last three years. He has solicited customers in the last year, but quit because he would not get the units from Two-Way. He told people Two-Way was getting ready to change over to automatic dial service. He stated that automatic dial service would be more desirable than manual service if it had the range, but that people just do not get the range in service they have been getting. Mr. Huffstickler further stated that he did not think there would be any problem getting 40 or 50 units on the manual channel, especially between Statesville and Gastonia, since witnesses at the hearing said they would take about seven more units and he knows of about five more in Gastonia.

Finally, Mr. Huffstickler stated that he is not really competing with Two-Way's paging service and that he is operating a private paging system in compliance with FCC policy and regulations. He has no objection to continuing to dispatch for Two-Way, even if Two-Way files a law suit against him, and would honor the 90-day notice of cancellation provisions in his contract with Two-Way.

Based on the foregoing and the entire record in this proceeding, the Commission now makes the following

## FINDINGS OF FACT

1. Two-Way Radio of Carolina, Inc., has provided manual mobile two-way radio telecommunications service to the public in the Gastonia - Statesville - Shelby area pursuant to a certificate of convenience and necessity issued by this Commission since 1966.

2. Two-Way provides manual mobile service over a VHF channel, Channel 11, which is capable of handling approximately 50 manual units efficiently and effectively.

3. Two-Way currently serves 17 subscribers having a combination of 27 leased and owned manual mobile units among them.

4. In recent years, Two-Way has either discouraged or denied requests by present and potential subscribers for service to additional manual mobile units.

5. It has been Two-Way's intention for at least a year to discontinue manual mobile service in order that its VHF channel may be made available for wide area paging service and to offer automatic dial service and repeater service over UHF channels.

6. Many, if not all, of the affected subscribers depend upon VHF manual mobile service for two-way voice communications in connection with the landline telephone system over a wide geographical area.

7. Paging service does not offer two-way voice communications; repeater service which is offered by Two-Way does not interconnect with the landline telephone system; and automatic dial service, when provided over a UHF channel, does not offer as great a range as service over a VHF channel.

8. Two-Way serves some 8,000 paging units and only 250 to 350 mobile units, both manual and automatic, in all of its service territory.

9. Two-Way's paging service is more profitable than its mobile services, which are only a small part of the Company's total operations.

10. While Two-Way's tariffed rates for manual mobile service do not today cover the avoidable costs of providing such service, the Company has never sought to increase the rates for this service. The greater part of the Company's estimated total costs for providing manual mobile service are unavoidable and will be incurred whether or not such service is abandoned.

11. In addition to the $15.00 per month (plus $.15 per minute of usage over 100 minutes) basic tariffed rate for manual mobile service, Two-Way derives revenues for unregulated services such as leasing and maintenance of manual mobile units.

12. Two-Way has never before sought Commission authority to increase its rates for manual mobile service or to obsolete the offering.

13. The initial request to discontinue manual mobile service in the affected area rested upon Two-Way's apparent belief that the dispatching arrangement between Two-Way and Gastonia TAS would soon be terminated as a result of Two-Way's filing a civil law suit and a complaint with the North Carolina Utilities Commission against Gastonia TAS in connection with the latter's paging operation.

14. Neither of the above actions has been instituted, but, even if they were, Mr. Huffstickler of Gastonia TAS has represented to the Commission his willingness to continue to provide dispatching service at current rates and, in any event, to honor the 90-day notice of cancellation provision in its contract with Two-Way.

15. There is an answering service in Statesville, operated by Mr. Brown of Lake Norman Security Systems, who has represented to the Commission his willingness to provide dispatching service to Two-Way at a rate comparable to that charged by Gastonia TAS.

WHEREUPON, the Commission reaches the following

## CONCLUSIONS

1. This matter has evolved into an application to abandon or reduce service pursuant to G.S. 62-118(a). Thus, the Commission is without power, unless it finds "that public convenience and necessity are no longer served, or that there is no reasonable probability of a public utility realizing sufficient revenue from a service to meet its expenses," to authorize the abandonment or reduction proposed by Two-Way. It has been held that the Commission may deny a request to reduce service only if it finds both that the public convenience and necessity require that the service be continued and that the utility in so doing will not incur costs out of proportion to any benefit to the public. Utilities Commission v. Atlantic Coast Line Railroad, 268 N.C. 242, 150 S.E.2d 386 (1966). Nevertheless, under G.S. 62-75, the burden of proof in this proceeding remains with the Company.

2. The overwhelming and uncontroverted evidence shows that there is a demand for manual mobile service which approaches Two-Way's capacity to provide such service, notwithstanding the Company's efforts not only to discourage additional use of the service but also to hasten its demise. None of the substitute offerings proposed by Two-Way are acceptable to the Company's affected customers. Some subscribers, such as Mr. Felker and Mr. McMillan, have no offices and depend on their mobile units for two-way communication with customers over an area encompassing several counties. Indeed, these individuals have largely built their businesses on the tacit assurance of the continued availability of such service. Other subscribers, such as Mr. Moore, Dr. Watts, and the McCormicks, provide valualbe services to a substantial segment of the population, services of which two-way communication is an integral part. None of the options suggested would meet the needs of these subscribers. Evidence that the Company proposes to replace the relatively dated manual mobile system with more up-to-date automatic dial and repeater systems must be considered in light of the subscribers' obvious satisfaction with the service they have received from the manual mobile system. There is little or no demand among these subscribers for automatic dial or repeater service over UHF channels with reduced range. Finally, the fact that more paging units than mobile units can be served on the VHF channel is relevant only insofar as Two-Way's interests are concerned and is hardly determinative of the interests of the affected subscribers, for whom paging is not an option. From the subscribers' standpoint, Channell 11 cannot be more efficiently utilized than in providing present coverage to the maximum practical number of mobile subscribers. Therefore, the Commission concludes that the public convenience and necessity require that the manual mobile service in question be continued.

3. There is strong evidence that the demand for manual mobile service would not be repressed by a moderate increase in the tariffed rates. What are cost based rates, however, is not at issue in an abandonment proceeding and, on the evidence in this case, would be a matter of sheer speculation. Mr. Guin's suggestion that it would take a rate of $148 per unit per month for Two-Way to meet its expenses is patently unreasonable. It assumes, among other things, that dispatching costs will increase six-fold and that the number of units will remain at 27. The sole apparent bases for these assumptions are Mr. Guin's opinions that Gastonia TAS should be paid $1600 per month and that manual mobile service should not be promoted, neither of which is supported by the record. To the contrary, the record shows that Gastonia TAS receives compensation in addition to the $250 per month dispatching fee for other services rendered to Two-Way and its subscribers. The record also shows that, but for Two-Way's intent to discontinue manual mobile service, the number of units and subscribers would be greater than at present. The Commission can only conclude, in the final analysis, that the cost which most concerns Two-Way in this case is not the cost of dispatching or of FX lines but an opportunity cost; namely, the profit forgone by using its VHF capacity for manual mobile service rather than for its more lucrative paging operations. Yet, Two-Way is a public utility. A public utility is entitled to the opportunity, with sound management, to recover its reasonable expenses and earn a fair rate of return on its investment from the totality of its operations; no more and no less. If the Company needs rate relief, it should file an appropriate request with the Commission, but a utility that has not attempted to increase its rates or the number of its subscribers cannot be heard to complain that its service is priced under cost. Therefore, the Commission concludes that Two-Way has failed

to show that there is no reasonable probability of its realizing sufficient revenues from manual mobile service to meet its expenses. The costs incurred in continuing the service are clearly in keeping with the benefits to the public.

4. The Commission further notes that Two-Way is presently providing automatic dial service (UHF only) to customers in portions of the Company's service territory pursuant to a lawful tariff approved by this Commission at the following rates:

AUTOMATIC INTERCONNECTED DIAL SERVICE (UHF ONLY)

| | | |
|---|---|---|
| a. | Communication service includes an unlimited number of two minute calls between mobile units, mobile to landline and landline to mobile, per month. | $45.00 |
| | For calls which exceed two minutes in length airtime usage in excess of two minutes per call, per minute or portion thereof. | .30 |
| b. | Dial Tone service, same as above except no usage allowance, per month. | $30.00 |
| | Airtime usage, per minute or portion thereof. | .30 |

Based on the evidence in this case, the Commission is of the opinion that automatic dial service is a far more technologically advanced and efficient service than manual mobile service and that implementation of automatic dial service in North Carolina should generally be encouraged. The Commission believes that one reasonable course of action and potential long term solution which should be acceptable to all affected parties in this case would be for Two-Way to file an application for authority to replace the existing manual mobile service with automatic dial service on VHF Channel 11 at the rates presently approved for UHF automatic dial service. Providing automatic dial service on VHF Channel 11 to the affected subscribers would enable those customers to continue to receive the same level of service in terms of area of coverage as they are presently receiving. The Commission believes this plan would constitute a more efficient use of VHF Channel 11 rather than continuing to use that channel for manual mobile service since it is likely that the Company could serve more than 50 customers through automatic dial service. The Commission also believes this plan would be fair to Two-Way in that the Company presently has an approved tariff in effect for automatic dial service, UHF only, which could be expanded to encompass VHF service. This would significantly increase the Company's revenues over those which it is presently receiving for its manual mobile service. The Commission is of the opinion that the presently approved rates for automatic dial service are fair and reasonable to consumers and would be appropriate for automatic dial service provided on VHF Channel 11 to subscribers in the Company's Gastonia, Statesville and Shelby service area.

5. Accordingly, the Commission is of the opinion, and so concludes, that Two-Way has failed to carry the burden of proof in this proceeding and that the application in this matter should be denied.

IT IS, THEREFORE, ORDERED as follows:

1. That Two-Way's request to discontinue manual mobile service in Gastonia, Statesville, and Shelby is hereby denied.

2. That Two-Way shall investigate the interference problem described by Mr. Glenn Moore during the hearing and file a detailed written report on the problem and its solution within 20 days.

3. That Two-Way shall make mobile service available upon demand in the Company's Gastonia, Statesville and Shelby service area up to the practical capacity of the system.

ISSUED BY ORDER OF THE COMMISSION.
This the 17th day of March 1986.

NORTH CAROLINA UTILITIES COMMISSION
(SEAL) Gail L. Mount, Deputy Clerk

DOCKET NO. W-754, SUB 3

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Application of North Topsail Water and Sewer )
Company for a Certificate of Public ) ORDER GRANTING CERTIFICATE
Convenience and Necessity to Provide Sewer ) OF PUBLIC CONVENIENCE AND
Utility Service in North Topsail and Topsail ) NECESSITY AND APPROVING
Reef Subdivision ) RATES

HEARD IN: Town Hall, Surf City, North Carolina, on May 22, 1986, at 2:00 p.m.

BEFORE: Commissioner Edward B. Hipp, Presiding, Chairman Robert O. Wells, and Commissioner J. A. Wright

APPEARANCES:

For the Applicant:

Charles S. Lanier, 114 Old Bridge Street, Jacksonville, North Carolina 28540

For the Attorney General:

Jo Anne Sanford, Special Deputy Attorney General, Post Office Box 629, Raleigh, North Carolina 27602-0629

For the North Carolina Department of Natural Resources and Community Development:

Daniel F. McLawhorn, Assistant Attorney General, Post Office Box 629, Raleigh, North Carolina 27602-0629

For the Public Staff:

Antoinette R. Wike, General Counsel, Post Office Box 29520, Raleigh, North Carolina 27626-0520

For the Town of Surf City:

Thomas W. H. Alexander, Maupin, Taylor, Ellis & Adams, 3201 Glenwood Avenue, Suite 200, Raleigh, North Carolina 27612

BY THE COMMISSION: On December 20, 1985, North Topsail Water and Sewer, Inc., ("North Topsail" or "the Company") filed an application with the Commission for a certificate of public convenience and necessity and for approval of rates. The application of the Company proposed to provide sewer service to the following areas:

(1) Commencing at the New River Inlet on Topsail Island at North Topsail Shores; thence down the Intracoastal Waterway at the Pender County Line; thence with the Pender County Line to the Atlantic Ocean; thence with the Mean High Water Mark of the Atlantic Ocean to the New

River Inlet; thence with the Inlet to the point of beginning and being all of Topsail Island located in Onslow County.

(2) Topsail Way Shopping Center;

(3) Chadwick Acres Subdivision;

(4) North Shores Golf Community Subdivision;

(5) Golden Acres;

(6) Pages Golden Acres.

The Applicant also requested authority to charge the following rates for sewer service in the proposed expanded service areas:

Flat Rate Residential Service: $15.00

Nonresidential Service: $6.00 lease rate; $2.00 per thousand gallons based upon water consumption.

Tap-on Fees:
Residential: $2,000 per unit and $100.00 connection fee
Commercial: $1,000 for each 250 gallons per day of estimated sewage flow with $5,000 minimum.

On January 7, 1986, the Public Staff filed a motion requesting the Commission to consolidate the application of North Topsail in this docket with the hearing scheduled to begin on January 16, 1986, in Docket No. W-754, Sub 2, which was a show cause proceeding requiring North Topsail to show cause why it should not lose its franchise in North Topsail Subdivision for violation of G.S. 62-110 or file for a new certificate of public convenience and necessity. In its motion, the Public Staff moved that the two dockets should be consolidated for hearing and decision, that a pretrial conference be scheduled, and that the January 16, 1986, hearing in the Sub 2 docket be rescheduled.

On January 8, 1986, the Commission issued an Order scheduling a prehearing conference of the parties to be held on January 16, 1986, in Raleigh in Docket No. W-754, Subs 2 and Sub 3. The Commission's Order set out the scope of the matters to be considered at the prehearing conference. The Commission also granted the Public Staff's motion to consolidate the two pending dockets. The Commission also allowed the Motion to Intervene filed by the Department of Natural Resources and Community Development.

On January 13, 1986, Kinlaw Properties, Ltd., filed a Petition to Intervene in this docket. This Motion to Intervene was allowed.

The prehearing conference was held as scheduled on January 16, 1986, in Raleigh. All of the parties were present and represented by counsel. On January 21, 1986, the Commission issued an Order adopting the prehearing conference report that was agreed upon by all of the parties. One of the items agreed upon was that a further prehearing conference would be tentatively scheduled for April 7, 1986. The prehearing conference report also provided that on or before March 1, 1986, North Topsail Water and Sewer would present certain data to the Department of Natural Resources and Community Development. The Company and the Town of Surf City were also to meet within a reasonable time to attempt to resolve any differences at issue between them in the proceeding.

On March 21, 1986, the Commission issued an Order Rescheduling the Prehearing Conference to April 15, 1986.

The prehearing conference for April 15, 1986, was held as scheduled, with all of the parties present and represented by counsel. The parties presented to the Commission a Motion to sever Docket No. W-754, Sub 2, from Docket No. W-754, Sub 3. In the Motion, the parties also entered into certain stipulations, one of which defined the current franchise area of North Topsail Water and Sewer, Inc. On April 18, 1986, the Commission issued an Order adopting the stipulations of the parties and granting the Motion to sever the two dockets.

Also on April 18, 1986, the Commission issued an Order in Docket No. W-754, Sub 3, scheduling a hearing in Surf City on May 22, 1986, and requiring the Company to give public notice of the hearing. The Commission's Order also provided that North Topsail was to furnish to all parties the information requested by the Attorney General on behalf of the Department of Natural Resources and Community Development in a letter dated April 8, 1986.

On May 21, 1986, Kinlaw Properties, Ltd., filed a petition for leave to withdraw intervention. The petition of Kinlaw Properties, Ltd., for leave to withdraw intervention was allowed by the Commission.

The application of North Topsail came on for hearing on May 22, 1986, in Surf City. The parties were present and represented by counsel. All of the parties presented to the Commission stipulations which had been agreed upon by them, and such stipulations were read into the record as the case agreed upon by the parties. In the stipulations the parties prayed the Commission to enter an order enlarging the franchise area of North Topsail Water and Sewer, Inc., consistent with the stipulations. The Commission also heard testimony from the following public witnesses: Thomas J. Caulfield, Dennis Mercer, Gilbert Grant, Boyd Paylor, Thomas Rhyne, Judy Goff, and Paul Jones.

Upon consideration of the entire record in this docket, and the stipulations entered into by the parties in this proceeding, which stipulations were presented to the Commission on May 22, 1986, and were accepted by the Commission, the Commission makes the following

## FINDINGS OF FACT

1. North Topsail Water and Sewer, Inc., is a public utility providing sewer utility service on the northeastern portion of Topsail Island, North Carolina, as more fully described pursuant to stipulation of the parties entered into in Docket No. W-754, Sub 2, and accepted by the Commission pursuant to an Order of April 18, 1986, in that docket.

2. Pursuant to the agreement of the parties as set forth in their stipulations of May 22, 1986, the issues raised by Docket No. W-754, Sub 3, are as follows: (a) expansion of the current franchise area of North Topsail Water

and Sewer Company to include the mainland areas along State Roads 1518 and 1553 to include the Subdivisions Chadwick Acres, Pages Acres and Golden Acres as well as the areas on Topsail Island between the current franchise area and the Onslow-Pender line; (b) the reasonably projected service demand for these additions to its franchise area; and (c) the capacity of the sewage treatment plant to accommodate the identified need and to expand to accommodate increased demand on the plant.

3. The parties agreed in the stipulations that the franchise area for North Topsail Water and Sewer Company should be expanded as follows:

(a) The utility will be granted as its franchise area all mainland sections that were embraced by the pending application and

(b) The utility will be granted as its franchise area all the lands on Topsail Island north of and including the Scotch Bonnet Pier property.

4. The plant, as built, can serve the immediate needs of the franchise area and the plant, when completed consistent with the Division of Environmental Management issued permit, will have the capacity to serve the reasonably projected needs of the franchise area up to the capacity established in the permit. The projected demand for the service area requires that the utility immediately undertake an enlargement of the plant. To assure that the utility will be enlarged to meet the demand as it occurs, the Applicant North Topsail

(a) will submit a report to the Utilities Commission and the parties by December 1, 1986, which states the status of the plant's expansion and any necessary adjustment to the anticipated demand and use projections for the plant in the report by North Topsail Water and Sewer and

(b) will execute a bond in the amount of TWO HUNDRED THOUSAND AND 00/100 ($200,000.00) DOLLARS payable to the Commission and conditioned upon the construction by North Topsail Water and Sewer, Inc., of facilities required to provide adequate and reasonable sewer services in the franchise area. M.F. Bostic and F. Roger Page, Jr., shall sign individually as securities on the bond.

5. The parties further agreed that, as to the remainder of the area sought by the application for inclusion in the franchise:

(a) The franchise application by North Topsail for the area between the Onslow-Pender line and the Scotch Bonnet Pier will be put on hold until December 1, 1986;

(b) The Town of Surf City will submit a report to the Utilities Commission and the parties by December 1, 1986, which states

1. Whether it intends to provide service in the area between the Onslow-Pender line and the Scotch Bonnet Pier and

2. When it can provide service in the same area;

(c) The Department of Natural Resources and Community Development may submit information regarding the immediacy of need for service in the same area and whether Surf City's proposal will best serve the environmental protection needs of the adjacent waters; and

(d) Unless the parties agree within thirty days of the December 1, 1986, reports on the service provided in the area between the Onslow-Pender line and the Scotch Bonnet pier, a hearing will be scheduled to determine that issue and any other issue raised by the parties within the thirty day period.

6. North Topsail Water and Sewer, Inc., should be authorized to charge the following rates for sewer service in the new franchised areas:

Flat Rate Residential Service: $15.00

Nonresidential Service: $6.00 lease rate; $2.00 per thousand gallons based upon water consumption

Tap-on Fees:

| | |
|---|---|
| Residential: | $2,000 per unit and $100.00 connection fee |
| Commercial: | $1,000 for each 250 gallons per day of estimated sewage flow with $5,000 minimum. |

## CONCLUSIONS
## I.

North Topsail Water and Sewer, Inc., should be granted a certificate of public convenience and necessity to provide sewer utility service in the area more fully described in Appendix A attached to this Order and incorporated herein by reference.

At the hearing in Surf City on May 22, 1986, all of the parties in this docket submitted to the Commission the following stipulations:

"The parties agree that the franchise area for North Topsail Water and Sewer Company should be expanded as follows:.

"(a) The utility will be granted as its franchise area all mainland sections that were embraced by the pending application and

"(b) The utility will be granted as its franchise area all the lands on Topsail Island north and including, the Scotch Bonnet pier property." (Finding of Fact No. 3)

The parties also stipulated that "the plant as built can serve the immediate needs of the franchise area and that the plant, when completed consistent with the Division of Environmental Management issued permit, will have the capacity to serve the reasonably projected needs of the franchise area up to the capacity established in the permit." (Finding No. 4)

The parties also stipulated to the conditions which shall govern the expansion of the franchise area as sought by the Applicant. These conditions are incorporated in this Order.

The Commission accepts the stipulations agreed upon by the parties on May 22, 1986, and issues this Order granting the expansion of North Topsail's franchise area, as agreed upon by the parties and pursuant to the terms and conditions of the stipulations.

II.

The Commission also concludes that the rates proposed to be charged in the expanded franchise area by the Applicant should be approved as the just and reasonable rates of the Applicant. The residential rates are identical to the rates now approved for the Applicant's existing franchise area. The nonresidential rates were unopposed.

IT IS, THEREFORE, ORDERED:

1. That North Topsail Water and Sewer, Inc., shall be granted a certificate of public convenience and necessity to provide sewer utility service in the service areas set forth in Appendix A attached to this Order and incorporated herein by reference. Appendix A shall constitute the Certificate of Public Convenience and Necessity.

2. That the Applicant shall be authorized to charge in the service areas granted in Appendix A the rates and charges that are set forth in Appendix B to this Order and incorporated herein by reference. Said rate schedule shall be deemed filed with the Commission pursuant to G.S. 62-134.

3. That on or before December 1, 1986, North Topsail Water and Sewer, Inc., shall submit a report to the Commission and to the parties stating the status of the plant's expansion and any necessary adjustment to the anticipated demand and use projections for the plant in the report by North Topsail.

4. That North Topsail Water and Sewer, Inc., shall execute a bond in the amount of TWO HUNDRED THOUSAND AND 00/100 DOLLARS ($200,000.00) payable to the Commission and conditioned upon the construction by North Topsail Water and Sewer, Inc., of facilities required to provide adequate and reasonable sewer services in the franchise area. M.F. Bostic and F. Roger Page, Jr., shall sign individually as securities on the bond. North Topsail Water and Sewer shall submit said bond for approval by the Commission on or before July 3, 1986.

5. That with respect to the remainder of the area sought by North Topsail in the application for inclusion in its franchise:

(a) The franchise application by North Topsail for the area between the Onslow-Pender line and the Scotch Bonnet Pier will be put on hold until December 1, 1986;

(b) The Town of Surf City will submit a report to the Commission and the parties by December 1, 1986, which states

1. whether it intends to provide service in the area between the Onslow-Pender line and the Scotch Bonnet Pier and

2. when it can provide service in the same area;

(c) The Department of Natural Resources and Community Development may submit information regarding the immediacy of need for service in the same area and whether Surf City's proposal will best serve the environmental protection needs of the adjacent waters; and

(d) Unless the parties agree within thirty days of the December 1, 1986, report on the service provided in the area between the Onslow-Pender line and the Scotch Bonnet Pier, a hearing will be scheduled to determine that issue and any other issue raised by the parties within the thirty day period.

6. That the Notice to the Public attached to this Order as Appendix C shall be published by North Topsail Water and Sewer, Inc., in the Wilmington Star, the Jacksonville Daily News, and Sounds of Pender East; that said Notice to the Public be published once a week for two consecutive weeks, the first Notice appearing no later than 20 days after the date of this Order; and that North Topsail Water and Sewer, Inc., submit to the Commission a copy of the Affidavits of Publication on or before August 1, 1986.

ISSUED BY ORDER OF THE COMMISSION.
This the 17th day of June 1986.

NORTH CAROLINA UTILITIES COMMISSION
(SEAL) Gail L. Mount, Deputy Clerk

APPENDIX A
DOCKET NO. W-754, SUB 3

Before the North Carolina Utilities Commission
Know All Men By These Presents That
North Topsail Water and Sewer, Inc.
is hereby granted this
CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY
to provide sewer utility service on
the mainland of Onslow County, North Carolina, as follows:

Topsail Way Shopping Center,
Chadwick Acres Subdivision
North Shores Golf Community Subdivision,
Golden Acres,
Pages Golden Acres

and

on Topsail Island, all the lands north of and including the Scotch Bonnet Pier Property in Onslow 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 17th day of June 1986.

NORTH CAROLINA UTILITIES COMMISSION
(SEAL) Gail L. Mount, Deputy Clerk

APPENDIX B
SCHEDULE OF RATES
NORTH TOPSAIL WATER AND SEWER, INC.
DOCKET NO. W-754, SUB 3

SEWER RATES

Flat Rate Residential Service: $15.00 per month
Nonresidential Service: $6.00 monthly lease rate; $2.00 per thousand gallons based upon water consumption

Tap-on Fees:

| | |
|---|---|
| Residential: | $2,000 per unit and $100.00 connection fee |
| Commercial: | $1,000 for each 250 gallons per day of estimated sewage flow with $5,000 minimum |

Reconnection Charges:

If sewer service is cut off by utility for good cause:
Actual cost - Itemized billing of actual charges to be submitted to customer and North Carolina Utilities Commission

Bills Due: On billing date
Bills Past Due: Fifteen days after billing date
Billing Frequency: Monthly for service in advance for residential service
Monthly for service in arrears for commercial service.

Finance Charges for Late Payment:

1% per month will be applied to the unpaid balance of all bills past due twenty-five days after billing date.

Issued in accordance with authority granted by the North Carolina Utilities Commission in Docket No. W-754, Sub 3, on this the 17th day of June 1986.

APPENDIX C
DOCKET NO. W-754, SUB 3

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Application of North Topsail Water and Sewer )
Company for a Certificate of Public )
Convenience and Necessity to Provide Sewer ) NOTICE TO THE PUBLIC
Utility Service in North Topsail and Topsail )
Reef Subdivision )

NOTICE IS HEREBY GIVEN that the North Carolina Utilities Commission has granted a Certificate of Public Convenience and Necessity to North Topsail Water and Sewer, Inc., to provide sewer utility service in the following service areas:

> On the mainland of Onslow County, North Carolina, as follows: Topsail Way Shopping Center, Chadwick Acres Subdivision, North Shores Golf Community Subdivision, Golden Acres, and Pages Golden Acres; and on Topsail Island, all the lands north of and including the Scotch Bonnet Pier Property in Onslow County.

The Commission also authorized North Topsail Water and Sewer, Inc., to charge the following rates in the service areas listed above:

| | |
|---|---|
| Flat Rate Residential Sewer Service: | $15.00 per month |
| Nonresidential Sewer Service: | $6.00 per month lease rate; $2.00 per per thousand gallons based upon water consumption |
| Tap-on Fees: | |
| Residential: | $2,000 per unit and $100.00 connection fee |
| Commercial: | $1,000 for each 250 gallons per day of estimated sewage flow with $5,000 minimum |

The Utilities Commission also ordered that the application of North Topsail Water and Sewer, Inc., to provide sewer service in the area between the Onslow-Pender County line and the Scotch Bonnet Pier will be put on hold until December 1, 1986. The town of Surf City will submit a report to the Commission and to the parties by December 1, 1986, which states whether the Town intends to provide service in the area between the Onslow-Pender County line and the Scotch Bonnet Pier and when it can provide service to that area. Unless the parties in this proceeding agree within 30 days of December 1, 1986, on the service to be provided in this area, the Commission will schedule a hearing to determine that issue.

ISSUED BY ORDER OF THE COMMISSION.
This the 17th day of June 1986.

NORTH CAROLINA UTILITIES COMMISSION
Gail L. Mount, Deputy Clerk

(SEAL)

DOCKET NO. W-354, Sub 39
DOCKET NO. W-354, SUB 40
DOCKET NO. W-354, SUB 41

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Applications 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 ) RECOMMENDED ORDER
Areas in North Carolina, for Authority to Merge ) APPROVING RATE INCREASE,
With CWS Systems, Inc., of North Carolina, and ) MERGER OF CWS SYSTEMS,
for Authority to Transfer the Franchise for Water ) INC., AND TRANSFER OF
And Sewer Utility Service in Beatties Ford and ) BEATTIES FORD
Hyde Park Subdivisions, Mecklenburg County, North )
Carolina, from GO Enterprises, Inc. )

HEARD IN: Dobbs Building, North Carolina Utilities Commission, 430 North Salisbury Street, Raleigh, North Carolina, on October 1 and 2, 1985

Commissioners' Board Room, 4th Floor, County Office Building, 720 East Fourth Street, Charlotte, North Carolina, on October 2, 1985

BEFORE: Sammy R. Kirby, Hearing Examiner

APPEARANCES:

For the Applicant:

Edward S. Finley, Jr., Attorney at Law, Hunton & Williams, Post Office Box 109, Raleigh, North Carolina 27602

For the Using and Consuming Public:

Paul Lassiter and Antoinette Wike, Staff Attorneys, Public Staff-North Carolina Utilities Commission, Post Office Box 29520, Raleigh, North Carolina 27626-0520

For the Intervenor Signal Hill Investors:

Thomas K. Austin, Attorney at Law, Fruitt & Austin, Post Office Box 23547, Raleigh, North Carolina 27605

For the Intervenor Village of Sugar Mountain:

Ralph McDonald, Attorney at Law, Bailey, Dixon, Wooten, McDonald, Fountain & Walker, Post Office Box 12865, Raleigh, North Carolina 27605

KIRBY, HEARING EXAMINER: This matter arose upon the filing of an application by Carolina Water Service, Inc., of North Carolina (hereinafter referred to as Carolina Water Service or Applicant or Company) on April 25, 1985, in Docket No. W-354, Sub 39, seeking authority to adjust and increase its rates and charges for water and sewer utility service in its service areas in North Carolina. On May 2, 1985, the Company filed an application in Docket No. W-354, Sub 40, seeking authority to acquire the franchise to provide water and sewer utility service in Beatties Ford and Hyde Park Subdivisions (hereinafter referred to as Beatties Ford), Mecklenburg County, from GO Enterprises, Inc., d/b/a Beatties Ford Utilities, Inc. On May 8, 1985, the Company filed an application and petition in Docket No. W-354, Sub 41, for authority to merge CWS Systems, Inc., into the Company. Carolina Water Service also requested that the rate increase apply to both Beatties Ford and CWS Systems, Inc.

By Order issued May 23, 1985, the Commission consolidated Docket Nos. W-354, Subs 39 and 41, declared the proceedings to be a general rate case, suspended the proposed rates for a period of 270 days, set the matter for public hearing, and required the Applicant to give public notice. Public hearings were scheduled to begin October 1, 1985, in Raleigh.

On August 20, 1985, the Public Staff filed a Motion for Public Hearing with the Commission, asserting that a substantial number of protest letters relating to the Beatties Ford transfer proceeding had been filed with the Commission and requesting that the proceeding in Docket No. W-354, Sub 40, be set for a public hearing in Charlotte. The Public Staff also requested that the proceedings be consolidated with the proceedings in Docket Nos. W-354, Subs 39 and 41, for the purpose of this hearing, and that the Company be required to give notice of the hearing to all its customers in Mecklenburg County. By Order of September 3, 1985, the Commission consolidated the three proceedings for the purpose of the October 1, 1985, hearing in Raleigh, and scheduled a second hearing in Charlotte for October 2, 1985, for the purpose of receiving testimony from customers involved in the transfer proceeding, Docket No. W-354, Sub 40, and the merger proceeding, Docket No. W-354, Sub 41, and required public notice of the hearings.

The Commission has entertained and addressed several procedural and substantive motions during the pendency of these dockets. On August 9, 1985, Signal Hill Investors, a North Carolina partnership owning property in Beatties Ford, moved to intervene. Intervention was allowed by Commission Order dated September 3, 1985. On September 10, 1985, the Public Staff filed a motion for an extension of time in which to file its testimony; such motion was granted by Commission Order dated September 12, 1985. On September 17, 1985, the Village of Sugar Mountain filed a Petition to Intervene and Motion to Compel Compliance With Rule R1-17(b), requesting that the Company be compelled, at risk of dismissal, to disclose the operating expenses attributable to its operations in the Village of Sugar Mountain and the reasonable original cost of the property dedicated thereto, and requesting that the scheduled October 1, 1985, hearing be postponed. The Company filed a response to this motion on September 20, 1985, in which the Company stated that it had no objection to the Village of Sugar Mountain's intervention, but asserted that it neither did nor was required to keep separate records of Sugar Mountain's operating expenses or cost of dedicated property, argued that Sugar Mountain had not made its motion in a timely manner, and requested that postponement of the October 1, 1985, hearing be denied. By Order of September 25, 1985, the Commission allowed Village of Sugar Mountain's Motion to Intervene, but denied postponement of the hearing and that part of the motion requesting that the Company file information as to the separate operating expenses and cost of dedicated property for Sugar Mountain--ordering instead that such information be supplied for the Company's operating system as a whole.

On September 24, 1985, the Public Staff filed a motion, supported by petitions from the Company customers in the Charlotte communities of Steeplechase and Forestbrook, that the hearing scheduled in Charlotte for October 2, 1985, be open to all Company customers who wished to testify. This motion was granted by Commission Order dated September 27, 1985.

The matter came on for hearing at the times and places indicated above. All parties were present and were represented by counsel.

Customers from nine of the fifty-nine subdivisions to which the Applicant and CWS Systems, Inc., provided service testified at the hearings. Testimony from public witnesses dealt generally with water quality and service problems and opposition to the proposed rate increase. The subdivisions and the customers from each who testified were as follows:

Pine Knoll Shores: Edward L. Baity.
High Meadows Country Club: James P. Edwards, Robert M. Graham.
Misty Mountain: Mrs. E. L. Jordan, Luis R. Esteves, Dan H. Wolfe
Ski Mountain: Elmer Jenkins, Robert T. Lambert, Clarence J. Allison.
Forest Brook: Roger Case, Carol Rhyne, Ed Munn, Daryl D. Hutchins.
Lamplighter Village South: Patrick Keene, Julia Hollister.
Lamplighter Village East: Imogene Powley, Ann Robey.
Steeplechase: Duane Taylor, Jerry R. Baldwin, Dennis myers, James Harris.
Danby: David Harris.

The Applicant presented the direct testimony of the following witnesses:

David L. Owens, President of Applicant and Utilities Inc., Applicant's parent company; Patrick J. O'Brien, Vice President and Treasurer of Applicant.

The Public Staff presented the direct testimony of the following witnesses:

Julie Jacome, Staff Accountant of the Public Staff; Andy R. Lee, Utilities Engineer with the Water Division of the Public Staff.

Intervenor Signal Hill Investors presented the direct testimony of the following witnesses:

Jerry R. Oliver, President of GO Enterprises; Sam Lerner, Partner in Signal Hill Investors; Johnny Hinton, Jr.; Lou Jean Heath; and Johnny J. Johnson, residents or former residents of Beatties Ford Subdivision.

The Applicant presented the rebuttal testimony of the following witnesses:

David L. Owens; Gregory E. Aliff, CPA, Manager with the Columbia, South Carolina office of Deloitte, Haskins, and Sells; Patrick J. O'Brien.

Intervenor Signal Hill Investors presented the rebuttal testimony of the following witness: Sam Lerner.

On October 28, 1985, the Applicant filed a Motion seeking approval of interim rates, requesting that it be allowed to implement the uncontested portions of its proposed rates to all customers except those of the Beatties Ford subdivision. These interim rates were approved by Commission Order dated November 7, 1985.

On November 27, 1985, Signal Hill filed a Motion to Deny Transfer and to Order Carolina Water Service to Cease and Desist any Expansion of the Beatties Ford System without Prior Approval of the Commission. On December 17, 1985, Carolina Water Service filed its Response to this Motion. The Motion is pending.

On December 2, 1985, Carolina Water Service filed a letter with the Commission giving notice that it intended to place into effect the increase in rates requested for Beatties Ford pursuant to G.S. 62-135. On December 3, the Public Staff filed a Motion seeking an injunction restraining Carolina Water Service from placing any increased rates into effect in Beatties Ford. On December 4, Signal Hill filed a Motion supporting the Public Staff's request for an injunction and requesting the Commission to institute a show cause proceeding to determine whether Carolina Water Service should be subject to the penalties provided by G.S. 62-310. Carolina Water Service filed its Response to these Motions on December 6. On December 11, 1985, the Hearing Examiner issued an Order Restraining Rate Increase restraining Carolina Water Service from implementing any rate increase pursuant to G.S. 62-135 in Beatties Ford and deferring any ruling as to a show cause proceeding.

Based upon the foregoing, the evidence produced at the hearings, and the entire record in these matters, the Hearing Examiner makes the following:

## FINDINGS OF FACT

1. The Applicant is a North Carolina corporation that has been duly franchised by this Commission to operate as a public utility to provide water and sewer utility service to customers residing in its North Carolina service areas and is subject to the jurisdiction of the Commission.

2. The test period for this proceeding as established by Commission Order consists of the twelve-month period ending December 31, 1984.

3. The Applicant's present rates for metered water and sewer utility service for all of its subdivisions but those purchased subsequent to the Order in Docket No. W-354, Sub 26, are as follows:

### METERED WATER SERVICE

Residential:

(A) Base facility charge: $5.00 per dwelling unit served by individual meter and being individually billed. This $5.00 facility charge also applies where the service is provided through a master meter and each individual dwelling unit is being billed individually.

(B) Base facility charge: $4.50 per month per dwelling unit when service is provided through a master meter and a single bill is rendered for the master meter, as in condominium complexes.

(C) Commodity charge: $1.77 per 1,000 gallons.

Commercial and Other:

(A) Base facility charge:

| | |
|---|---|
| 3/4" meter | $ 5.00 |
| 1" meter | $ 12.50 |
| 1½" meter | $ 25.00 |
| 2" meter | $ 40.00 |
| 3" meter | $ 75.00 |
| 4" meter | $125.00 |

(B) Commodity charge: $1.77 per 1,000 gallons or 134 cubic feet.

SEWER SERVICE:

Residential:

Flat rate per month per dwelling unit - $16.00.

Commercial and Other:

125% of water service subject to a minimum rate of $16.00 per month. Customers who do not take water service pay $16.00 per single-family equivalent.

4. The Applicant's proposed rates for metered water and sewer utility service for all of its service areas are as follows, with different rates proposed for Beatties Ford noted in parentheses:

METERED WATER SERVICE

Residential:

(A) Base facility charge: $7.00 per dwelling unit. This $7.00 facility charge shall also apply where the service is provided through a master meter and each dwelling unit is being billed individually.

(B) Base facility charge: $6.50 per month per dwelling unit when service is provided through a master meter and a single bill is rendered for the master meter, as in condominium complexes.

(C) Commodity charge: $2.00 per 1,000 gallons ($1.15 per 1,000 gallons in Beatties Ford Subdivision).

(D) Minimum charge per month for metered single-family residences in resort communities: $11.00 (includes communities of Carolina Forest, Woodrun, Bear Paw, Pine Knoll Shores, Ski Mountain and Sugar Mountain). The minimum charge includes a base facility charge of $7.00 and 2,000 gallons usage. Thereafter, usage will be billed at a rate of $2.00 per 1,000 gallons.

Commercial and Other:

(A) Base facility charge:

| | |
|---|---|
| 3/4" meter | $ 7.00 |
| 1" meter | $ 17.50 |
| 1½" meter | $ 35.00 |
| 2" meter | $ 56.00 |
| 3" meter | $105.00 |
| 4" meter | $175.00 |

(B) Commodity charge: $2.00 per 1,000 gallons or 134 cubic feet.

SEWER SERVICE:

Residential:

Flat rate per month per dwelling unit - $18.00 ($14.00 in Beatties Ford subdivision). Dwelling unit shall exclude any unit which has not been sold, rented, or otherwise conveyed by the developer or contractor erecting the unit.

Commercial and Other:

125% of water service subject to a minimum rate of $18.00 per month. Customers who do not take water service will pay $18.00 per single-family equivalent.

5. The Applicant also proposes the following additional charges: Applicant seeks to charge a $13.00 per month flat rate for unmetered single-family residences. Applicant proposes to continue charging a $2.00 per month availability charge for those customers in the Carolina Forest and Woodrun subdivisions who, pursuant to contract, are subject to availability charges. Applicant will continue charging a $100.00 tap-on fee for 5/8" meters, with the tap-on fee for larger meters being equal to the actual cost of the meter and its installation. Applicant proposes that the plant modification and expansion fee remain at $400.00 for 5/8" meter, with multifamily or commercial customers paying a fee negotiated on the basis of equivalence to a number of single-family customers but in no case less than $400.00, such fee to be payable by the developer or builder. Applicant proposes to raise the new water customer charge from $20.00 to $22.00, and to raise the reconnection charge if water service is cut off by Company for good cause or if water service is discontinued at the customer's request from $15.00 to $22.00. Applicant will continue charging a sewer tap-on fee of $100.00 per single-family dwelling unit and a fee equal to the actual cost of connection from commercial customers. Applicant proposes to raise the new sewer customer charge from $15.00 to $16.50, which would be waived if the customer also received water service. Applicant proposes to continue charging a plant modification and expansion fee of $1,000 for single-family customers, and a fee to multifamily or commercial customers to be negotiated on the basis of equivalence to a number of single-family customers but in no case less than $1,000, with such fee payable by the developer or builder. Applicant proposes to raise the sewer reconnection charge from $30.00 to $33.00, with the fee waivable if the customer also receives water service from the Applicant. Applicant proposes to increase its charge for returned checks from $5.00 to $7.00.

6. The Applicant's service in all of its service areas is adequate. Although various problems and complaints regarding some aspects of service were presented at the hearings held in this matter, it appears that the Company has taken or is taking appropriate actions in order to deal with most of those. The Company should, however, pursue certain follow-up activities in connection with certain remaining problems in the manner specified in the Evidence and Conclusions for this Finding of Fact.

7. The merger of CWS Systems, Inc., into the Applicant is justified by the public convenience and necessity and should be approved.

8. The application to transfer the water and sewer utility franchise for Beatties Ford from Beatties Ford Utilities, owned by GO Enterprises, to Carolina Water Service and the subsequent proposed increase in water and sewer rates should be approved.

9. The debit entries to the utility plant acquisition adjustment account related to the acquisition of Chapel Hills and High Meadows service areas should not be included in the Company's rate base; however, it is reasonable and appropriate to include the debit plant acquisition adjustment associated with the Mecklenburg systems (CWS Systems) in rate base in this proceeding.

10. The Applicant's reasonable allowance for working capital is $163,787, consisting of a cash requirement of $193,704, prepayments of $9,161 less average tax accruals of $39,078.

11. Carolina's reasonable original cost rate base used and useful in providing water and sewer service within the State of North Carolina is $5,460,168. This rate base consists of plant in service of $17,284,209, deferred charges of $193,754, and an allowance for working capital of $163,787, reduced by accumulated depreciation of $1,420,922, plant acquisition adjustment of $1,124,907 advances in aid of construction of $44,972, excess book value of $1,579,771, contributions in aid of construction of $7,900,034, customer deposits of $29,901, and net deferred taxes of $81,075.

12. The Applicant's gross revenues for the test year under present rates, after accounting and pro forma adjustments, are $2,363,478. After giving effect to the Company's proposed rates, such gross revenues are $2,931,837.

13. The reasonable level of test year operating revenue deductions for the Company after accounting and pro forma adjustments is $1,975,170.

14. The reasonable capital structure for use herein is as follows:

| | |
|---|---|
| Long-term debt | 50.20% |
| Common equity | 49.80% |
| Total | 100.00% |

15. Based on the foregoing, the Applicant should be allowed an increase in annual gross revenues of $568,359. This increase will allow the Applicant the opportunity to earn a 12.10% overall rate of return on its rate base which the Hearing Examiner finds to be not unreasonable.

16. The rate design modifications and adjustments proposed by Applicant should be approved in part and disapproved in part as hereinafter discussed in the Evidence and Conclusions for this Finding of Fact.

## Evidence and Conclusions for Finding of Fact Nos. 1-5

The evidence supporting these findings of fact is contained in the verified application, prior Commission orders in these dockets, and the record as a whole. These findings are jurisdictional and procedural in nature and are not matters in controversy.

## Evidence and Conclusions for Finding of Fact No. 6

The evidence for this finding of fact is found in the testimony of Company customers and that of Company witness Owens. Public hearings were held in Raleigh and Charlotte. Approximately 20 customers testified at those hearings concerning various problems and complaints. David Owens, President of Carolina Water Service, Inc., testified at each hearing concerning Company action and plans for dealing with the problems noted by the customers.

Mr. James P. Edwards of High Meadows Subdivision complained that when he bought his lot he was informed by the developer that the water system was adequate and had the ability to provide fire protection. Mr. Edwards further testified that he has since had an engineering study done of the water system at his expense that indicates the system is not designed to provide fire protection and that some of the mains are undersize. Mr. Edwards objected to approval of the transfer of the water utility system serving High Meadows to Carolina Water Service. Mr. Robert M. Graham testified supporting Mr. Edwards' testimony.

Mr. David Owens testified in response to Mr. Edwards' complaints. Mr. Owens testified that he had seen a copy of the engineering report presented by Mr. Edwards and confirmed that the existing system was not designed nor installed to provide fire protection. He further testified that it would not be economically feasible to provide the network of large diameter water mains, water storage and water pumping capacity to provide fire protection in High Meadows. Mr. Owens further testified that Carolina Water Service had made significant improvements since acquiring the High Meadows system including installing blowoff valves at the end of deadend lines so adequate flushing could be accomplished, installing meters at the wells, installing two new well pumps, installing new well controls, adding chemical feed pumps, installing a standby set of booster pumps and completely rebuilding the three existing well houses.

The Hearing Examiner has reviewed the Commission's official files and records and finds that the transfer of the High Meadows utility system to Carolina Water Service was approved by Order issued April 19, 1985, in Docket No. W-354, Sub 38. The Hearing Examiner concludes that no further hearings concerning the franchise transfer is warranted. The Hearing Examiner further concludes that it would not be economically feasible to upgrade the High Meadows utility system to provide for fire protection. The Hearing Examiner further concludes that Carolina Water Service has taken actions to upgrade the High Meadows water system and should continue to do so as needed.

Mrs. Ethel Jordon, President of the Misty Mountain Property Owners Association, testified opposing the amount of the rate increase and complaining of water quality problems including muddy water and staining of plumbing fixtures. Mrs. Jordon stated that she opposed adding of chlorine to the water. Mr. Luis R. Esteves and Mr. Dan H. Wolfe testified supporting Mrs. Jordon's testimony.

Mr. Owens testified that the Company was required by the State to chlorinate the water. Mr. Owens further testified that recent improvements had been made in an attempt to correct the problem of muddy water and staining. Mr. Owens stated that these problems were caused by buildup of mineral deposits such as rust in the existing mains and that a new well has been added recently which allows sufficient capacity to adequately flush the system. The Hearing Examiner concludes that the Company is taking action to correct the water quality problems in Misty Mountain.

Mr. Elmer Jenkins, Mr. Robert T. Lambert and Mr. Clarence J. Allison testified concerning water pressure problems and water quality problems at Ski Mountain. They stated that water pressure was too high at the bottom of the mountain and too low at the top of the mountain. They also complained of rusty, muddy water at times and the Company's failure to promptly repair roads when cut to make repairs to the water system.

Mr. Owens testified that the Company has made several improvements to the Ski Mountain water system including cleaning and repainting the storage tank, repairing pressure reducing valves and repairing a major leak that had gone undetected for a long period of time. Mr. Owens also testified that the Company was planning to install a booster pump to increase pressure at the higher elevations on the system. The Hearing Examiner notes that similar complaints were received from Ski Mountain customers during the Company's last rate increase proceeding. The Hearing Examiner concludes that the Company has taken measures to improve services at the Ski Mountain water system; however, the Hearing Examiner is concerned that these problems apparently continue to exist. The Hearing Examiner concludes that the Company should seek to correct these problems as soon as possible.

Mr. Roger Cash, Mrs. Carol Rhyne, Mr. Ed Munn and Mr. Daryl Hutchins testified concerning water quality problems in Forestbrook Subdivision. They testified to problems including black specks in the water, corrosion of copper plumbing, too much chlorine in the water, brown stains occurring in dishwashers and blue stains occurring in sinks and bathtubs. They opposed any rate increase until such problems are corrected.

Mr. Owens testified that the Company is working to correct these problems by adding a polyphosphate chemical to control the manganese which is causing the brown stains, flushing the lines to remove black particles of sediment and adding chemicals to raise the pH of the water to correct the corrosion and blue staining problem. The Hearing Examiner concludes that the Company is working to correct the noted problems; however, the Hearing Examiner is concerned that the problems be eliminated as soon as possible.

Mr. Patrick Keene, Mrs. Imogene Powley and Mrs. Julia Hollister testified concerning problems occurring in Lamplighter Village South Subdivision. They testified to problems of water outages, low water pressure, excessive chlorine in the water and cloudy water.

Mr. Owens acknowledged that problems have existed with this water system. Mr. Owens further testified that the Company has spent approximately $35,000 over the past year to upgrade the system, including installing a new well, upgrading well houses, adding new well controls and new chemical feed pumps in addition to upgrading the sewage treatment plant at Lamplighter South. The Hearing Examiner concludes that the Company is taking action to correct the noted problems; however, the Hearing Examiner is again concerned that these problems be corrected as soon as possible.

Mr. Duane Taylor, Mr. Dennis Myers, Mr. James Harris and Mr. Jerry Baldwin testified concerning problems with the sewer service in Steeplechase Subdivision. Mr. Taylor expressed his concern with whether the sewer treatment plant was reaching or exceeding its approved capacity. He noted that new houses were being connected to the system. Mr. Myers testified about an offensive sewage odor that occurs within the vicinity of the sewage treatment plant during late afternoon and early evening. Mr. Harris and Mr. Baldwin confirmed Mr. Myers' complaints.

Mr. Owens testified that the sewage treatment plant was not overloaded and, therefore, the odor problems were not resulting from overloading. Mr. Owens further testified that the Company has hired professional consulting engineers in an effort to solve the odor problem and would pursue the matter. The Hearing Examiner concludes that the Company should resolve the odor problem as soon as possible.

In summing up the service provided by Carolina Water Service, the Hearing Examiner concludes that overall water and sewer utility service provided by the Company to its utility customers in North Carolina is generally adequate. The Hearing Examiner notes from review of the Company's last rate proceeding that the Company was required to solve numerous problems presented at that proceeding. The Hearing Examiner also notes that those problems did not resurface during this proceeding with the exception of those noted for Ski Mountain. The conclusion is drawn that the Company responded adequately in solving those problems, The Hearing Examiner requires the Company to continue correcting the problems brought to light in this proceeding and in an expeditious manner. The Hearing Examiner further requires the Company to file a report in 60 days from the date of this Order giving the status of the Company's efforts to solve these problems.

## Evidence and Conclusions for Finding of Fact No. 7

The evidence for this finding of fact is found in the testimony and exhibits of Company witness O'Brien and Public Staff witnesses Lee and Jacome. The Hearing Examiner notes that CWS Systems, Inc., has been operating the Mecklenburg systems as an arm of the Applicant, and was in fact formed to acquire these systems for the Applicant. Further, the parties, including the Public Staff, stipulated that there was no opposition to the merger. Based on the foregoing and the record as a whole, the Hearing Examiner approves the merger of CWS Systems, Inc., into Applicant.

## Evidence and Conclusions for Finding of Fact No. 8

The evidence for this finding of fact comes from the testimony of customers of Beatties Ford at the Charlotte hearing, Company witnesses O'Brien and Owens, Public Staff witness Lee and Signal Hill witnesses Lerner and Oliver.

Mr. Johnny Hinton, Jr., Lou Jean Heath, and Johnny H. Johnson testified opposing the transfer and the proposed rate increase. They testified that they were in favor of the homeowners taking over the system. In addition to these witnesses, about seventy other customers in Beatties Ford appeared at the hearing and indicated their opposition to the transfer and rate increase.

Sam Lerner, a partner in Signal Hill Investors which owns the Trinity Park Apartments in Beatties Ford Subdivision, testified that he was opposed to the transfer. He stated that a major concern was the high level of Carolina Water Service's proposed rates. In addition, he expressed genuine concern that the lower or "stepped" rates for Beatties Ford would be eliminated in the very near future by Carolina Water Service. Mr. Lerner also expressed concern that the customers were never offered the opportunity to purchase the system prior to it being offered to Carolina Water Service. Mr. Lerner testified that the customers should have been given a chance to purchase the system. He stated that Signal Hill, on behalf of the customers, was prepared to buy the system.

Jerry R. Oliver, President of GO Enterprises, which owned Beatties Ford Utilities, testified at the Charlotte hearing at the request of the Intervenor, Signal Hill Investors. Witness Oliver testified that GO Enterprises obtained the franchise to serve Beatties Ford in 1976 and sold the water and sewer utility to Carolina Water Service in 1984 without first obtaining approval of this Commission. Mr. Oliver was asked questions about the accounting books and records of Beatties Ford which had been kept by GO Enterprises. Mr. Oliver could not answer specific questions about the accounting records but stated that he believed the records were at home in his basement.

David Owens, President of Carolina Water Service, testified that Carolina Water Service was qualified to operate the water and sewer utilities in Beatties Ford and that improvements had been made to the water and sewer systems since Carolina Water Service had acquired the utility system. The system had been out of compliance with state water and sewage regulations at the time the Company took over its operation. Since that time, the elevated storage tank has been cleaned and is once again in use, improving pressures and system reliability. The sewage treatment plant has also been improved to meet State Health Department standards. Witness Owens also testified that there is a significant chance that the sewage plant will have to be upgraded--a capital intensive project. He further stated that he doubted whether the customers were aware of the financial liabilities involved in operating a water and sewer utility.

G.S. 62-111(a) provides in part as follows:

> No franchise now existing or hereafter issued under the provisions of this Chapter. . . shall be sold, assigned, pledged or transferred, nor shall control thereof be changed through stock transfer or otherwise, or any rights thereunder leased, nor shall any merger or

> combination affecting any public utility be made through acquisition or control by stock purchase or otherwise, except after application to and written approval by the Commission, which approval shall be given if justified by the public convenience and necessity. .

This statute clearly provides that no utility franchise shall be sold or transferred nor shall control thereof be changed in any manner except after an application has been filed with the Commission seeking approval of such action and the approval of the Commission has been given by written order. The evidence is uncontradicted that GO Enterprises sold the water and sewer utility in Beatties Ford to Carolina Water Service in 1984 without obtaining approval as required by this statute. Carolina Water Service is a large and sophisticated utility with years of operation in North Carolina and experience in acquiring many small North Carolina utility systems. It had the responsibility, every bit as much as GO Enterprises, to see that acquisition of the Beatties Ford system was conducted in accordance with the law of North Carolina. In the present case, the Hearing Examiner has already issued an Order enjoining Carolina Water Service from taking advantage of the rights and protections provided by G.S. 62-135(a) with respect to Beatties Ford. That Order, together with the reminder provided by this paragraph, should be sufficient to assure compliance with G. S. 62-111(a) in all future acquisitions by Carolina Water Service. The Hearing Examiner concludes that a show cause proceeding, as requested by Signal Hill, is not appropriate at this time.

The present issue is whether the application to transfer the franchise for Beatties Ford should be approved. The statute provides the standard by which the issue must be judged. The statute provides that approval "shall be given if justified by the public convenience and necessity." Carolina Water Service argues that the public convenience and necessity of a transfer is shown if the transfer will not adversely affect the ability of the transferred utility to serve the public. 'It cites State ex rel. Utilities Commission v. Carolina Coach Company, 269 NC 717 (1967). The Hearing Examiner is not prepared to read the Carolina Coach opinion as establishing the standard to be applied in all transfer proceedings. That case involved the transfer of a franchise to provide transportation services, which fact alone distinguishes it from the present situation. However, while the Hearing Examiner does not view the public convenience and necessity standard of G.S. 62-111(a) as narrowly as argued by Carolina Water Service, the Examiner does not read the standard as being so broad as to allow the Commission to choose among competing purchasers of a utility franchise the one the Commission prefers. The law does not require that a utility offer its system to its customers when it desires to sell. G. S. 62-111(a) allows the holder of a utility franchise to offer and negotiate the sale of the franchise. It provides that the Commission must approve the sale beforehand, but it provides that such approval shall be given if justified by the public convenience and necessity.

Carolina Water Service is a large, experienced utility company with financial resources and professional expertise and with a history of providing adequate utility service to its customers. It has undertaken a program of needed improvements to the Beatties Ford system. The Examiner cannot but conclude that there is a need for water and sewer utility service in Beatties Ford, that Carolina Water Service is capable and prepared to provide for that need, and that the transfer to Carolina Water Service is justified by the public convenience and necessity.

Most of the complaints with respect to the transfer of Beatties Ford to Carolina Water Service concerned the high level of Carolina Water Service's rates. In this connection, the Hearing Examiner notes that GO Enterprises never sought a rate increase. The present rates in Beatties Ford have not been raised for many years, thus accentuating the present increase. In recognition of this problem, Carolina Water Service has proposed lower, "stepped-in" rates for Beatties Ford. The Hearing Examiner approves this concept and orders that the stepped-in rates remain unchanged until Carolina Water Services' next general rate case or for at least one year from the effective date of the present Order, whichever period of time is longer.

Evidence and Conclusions for Finding of Fact No. 9

The evidence for this finding of fact is found in the testimonies and exhibits of Company witnesses O'Brien, Owens, and Aliff and in the testimonies and exhibits of Public Staff witnesses Lee and Jacome. According to the proposed orders filed by the parties in this proceeding, the only area of disagreement with regard to the proper level of rate base is the balance of the plant acquisition adjustment. The Public Staff is proposing for the plant acquisition adjustment a credit balance of $1,139,623 whereas the Company is proposing a credit balance of $1,074,292 resulting in a difference of $65,331. In its proposed order, the Company has agreed with all of the Public Staff's rate base acquisition adjustments except those associated with the disallowance of the Company's debit plant acquisition adjustments relating to Chapel Hills, High Meadows, and Mecklenburg systems, therefore the $65,331 difference entirely relates to debit plant acquisition adjustment amounts. The Company in its proposed order has discussed its position on debit plant acquisitions using its originally proposed amounts which result in a difference of only $20,144 according to its brief in this docket; however, the Company actually differs with the Public Staff by $65,331. Due to the fact that neither the Company's proposed order nor its brief states specifically the dollar amounts composing the $65,331 difference, the Hearing Examiner is required to make certain assumptions as to what makes up the difference in order to decide the issues in this case. Since the Company has accepted all the Public Staff rate base adjustments except the balance of the plant acquisition adjustment (as evidenced by the Company's rate base schedule included in its proposed order), the residual difference between what the Company accepts of the Public Staff's acquisition adjustments to net original cost and its purchase price is the debit plant acquisition adjustment. The Hearing Examiner therefore makes the initial assumptions that this difference consists of three debit plant acquisition adjustment amounts as follows:

| | Item | Amount |
|---|---|---|
| 1. | Plant acquisition adjustment for Chapel Hills Subdivision (Jacome Ex. II, Sch. 2-4a) | $17,029 |
| 2. | Plant acquisition adjustment for High Meadows Subdivision (Jacome Ex. II, Sch. 2-4c) | 30,000 |
| 3. | Plant acquisition adjustment for Mecklenburg Systems (Jacome Ex. III, Sch. 2a) | 18,302 |
| | Total Difference | $65,331 |

As indicated, these three differences can be further understood if one looks at the cited witness Jacome exhibits; however, in Jacome Exhibit III, Schedule 2a, Column b, line 10, the $18,302 difference which is presumed to be used by the Company as the debit plant acquisition adjustment related to Mecklenburg is an inappropriate figure for the Company's purposes. In this regard, the $18,302 includes the Public Staff's $2,939 adjustment to reflect the test year depreciation expense booked at a 3.28% composite rate which is not an adjustment to the actual acquisition journal entries and it also reflects the unamortized balance for the Mecklenburg plant acquisition adjustment of $9,717 rather than the Company's originally proposed $9,865 plant acquisition adjustment. Jacome Exhibit III, Schedule 2-3 shows the figures that would be appropriate for the Company's Mecklenburg recommendation and indicates a debit plant acquisition adjustment of $15,215 rather than $18,302. As can be seen in that exhibit, the debit plant acquisition adjustment is $15,215 since the Company has agreed with the Public Staff in its proposed order that the Public Staff's adjustment of $25,080 for tap-on fees relating to the Mecklenburg systems is a proper adjustment. In summary, the Company and the Public Staff differences are revised as follows:

| | Item | Amount |
|---|---|---|
| 1. | Plant acquisition adjustment for Chapel Hills | $17,029 |
| 2. | Plant acquisition adjustment for High Meadows | 30,000 |
| 3. | Plant acquisition adjustment for Mecklenburg | 15,215 |
| | Total Difference | $62,244 |

This $62,244 difference results from the Company's and Public Staff's differing points of view as to whether or not debit plant acquisition adjustments should be included in the Company's rate base for ratemaking purposes in this proceeding.

Public Staff witness Jacome objected to the inclusion of the debit plant acquisition adjustments because she believed that:

> the Company's method of including unamortized debit plant acquisition adjustments in rate base and allowing the amortization expense to be included "above-the-line," has the effect of increasing the rate base by the excess purchase price, of allowing these excess dollars to earn a return, and of allowing the Company to recover the amortization of the excess purchase as an item of cost of service. It is not reasonable or appropriate to penalize the ratepayers for the transfer of franchises by requiring them to pay more than once for the same net original cost of property used in providing utility service.

Witness Jacome further stated that while debit plant acquisition adjustments should be examined on a case-by-case basis, the entire cost of the High Meadows system had been recovered by the developer and that none of the three situations were similar to cases in which the Commission had allowed debit acquisition adjustments--that Carolina Water Service had not been required to bid on any of the systems and that in no case did the benefits to the customer exceed the increase in rate base. Witness Jacome further pointed out that all other acquisitions in the history of the Company had resulted in credit entries to the plant acquisition adjustment account, as they were all consummated at a purchase price less than the seller's net original cost.

Witness Jacome acknowledged in direct testimony that the Company was properly accounting for plant acquisitions in accordance with the NARUC Chart of Accounts by debiting and crediting a plant acquisition adjustment account for the difference between purchase price and net original cost. She stipulated, however, that simply because the NARUC Chart of Accounts provides an account to record this amount, it in no way dictates to the Commission the ratemaking treatment of such amounts.

Company witness O'Brien argued that "in situations where the existing and future customers benefit from the acquisition, where operating efficiencies occur, and where bargaining has been at arm's length, the debit [plant acquisition adjustment] should be allowed in rate base and amortized as a cost of service." Witness O'Brien testified that these were in fact arm's-length transactions resulting in substantial benefits to both the existing and newly acquired customers of Carolina Water Service. The existing customers were benefitted in that the cost of each of the acquisitions, including improvements, was less per customer than the rate base per customer prior to the acquisition. As the average rate base dropped upon each acquisition, the existing customers bear responsibility for lower fixed costs.

Addressing the Mecklenburg systems acquisitions in particular, witness O'Brien noted that Carolina Water Service had tried to acquire these systems for several years but the owners were not willing to sell at its price. The systems eventually became part of a bankruptcy proceeding and were sold to a buyer who was willing to pay more than the Applicant believed the system was worth. Some 18 months later Carolina Water Service acquired the system for a lower price. At that time, the Division of Health Services issued a four page report of needed system corrections; some were a result of deferred maintenance and others the result of the systems not being built per the approved plans. Further, a building moratorium had been imposed in Bahia Bay because of system undercapacity. Witness O'Brien testified that the Company has already spent some $200,000 on system repairs and improvements, including the addition of a new well to meet the undercapacity problem. With this acquisition, the Applicant was able to open a Charlotte office and increase its operating personnel there, resulting in more efficient service not only to the Mecklenburg (CWS Systems) customers but to the previously existing customers in the Charlotte area.

Addressing the High Meadows acquisition, witness O'Brien noted that the Applicant operated two systems in the Winston-Salem area so that the High Meadows acquisition made possible better use of its people there. Further, the Applicant has made improvements to increase service reliability and has extended a main to provide greater service availability within the subdivision.

As to the Chapel Hills acquisition, witness O'Brien noted that the Order in Docket No. W-310, Sub 4, the previous owners' last rate increase, referred to customer dissatisfaction with water pressure, outages, pH levels, and complaints that the meters were in a state of disarray. In regard to this system, the Division of Health Services had reported that there were six system violations of the Rules Governing Public Water Supplies in North Carolina.

Witness O'Brien stated that the previous deficiencies were either already corrected or were in the process of being corrected.

In light of these aforementioned improvements, witness O'Brien testified that the acquisitions of these systems have resulted in better service to the acquired customers. While it may be true that, as Public Staff witness Jacome testified, the Applicant will be able to include the cost of its system improvements in rate base, witness O'Brien believes this fact does not justify penalizing the Company by denying its recovery of part of the purchase cost of the systems. According to witness O'Brien, the fact remains that absent the transfer, the customers probably would have stood little chance of enjoying the benefits of the system improvements because the former owners were unable or unwilling to make them. Further, witness O'Brien testified that the customers in the acquired systems will also benefit from advantages such as centralized purchasing, the grouping of systems for centralized maintenance service, and a greater capital reserve for improvements--all benefits that are independent of the benefits given by actual expenditures on repairing the systems. It is the Company's position that all of these benefits are not reflected by the mere inclusion of system improvements in rate base, and it is thus fair that the acquired customers be asked to make a modest payment for these advantages. Witness O'Brien further noted that it is inconsistent to give the customers the advantage of a credit acquisition adjustment while penalizing the Company for a debit adjustment, especially when the customers were to benefit from both.

Company witness Aliff observed that account 114 of the NARUC Uniform System of Accounts provides for the accumulation of both debit and credit acquisition adjustments, while account 115 provides for their amortization. Paragraph C of the NARUC Uniform System of Accounts instructions to account 114 states that acquisition adjustments "shall be amortized, or otherwise disposed of, as the Commission may approve or direct." Also, the instructions to account 115 provide accounts 406 and 426 for the amortization or disposition of amounts in account 114. Account 406 provides for recognition of the amortization of acquisition adjustments in operating expenses, while account 426 provides for non-operating expense recognition. Witness Aliff further noted that the regulatory commissions of several states had allowed rate base and cost of service recognition for debit adjustments where such transactions were the result of arm's-length bargaining and were either a desirable part of a program to integrate facilities for the purpose of better serving ratepayers or were acquisitions in the public interest because the associated operating efficiencies would offset the costs associated with recognition of the adjustment. Witness Aliff also commented upon the apparent inconsistency in the Public Staff's intended exclusion of debit adjustments while "allowing" credit adjustments, and the apparent unfairness of giving the ratepayer the benefit where credit adjustments are involved while requiring the Applicant to absorb the costs associated with debit adjustments.

In response to witness Jacome's testimony that allowing a debit adjustment would effectively require a double payment by the ratepayer, witness Aliff asserted that this was true only if one viewed the effect of a single purchase transaction upon the transferred customers alone. According to witness Aliff when the impact of the purchase transaction upon all the Company's ratepayers is examined, it becomes clear that the customers who are apparently paying twice are also sharing the benefit of the purchases that resulted in credit adjustments. Witness Aliff stated "I think it's also important to recognize that if customers are indeed better served as a result of the purchase, that they're not actually paying twice for the same system. They're paying for an improved system." Witness Aliff further observed that the costs associated with debit adjustments are deductible for income tax purposes because they represent additional tax basis in the property that may be depreciated and stated that these tax benefits accrue to all the system's ratepayers.

The Hearing Examiner notes that in Re Public Service Company of North Carolina, Inc., 55 P.U.R.4th 53, 57 (N.C.U.C. 1983) a gas utility was held entitled to include the $404,860 unamortized portion of a debit plant acquisition adjustment in its rate base. The utility argued that the debit adjustment should be included in rate base because the cost per customer of the acquisition was less than the cost of extending new mains to the customers and because the acquisition had increased the customer base over which to spread the utility's fixed costs. The Company also pointed out that there were benefits to its existing customers, including lower rates in the acquired area, more reliable service, and more efficient operation of the division to which the system was added. In approving inclusion of the debit adjustment, the Commission stated that

> while it is clearly the policy of the Commission to look at acquisition adjustments on a case-by-case basis, the evidence here shows benefit 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. Id. at 57.

The Hearing Examiner in considering the proper treatment to be accorded to the Company's proposed debit purchase acquisition adjustments notes that while the NARUC Uniform System of Accounts provides for the accounting treatment to be accorded debit plant acquisition adjustments, it does not dictate the ratemaking treatment which shall be given by a regulatory body. In fact, the NARUC Uniform System of Accounts specifically states that, "The amounts recorded in this account with respect to each property acquisition shall be amortized, or otherwise disposed of as the Commission may approve or direct."

It appears to be the normal practice of utility companies who come before the Commission to request approval for the inclusion of specific debit plant acquisition adjustments in rate base; however, there are many instances where utilities appearing before the Commission have not sought rate base treatment for debit plant acquisition adjustments which exist on the utility books. In deciding whether or not to give rate base treatment to these items, it is incumbent upon the Hearing Examiner to look at each acquisition adjustment on a case-by-case basis.

The Hearing Examiner notes as pointed out by Public Staff witness Jacome that prior to these three acquisitions in question herein the Company has consistently purchased systems at less than the net original cost on the books of the prior owner at the date of transfer. By so doing, the Company's present customers have benefitted by paying rates calculated on a rate base approximately $2.7 million lower than would otherwise be the case as testified to by Company witness O'Brien. Thus, the Company's customers are receiving service from plant they will never pay for through rates. In fairness to Carolina Water Service, it should be given proper consideration by the Commission in cases where it acquires a system for a purchase price exceeding net original cost because the facts surrounding the case may be such that the benefits of the acquisition to the acquired customers and to existing customers merit the inclusion of the debit acquisition adjustment.

The record indicates that the Company has established a consistent record of acquiring existing systems, many with serious service problems, and rehabilitating these systems through outlays of substantial capital. With respect to two of the three systems at issue in this case, the record indicates that the systems had fallen into disrepair and were in need of improvement, as evidenced by a four-page report regarding the Mecklenburg systems issued by the Division of Health Services, and six system violations reported by the Division of Health Services on the Chapel Hills system.

Company witness O'Brien testified that at the time of the hearing the Company had already spent approximately $200,000 on system improvements in the Mecklenburg systems, including the addition of a new well to meet the undercapacity problem. At the time Carolina Water Service purchased the Mecklenburg Systems, the prior owner, who had purchased the systems in a bankruptcy proceeding some 18 months earlier, had been unable to provide for proper operation of the system as noted in a report on needed system corrections issued by the Division of Health Services. It appears that the former owner of the Mecklenburg Systems did not intend or desire to make the improvements necessary to provide adequate service. Although the customers in the Mecklenburg systems may experience increased rates, the Hearing Examiner concludes that they have far greater assurance of receiving adequate service at reasonable rates over the life of the system than had they continued to receive service from the former owner. The Hearing Examiner is also of the opinion that the circumstances surrounding the Company's acquisition of the Mecklenburg systems do in fact show that the transaction was at arm's length and that the purchase price was not imprudent. The Hearing Examiner concludes that over time the customers of the Mecklenburg systems will be better off as a result of the transfer and that the benefits accruing to the acquired customers outweigh the costs associated with inclusion of the excess purchase price in rate base. Thus, it is appropriate to include the Mecklenburg debit plant acquisition in rate base in this proceeding. Additionally, the Hearing Examiner notes that an examination of the Commission records in the Mecklenburg systems transfer proceeding, Docket No. W-778, reveals that the Applicant met the requirements of G.S. 62-111 in acquiring these systems. Specifically, the purchase agreement therein provided that the closing would follow the receipt of all necessary regulatory approvals.

The Hearing Examiner further concludes that the Mecklenburg systems acquisitions will also benefit the Company's other customers. The average rate base per customer of the Mecklenburg systems is less than the average rate base per customer of Carolina Water Service according to the testimony of both Company witness O'Brien and Public Staff witness Jacome. Thus after this acquisition the average rate base per customer of Carolina Water Service will be lower and the revenues generated from the new customers will support all customers. Further, the addition of these customers increases the base across which all costs may be spread under the Company's unified rate structure and existing customers also benefit from the efficiencies made possible by the Mecklenburg systems acquisition since the Company was able to open a Charlotte office and increase its operating personnel there.

The Hearing Examiner concludes that it is fair and reasonable to include in rate base the debit plant acquisition adjustment of $15,215 associated with the Mecklenburg systems acquisition in this case. Further, the Company and the Public Staff are in agreement that a 3.28% composite rate is appropriate to determine the proper level of depreciation expense and amortization expense in this case. Therefore the Hearing Examiner concludes that it is appropriate to use a 3.28% composite rate to amortize this adjustment. Thus, the proper amount of debit plant acquisition adjustment relating to Mecklenburg systems to be included in rate base in this proceeding is the unamortized portion of $14,716.

With regard to the High Meadows and Chapel Hills plant acquisition adjustments, Company witness O'Brien testified that the Company at the time of the hearing had made improvements to increase service reliability and had extended a main to provide greater service reliability in the High Meadows subdivision and was in the process of correcting the inadequacies of the Chapel Hills system. The record is unclear as to whether the former owners of the Chapel Hills and High Meadows systems did or did not intend or desire to make the needed improvements. The Hearing Examiner also concludes that there was too little evidence presented by the Company as to whether the Chapel Hills and High Meadows acquisitions were in fact the result of arm's length bargaining and negotiated at reasonable purchase prices. Further, no evidence was presented as to the amount of money spent by the Applicant on improvements in these two systems, circumstances surrounding the transfers were not described by the Company as extensively as was done with the Mecklenburg acquisition, at the hearings in this matter a public witness testified in opposition to the transfer of the High Meadows system to Carolina Water Service, and no violations had been cited by the Division of Health Services regarding the High Meadows system.

Additionally, in the Chapel Hills and High Meadows acquisitions, the Company, according to the testimony of witness O'Brien, purchased and operated these two systems before getting approval from the Commission to do so. Examination of the Commission's records in the transfer proceedings relating to these two subdivisions confirms this. The purchase agreements for the High Meadows and Chapel Hills systems, which were filed with the Commission in Docket Nos. W-354, Sub 37 and 38 respectively, and of which the Hearing Examiner takes judicial notice, provide for the agreement to be closed on a certain date and further provide that within a stated number of days "following the closing and purchase of the Facilities, Purchaser will file a petition with the Commission requesting a transfer of the Public Utility franchise. . . " These contract provisions are in direct conflict with the provisions of G.S. 62-111(a) which clearly provides that no utility franchise shall be sold except after the written approval of the Commission has been obtained. G. S. 62-111 was enacted by the General Assembly and is binding on the Commission. It is not a statement of Commission policy; it is not a Commission rule that may be waived by the Commission. It is the law of the state duly enacted by the legislature. Carolina Water Service has been in operation in North Carolina long enough and has acquired enough water and sewer utility systems in North Carolina to be well acquainted with the law regarding system acquisitions. In just the time since Carolina Water Service's last rate case, it has acquired 12 water systems as testified to by Public Staff witness Lee. The provisions of G.S. 62-111 are intended to serve the purpose of ensuring beforehand that the public convenience and necessity will be served by any transfer of control of a public utility system. That purpose was circumvented by the manner in which the High Meadows and Chapel Hills systems were transferred, and the Hearing Examiner believes this to be a valid consideration, to be weighed along with the other considerations discussed hereinabove, in determining how to handle the debit purchase acquisition adjustments associated with these two systems. Had approval been sought before the transfers, the Public Staff would have been in a better position to work with the parties to resolve the debit purchase acquisition adjustments issues.

Although it is a difficult decision to determine whether or not to allow the inclusion of the debit plant acquisition adjustments associated with the Chapel Hills and High Meadows systems, the Hearing Examiner is doubtful that the benefits to the ratepayers of these two acquired systems outweigh the cost of inclusion in rate base of the excess purchase price and concludes based upon the evidence that these particular plant acquisition adjustments should not be included in rate base in this proceeding.

In summary, the Hearing Examiner notes that the adoption of too stringent a rule for inclusion of debit plant acquisition adjustments in rate base may lead to economic inefficiency. As was brought out in the cross-examination of witness Jacome, consistent denial of such debit adjustments would create great incentive to add capacity by construction rather than purchase because construction outlays are normally allowed as prudent investments. Such skewed incentives underscore the danger in denying the inclusion of the debit purchase acquisition adjustments where the facts otherwise justify inclusion. The Hearing Examiner notes also that the danger of including such debit adjustments in rate base--encouraging transfers made to build up rate base--may be adequately guarded against by examining each transaction to ensure that it is prudent, at arm's length, and that the benefits accruing to the customers outweigh the costs of inclusion in the rate base of the excess purchase price. The Hearing Examiner agrees with the Company that it is inequitable to give the customers the benefit of credit plant acquisition adjustments and to penalize the Company for debit plant acquisition adjustments. However, this is not to say that all debit plant acquisition adjustments should be allowed. They must be decided on a case-by-case basis.

The Hearing Examiner further acknowledges that there are many small water systems in North Carolina operated by owners with limited financial resources and utility training and expertise. In many instances, these owners have little incentive or desire to provide adequate service. One solution to the threat to service resulting from this situation is the acquisition of these systems by professional utility owners such as Carolina Water Service. The Commission wishes to encourage such acquisitions in cases such as these and therefore approves the rate base treatment advocated by the Company with regard to the Mecklenburg systems. Without this transfer, the Hearing Examiner believes that these customers had little chance of enjoying the benefits of the system improvements as it appears that the former owner was unable or unwilling to make the needed system corrections.

Based upon the foregoing and the record as a whole, the Hearing Examiner concludes that the proper level of the plant acquisition adjustment for inclusion in rate base in this proceeding is $1,124,907 which reflects the inclusion in rate base of the unamortized portion of the debit plant acquisition adjustment related to the Mecklenburg systems of $14,716 and exclusion from rate base of the debit plant acquisition adjustments relating to the Chapel Hills and High Meadows subdivisions.

## Evidence and Conclusions for Finding of Fact No. 10

The evidence supporting this finding is contained in the exhibits of Company witness O'Brien and in the testimony and exhibits of Public Staff witness Jacome.

Company witness O'Brien determined the Company's working capital allowance by inclusion of a cash requirement consisting of 1/8th of the Company's proposed total operating expenses less depreciation and taxes. Witness Jacome similarly included a cash requirement in her calculation of a working capital allowance consisting of 1/8th of the Public Staff's total operating expenses less depreciation and taxes. However, she also added prepayments of $9,161 and deducted average tax accruals of $39,078 in arriving at her recommended level of working capital of $163,787.

As the parties agreed on the formula approach for the determination of a reasonable cash requirement, the Hearing Examiner finds the proper level of the cash requirement to be $193,704. This amount represents 1/8th of the total operating revenue deductions of $1,975,170 less depreciation and taxes of $425,541, as determined in the Evidence and Conclusions for Finding of Fact No. 13. The Hearing Examiner further finds, based on the uncontested testimony of witness Jacome and past Commission treatment, that the inclusion of prepayments and average tax accruals in the determination of working capital is proper.

Therefore, based upon the foregoing, the Hearing Examiner concludes that the appropriate level of working capital in this proceeding is $163,787 consisting of a cash requirement of $193,704, prepayments of $9,161 less average tax accruals of $39,078.

## Evidence and Conclusions for Finding of Fact No. 11

Company witnesses O'Brien and Aliff and Public Staff witness Jacome presented testimony regarding the Company's reasonable original cost rate base.

As previously discussed in the Evidence and Conclusions for Finding of Fact No. 9, the only difference between the parties as to the proper level of rate base is the plant acquisition adjustment. The Hearing Examiner has concluded therein that the proper level of the plant acquisition adjustment is $1,124,907. Being that the Company and the Public Staff agreed on the amounts included in rate base for plant in service, deferred charges, working capital allowance, accumulated depreciation, advances in aid of construction, excess book value, contributions in aid of construction, customer deposits, and net deferred taxes, the Hearing Examiner, therefore, concludes that these amounts are reasonable and proper for use in the determination of original cost rate base. Based on the foregoing, the Hearing Examiner concludes that the appropriate original cost rate base for use in setting rates in this proceeding is $5,460,168.

Evidence and Conclusions for Finding of Fact No. 12

The evidence for this finding of fact is found in the testimony and exhibits of both the Company and the Public Staff. The Public Staff agreed with the Company's level of gross revenues under both present and proposed rates. The Public Staff did recommend that the Company's proposed $11.00 minimum charge for resort communities be denied, but the revenue impact of this proposal is immaterial and no adjustment was made. The Hearing Examiner concludes that the proper level of gross revenues under present rates after accounting and pro forma adjustments is $2,363,478 and after proposed rates is $2,931,837 as recommended by the Company and agreed to by the Public Staff.

Evidence and Conclusions for Finding of Fact No. 13

The evidence for this finding of fact is found in the testimony and exhibits of Company witnesses O'Brien and Aliff and Public Staff witnesses Jacome and Lee.

Company witness O'Brien recommended total operating expenses of $1,961,552. Public Staff witnesses Lee and Jacome recommended that a net increase of $13,618 be made, representing a decrease in purchased power expense and operating expenses charged to plant, and increases in regulatory commission expense, interest on customer deposits, depreciation, and state and local taxes. The Applicant's proposed order showed that the Company was in total agreement with the Public Staff's proposed level of operating expenses. Further the Company's proposed order reflected no adjustment to the level of amortization expense included in the cost of service to reflect the amortization of the debit plant acquisition adjustments nor any adjustment to income tax expense for the resulting change in interest expense arising from the Company's increase in rate base. The Hearing Examiner concludes that it would have been appropriate for the Company to include the amortization expense in the cost of service and to include additional interest expense in the tax calculation, however, based upon the conclusions set forth in Finding of Fact No. 9 these expense adjustments are immaterial amounts and are not reflected in the operating expense level determined herein. Thus, the Hearing Examiner finds that the total operating revenue deductions of $1,975,170 recommended by the Public Staff and accepted by the Company are reasonable and appropriate for use herein.

Evidence and Conclusions for Finding of Fact No. 14

The evidence for this Finding of Fact is found in the testimony and exhibits of both the Company and the Public Staff. Since the Public Staff adopted the capital structure and embedded cost of debt of 12.10% as proposed by the Company, the Hearing Examiner concludes that the fair and reasonable capital structure for use herein should be 50.20% debt and 49.80% common equity as proposed by the Company and agrees with the use of an embedded cost of debt of 12.10%.

Evidence and Conclusions for Finding of Fact No. 15

Both the Public Staff and the Company presented testimony and exhibits in support of an increase in annual gross revenues of $568,359. This increase will allow the Applicant the opportunity to earn a 12.10% overall rate of return which the Hearing Examiner finds not to be unreasonable. The overall rate of return incorporates an embedded cost of debt of 12.10% and a return on common equity of 12.10% derived by the capitalization ratios approved herein. The revenue requirement increase approved herein is based on the original cost of the Company's property and its reasonable test year operating revenues and expenses as previously determined and set forth in the Findings of Fact which are set out in this Order.

The following schedules summarize the gross revenues and rate of return which the Company should have a reasonable opportunity to achieve based upon the increases approved herein. Such schedules, illustrating the Company's gross revenue requirements, incorporate the findings and conclusions heretofore and herein found fair by the Hearing Examiner.

SCHEDULE I
CAROLINA WATER SERVICE, INC. OF NORTH CAROLINA
DOCKET NO. W-354, SUBS 39, 40, and 41
STATEMENT OF OPERATING INCOME AVAILABLE FOR A RETURN
For the Twelve Months Ended December 31, 1984

| Item | Present Rates | Increase Approved | After Approved Increase |
|---|---|---|---|
| Operating Revenues: | | | |
| Service Revenues | $2,311,345 | $554,070 | $2,865,415 |
| Miscellaneous Revenues | 52,133 | 14,289 | 66,422 |
| Total operating revenues | 2,363,478 | 568,359 | 2,931,837 |
| Operating Revenue Deductions: | | | |
| Operation and Maintenance expenses | 1,090,167 | - | 1,090,167 |
| General expenses | 459,462 | 7,206 | 466,668 |
| Depreciation and amortization | 195,326 | - | 195,326 |
| Operating taxes other than income | 183,147 | 24,374 | 207,521 |
| State income taxes | 6,276 | 32,207 | 38,483 |
| Federal income taxes | 40,792 | 232,104 | 272,896 |
| Total operating revenue deductions | 1,975,170 | 295,891 | 2,271,061 |
| Net Operating Income for Return | $ 388,308 | $272,468 | $ 660,776 |

## SCHEDULE II
## CAROLINA WATER SERVICE, INC., OF NORTH CAROLINA
## Docket No. W-354, Subs 39, 40, and 41
## STATEMENT OF RATE BASE AND RATE OF RETURN
## Twelve Months Ended December 31, 1984

| Item | After Approved Rates |
|---|---|
| Plant in service | $17,284,209 |
| Add - Debit balance in deferred taxes | 20,704 |
| Less - Accumulated depreciation | (1,420,922) |
| Plant acquisition adjustment | (1,124,907) |
| Advances in aid of construction | (44,972) |
| Excess book value | (1,579,771) |
| Contribution in aid of construction | (7,900,034) |
| Customer deposits | (29,901) |
| Deferred taxes | (101,779) |
| Add - Deferred charges | 193,754 |
| Working capital allowance | 163,787 |
| Total rate base | $ 5,460,168 |
| Rates of Return | |
| Present | 7.11% |
| Approved | 12.10% |

## SCHEDULE III
## CAROLINA WATER SERVICE, INC. OF NORTH CAROLINA
## Docket No. W-354, Subs 39, 40, and 41
## STATEMENT OF CAPITALIZATION AND RELATED COSTS
## For the Twelve Months Ended December 31, 1984

| Item | Ratio % | Original Cost Rate Base | Embedded Cost % | Net Operating Income |
|---|---|---|---|---|
| | Present Rates - Original Cost Rate Base | | | |
| Long-term debt | 50.20% | $2,741,004 | 12.10% | $331,661 |
| Common equity | 49.80% | 2,719,164 | 2.08% | 56.647 |
| Total | 100.00% | $5,460,168 | - | $388,308 |
| | Approved Rates - Original Cost Rate Base | | | |
| Long-term debt | 50.20% | $2,741,004 | 12.10% | $331,661 |
| Common equity | 49.80% | 2,719,164 | 12.10% | 329,115 |
| Total | 100.00% | $5,460,168 | - | $660,776 |

## Evidence and Conclusions for Finding of Fact No. 16

The evidence in support of this finding of fact is contained in the testimony and exhibits of Company witness O'Brien, Public Staff witness Lee and public witness Baity.

First, Applicant proposes that the customers residing in the resort communities of Carolina Forest, Woodrun, Bear Paw, Pine Knoll Shores, Ski Mountain, and Sugar Mountain be charged a minimum of $11.00 per month for a metered single family residence. This minimum charge includes a base facilities charge of $7.00 and 2,000 gallons usage. Usage above 2,000 gallons would be billed at the rate of $2.00 per 1,000 gallons. The Company's present rate structure does not differentiate between resort service areas and other service areas. Witness O'Brien testified that the minimum charge for resort areas was being proposed since very few of the landowners in these communities are year-round residents but the Company's facilities must be of sufficient capacity to meet the peak demand during the seasons when the parttime customers are living in the community. Presuming some minimal level of consumption in the resort areas would ensure that these parttime customers contribute to the capital cost of carrying the facilities that are not being used in the off-season. Witness Lee recommended that the minimum charge for resort areas be denied because the charge discriminates against the resort communities and deviates from the uniform rate concept utilized by the Company for its utility systems on a statewide basis. The Hearing Examiner concludes that the uniform rate concept is a valid one for Carolina Water Service for the reasons hereinafter discussed. Application of this concept requires that the minimum charge for resort communities be denied.

Staff witness Lee recommended that the tap-on and plant modifications fees proposed by the Company be modified to include the same restrictive clause that was included in the Order for Docket No. W-354, Sub 26; namely, that the tap fees are

> [a]pplicable only to taps made to new mains that are installed after the effective date of this Order. Previously existing and approved tap fees, however, shall be applicable to all service areas or sections of service areas served by existing plant and mains.

The Commission similarly restricted the plant modification fee:

> This fee shall be applicable only in those cases where plant or main modifications or expansion of mains is required in order to serve new development for which the Division of Health Services or other regulatory agency approval of plans and specifications relating to it has not been obtained as of the date of the Final Order in this docket and shall be charged to and payable by only the developer or builder who requests the modification or expansion of facilities for which fee is charged.

The Applicant objects to the addition of the proposed language. The Hearing Examiner notes that, as was asserted by Company witness O'Brien, such a restriction would result in varying fees from neighbor to neighbor--a system difficult to administer and likely to create unnecessary animosity. Further, this language would limit the Applicant's ability to charge the proposed fees when it is necessary to expand source of supply facilities to serve previously existing mains. Further, the concept of uniform rates presumes no differentiation in rate base. The imposition of a variety of circumstances by which tap fees are based circumvents that concept where there is no sufficient reason to do so. The difference in rate is therefore not justified and is unreasonably discriminatory. In the Order in Carolina Blythe Utilities Company, Docket No. W-503, Sub 2 (July 1, 1982), the Hearing Examiner found just such a difference in tap-on fees to be unreasonably discriminatory and a violation of N.C. Gen. Stat. 62-140 (1984). Based upon the foregoing and the record as a whole, the Hearing Examiner finds the proposed language to be counterproductive and denies its inclusion.

Witness Baity expressed his objection to the $6.50 monthly charge per condominium unit for the units in Pine Knoll Shores, believing such charge to be excessive when the entire condominium building is being served by a master meter. The Hearing Examiner notes that the treatment of condominium unit owners as individual customers was approved in Docket No. W-354, Sub 26, as reflective of the fact that the unit owners' usage approximates that of the owners of single-family homes and that fixed costs are largely related to facilities, which are also about equal to those needed to serve single-family homes. Further, any decreased cost of serving condominium units is already in a lower base facility charge for these units. Based upon the foregoing, the Hearing Examiner determines that the Company's rate design with respect to the metering and billing of condominium owners is appropriate.

Intervenor Village of Sugar Mountain challenged Applicant's practice of determining rates on a statewide basis, believing that under such a system larger, older, better-established systems incorrectly subsidized other systems. Staff witness Lee stated that it had been the Commission's policy to encourage the use of uniform rates for utilities. Witness Lee further stated that while there might indeed be some subsidization between systems, those who received the subsidy would change from time to time, and that creating a statewide system created a system with the financial resources to solve problems which a smaller system might be unable to address. Witness O'Brien similarly noted that an individual system could be supported faster and more economically with the financial backing of the unified entity. Based upon the foregoing and the record as a whole, the Hearing Examiner concludes that the treatment of Applicant as a single operating system for ratemaking purposes encourages economic efficiency and is reasonable for use herein.

Staff witnesses Lee and Jacome recommended that the other rate modifications as proposed by the Applicant be approved, and based upon the foregoing and the record as a whole the Hearing Examiner finds them appropriate for use herein.

IT IS, THEREFORE, ORDERED as follows:

1. That Carolina Water Service be, and is hereby, allowed to adjust its water and sewer rates and charges so as to produce, based upon the adjusted test year level of operations, an increase in water and sewer service revenues of $568,359.

2. That the Schedule of Rates attached hereto as Appendix A is hereby approved for water and sewer service rendered by Carolina Water Service, Inc. of North Carolina subject to the conditions set forth therein. Said rates shall become effective for service rendered on and after the effective date of this 'Order. Such Schedule of Rates is deemed filed with the Commission pursuant to G.S. 62-138.

3. That Carolina Water Service, to the extent it has not already done so, shall undertake and complete the improvements to service and water quality mandated in the Evidence and Conclusions for Finding of Fact No. 6 of this Order.

4. That the application to merge CWS Systems, Inc., into Carolina Water Service should be, and the same hereby is, approved.

5. That the application to transfer the franchise to provide water and sewer utility service in Beatties Ford from GO Enterprises, Inc., d/b/a Beatties Ford Utilities, Inc., to Carolina Water Service should be, and the same hereby is, approved. The lower "stepped-in" rates approved hereinabove for Beatties Ford shall remain in effect unchanged until Carolina Water Services' next general rate case or for at least one year from the effective date of this Order, whichever period of time is longer.

6. That Carolina Water Service shall give Notice to Customers of the rates approved herein by inserting a copy of Appendix B in its next regular billing statement following the effective date of this Order. Appendix A of this Order shall be attached to the Notice to Customers.

ISSUED BY ORDER OF THE COMMISSION.
This the 10th day of January 1986.

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

## APPENDIX A
## FINAL SCHEDULE OF RATES

Docket No. W-354, Sub 39
Docket No. W-354, Sub 40
Docket No. W-354, Sub 41

Carolina Water Service, Inc. of North Carolina
for all its service areas in North Carolina

### WATER RATE SCHEDULE

### METERED WATER RATES

#### Residential

(A) Base facility charge: $7.00 per dwelling unit. This $7.00 facility charge shall also apply where the service is provided through a master meter and each individual dwelling unit is being billed individually.

(B) Base facility charge: $6.50 per month per dwelling unit when service is provided through a master meter and a single bill is rendered for the master meter, as in condominium complexes.

(C) Commodity charge: $2.00 per 1,000 gallons ($1.15 per 1,000 gallons in Beatties Ford Subdivision).

(D) Flat rate for unmetered single-family residences: $13.00

Commercial and Other

(A) Base facility charge:

| | |
|---|---|
| 3/4" meter | $ 7.00 |
| 1" meter | 17.50 |
| 1½" meter | 35.00 |
| 2" meter | 56.00 |
| 3" meter | 105.00 |
| 4" meter | 175.00 |

(B) Commodity charge: $2.00 per 1,000 gallons, or 134 cubic feet.

AVAILABILITY RATES - Monthly charge per customer: $2.00

Applicable only to customers in Carolina Forest and Woodrun, who are subject to said Availability Charges pursuant to contract.

TAP ON FEE - $100.00 for 5/8" meter. Meters larger than 5/8" - actual cost of meter and installation.

PLANT MODIFICATION AND EXPANSION FEE - $400 for 5/8" meter.

Multi-family or commercial customers - to be negotiated on basis of equivalence to a number of single-family customers, but not less than $400 payable by developer or builder.

NEW WATER CUSTOMER CHARGE: $22.00

RECONNECTION CHARGE:

If water service cut off by utility for good cause: $22.00

If water service discontinued at customer's request: $22.00
(Customers who ask to be reconnected within 9 months of disconnection will be charged the base facility charge for the service period they were disconnected.)

## SEWER RATE SCHEDULE

SEWER RATES (Residential) - Flat rate per month per dwelling unit: $18.00 ($14.00 in Beatties Ford Subdivision)

Dwelling unit shall exclude any unit which has not been sold, rented, or otherwise conveyed by the developer or contract erecting the unit.

SEWER RATES (Commercial and Other)

125% of water service subject to a minimum rate of $18.00 per month. Customers who do not take water service will pay $18.00 per single-family equivalent.

NEW WATER AND SEWER CUSTOMER CHARGES - New Sewer Customer Charge: $16.50 (If customer also receives water service, this charge will be waived.)

TAP ON FEE

(Residential) - $100.00 per single-family dwelling unit
(Commercial) - Actual cost of connection

PLANT MODIFICATION AND EXPANSION FEE - $1,000 for single-family customers.

Multi-family or commercial customers: To be negotiated on basis of equivalence to a number of single-family customers, but not less than $1,000 payable by developer or builder.

RECONNECTION CHARGE:

If sewer service cut off by utility for good cause: $33.00

This charge will be waived if customer also receives water service from Carolina Water Service.

BILLS DUE: On billing date.

BILLS PAST DUE: Twenty-one (21) days after billing date.

FINANCE CHARGE FOR LATE PAYMENT: 1% per month for balance due twenty-five (25) days after billing date.

CHARGE FOR PROCESSING OF NSF CHECK: $7.00

Bills shall be rendered bimonthly in all service areas except Carolina Forest, Woodrun, Misty Mountain, Crystal Mountain, Ski Mountain, Pine Knoll Shores, Sugar Mountain, and High Meadows, where bills shall be rendered quarterly.

Issued in accordance with authority granted by the North Carolina Utilities Commission in Docket No. W-354, Subs 39, 40 and 41, on this the 10th day of January 1986.

APPENDIX B

DOCKET NO. W-354, Sub 39
DOCKET NO. W-354, SUB 40
DOCKET NO. W-354, SUB 41

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Applications 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, for Authority to Merge With CWS Systems, Inc., of North Carolina, and for Authority to Transfer the Franchise of Water And Sewer Utility Service in Beatties Ford and Hyde Park Subdivisions, Mecklenburg County, North Carolina, from GO Enterprises, Inc. ) NOTICE TO CUSTOMERS

NOTICE IS HEREBY GIVEN that the North Carolina Utilities Commission has issued an Order granting final approval of the rates of Carolina Water Service for all of its service areas in North Carolina. The rates approved by the Commission are the same as the rates placed into effect on an interim basis in all service areas except Beatties Ford by Order of November 7, 1985. The rates are fully described on Appendix A attached hereto.

NOTICE IS ALSO GIVEN that the Commission has approved the merger of CWS Systems, Inc., into Carolina Water Service and has approved the transfer of the franchise to provide water and sewer utility service in Beatties Ford from GO Enterprises, Inc., d/b/a Beatties Ford Utilities, Inc., to Carolina Water Service. The Commission has approved a "stepped-in" rate for Beatties Ford and has ordered that this rate remain in effect until Carolina Water Services' next general rate case or for at least one year, whichever period of time is longer.

The Commission's decision followed hearings in Raleigh and Charlotte at which a number of customers appeared and offered testimony. The Commission's Order found that the service provided by Carolina Water Service to its customers is adequate; however, the Order noted that several customers had testified about their problems with water quality and service and the Commission ordered the Company to take appropriate steps to correct these problems and to continue its efforts to improve the quality of water and sewer service in all its service areas.

ISSUED BY ORDER OF THE COMMISSION.
This the 10th day of January 1986.

NORTH CAROLINA UTILITIES COMMISSION
Sandra J. Webster, Chief Clerk

(SEAL)

DOCKET NO. W-354, SUB 39
DOCKET NO. W-354, SUB 40
DOCKET NO. W-354, SUB 41

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Applications 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; for ) ORDER
Authority to Merge with CWS Systems, Inc., of North ) ON
Carolina; and for Authority to Transfer the Franchise for ) RECONSIDERATION
Water and Sewer Utility Service in Beatties Ford and Hyde )
Park Subdivisions, Mecklenburg County, North Carolina, from )
GO Enterprises, Inc. )

HEARD IN: Commission Hearing Room 2115, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on Monday, March 10, 1986, at 2:00 p.m.

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

APPEARANCES:

For the Applicant:

Edward S. Finley, Jr., Attorney at Law, Hunton & Williams, P.O. Box 109, Raleigh, North Carolina 27602

For the Using and Consuming Public:

Paul L. Lassiter, Staff Attorney, Public Staff - North Carolina Utilities Commission, P.O. Box 29520, Raleigh, North Carolina 27626-0520

For the Intervenor Signal Hill Investors:

Thomas K. Austin, Attorney at Law, Fruitt & Austin, P.O. Box 23547, Raleigh, North Carolina 27605

BY THE COMMISSION: On January 10, 1986, Hearing Examiner Sammy R. Kirby issued a Recommended Order Approving Rate Increase, Merger of CWS Systems, Inc., and Transfer of Beatties Ford in this docket allowing Carolina Water Service, Inc., of North Carolina (Carolina Water Service, Applicant, or Company) an increase in gross annual water and sewer service revenues of $568,359 from its North Carolina operations, allowing the merger of CWS Systems, Inc., of North Carolina into the Applicant, and approving the transfer of the water and sewer utility franchise for Beatties Ford from Beatties Ford Utilities, owned by GO Enterprises, Inc., to the Applicant.

On January 27, 1986, the Public Staff timely filed exceptions to the Recommended Order issued in this docket and requested further hearing. On the same date, Intervenor Signal Hill Investors timely filed exceptions, a request for oral argument, and a motion for further hearing.

On February 10, 1986, Carolina Water Service filed its response to the exceptions of the Public Staff and Signal Hill Investors, and on February 11, 1986, the Company filed its response to the motion for futher hearing.

Oral argument was held on this matter on Monday, March 10, 1986. The Hearing Examiner's treatment of the following two issues was presented for reconsideration at the oral argument:

1. Approval of transfer of the water and sewer utility franchise for Beatties Ford from Beatties Ford Utilities, owned by GO Enterprises, Inc., to Carolina Water Service.

2. Classification of water and sewer customers residing in Trinity Park Apartments, located in the Beatties Ford service area, as residential customers rather than as commercial customers.

The Commission has carefully reviewed the entire record in this docket concerning the issues presented in the exceptions, motions for further hearing, and the oral argument of March 10, 1986, and concludes that Finding of Fact No. 8 in the Recommended Order of January 10, 1986, as it relates to the approval of the transfer of the water and sewer utility franchise for Beatties Ford from Beatties Ford Utilities, owned by GO Enterprises Inc., to Carolina Water Service is appropriate, is fully supported by the evidence of record, and should not be reconsidered.

As to the question of the appropriate rates to charge the Trinity Park Apartments, the Commission concludes that this matter should be reconsidered pursuant to G.S. § 62-80 in order to allow the Commission to amend the Recommended Order of January 10, 1986. In the Recommended Order the rates approved for the Trinity Park Apartments (Beatties Ford) are as follows:

Metered Water Rates - Residential

1. Base facility charge: $6.50 per month per dwelling unit when service is provided through a master meter and a single bill is rendered for the master meter, as in condominium complexes.

2. Commodity Charge: $1.15 per 1,000 gallons

Sewer Rate - Residential

Flat rate per month per dwelling unit: $14.00

These aforementioned rates were recommended by the Company and agreed to by the Hearing Examiner. The residential monthly water rate commodity charge of $1.15 per 1,000 gallons and the residential monthly sewer flat rate per unit of $14.00 represent stepped-in rates for the Beatties Ford System customers. The other residential Carolina Water Service customers (excluding Beatties Ford

System) are being charged a monthly water rate commodity charge of $2.00 per 1,000 gallons and a monthly sewer flat rate per unit of $18.00.

Signal Hill Investors, owners of the Trinity Park Apartments, raised exceptions in this proceeding to the rates approved by the Hearing Examiner for the customers in Trinity Park Apartments and argued that the Hearing Examiner's conclusion that individual units served behind a master meter can each be charged an individual base facility charge runs contrary to Commission Rules R7-26(a)(2) and R7-26(b). It is the position of Signal Hill Investors that Trinity Park Apartments should be billed as one commercial customer and charged one base facility charge rather than be billed as a residential customer and charged a base facility charge for each apartment unit.

Commission Rule R7-26(a)(2) states:

> "Should the owner of a multiple apartment building undertake to furnish water to his tenants as a part of their monthly rent, then such service shall be classed as 'Commercial'."

The Trinity Park Apartments are served by a master meter. The owner receives one bill and includes the cost of water and sewer in the rent paid by the tenants. Therefore, in accordance with the above quoted Commission Rule, Signal Hill Investors believe that it is appropriate to treat Trinity Park Apartments as a commercial customer rather than as a residential customer.

In this regard, the Commission concludes that, under the present circumstances, and in view of the language contained in Commission Rules R7-26(a)(2) and R7-26(b), the Trinity Park Apartments should be treated as a commercial customer rather than as a residential customer. However, in reaching this decision, the Commission recognizes that there is very little evidence presented in the record supporting such a decision other than the existence of Commission Rules R7-26(a)(2) and R7-26(b). In view of this situation, the Commission concludes that the Trinity Park Apartments should be billed as a commercial customer on an interim basis while the Commission studies the propriety of Commission Rule R7-26(a)(2).

Having determined that Trinity Park Apartments should be treated as a commercial customer, there is still one remaining question as to what actual rates should be charged to these particular customers. In the Hearing Examiner's Recommended Order, the rates proposed for the commercial customers are as follows:

Monthly Metered Water Rates

(1) Base facility charge:

| | |
|---|---|
| 3/4" meter | $ 7.00 |
| 1" meter | 17.50 |
| 1½" meter | 35.00 |
| 2" meter | 56.00 |
| 3" meter | 105.00 |
| 4" meter | 175.00 |

(2) Commodity Charge: $2.00 per 1,000 gallons, or 134 cubic feet.

Monthly Sewer Rate :

125% of water service subject to a minimum rate of $18.00 per month.

According to Public Staff witness Andy Lee's Late Filed Exhibit 1, filed November 14, 1985, in this docket, the Trinity Park Apartments' master meter is a 3" meter serving approximately 100 apartments. Based on this information and the fact that no one in these proceedings disagreed with the Company's requested overall revenue increase, the Commission finds that the appropriate commercial rates for the Trinity Park Apartments in Beatties Ford Subdivision should be as follows:

Monthly Metered Water Rates

(1) Base Facilty Charge: 3" meter - $105.00
(2) Commodity Charge: $1.90 per 1,000 gallons

Monthly Sewer Rate : 100% of water service

These approved rates reflect stepped-in rates for Trinity Park Apartments and will produce a level of revenues that is approximately the same as the level of revenues produced under the Hearing Examiner's proposed rates. The Company and the Hearing Examiner recognized that the Beatties Ford customers have had no increase in rates for many years and agreed that these customers should have stepped-in rates to reduce somewhat the immediate impact of the substantial increase in rates that these customers will eventually be experiencing. The Commission agrees with this concept in view of the circumstances in this case and further concludes that these stepped-in rates should remain unchanged for at least one year from the effective date of this Order or until Carolina Water Service's next general rate case, whichever period of time is longer. Accordingly, the Commission concludes that the Schedule of Rates, attached hereto as Appendix A, is just and reasonable.

IT IS, THEREFORE, ORDERED as follows:

1. That, except as modified herein, the Recommended Order heretofore entered in this docket on January 10, 1986, be, and is hereby, affirmed and adopted as the final order of the Commission to become effective on and after the date of this Order on Reconsideration.

2. That the Schedule of Rates, attached hereto as Appendix A, is hereby approved for water and sewer service rendered by Carolina Water Service, subject to the conditions set forth therein. Said rates shall become effective for service rendered on and after the effective date of this Order. Such Schedule of Rates is deemed filed with the Commission pursuant to G.S. § 62-138.

3. That the lower stepped-in rates approved hereinabove for Beatties Ford shall remain in effect unchanged for at least one year from the effective date of this Order or until Carolina Water Service's next general rate case, whichever period of time is longer.

4. That Carolina Water Service shall give Notice to Customers of the rates approved herein by inserting a copy of Appendix B in its next regular

billing statement following the effective date of this Order. Appendix A of this Order shall be attached to the Notice to Customers.

5. That, except as granted herein, the exceptions and motions for further hearing filed in this docket by the Public Staff and Signal Hill Investors be, and are hereby, denied.

ISSUED BY ORDER OF THE COMMISSION.
This the 24th day of March 1986.

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

## APPENDIX A
## FINAL SCHEDULE OF RATES

Docket No. W-354, Sub 39
Docket No. W-354, Sub 40
Docket No. W-354, Sub 41

Carolina Water Service, Inc., of North Carolina
for all its service areas in North Carolina

### WATER RATE SCHEDULE

METERED WATER RATES

Residential (Monthly charges)[1]

(A) Base facility charge: $7.00 per dwelling unit. This $7.00 facility charge shall also apply where the service is provided through a master meter and each individual dwelling unit is being billed individually.

(B) Base facility charge: $6.50 per month per dwelling unit when service is provided through a master meter and a single bill is rendered for the master meter, as in condominium complexes.

(C) Commodity charge: $2.00 per 1,000 gallons ($1.15 per 1,000 gallons in Beatties Ford System).

(D) Flat rate for unmetered single-family residences: $13.00

Commercial and Other (Monthly Charges)[2]

(A) Base facility charge:

| | |
|---|---|
| 3/4" meter | $ 7.00 |
| 1" meter | 17.50 |

[1] Corrected by Errata Order dated April 1, 1986.
[2] Corrected by Errata Order dated April 1, 1986.

| | |
|---|---|
| 1½" meter | 35.00 |
| 2" meter | 56.00 |
| 3" meter | 105.00 |
| 4" meter | 175.00 |

(B) Commodity charge: $2.00 per 1,000 gallons, or 134 cubic feet
($1.90 per 1,000 gallons in Beatties Ford System)

AVAILABILITY RATES - Monthly charge per customer: $2.00

Applicable only to customers in Carolina Forest and Woodrun, who are subject to said Availability Charges pursuant to contract.

TAP ON FEE - $100.00 for 5/8" meter. Meters larger than 5/8" - actual cost of meter and installation.

PLANT MODIFICATION AND EXPANSION FEE - $400 for 5/8" meter.

Multifamily or commercial customers - to be negotiated on basis of equivalence to a number of single-family customers, but not less than $400 payable by developer or builder.

NEW WATER CUSTOMER CHARGE: $22.00

RECONNECTION CHARGE:

If water service cut off by utility for good cause: $22.00

If water service discontinued at customer's request: $22.00
(Customers who ask to be reconnected within nine months of disconnection will be charged the base facility charge for the service period they were disconnected.)

## SEWER RATE SCHEDULE

SEWER RATES (Residential) - Flat rate per month per dwelling unit: $18.00 ($14.00 in Beatties Ford System)

Dwelling unit shall exclude any unit which has not been sold, rented, or otherwise conveyed by the developer or contractor erecting the unit.

SEWER RATES (Commercial and Other)

125% of water service (100% of water service in Trinity Park Apartments) subject to a minimum rate of $18.00 per month. Customers who do not take water service will pay $18.00 per single-family equivalent.

NEW WATER AND SEWER CUSTOMER CHARGES - New Sewer Customer Charge: $16.50 (If customer also receives water service, this charge will be waived.)

TAP ON FEE

(Residential) - $100.00 per single-family dwelling unit
(Commercial) - Actual cost of connection

PLANT MODIFICATION AND EXPANSION FEE - $1,000 for single-family customers.

Multifamily or commercial customers: To be negotiated on basis of equivalence to a number of single-family customers, but not less than $1,000 payable by developer or builder.

RECONNECTION CHARGE:

If sewer service cut off by utility for good cause: $33.00

This charge will be waived if customer also receives water service from Carolina Water Service.

BILLS DUE: On billing date

BILLS PAST DUE: Twenty-one (21) days after billing date

FINANCE CHARGE FOR LATE PAYMENT: 1% per month for balance due twenty-five (25) days after billing date

CHARGE FOR PROCESSING OF NSF CHECK: $7.00

BILLING FREQUENCY:

Bills shall be rendered bimonthly in all service areas except Carolina Forest, Woodrun, Misty Mountain, Crystal Mountain, Ski Mountain, Pine Knoll Shores, Sugar Mountain, and High Meadows, where bills shall be rendered quarterly.

Issued in accordance with authority granted by the North Carolina Utilities Commission in Docket No. W-354, Subs 39, 40, and 41, on this the 24th day of March 1986.

APPENDIX B

DOCKET NO. W-354, Sub 39
DOCKET NO. W-354, SUB 40
DOCKET NO. W-354, SUB 41

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Applications 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, for Authority to Merge )
With CWS Systems, Inc., of North Carolina, and ) NOTICE TO CUSTOMERS
for Authority to Transfer the Franchise of Water )
and Sewer Utility Service in Beatties Ford and )
Hyde Park Subdivisions, Mecklenburg County, North )
Carolina, from GO Enterprises, Inc. )

NOTICE IS HEREBY GIVEN that the North Carolina Utilities Commission has issued an Order granting final approval of the rates of Carolina Water Service for all of its service areas in North Carolina. The rates approved by the Commission are the same as the rates placed into effect on an interim basis in all service areas except in the Beatties Ford System by Order of November 7, 1985. The rates are fully described in Appendix A attached hereto.

NOTICE IS ALSO GIVEN that the Commission has approved the merger of CWS Systems, Inc., into Carolina Water Service and has approved the transfer of the franchise to provide water and sewer utility service in Beatties Ford from GO Enterprises, Inc., d/b/a Beatties Ford Utilities, Inc., to Carolina Water Service. The Commission has approved a stepped-in rate for Beatties Ford and has ordered that this rate remain in effect for at least one year or until Carolina Water Services' next general rate case, whichever period of time is longer.

The Commission's decision followed hearings in Raleigh and Charlotte at which a number of customers appeared and offered testimony. The Commission's Order found that the service provided by Carolina Water Service to its customers is adequate; however, the Order noted that several customers had testified about their problems with water quality and service and the Commission ordered the Company to take appropriate steps to correct these problems and to continue its efforts to improve the quality of water and sewer service in all its service areas.

ISSUED BY ORDER OF THE COMMISSION.
This the 24th day of March 1986.

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

DOCKET NO. W-218, SUB 32

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

| In the Matter of |  |  |
|---|---|---|
| Application by Hydraulics, Ltd., P. O. Box 18047', Greensboro, North Carolina, for Authority to Increase Rates for Water Utility Service in all Its Service Areas in North Carolina | ) | FINAL ORDER OVERRULING EXCEPTIONS, AFFIRMING RECOMMENDED ORDER, AND REQUIRING FILING OF APPLICATION FOR TRANSFER OF OWNERSHIP OF UTILITY |

HEARD IN: The Commission Hearing Room, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina 27626, on March 3, 1986

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

APPEARANCES:

For the Applicant:

William Grantmyre, Attorney at Law, 263 West Chatham Street, Cary, North Carolina 27511

For the Using and Consuming Public:

Theodore C. Brown, Jr., Staff Attorney, Public Staff, North Carolina Utilities Commission, P. O. Box 29520, Raleigh, North Carolina 27626-0520

BY THE COMMISSION: On January 17, 1986, Hearing Examiner Wilson B. Partin, Jr., entered a Recommended Order in this docket granting a partial rate increase to Hydraulics, Ltd.

On January 31, 1986, the Public Staff filed certain exceptions to the Recommended Order and requested that the matter be set for oral argument before the full Commission. On February 3, 1986, Hydraulics, Ltd., filed certain exceptions to the Recommended Order.

On February 7, 1986, the Commission issued an Order scheduling the exceptions for oral argument before the full Commission on March 3, 1986.

The matter came on for oral argument as scheduled. The Applicant, Hydraulics, Ltd., and the Public Staff were present, represented by counsel, and made oral argument.

The Commission believes that certain of the exceptions raised for reconsideration warrant further discussion. The Company requested reconsideration of the decisions in the Recommended Order relating to salaries and wages and electrical power expenses. The Commission has carefully evaluated the decisions rendered in this regard by the Hearing Examiner and finds such decisions just and reasonable and fully supported by the evidence presented in the proceeding. Though the new evidence introduced at the Oral Argument regarding electrical expenses would tend to substantiate the Company's position, it should be recognized that such information was not available at the time of the hearing in the case nor does such data represent a full operating year of expense reflective of all seasonal changes. Thus the Commission concludes that the decisions rendered by the Hearing Examiner regarding wages and salaries and electrical power expenses should be affirmed for the reasons set out in the Recommended Order.

The Public Staff requests reconsideration of several issues also. The Public Staff takes issue with the decisions of the Hearing Examiner regarding life insurance expense, medical expenses, and the use of a 15% margin on operating revenue deductions. Counsel for the Public Staff asserts that the reasoning used by the Hearing Examiner for decisions reached regarding life insurance expense and the 15% margin on operating revenue deductions are fallacious and duplicative. Specifically, language contained in the Recommended Order states that inclusion of life insurance expense and a 15% margin are justified as a result of the current financial status of the Company and the fact that it was necessary for the owner and his wife to cosign a loan and pledge the family home as collateral in order to obtain financing for the water system. The Public Staff asserts that this justification is improperly used for both issues. The Commission finds nothing improper in using the same evidence to render decisions on more than one related issue and certainly the rendering of one decision on the basis of given facts does not preclude the rendering of another for similar reasoning. The Public Staff asserts that the statement "it was necessary for the owner and his wife to cosign a loan and pledge as collateral the family home in order to obtain necessary financing for the water" contained in the Order is fallacious. The Public Staff does not disagree that the owner and his wife had to cosign the loan and pledge the family home as collateral. However, the Public Staff asserts that the financing was completed in order to allow the owner to buy stock in the Company and not for purposes of infusing cash into the water system. Witness Perkins, the owner of the system, testified that the $50,000 loan was obtained "to try to pay some of its (the Company's) indebtedness off and to keep it (the Company) going without going under." Specifically witness Perkins testified that a portion of loan was used to pay past due gross receipt taxes, a portion to pay accountant's fees, and a portion to buy the remainder of the outstanding stock in the Company. Witness Perkins testified that the previous partial owner in the business wanted to rid himself of the Company due to its continued unprofitability. Further evidence was introduced in the case indicating that the Company has been experiencing difficulty meeting obligations such as payroll and tax liabilities and that purchases for maintenance and plant improvements must be made on a cash basis due to the Company's inability to obtain financing. Obviously the record is replete with evidence substantiating the precarious financial position of the Company. The fact that a portion of the loan proceeds were used to purchase stock in the Company does not alter this fact. The Commission thus finds the inclusion of life insurance premiums in test period expenses clearly just and reasonable.

Further the precarious financial position of the Company coupled with the owner's obvious intent to obtain financial stability for the water system and render adequate water utility service to his customers warrants a 15% margin on operating revenue deductions. Such margin reflects a 5% risk factor rather than the 3% advocated by the Public Staff.

The Commission notes that the margin on operating revenue deductions methodology of determining operating ratio was introduced several years ago by the Public Staff and has been accepted routinely by the Commission in water cases. The methodology itself obviously has merit. However, the Public Staff has generally not altered its risk premium of 3% for any water company. It is recognized that the risk factor is judgmental based upon the overall risk of the Company involved. The 3% risk factor has been advocated by the Public Staff for small, large, financially stable, financially unstable, well managed, and poorly managed systems alike. The Commission believes that proper consideration of these factors warrant varied risk factors for individual companies since all water companies do not face the same risk. The financial instability of this Company clearly justifies the use of a 5% risk factor. Thus the Commission affirms the Hearing Examiner's decision in this regard.

Finally the Public Staff objects to inclusion of one-half of the medical insurance premiums for the owner's family. The Public Staff asserts that no evidence has been cited to justify this decision. The evidence presented in the case indicates that family members are currently employed by the Company. It is unclear as to the level of such insurance premium which relates to family members that are employees of the Company. Further some of the salaries of such employees have been excluded from test period expenses. Thus the Hearing Examiner's inclusion of one-half of the medical insurance premiums seems quite reasonable. Further many businesses include family insurance premiums as an part of an overall company benefit plan.

Therefore, based upon a careful consideration of the Recommended Order of January 17, 1986, the oral argument of the parties before the full Commission on March 3, 1986, 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 January 17, 1986, should be affirmed and adopted as the Final Order of the Commission; that each of the exceptions thereto should be overruled and denied; and that Hydraulics, Ltd., be required to file an application for the transfer of ownership of the utility.

IT IS, THEREFORE, ORDERED as follows:

1. That each and every exception of the Public Staff and Hydraulics, Ltd., to the Recommended Order of January 17, 1986, be, and hereby is, overruled.

2. That the Recommended Order of January 17, 1986, be, and the same is hereby, affirmed, and adopted as the Final Order of the Commission.

3. That Hydraulics, Ltd., be, and hereby is, required to file an application for transfer of ownership of this utility within 30 days of the date of this Order.

ISSUED BY ORDER OF THE COMMISSION.
This the 10th day of March 1986.

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

DOCKET NO. W-354, SUB 50

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

| In the Matter of<br>Application of Carolina Water Service, Inc., of North Carolina, 2335 Sanders Road, Northbrook, Illinois for a Certificate of Public Convenience and Necessity to Provide Water Utility Service in Emerald Point Subdivision, Mecklenburg County, North Carolina and for Approval of Rates | ) | ORDER |
|---|---|---|

HEARD IN: Commission Hearing Room, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on Tuesday, Spetember 2, 1986, at 2:00 p.m.

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

APPEARANCES:

For Carolina Water Service:

Edward S. Finley, Jr., Hunton and Williams, Post Office Box 109, Raleigh, North Carolina 27602

For Enderby:

Robert F. Page, Crisp, Davis, Schwentker, Page and Currin, Post Office Drawer 30489, Raleigh, North Carolina 27622

BY THE COMMISSION: On July 11, 1986, Enderby Development Associates, Inc., (Enderby), filed a Motion to Revoke and Reaward Franchise in this docket moving the Commission (1) that the certificate of public convenience and necessity heretofore awarded to Carolina Water Service, Inc., on October 2, 1985, to provide water and sewer utility service in Emerald Point Subdivision, Mecklenburg County, be revoked and (2) that the franchise be awarded to Enderby.

On July 30, 1986, Carolina Water Service filed its Response to Motion to Revoke and Reaward Franchise and Request for Injunctive Relief. By the Response, Carolina Water Service asked that Enderby's Motion be treated as a complaint and be denied, that a preliminary injunction be issued enjoining Enderby from denying Carolina Water Service the opportunity to exercise its certification rights pending a hearing on the merits, and that a hearing be scheduled as expeditiously as the calendar permits. On August 19, 1986, Enderby filed its Reply to Response and Answer to Counterclaim of Carolina Water Service.

On August 26, 1986, the Commission issued its Order Scheduling Oral Argument and Hearing on Merits, by which the Commission scheduled an oral argument for the time and place indicated above for the purpose of considering the request of Carolina Water Service for a preliminary injunction pending the hearing on the merits. By that same Order, the Commission scheduled a hearing on the merits for Tuesday, November 4, 1986.

The oral argument was held as scheduled. Both Carolina Water Service and Enderby filed affidavits. Carolina Water Service submitted a brief in support of its request for a preliminary injunction; Enderby has since filed a letter responding to the brief.

It appears undisputed that Enderby is developing Emerald Point Condominiums in Mecklenburg County; that Enderby entered into a contract with Carolina Water Service on July 17, 1985, pursuant to which Carolina Water Service agreed to operate the water and sewer utility systems at Emerald Point; that Carolina Water Service applied to this Commission for a certificate of public convenience and necessity to operate the water and sewer utility systems and such a certificate was granted to Carolina Water Service by the Commission by Order of October 2, 1985; that some condominium units have been occupied and the water and sewer systems have been put into operation; that a dispute arose and continues to exist between the parties as to the manner in which the sewer utility system was being operated; that on May 15, 1986, Enderby wrote a letter to Carolina Water Service declaring the contract null and void and directing Carolina Water Service to keep its workers out of Emerald Point; and that Enderby has contracted with Burnett Construction Company, Inc., for Burnett to operate the water and sewer utility systems. It is also apparently undisputed that Carolina Water Service instituted a civil action in the Superior Court of Mecklenburg County on or about May 21, 1986, requesting, among other relief, that Enderby be enjoined from interfering with Carolina Water Service's right of access to the water and sewer facilities at Emerald Point for the purpose of maintaining and operating those facilities and that on June 23, 1986, there was filed with the Mecklenburg Superior Court an Order of Judge Chase Saunders denying Carolina Water Service's request for a preliminary injunction in that action.

By the present Order, we are only concerned with the request for a preliminary injunction pending the hearing in November. Carolina Water Service requests that Enderby be enjoined from denying Carolina Water Service the opportunity to exercise its rights under its franchise and from providing utility service without a franchise of its own. In general, Carolina Water Service contends that Enderby is unlawfully providing public utility service without a franchise and should be enjoined, that the Commission has jurisdiction over Enderby, and that the Superior Court action does not bar an injunction by the Commission. Enderby generally contends that the Commission has no jurisdiction over it, that the Superior Court denial of a preliminary injunction is res judicata as to the Commission, that the Commission should defer to the Superior Court's denial of an injunction and that no irreparable harm is threatened.

We must first examine the regulatory authority of this Commission. Chapter 62 of the General Statutes grants the Utilities Commission general powers to regulate the rates and service of public utilities within the state. One of the ways in which the Commission exercises its regulation is through its power to grant and control the transfer and revocation of utility franchises. The franchise is the grant of authority by the Commission to engage in business as a public utility. G.S. 62-3(11). A franchise is granted by a certificate of public convenience and necessity. G.S. 62-110 provides that no public utility shall 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 a certificate of public convenience and necessity from the Commission. G.S. 62-111 provides that no franchise shall be transferred nor shall control thereof be changed in any way except after application to and written approval by the Commission. G.S. 62-112 provides that franchises may be suspended or revoked by order of the Commission. The Utilities Commission is also granted general supervision over the service of the franchise holders. By G.S. 62-73, the Commission has jurisdiction to hear and decide complaints made by any interested person with respect to the service practices of any public utility. The Commission frequently hears and adjudicates such complaint proceedings and has ample powers to correct service deficiencies. See G.S. 62-310 et seq.

Thus, Enderby has a forum before the Commission within which to litigate any complaint as to Carolina Water Service's service at Emerald Point or as to the way in which Carolina Water Service obtained its franchise for the area. Enderby has now invoked this forum. However, before doing so, it took control of the public utility systems at Emerald Point and put someone other than the franchised operator in control of those systems without obtaining the approval of the Commission. By virtue of its franchise, Carolina Water Service is responsible for maintaining and operating the public utility systems at Emerald Point and for serving the customers there. By being denied access to these systems, Carolina Water Service is not merely losing revenue it might otherwise collect. More importantly, Carolina Water Service is also being prevented from carrying out its responsibilities under the law as a public utility to provide safe, adequate, and reliable water and sewer service to its customers at Emerald Point. Water and sewer utility services are vital to the health and safety of the public. Thus, denial of access to Carolina Water Service poses the threat of irreparable loss to Carolina Water Service and its customers. The threat to the public is pressing. This Commission is ultimately responsible for the provision of adequate public utility service. Enderby is in control of the public utility systems at Emerald Point and, although it asserts it will provide adequate service, it denies this Commission's jurisdiction over it. Access by Carolina Water Service to the public utility systems is necessary in order to protect the rights of Carolina Water Service and the rights of the public during this litigation. Further, the Commission, although it has not prejudged the merits of this case, has examined in detail the affidavits filed by the parties and finds therein probable cause to believe that Carolina Water Service will be able to establish the rights it asserts. On the basis of the affidavit and the oral and written arguments of the parties, the Commission finds good cause to issue the present Order granting preliminary relief.

Enderby asserts that he is not charging compensation for utility services at this time, that he is therefore not a public utility, and that this Commission therefore has no jurisdiction over him. The Commission disagrees. This Commission's jurisdiction over Enderby cannot be so easily circumvented. Initially, we note that the General Assembly has vested the Commission with all such powers "as may be necessary or incident to the proper discharge of its duties." The relief sought by Carolina Water Service is clearly necessary and incident to the proper discharge of this Commission's duties with respect to the supervision of utility franchises. Further, the Commission cannot accept

Enderby's denial of public utility status. The water and sewer systems at Emerald Point are public utility systems by virtue of this Commission's franchise. Enderby has taken control of the systems. Although Enderby asserts it is not charging for its services now, it has asked for the public utility franchise in the area and clearly intends to charge rates if franchised. Finally, Enderby has submitted to the jurisdiction of this Commission by virtue of its filing a complaint with the Commission and seeking relief from the Commission. Enderby cannot, on the one hand, invoke this Commission's power to hear its complaint and, on the other hand, deny this Commission's power over it with respect to a matter so clearly incident to the complaint.

This Commission has also considered the effect of the denial of preliminary injunctive relief by the Mecklenburg Superior Court. The Superior Court's denial of a preliminary injunction does not operate as res judicata on this Commission because the denial of a preliminary injunction is interlocutory and thus without res judicata effect and because the present proceeding involves different issues from the Superior Court proceeding. We conclude that both the Superior Court and this Commission have jurisdiction over different aspects of the dispute between the parties. As Enderby itself has stated in its Reply, "the legal issues pending before the Superior Court Judge were greatly different from the issues now pending before this Commission. The issues pending before the Superior Court Judge were exclusively devoted to matters of contract law." By G.S. 62-73 and G.S. 62-110 through 112, the General Assembly has given this Commission jurisdiction as to public utility franchises and service. See, e.g., Burke Transit Co. v. Queen City Coach Co., 228 NC 768 (1948). We do not in any way question the denial of injunctive relief issued by the Superior Court on the basis of the matters presented to it. However, we believe that the matters now pending before this Commission are different and justify a different decision here. The present proceeding, unlike the contract issues before the Superior Court, involves questions of the public health and safety, for which Carolina Water Service is responsible by virtue of its franchise and for which this Commission is ultimately responsible by virtue of the General Statutes.

IT IS, THEREFORE, ORDERED that, pending a further Order in this proceeding, Enderby should be, and hereby is, ordered to allow Carolina Water Service access to the water and sewer utility systems at Emerald Point and is further ordered to refrain from interfering with Carolina Water Service's maintenance and operation of these systems pursuant to its franchise from this Commission and, upon Carolina Water System assuming maintenance and operation of the systems, Enderby is hereby further ordered to cease providing utility service at Emerald Point without a franchise.

ISSUED BY ORDER OF THE COMMISSION.
This the 10th day of September 1986.

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 ) ORDER DISMISSING NOTICE
Assessments ) OF INTENT TO APPEAL

BY THE COMMISSION: On February 11, 1986, Stephen S. Sawin, on behalf of Environmental Pollution Control, Inc., filed a pleading in this docket entitled Notice of U.S. Bankruptcy Proceeding and Intent to Appeal. Mr. Sawin alleged that he was filing the document for the purpose of providing notice to the Commission of the filing of U.S. bankruptcy proceedings by EPC and the intent to appeal the Order entered by the Commission on November 6, 1985. He alleged the following:

1. Environmental Pollution Control, Inc., filed a Petition in the United States Bankruptcy Court on November 8, 1985.

2. Under the provisions of 11 USC 362, a stay is in effect as of the date of filing of the Petition of all judicial, administrative or other proceedings.

3. That 11 USC 362 stays the time for appeal of the North Carolina Utilities Commission Order entered on November 6, 1985, and Environmental Pollution Control, Inc., does hereby provide notice of an intent to appeal said Order.

4. That grounds of the appeal shall be, among other things, that the findings of fact in the November 6, 1985 Order were not based upon evidence, and that there was no hearing on the matter in that the hearing was continued and then cancelled, preventing a full hearing of the issues as required by law.

On February 13, 1986, the Attorney General filed in this docket Motion to Dismiss Notice of Bankruptcy Proceeding and Intent to Appeal. In the Motion the Attorney General alleged the following:

1. The Order of the Commission Declaring an Emergency and Authorizing Application for Emergency Operator was issued on 6 November 1985.

2. N.C.G.S. 62-90(a) in pertinent part requires that parties to a proceeding file a notice of appeal and exceptions to a final order of the Commission with 30 days after the entry of the final order or decision.

3. EPC, Inc., through its president, Stephen S. Sawin, filed a Chapter 11 Bankruptcy petition for reorganization on 8 November 1985. Under 11 U.S.C. § 362(a) commencement of a bankruptcy petition acts as an automatic stay of the commencement or continuation of a judicial, administrative, or other proceeding against the debtor. HOWEVER, the filing of its petition does not operate as a stay "of

the commencement or continuation of an action or proceeding by a governmental unit to enforce such governmental unit's police or regulatory power;" (11 U.S.C. § 362(b)(4)

4. In his order of 27 November 1985, United States Bankruptcy Judge Thomas M. Moore specifically found and concluded that

> . . . the North Carolina Utility Commission is a governmental unit of the State of North Carolina and is exercising its regulatory powers. . . and is not stayed from proceeding against the debtor in the enforcement of its orders. .

5. EPC, Inc., received a copy of the Order of 27 November 1985 and had until 6 December 1985 either to file its exceptions and notice of appeal or seek an extension of time from the Commission within which to file said notice.

6. EPC, Inc., has waited over two months to file a notice of intent to appeal.

7. Since EPC, Inc., has sold the sewer plant to the town of Kill Devil Hills on 31 January 1986 and has filed a petition for bankruptcy reorganization, there is no legitimate basis for an appeal (notwithstanding the expiration of time for appeal) since no relief from the Commission Order is available through an appeal.

8. EPC, Inc.'s, allegation that the findings of fact in the 6 November 1985 Order were not based upon evidence is unfounded. The Commission Order states in explicit detail the bases for its findings and refers to all the prior evidentiary hearings and proceedings in this matter.

9. The allegation by EPC, Inc., that "there was no Hearing on the matter" is unfounded and untrue: There was a hearing and oral argument before the full Commission on Thursday, 24 October 1985 at which time the president of EPC, Inc., was offered and took the opportunity to testify on his own behalf.

10. EPC, Inc., consistently has filed exceptions to almost every order issued by this Commission regarding EPC, Inc., but has failed to perfect any of its appeals. This current approach is merely another dilatory tactic on the part of EPC, Inc., to delay, impede, and obstruct the Commission from carrying out its statutory duties to compel efficient utility service for the using and consuming public.

Upon consideration of the above-described pleadings, and the judicial notice of Commission's official files in Docket No. W-776, Sub 1, and the Order of the Bankruptcy Court entered November 27, 1985, the Commission makes the following:

## FINDINGS OF FACT

1. On November 6, 1985, the Commission issued its Final Order in this docket entitled Order Declaring Emergency and Authorizing Application for Emergency Operator.

2. On November 8, 1985, EPC, Inc., filed a Petition for Chapter 11 relief in the United States Bankruptcy Court, Eastern District of North Carolina.

3. On November 20, 1985, the Commission received Notice from the Bankruptcy Court of EPC's Petition.

4. On November 27, 1985, the United States Bankruptcy Judge issued an Order in the EPC, Inc., matter. The Order in part provided:

> That U.S.C. § 362(b)(4) exempts from the automatic stay the commencement or continuation of an action or proceeding by a governmental unit to enforce such governmental unit's regulatory powers, and
>
> That the North Carolina Utility Commission is a governmental unit of the State of North Carolina and is exercising its regulatory powers in fixing rates for service charges and assessments to be charged by the debtor to its customers, and
>
> The court concludes that the State of North Carolina is not stayed from proceeding against the debtor in the enforcement of its orders regulating the rates to be charged by debtor to its customers and, as a result, a temporary restraining order against the debtor need not be issued by this court.

5. On February 11, 1986, EPC, Inc., filed with the Commission its Notice of U.S. Bankruptcy Proceeding and Intent to Appeal.

## CONCLUSIONS

Upon consideration of the record in this docket and the applicable provisions of the bankruptcy code and the Order of the Bankruptcy Court entered November 27, 1985, the Commission is of the opinion that the Motion of the Attorney General to dismiss EPC's Notice be granted. In so deciding, the Commission notes the following: G.S. 62-90(a) requires that any party to a proceeding before the Commission may appeal any final order of the Commission within 30 days after the entry of such final order or decision. Under 11 U.S.C. § 362(a) the commencement of a bankruptcy petition acts as an automatic stay of the commencement or continuation of a judicial, administrative, or other proceeding against a debtor. Under 11 U.S.C. § 362(b)(4), however, the filing of this petition does not operate as a stay of the "commencement or continuation of a action or proceeding by a governmental unit to enforce such governmental unit's police or regulatory powers." In his Order of November 27, 1985, the United States Bankruptcy Judge noted the provisions of 11 U.S.C. § 362(b)(4) and concluded that "the State of North Carolina is not stayed from proceeding against the debtor in the enforcement of its orders regulating the rates to be charged by debtor to its customers and, as a result, a temporary restraining order against the debtor need not be issued by this Court."

The Commission notes that EPC's attempt of February 11, 1986, to give notice of the bankruptcy proceeding comes rather belatedly. In any event, the Commission received notice of the proceeding on November 20, 1985, in a notice from the Bankruptcy Court itself.

With respect to the "intent to appeal": G.S. 62-90(a) requires the filing of notice of appeal and exceptions within 30 days after the entry of a final Order (or within such time not to exceed 30 additional days as may be fixed by the Commission). In view of the above, the Commission is of the opinion, and so concludes, that EPC, Inc., did not file any exceptions and notice of appeal to the Order of November 6, 1985, within the time provided for by G.S. 62-90.

IT IS, THEREFORE, ORDERED that the Motion of the Attorney General to dismiss the Notice of Bankruptcy Proceeding and Intent to Appeal filed by EPC, Inc., on February 11, 1986, be, and the same is hereby granted.

ISSUED BY ORDER OF THE COMMISSION.
This the 10th day of March 1986.

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

DOCKET NO. W-754, SUB 2
DOCKET NO. W-754, SUB 3

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

Docket No. W-754, Sub 2

In the Matter of
Application of North Topsail Water and Sewer )
Company for a Certificate of Public )
Convenience and Necessity to Provide Sewer )
Utility Service in North Topsail and Topsail )
Reef Subdivision )
) ORDER GRANTING MOTION
Docket No. W-754, SUB 3 ) TO SEVER, ACCEPTING
) STIPULATION, AND CLOSING
In the Matter of ) DOCKET NO. W-754, SUB 2
Application of North Topsail Water and )
Sewer, Inc., to Provide Sewer Utility )
Service on All of Topsail Island Located in )
Onslow County, to Topsail Way Shopping )
Center, in Chadwick Acres Subdivision, in )
Golden Acres, and in Pages Golden Acres )

HEARD: Commission Hearing Room, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina on Tuesday, April 15, 1986, at 2:00 p.m.

BEFORE: Commissioner Edward B. Hipp, presiding, Chairman Robert O. Wells and Commissioner J. A. Wright

APPEARANCES:

For the Applicant:

Charles Lanier, Lanier & Fountain Attorneys at Law, 114 Old Bridge Street, Jacksonville, North Carolina 28540

For the Intervenors:

William E. Anderson, DeBank, McDaniel, Heidgerd, Holbrook & Anderson, Attorneys at Law, P. O. Box 58186, Raleigh, North Carolina 27658
For: Kinlaw Properties, LTD.

John C. Cooke, Maupin, Taylor, Ellis & Adams, Attorneys at Law, 3201 Glenwood Avenue, Suite 200, Raleigh, North Carolina 27612
For: Town of Surf City

Daniel F. McLawhorn, Assistant Attorney General, N.C. Attorney General's Office, Environmental Protection Section, P. O. Box 629, Raleigh, North Carolina 27604
For: N.C. Department of Natural Resources and Community Development

Antoinette R. Wike, Chief Counsel, Public Staff-North Carolina Utilities Commission, P. O. Box 29529, Raleigh, North Carolina 27626-0520
For: The Using and Consuming Public

BY THE COMMISSION: On April 15, 1986, the Commission held its second prehearing conference in the above-captioned dockets. All of the parties were present and represented by counsel. Mr. McLawhorn stated that he was also appearing for Jo Ann Sanford, who could not attend the hearing on that day.

The parties presented to the Commission a Motion to sever Docket No. W-754, Sub 2, from Docket No. W-754, Sub 3. In the Motion all of the parties stipulated as follows:

> 1. That, by the agreement of the parties thereto, the issues raised by Docket No. W-754, Sub 2 were (a) definition of the current franchise area of North Topsail Water and Sewer Company including the territory contiguous to that already occupied; (b) the reasonably projected service demand for the current franchise area; and (c) the capacity of the sewage treatment plant to accommodate the identified need.
>
> 2. That the parties agree that the current franchise area for North Topsail Water and Sewer Company should be defined as follows:
>
> BEING all that property colored "Yellow" on Exhibit "A", attached hereto and incorporated herein by reference.
>
> The area may be further described as: (1) all lands on Topsail Island northeast of the Highway 210 bridge including that parcel denominated as Tract B of the Jeffries parcel; (2) all lands in the area northeast of

> Highway 210 which are bounded by the North Topsail Water and Sewer sewage treatment plant, Mill Creek and the Intracoastal Waterway; and (3) all lands in the area southwest of Highway 210 which are bounded by the Intracoastal Waterway, by a line parallel to and 2,500 feet from Highway 210, and by the extended western boundary of the sewage treatment plant.

3. That all services to the above described franchise area can and shall be served from the force main sewer line which was originally installed between the sewer plant and the subdivisions set forth in the original franchise request.

4. That, when the plant as built begins to treat sewage, it can serve the immediate needs of the franchise area and the plant, when completed consistent with the Division of Environmental Management issued permit, will have the capacity to serve the reasonably projected needs of the franchise area up to the capacity established in the permit.

5. That all issues raised in Docket No. W-754, Sub 3 shall not be affected by these stipulations.

Attached to the Motion was the Exhibit A described in the stipulation, which consisted of two maps attached together.

In response to a question from the Commission, the parties all agreed that as a result of the stipulation offered to the Commission, Docket No. W-754, Sub 2, could be closed.

Upon consideration of the Motion to Sever and Stipulation signed by all of the parties in this proceeding, including Exhibit A attached thereto, and the entire record in this docket, the Commission is of the opinion that the Stipulation of the parties should be accepted by the Commission and made a part of the record in this proceeding; that Docket No. W-754, Sub 2, be severed from Docket No. W-754, Sub 3; and that Docket No. W-754, Sub 2, be closed.

The original Motion to Sever and Stipulation, and its attached Exhibit A, which was presented to the Chairman during the prehearing conference, shall be placed in the official file of Docket No. W-754, Sub 2.

IT IS, THEREFORE, ORDERED as follows:

1. That the stipulation of the parties set forth in the Motion to Sever and Stipulation filed in this docket on April 15, 1986, be, and the same is hereby, accepted by the Commission and is made a part of the record in this proceeding.

2. That the Motion of the parties to sever Docket No. W-754, Sub 2, from Docket No. W-754, Sub 3, be granted.

3. That the current franchise area of North Topsail Water and Sewer Company shall be defined as set forth in the Motion to Sever and Stipulation,

including Exhibit A, which was filed by the parties on April 15, 1986, in this proceeding.

4. That Docket No. W-754, Sub 2, be closed.

ISSUED BY ORDER OF THE COMMISSION.
This the 18 day of April 1986.

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

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| Company | Docket Number | Date |
|---|---|---|
| American Charters, Ltd. | B-366, Sub 6 | 4-17-86 |
| Beamer, Nancy, Tours, Nancy Beamer, d/b/a | B-393, Sub 2 | 1-31-86 |
| Carolina Coach Company | B-15, Sub 193 | 3-7-86 |
| Five Star Tours, Robert J. Gulotta, t/a | B-412, Sub 1 | 2-26-86 |
| Kannapolis Transit Co., Inc. | B-189, Sub 10 | 2-13-86 |
| Seashore Transportation Co. | B-79, Sub 29 | 3-7-86 |
| Trans-Service, Inc. | B-411, Sub 3 | 3-7-86 |

AUTHORIZED SUSPENSION

Archie's Bus & Transit Service, Archie Bond, d/b/a - Order Granting Authorized Suspension of Operations Under Certificate No. B-382 Until April 1, 1987
B-382, Sub 3 (9-19-86)

Five Star Tours, Robert J. Gulotta, t/a - Order Granting Authorized Suspension of Operations Under Broker's License No. B-412 Until October 1, 1986
B-412, Sub 1 (3-18-86)

King's Bus Service, Calvin R. King, d/b/a - Order Granting Authorized Suspension of Operations Under Certificate No. B-416 Until October 1, 1986
B-416, Sub 3 (7-17-86)

Liberty Lines, R. W. Merrell, Inc. d/b/a - Order Granting Authorized Suspension and Dismissing Show Cause Hearing
B-441, Sub 2 (7-3-86)

BROKER'S LICENSE

Colonial Ventures, Inc. - Recommended Order Cancelling Broker's License No. B-346
B-346, Sub 1 (1-3-86)

Express Tours, Loretta M. Harrison, d/b/a - Order Granting Broker's License
B-417 (8-21-86)

N.S. State Motor Club, Inc. - Order Granting Broker's License
B-453 (11-12-86)

T.L.C. Tours, Joyce T. Brantley, d/b/a - Order Granting Broker's License
B-459 (11-17-86)

Travel Professionals, Incorporated - Order Cancelling Broker's License
B-404, Sub 1 (12-16-86)

CERTIFICATES

Forte's Charter and Van Service, Louis C. Forte, t/a - Order Granting Common Carrier Authority to Engage in Charter Operations, Statewide, Beginning and Ending in Mecklenburg County
B-452 (5-16-86)

Trailways Lines, Inc. - Order Amending Certificate to Reflect Name Changed from Trailways Southeastern Lines, Inc.
B-69, Sub 144 (1-17-86)

Young Transportation, T.R.Y., Inc., d/b/a - Order Granting Common Carrier Authority to Engage in Charter Operations, Statewide
B-5, Sub 11 (4-23-86)

INCORPORATIONS

Thompson Travel Services, Inc. - Order Approving Incorporation and Transfer of Certificate No. B-416 from Roger Lee Thompson, d/b/a Thompson Transportation Service
B-458, Sub 1 (8-27-86)

NAME CHANGE

Forte's Chartered Bus & Van Service, Louis Forte, t/a - Order Approving Name Change from Louis Forte, t/a Forte's Charter & Van Service
B-452, Sub 1 (12-2-86)

## ORDERS AND DECISIONS LISTED

## SALES AND TRANSFERS

Eastern Greyhound Lines Co., Southern Greyhound Lines Co. - Order Granting Application to Transfer Certificate No. B-7 from Greyhound Lines, Inc.
B-456 and B-457 (7-8-86)

Kannapolis Transit Company, Red Bus System, Inc., d/b/a - Order Granting Application to Purchase and Transfer Certificate No. B-189 from Kannapolis Transit Company, Inc.
B-189, Sub 11 (4-2-86); Errata Order (4-10-86)

Thompson Transportation Service, Roger Lee Thompson, d/b/a - Order Granting Application for Sale and Transfer of Certificate No. B-416 from Calvin R. King, d/b/a King's Bus Service, Grifton
B-458 (8-5-86)

## TEMPORARY AUTHORITY

Duke Power Company - Order Granting Temporary Contract Carrier Authority to Transport Passengers Between the Imperial 400 Motor Inn, Durham, and the Military Entrance Processing Station, Raleigh, Under Contract with the Imperial 400 Motor Inn
B-209, Sub 28 (5-20-86)

## MISCELLANEOUS

Greyhound Lines, Inc. - Recommended Order Closing Docket in Petition for Authority to Establish a Separate Bus Station in Durham
B-7, Sub 103 (1-8-86)

Jacksonville Union Bus Station - Order Granting Petition to Eliminate the Use of the Porter and Security Persons at the Union Station as Set Forth in Order
B-270, Sub 1 (6-4-86)

Trailways Lines, Inc. - Order Granting Application to Self-Insure in North Carolina
B-69, Sub 145 (7-3-86)

## MOTOR TRUCKS

## APPLICATIONS AMENDED

Action Transit Company - Order Amending Application for Common Carrier Authority, Allowing Withdrawal of Protest, and Cancelling Hearing
T-2584 (1-8-86)

Al Chem-Tron, Inc. - Order Amending Application for Common Carrier Authority
T-2596 (1-16-86)

Al Chem-Tron, Inc. - Order Amending Application, Allowing Withdrawal of Protest and Cancelling Hearing
T-2596 (2-11-86)

## ORDERS AND DECISIONS LISTED

Belue Trucking - Order Amending Application, Allowing Withdrawal of Protest, and Cancelling Hearing
T-2717 (11-6-86)

Carl Messenger Service, Inc. - Order Amending Application for Common Carrier Authority, Allowing Withdrawal of Protest, and Cancelling Hearing
T-2694 (9-3-86)

Cheek, J. Dalton - Order Amending Application for Common Carrier Authority and Allowing Withdrawal of Protest
T-2663 (6-26-86)

Davis Mobile Home Moving, James Lloyd Davis and Rita Roberts Davis, d/b/a - Order Amending Application for Common Carrier Authority to Delete Group 2, Heavy Commodities
T-2745 (12-17-86)

First Express, First Express, Inc., d/b/a - Order Amending Application for Common Carrier Authority to Delete Group 21, Motion Picture Film and Special Service
T-2622 (4-21-86)

Harris, Dick, and Son Trucking Co., Inc. - Order Amending Application for Common Carrier Authority and Cancelling Hearing
T-2633, Sub 2 (8-27-86)

Jet Express Delivery, Inc. - Order Amending Application for Contract Carrier Authority, Allowing Withdrawal of Protest, and Cancelling Hearing
T-2551 (3-25-86)

Jump Transportation Services, Jump Enterprises, Inc., d/b/a - Order Amending Application, Allowing Withdrawal of Protest, and Cancelling Hearing
T-2608 (4-3-86)

Lisk, Howard, Inc. - Order Amending Application, Allowing Withdrawal of Protest, and Cancelling Hearing
T-1685, Sub 12 (11-5-86)

Marshall's Pick-Up & Delivery - Order Amending Application, Allowing Withdrawal of Protest and Cancelling Hearing
T-2720 (11-13-86)

MCB Trucking, Inc. - Order Amending Application for Common Carrier Authority, Allowing Withdrawal of Protest and Cancelling Hearing
T-2657 (6-13-86)

McCann Enterprises, Inc. - Order Amending Application
T-2711 (9-16-86)

Metrolina Courier, Inc. - Order Amending Common Carrier Authority Application
T-2648 (6-9-86)

Sampson, Charles T., Trucking Company - Order Amending Application
T-2682 (11-10-86)

Specialty Courier, Inc. - Order Amending Common Carrier Authority Application
T-2628 (5-14-86)

Thomas, John Charles, & Vernon Lee Wright, Wright Junction Express, d/b/a - Order Amending Application, Allowing Withdrawal of Protest, and Cancelling Hearing
T-2572 (1-7-86)

Triple "S" Trucking Company, Inc. - Order Amending Application, Allowing Withdrawal of Protest, and Cancelling Hearing
T-2687 (7-31-86)

Salem Express, Katherine Gray Medley - Order Amending Application for Contract Carrier, Allowing Withdrawal of Protest and Cancelling Hearing
T-2599 (2-18-86)

Tidewater Transit Co., Inc. - Order Amending Application for Common Carrier Authority, Allowing Withdrawal of Protest, and Cancelling Hearing
T-380, Sub 21 (6-26-86)

Walters, James Emory - Order Amending Application for Common Carrier Authority, Allowing Withdrawal of Protest and Cancelling Hearing
T-2623 (5-6-86)

## APPLICATIONS DENIED

Tank Lines, Inc. - Recommended Order Denying Application for Common Carrier Authority
T-2686 (9-16-86)

Transit Homes of America, Inc. - Recommended Order Denying Application for Authority to Purchase and Transfer Certificate No. C-812 from Chandler Trailer Convoy, Inc., and Denying Request for Temporary Authority
T-2625 (5-2-86)

## APPLICATIONS WITHDRAWN (COMMON OR CONTRACT CARRIER AUTHORITY)

| Company | Docket Number | Date |
|---|---|---|
| Cedartown-Atlanta Freight Lines, Inc. | T-2656 | 5-20-86 |
| Edwards Moving Company, Inc. | T-2472 | 4-25-86 |
| Delivery Service Corporation | T-2593 | 2-4-86 |
| Postmasters, Inc. | T-2683 | 10-27-86 |
| Smith, Bobby B. | T-2164 | 3-28-86 |
| Smith, Debbie Phelps | T-2579 | 1-15-86 |
| Smith's Transfer Corporation | T-2516 | 2-11-86 |
| W & P Delivery Express, Derrell L. Pearson and Stephen P. Wilbanks, d/b/a | T-2710 | 9-18-86 |

## AUTHORITY GRANTED - COMMON CARRIER

Ace Transport Ltd. - Order Granting Common Carrier Authority to Transport Group 3, Petroleum and Petroleum Products, in Bulk, in Tank Trucks, Statewide
T-1979, Sub 2 (6-5-86)

## ORDERS AND DECISIONS LISTED

Ace World Wide Moving & Storage Company of Raleigh, Inc. - Order Granting Common Carrier Authority to Transport Group 18, Household Goods, Statewide
T-2597 (10-1-86)

Action Transit Company - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, and Group 14, Dump Truck Operations, Statewide
T-2584 (6-26-86)

Air/Highway Express, Charles T. Lohr, d/b/a - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, with Exceptions; Group 16, Furniture Factory Goods and Supplies; and Group 17, Textile Mill Goods and Supplies, Statewide
T-2653 (10-29-86)

Barnett's Mobile Home Movers, Richard Barnett, d/b/a - Order Granting Common Carrier Authority to Transport Group 21, Mobile Homes, Between Points and Places Within the Counties of Wilson, Nash, Pitt, Greene, Wayne, Johnston, Wake, and Edgecombe
T-2673 (7-25-86)

Belue Trucking, C. P. Belue, d/b/a - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, Except Commodities in Bulk in Tank Vehicles, Statewide
T-2717 (12-18-86)

Bennett Motor Express, Inc. - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, Except Commodities in Bulk in Tank Vehicles, and Group 10, Building Materials, Statewide
T-2583 (4-18-86)

Billy's Home Service, George William Layton, d/b/a - Order Granting Common Carrier Authority to Transport Group 21, Manufactured (mobile) Homes, Statewide
T-2661 (7-18-86)

Blevins Motor Express, Hyte Blevins, d/b/a - Order Granting Common Carrier Authority to Transport Group 21, General Commodities, with Exceptions, Statewide, with Restrictions of Shipments Weighing Less than 200 Pounds
T-1242, Sub 6 (10-8-86)

Blue Ridge Transfer Company, Inc. - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, Statewide
T-1897, Sub 1 (7-3-86)

Blue Wing Trucking, Eunice Hammond & Robert Turner, Jr., d/b/a - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, Statewide
T-2637 (4-29-86)

Buchanan, Angela Capps - Recommended Order Granting Authority to Transport Group 21, Mobile Homes, in and Between Lee, Moore, and Harnett Counties
T-2646 (7-25-86); Final Order Affirming Recommended Order (9-4-86)

## ORDERS AND DECISIONS LISTED

Buckhorn Trucking Company, Inc. - Order Granting Authority to Transport Group 1, General Commodities, Except Commodities in Bulk in Tank Vehicles, Statewide
T-2671 (9-8-86)

Carolina Relocation Services, Inc. - Order Granting Common Carrier Authority to Transport Group 21, General Commodities and Household Goods, Except Commodities in Bulk in Tank Vehicles, Statewide
T-2619 (4-17-86)

Car Sea Enterprises, Inc. - Order Granting Authority to Transport Group 1, General Commodities, Except Commodities in Bulk, in Tank Vehicles, Statewide
T-2636 (5-6-86)

Cecil's Mobile Home Service, Cecil A. Fox, d/b/a - Order Granting Common Carrier Authority to Transport Group 21, Mobile Homes, Statewide
T-2580 (1-29-86)

Center Line, Inc. - Order Granting Common Carrier Authority to Transport Group 1, General Commodities; Group 15, Retail Store Delivery Service; and Group 18, Household Goods, Statewide
T-2364, Sub 2 (4-2-86)

Chambers Mobile Home Movers, Stanley Howard Chambers, d/b/a - Order Granting Common Carrier Authority to Transport Group 21, Mobile Homes, Statewide
T-2609 (3-27-86)

Chatham Trucking Company, Chatham Steel Corporation, d/b/a - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, with Exceptions, Restricted to Flatbed Trailers, Statewide
T-2615 (9-12-86)

Cheek, J. Dalton - Order Granting Common Carrier Authority to Transport Group 21, Mobile Homes, Statewide
T-2663 (8-18-86)

Citizen Express, Inc. - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, Except Commodities in Bulk in Tank Vehicles, Statewide
T-68, Sub 14 (8-18-86)

Classic Moving and Storage, Inc. - Order Granting Common Carrier Authority to Transport Group 1, General Commodities (Except Classes A and B Explosives, Commodities in Bulk, and Shipments of Less than 101 Pounds if Transported in a Motor Vehile in Which no one Package Exceeds 100 pounds), Statewide
T-2696 (12-10-86)

Continental Transport Systems, Inc. - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, Except Commodities in Bulk in Tank Vehicles, Statewide
T-2037, Sub 1 (10-23-86)

D & L Leasing and Diesel, Inc. - Order Granting Common Carrier Authority to Transport Group 1, General Commodities; Group 16, Furniture Factory Goods and Supplies; Group 17, Textile Mill Goods and Supplies; and Group 2, Heavy

Commodities Between the Plant Sites and Facilities of Ithaca Industries, Inc., Located at or near the Cities of North Wilkesboro, Wilkesboro, Robbins, Gastonia, Chadbourn, and Burlington
T-2560 (2-4-86)

DAC Leasing Company, Inc. - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, Except Commodities in Bulk and Explosives and Other Dangerous Articles, Statewide
T-2654 (9-2-86)

Deloatch Transportation, Inc. - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, on Designated Routes in Designated Counties
T-2675 (12-4-86)

Wallace Davis Trucking, Wallace Davis, d/b/a - Order Granting Common Carrier Authority to Transport Group 21, General Commodities, with Exceptions and Restrictions, Statewide
T-2716 (12-4-86)

Dew Transport Co., Dew Oil Company, d/b/a - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, Except Commodities in Bulk in Tank Vehicles, Statewide
T-2664, Sub 1 (7-25-86)

Direct Express Courier Services, Inc. - Recommended Order Granting Common Carrier Authority to Transport Group 1, General Commodities, Other Than Commodities in Bulk, Statewide
T-2468 (6-10-86)

Dunnagan's Moving & Storage, James G. Dunnagan, d/b/a - Order Granting Common Carrier Authority to Transport Group 18, Household Goods, Statewide
T-2739 (12-15-86)

Eastern Waste Paper Company - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, Except Commodities in Bulk in Tank Vehicles, Statewide
T-2635 (6-13-86)

Ed's Mobile Home Movers, Grover Edward Johnson, d/b/a - Recommended Order Granting Common Carrier Authority to Transport Group 21, Mobile Homes, Manufactured Homes, and House Trailers, Statewide
T-2714 (10-16-86)

Ed's Used Cars, Walter Edward Radford, d/b/a - Order Granting Common Carrier Authority to Transport Group 21, Mobile Homes, Statewide
T-2613 (3-24-86)

Electronic Express, Inc. - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, Except Commodities in Bulk, in Tank Vehicles, Statewide
T-2644 (5-1-86)

Emerson, Phillip M. - Order Granting Common Carrier Authority to Transport Group 21, Mobile Homes, Between all Points and Places Within the Counties of Surry, Davie, Stokes, Forsyth, Yadkin, and Guilford
T-2704 (9-24-86)

English Trucking Company - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, Except Commodities in Bulk in Tank Vehicles, Statewide
T-2665 (7-11-86)

Fleetwood Express, Robert Lee Padgett, d/b/a - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, Except Commodities in Bulk in Tank Vehicles, Statewide
T-2610 (3-20-86)

Grady's Delivery Service, James Robert Grady, Sr., and James Robert Grady, Jr., d/b/a - Order Granting Common Carrier Authority to Transport Group 18, Household Goods, and Group 21, Office Furniture and Equipment, Statewide
T-2547 (3-28-86)

Granville House Incorporated - Order Granting Common Carrier Authority to Transport Group 16, Furniture Factory Goods and Supplies, and Group 21, Furniture Showroom Materials and Supplies and Manufactured Furniture Products When Hauled to or from Furniture Showrooms or Furniture Storage Facilities. Photography Samples, Museum Exhibits, and Articles Including Objects of Art, Displays, and Exhibits, which, Because of Their Unusual Nature and/or Value, Require Special Handling, Statewide
T-390, Sub 10 (11-10-86)

Great Coastal Express, Inc. - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, Except Commodities in Bulk, in Tank Vehicles, Statewide
T-2734 (12-10-86)

Hadley's Cartage, Charles E. Hadley, d/b/a - Order Granting Authority to Transport Group 1, General Commodities, with Exceptions, and Group 10, Building Materials, Statewide
T-2514 (2-20-86)

Harris, Dick, and Son Trucking Co., Inc. - Order Granting Authority to Transport Materials Used in the Manufacture and Distribution of Glass Bottles or Jars Between Facilities of Owens-Illinois, Inc., at or near Midway, Clemmons, Winston-Salem, and Greensboro and Points and Places in North Carolina
T-2633 (6-30-86)

Harris, Dick, and Son Trucking Co., Inc. - Order Granting Authority to Transport Group 1, General Commodities, with Exceptions, Statewide
T-2633, Sub 2 (10-28-86)

Harris Mobile Home Movers, George W. Harris, d/b/a - Order Granting Authority to Transport Group 21, Mobile Homes and/or Trailers, Statewide
T-2647 (7-21-86)

ORDERS AND DECISIONS LISTED

Hedrick Trucking Company, Inc. - Order Granting Authority to Transport Group 1, General Commodities, Except Commodities in Bulk, in Tank Vehicles, Statewide
T-2582 (2-18-86)

Helms Mobile Home Towing, Paul Ray Helms, d/b/a - Order Granting Common Carrier Authority to Transport Group 21, Mobile Homes, Statewide
T-2726 (11-17-86)

Highland Transport, Inc. - Errata Order Correcting Error in Order Dated September 24, 1985, to Reflect the Operating Authority Set Forth in Exhibit B
T-2480 (7-1-86)

Horizon Transportation Services Corporation - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, with Exceptions, Statewide
T-2571 (5-14-86)

Houser Trucking, Harvey Venus Houser, d/b/a - Order Granting Common Carrier Authority to Transport Group 7, Cotton in Bales, and Group 17, Textile Mill Goods and Supplies, Statewide
T-2562 (7-7-86)

Hoyle Transfer Company, David Hoyle, d/b/a - Order Granting Common Carrier Authority to Transport Group 18, Household Goods, Between all Points and Places in North Carolina on and West of U.S. Highway 1
T-2585 (4-29-86)

Huss, Inc. - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, Except Commodities in Bulk, in Tank Vehicles, Statewide
T-2669 (8-8-86)

Independent Freightway, Incorporated - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, Except Commodities in Bulk, in Tank Vehicles, Statewide
T-2643 (5-1-86)

Jackie Waddell Mobile Home Mover, Jackie Glenn Waddell, d/b/a - Order Granting Common Carrier Authority to Transport Group 21, Modular and/or Manufactured Houses, Statewide
T-2695, Sub 1 (12-23-86)

Jay's Mobile Home Moving and Repair Service, Joseph Lee Hudson, d/b/a - Recommended Order Granting Common Carrier Authority, in Part, to Transport Group 21, Mobile Homes, Statewide
T-2556 (1-28-86)

Jay's Mobile Home Moving and Repair Service, Joseph Lee Hudson, d/b/a - Recommended Order Granting Common Carrier Authority to Transport Group 21, Mobile Homes, Statewide
T-2556, Sub 1 (11-10-86)

J & D Mobile Home Service, Jerry Smith, d/b/a - Recommended Order Granting Common Carrier Authority to Transport Group 21, Mobile Homes, Between all Points and Places Within a 60-Mile Radius of Madison
T-2679 (10-6-86)

Jerry's Mobile Home Service & Movers, Jerry W. Craig, d/b/a - Order Granting Common Carrier Authority to Transport Group 21, Mobile Homes, Statewide
T-2702 (10-28-86)

Jiffy Moving & Storage Company, W. M. Poole Enterprises, Inc., d/b/a - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, Except Commodities in Bulk, in Tank Vehicles; and Group 18, Household Goods, Statewide
T-1975, Sub 2 (12-5-86)

Johnson's Mobile Home Services, Marvin Malcolm Johnson, d/b/a - Order Granting Common Carrier Authority to Transport Group 21, Mobile Homes, Statewide
T-1636, Sub 3 (8-7-86)

Jordan Mobile Home Movers, Ronnie Long Jordan d/b/a - Order Granting Common Carrier Authority to Transport Group 21, Mobile Homes, Between Points and Places in Anson, Richmond, and Scotland Counties, and Between Points and Places in These Counties to Points and Places in North Carolina
T-2684 (12-15-86)

Jump Transportation Services, Jump Enterprises, Inc., d/b/a - Order Granting Common Carrier Authority to Transport Group 1, General Commodities; Group 15, Retail Store Delivery Service; Group 16, Furniture Factory Goods and Supplies; and Group 17, Textile Mill Goods and Supplies, Statewide
T-2608 (12-18-86)

Kennedy Freight Lines, Inc. - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, Except Commodities in Bulk in Tank Vehicles, Statewide
T-2567 (1-10-86)

Landair Transport, Inc. - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, with Exceptions, Statewide
T-2504 (7-28-86)

Land-Link, a Division of Search, Inc. - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, Excluding Courier Packages for the Delivery of Financial Documents, Written Documents, etc., with Restrictions
T-2552 (2-4-86)

Lee's Mobile Home Service, Ernest Elmer Lee, d/b/a - Recommended Order Granting Authority to Transport Group 21, Mobile Homes Between Points Within Rowan, Cabarrus, and Stanly Counties, and Between Points in Rowan, Cabarrus, and Stanly Counties on the One Hand and on the Other Hand all Points Within the State
T-2594 (2-26-86)

Lewis Storage Company, Inc. - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, Except Commodities in Bulk in Tank Vehicles, Statewide
T-2573 (1-15-86)

Lisk, Howard, Inc. - Order Granting Common Carrier Authority to Transport Group 21, Cement, in Bulk and in Bags, Between Points in Durham and New Hanover Counties on the one Hand, and, on the Other, Points in the State
T-1685, Sub 10 (4-29-86)

Lisk, Howard, Inc. - Order Granting Authority to Transport Group 21, Salt, Statewide, with Restrictions of Shipments Originating at Rocky Mount
T-1685, Sub 12 (11-17-86)

Lloyd's Transfer & Storage, Inc. - Order Granting Common Carrier Authority to Transport Group 18, Household Goods, Between all Points and Places Within Haywood and Jackson Counties
T-2604 (5-5-86)

Logex, Logistics Express, Inc., d/b/a - Order Granting Common Carrier Authority to Transport Group 12, Explosives and Other Dangerous Articles, and Group 21, Cryogenic Liquids, etc., Statewide
T-2575 (1-6-86)

M & M Movers, Richard C. Hall and Mark A. Hall, d/b/a - Order Granting Common Carrier Authority to Transport Group 21, Mobile Homes and Prefabricated Modular Homes Between Points in Specified Counties
T-1750, Sub 5 (1-14-86)

Marshall's Pick-Up and Delivery Service, John Raymond Marshall, d/b/a - Order Granting Authority to Transport Group 1, General Commodities, Between Points and Places Within the Counties of Surry, Stokes, and Forsyth, with Restrictions
T-2720 (12-19-86)

MCB Trucking, Inc. - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, and Group 21, Malt Beverages, etc., from the Plant Site and Facilities of Miller Brewing Company Located at or Near Eden; Healy Wholesale, Inc., Located at or near Fayetteville; and Stroh's Brewing Company Located at or near Winston-Salem with Restriction Against Transportation of Group 19, Unmanufactured Tobacco and Accessories
T-2657 (6-27-86); Errata Order Correcting Exhibit B (7-9-86)

McCann Enterprises, Inc. - Order Granting Common Carrier Authority to Transport General Commodities, Statewide
T-2711 (12-10-86)

McGee Trucking Company, Inc., C.N. Trucking Company, d/b/a - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, Except Commodities in Bulk, in Tank Vehicles; Group 14, Dump Truck Operations; and Group 21, Liquid Nitrogen, Fertilizers, and Fertilizer Materials, Statewide
T-2697 (9-17-86)

MGM Transport, Corporation - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, Except Commodities in Bulk in Tank Vehicles, Statewide
T-2395, Sub 1 (7-28-86)

Merchants Moving & Storage, Inc. - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, Except Commodities in Bulk, in Tank Vehicles, Statewide
T-1423, Sub 2 (4-29-86)

Metrolina Courier, Inc. - Recommended Order Granting Common Carrier Authority to Transport Group 1, General Commodities; Group 21, Checks, Drafts, etc., on Designated Routes, Including Any Commercial Zones Adjacent to the Above Designated Boundaries
T-2648 (9-4-86)

Mobile Movers of North Carolina, Town Park, Inc., d/b/a - Order Granting Common Carrier Authority to Transport Group 21, Mobile Homes, Statewide
T-2591 (5-6-86)

Morgan, Garrett, Trucking, Inc. - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, Except Commodities in Bulk, in Tank Vehicles, Statewide
T-2624 (6-18-86)

Neuse Transport, Incorporated - Order Granting Common Carrier Authority to Transport Group 10, Building Materials, Statewide
T-2171, Sub 2 (5-22-86)

Odum, Ernest - Order Granting Common Carrier Authority to Transport Group 6, Agricultural Commodities; Group 8, Dry Fertilizer and Dry Fertilizer Materials; and Group 10, Building Materials, Statewide
T-2620 (6-25-86)

Pippin, Herbert Joel - Order Granting Common Carrier Authority to Transport Group 21, New or Used Trailer Homes or Mobile Homes Between all Points and Places in the State
T-2649 (7-1-86)

Pope Transport Company, E. J. Pope & Son, Inc., d/b/a - Recommended Order Granting Common Carrier Authority to Transport Group 3, Petroleum and Petroleum Products, Liquid, in Bulk, in Tank Trucks, Statewide
T-2353, Sub 4 (11-19-86)

Proctor, F.C., Inc. - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, Except Household Goods, Commodities in Bulk and Explosives, Statewide
T-2670 (7-23-86)

Puryear Transport, Inc. - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, Except Commodities in Bulk in Tank Vehicles, Statewide
T-2689 (10-9-86)

Quality Mobile Home Sales of Godwin, Turpin Associates, Inc., d/b/a - Order Granting Common Carrier Authority to Transport Group 21, Manufactured Homes, Statewide
T-2660 (7-23-86)

## ORDERS AND DECISIONS LISTED

Raeford Trucking Company - Order Granting Common Carrier Authority to Transport Group 10, Building Materials and Group 21, General Commodities, Except Commodities in Bulk, or in Tank Trailers, Household Goods, Explosives and Other Dangerous Articles, or Shipments Weighing Less Than 500 Pounds, Statewide
T-2640 (6-23-86)

Ray Moving & Storage, Inc. - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, Except Classes A and B Explosives, Radioactive Materials, and Poisonous Substances, Statewide
T-945, Sub 5 (2-12-86)

Reed Moving & Storage, Reed Warehouse of Charlotte, Inc., d/b/a - Order Granting Common Carrier Authority to Transport Group 21, General Commodities, and Household Goods, Except Commodities in Bulk, in Tank Vehicles, Statewide
T-2616 (3-27-86)

Reliable Delivery Service, Joel Robert Shores, d/b/a - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, with Exceptions, Statewide, and Group 15, Retail Store Delivery Service on Designated Routes
T-2526 (1-22-86)

Ridgeway Mobile Home Transporters, Inc. - Order Granting Common Carrier Authority to Transport Group 21, Manufactured Housing, Between all Points and Places in North Carolina Bounded on the East by the Counties of Rockingham, Guilford, Randolph, Davie, Rowan, Cabarrus, and Mecklenburg
T-2707 (10-2-86)

Robin Hood Container Express, Inc. - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, Except Commodities in Bulk, in Tank Vehicles, and Group 5, Solid Refrigerated Products, Statewide
T-2699 (10-28-86)

Sampson, Charles T., Trucking Co., Charles T. Sampson, d/b/a - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, Statewide
T-2682 (11-14-86)

Satellite Station, The, Richard S. Webster, d/b/a - Order Granting Common Carrier Authority to Transport Group 21, New and Used Mobile Homes, Statewide
T-2690 (10-1-86)

Seaboard Western Express, Inc. - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, Except Commodities in Bulk in Tank Vehicles, Statewide
T-2703 (9-24-86)

South Atlantic Bonded Warehouse Corporation - Order Granting Common Carrier Authority to Transport General Commodities, Except Those Requiring Special Equipment, Statewide
T-386, Sub 4 (2-13-86)

South West Mobile Home Transport, Harry George West, d/b/a - Order Granting Common Carrier Authority to Transport Group 21, Mobile Homes Between all Points

and Places Within the Counties of Cumberland, Sampson, Bladen, Hoke, Robeson, Harnett, Moore, and Scotland
T-2693 (9-2-86)

Specialty Courier, Inc. - Order Granting Common Carrier Authority to Transport Group 21, on Call Transportation of Retail Store Merchandise, Personal Effects, General Commodities in Parcels or Packages Weighing 100 Pounds or Less, Money, Currency, Coins, Securities, Payroll Checks, Documents, Stocks, Bonds, Jewelry and Other Valuables, Accounting Media, Commercial Papers and Communications, in Vehicles Using Armed Drivers Licensed by the Private Protective Services Board, Statewide
T-2628 (6-13-86)

Star Express, Inc. - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, Except Commodities in Bulk in Tank Vehicles, Statewide
T-2724 (11-14-86)

Star Freight, Inc. - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, Except Commodities in Bulk, in Tank Vehicles, Statewide, with Restrictions
T-2581 (1-15-86)

Stevens Freight Service, Inc. - Recommended Order Granting Common Carrier Authority to Transport Group 1, General Commodities, Except Commodities in Bulk in Tank Vehicles, Statewide
T-2602 (3-12-86)

Strider and Murray, Howard Strider and James Murray, t/a - Order Granting Common Carrier Authority to Transport Group 21, Mobile Homes, Between all Points and Places in the Counties of Randolph, Montgomery, Chatham, Guilford, Forsyth, Davie, and Davidson and from all Points and Places Within Said Counties to all Points and Places in North Carolina, and from all Points and Places in North Carolina to all Points and Places Within Said Counties
T-2603 (2-12-86)

Swicegood, Donald J. - Recommended Order Granting Common Carrier Authority to Transport Group 21, Fly Ash, Statewide
T-2465, Sub 1 (1-10-86)

TGH Enterprises, Inc. - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, with Exceptions, Statewide
T-2474 (4-3-86)

Thomas Produce Company of Mount Airy, Inc. - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, Statewide
T-2629 (6-17-86)

Thomas, R. P., Trucking Company, Inc. - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, Except Commodities in Bulk in Tank Vehicles*, Statewide (*corrected by Errata Order)
T-2658 (6-20-86); Errata Order (6-25-86)

Tidewater Transit Co., Inc. - Order Granting Common Carrier Authority to Transport Group 21, General Commodities, with Exceptions, Statewide
T-380, Sub 21 (10-23-86)

Tom's Mobile Home Parts, Sales, and Service, Tom's Auto Supply of Roxboro, Inc., d/b/a - Recommended Order Granting Common Carrier Authority to Transport Group 21, Manufactured Housing, Mobile Homes, and Modular Homes, Statewide
T-2377, Sub 1 (5-23-86)

Topco Enterprises, Inc. - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, Statewide
T-2641 (4-29-86)

Triad Transport, Inc. - Order Granting Authority to Transport Group 3, Petroleum and Petroleum Products, Liquid, in Bulk in Tank Trucks, Statewide
T-2016, Sub 3 (12-18-86)

Triad Transport, Inc. - Order Granting Authority to Transport Group 1, General Commodities, Except Commodities in Bulk in Tank Vehicles, Statewide
T-2016, Sub 4 (12-15-86)

Triple "S" Trucking Company, Inc. - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, Statewide
T-2687 (8-27-86)

TSC Express Company - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, Except Commodities in Bulk in Tank Vehicles, Statewide
T-2725 (11-17-86)

Unique Express, Inc. - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, Except Commodities in Bulk in Tank Vehicles, Statewide
T-2652 (8-6-86)

Upchurch Mobile Home Service & Transporting Company, Andrew David Upchurch, d/b/a - Recommended Order Granting Application for Common Carrier Authority to Transport Group 21, Mobile Homes, Statewide
T-2598 (4-10-86)

Vance Trucking Company Incorporated - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, Except Commodities in Bulk in Tank Vehicles, Statewide
T-29, Sub 5 (7-3-86)

Waccamaw Transport, Inc. - Order Granting Common Carrier Authority to Transport Group 21, Liquid Fertilizer, in Bulk, Statewide
T-259, Sub 8 (10-1-86)

Wally Service Co., Inc. - Order Granting Common Carrier Authority to Transport Group 1, General Commodities (Excepting Classes A & 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-2676 (9-12-86)

Warren Trucking Company, Inc. - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, Except Commodities in Bulk in Tank Vehicles, Statewide
T-2659 (6-30-86)

Widenhouse, A. C., Inc. - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, Statewide
T-396,. Sub 9 (7-25-86)

Winglers Mobile Home Moving, Oscar Eugene Wingler, d/b/a - Order Granting Common Carrier Authority to Transport Group 21, Mobile Homes, Between all Points and Places in Wilkes, Caldwell, Ashe, Yadkin, and Watauga Counties and from These Counties to all Points in North Carolina and From all Points in North Carolina Back to These Counties
T-2698 (9-10-86)

Wright Junction Express, John Charles Thomas and Vernon Lee Wright, d/b/a - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, Except Shipments Weighing Less Than 100 Pounds, Between the Facilities of The Sherwin Williams Company, Burlington, North Carolina; Redmon Homes, Inc., Mebane, North Carolina, and Triton Water Industries, Burlington, North Carolina, and all Points in the State
T-2572 (2-14-86)

AUTHORITY GRANTED - CONTRACT CARRIER

B-Freight Lines, Ltd. - Order Granting Contract Carrier Authority to Transport Group 21, Other Specific Commodities (Materials Used in the Manufacture or Laying of Concrete Pipe, Concrete Block, Pre-Stressed Concrete and Other Concrete Products), Under Bilateral Contract with N. C. Products Corporation from Its Plants Located in Raleigh, Kinston, near Fayetteville, Fairmont, and Fuquay-Varina to Points and Places Within the State of North Carolina, with Transportation on Return Movements. Exceptions: Restricted Against Cement, Lime, and Mortar in Bulk. Between Points and Places in North Carolina
T-2029, Sub 3 (2-21-86)

Blount Transit, Incorporated - Order Granting Contract Carrier Authority to Transport Group 1, General Commodities; Group 2, Heavy Commodities; Group 3, Petroleum and Petroleum Products, Liquid, in Bulk in Tank Trucks; Group 6, Agricultural Commodities; Group 8, Dry Fertilizer and Dry Fertilizer Materials; Group 10, Building Materials; and Group 21, Liquid Fertilizer in Bulk, Statewide, Under Continuing Contracts with M. O. Blount & Sons, Blount Petroleum Corporation and Blount Fertilizer Company, Inc.
T-2631 (5-28-86)

Blue Diamond Express, Inc. - Order Granting Contract Carrier Authority to Transport Group 1, General Commodities, Statewide, Under Continuing Contracts with Harlan Transport, Inc.; Amoco Foam Products, Inc.; Sarn, Inc.; and Triton Water/Alamance Foods, Inc.
T-2674 (7-23-86)

# ORDERS AND DECISIONS LISTED

Blue Ox Distribution Co., Inc., The - Order Granting Contract Carrier Authority to Transport Group 10, Building Materials and Group 21, Trusses and Materials and Supplies Used in the Manufacture of Trusses and Building Products, Statewide, Under Continuing Contracts with Tri-City Building Components, Inc., Blue Ox Components, Inc., Blue Ox Products, Inc., and Blue Ox Structures, Inc.
T-2672 (10-1-86)

Bright, Thomas Elton - Order Granting Authority to Transport Group 21, Other Specific Commodities, Under Bilateral Contract with Adams Products Company with Exceptions: Restricted Against Cement, Lime, and Mortar in Bulk
T-2642 (4-30-86)

Cargo Transporters, Inc. - Order Granting Contract Carrier Authority to Transport Group 1, General Commodities, Statewide, Under Continuing Contract with Lowe's Companies, Inc.
T-2424, Sub 2 (11-19-86)

Cedar Hills Trucking, Inc. - Order Granting Contract Carrier Authority to Transport Group 1, General Commodities, Statewide, Under Continuing Contracts with Exposaic Industries, Inc., and Feibus & Company, Inc.
T-2681 (9-8-86)

Charlotte Bay Trading Company - Order Granting Contract Carrier Authority to Transport Group 1, General Commodities: Group 16, Furniture Factory Goods and Supplies; and Group 17, Textile Mill Goods and Supplies Between all Points in the State Under Continuing Contract with St. Joseph Container Company
T-2349, Sub 3 (1-23-86)

Colonial Freight Systems, Inc. - Order Granting Contract Carrier Authority to Transport Group 1, General Commodities, Between the Facilities of Proctor & Gamble Company, Grown Summit (near Greensboro), on the One Hand, and, on the Other Hand, Points in North Carolina Under Continuting Contract with Proctor & Gamble Distribution Company and Richardson-Vicks, Inc.
T-2004, Sub 5 (10-8-86)

Corey, John F., Jr. - Order Granting Contract Carrier Authority to Transport Group 15, Retail Store Delivery Service, Between all Points and Places Within a 20-Mile Radius of Shelby, Under Continuing Contract with Sears, Roebuck and Co.
T-2592 (2-21-86)

Danco Delivery Service, Danny T. Meyers, d/b/a - Order Granting Contract Carrier Authority to Transport Group 15, Retail Store Delivery Service, Between all Points and Places Within the Counties of Carteret, Craven, and Onslow, Under Continuing Contracts with Howard Furniture Company, Inc., Tal-Y-Bont, Ltd., and High Point Furniture Connection
T-2626 (8-18-86)

Dedicated Fleet, Inc. - Order Granting Contract Carrier Authority to Transport Group 1, General Commodities, Under Bilateral Contract with Lowe's Companies, Inc., Statewide
T-2130, Sub 4 (12-11-86)

First American Carriers, Inc. - Order Granting Contract Carrier Authority to Transport (1) Group 1, General Commodities, Except Commodities in Bulk in Tank

Vehicles and (2) Group 5, Solid Refrigerated Products, Statewide, Under Continuing Contract with Meadowbrook Meat Corporation, d/b/a MBM Corporation
T-2520, Sub 2 (12-18-86)

First Express, First Express, Inc., d/b/a - Recommended Order Granting Contract Carrier Authority to Transport all Goods Transferred on Behalf of S. P. Richards Company Throughout North Carolina as Required
T-2622 (7-25-86)

Fleetwood Express, Robert Lee Padgett, d/b/a - Order Granting Contract Carrier Authority to Transport Group 1, General Commodities, in Bulk in Tank Trucks, Statewide, Under Continuing Contract with Etta Packaging, Inc., J. L. DeBall-Grimes, of America, Inc., Beacon Manufacturing Company, and Ball Corporation
T-2610, Sub 1 (12-11-86)

Hallport, Inc. - Order Granting Contract Carrier Authority to Transport Group 1, General Commodities, Statewide, Under Continuing Contract with Black & Decker (U. S.), Inc. T-2729 (12-10-86)

Home Run, Inc. - Order Granting Contract Carrier Authority to Transport Group 10, Building Materials, Statewide, Under Continuing Contract with Ryland Group, Inc.
T-2678 (9-10-86)

Hunt's Trucking Co., Gilbert Hunt, d/b/a - Order Granting Contract Carrier Authority to Transport Group 21, General Commodities, Between all Points and Places Within the Counties of Mecklenburg, Robeson, Hoke, Scotland, Richmond, Cumberland, Onslow, Columbus, Brunswick, Pender, Jones, Duplin, and Sampson, Under Contract with Stanley Home Products
T-2700 (10-28-86)

Industrial Asphalt Transport, Inc. - Order Granting Contract Carrier Authority to Transport Group 21, Asphalt, in Packages or in Bulk, Statewide, Under Continuing Contracts with Asphalt Paving Company of Hickory and Morganton, Superior Paving Company of Statesville, Twin City Paving Company of North Wilkesboro, and Davis Oil Company, of Statesville
T-1619, Sub 4 (3-27-86)

Jet Express Delivery, Inc. - Order Granting Contract Carrier Authority to Transport Group 1, General Commodities, Except Classes A and B Explosives, Commodities in Bulk and Household Goods, Statewide, Under Continuing Contract with AT&T Technologies
T-2551 (7-21-86)

Johnson, James Walter - Order Granting Contract Carrier Authority to Transport Group 21, Other Specific Commodities (Concrete Pipe, Concrete Block, Pre-Stressed Concrete Products, etc.) Under Bilateral Contract with Adams Product Company from Its Plants Located in Raleigh, Durham, Rocky Mount, Edenton, Kinston, Fayetteville, and Morrisville to Points and Places Within the State, with Transportation on Return Movements. Exception: Restricted Against Cement, Lime, and Mortar in Bulk
T-2489 (2-21-86)

## ORDERS AND DECISIONS LISTED

Kennedy Freight Lines, Inc. - Order Granting Contract Carrier Authority to Transport Group 1, General Commodities, Except Commodities in Bulk, in Tank Vehicles, Statewide, Under Continuing Contract with A.P. Industries, Inc.
T-2567, Sub 1 (1-6-86)

LRC Truck Line, Inc. - Order Granting Contract Carrier Authority to Transport Group 1, General Commodities, Except Shipments of 100 Pounds or Less, Statewide, Under Continuing Contract with National Fruit Products Company, Inc.
T-2369 (5-5-86)

Merritt Trucking Company, Inc. - Order Granting Contract Carrier Authority to Transport Group 21, Cement, in Bulk, and in Bags, Between Points in North Carolina Under Continuing Contract with Lehigh Portland Cement Company
T-2143, Sub 6 (3-7-86)

Metler, A. J., & Rigging, Inc. - Order Granting Contract Carrier Authority to Transport Group 2, Heavy Commodities, Between Points in Designated Cities and all Points in North Carolina, under Continuing Contract with Combustion Engineering, Inc.
T-2605 (3-12-86)

Mountain River Trucking Company, Inc. - Order Granting Contract Carrier Authority to Transport Group 1, General Commodities, and Group 10, Building Materials, Statewide, Under Continuing Contract with Exposaic Wire Company, Inc.
T-2701 (10-15-86)

North American Van Lines, Inc. - Order Granting Contract Carrier Authority to Transport Group 21, Business and Office Machines and Electronic Manufacturing Systems Consisting of Data Processing Machines, etc., Under Continuing Contract with International Business Machines Corporation, Statewide
T-2108, Sub 1 (9-17-86)

North State Transport, Frank E. Dills and Wesley M. Dills, d/b/a - Order Granting Contract Carrier Authority to Transport Group 1, General Commodities, Statewide, Under Continuing Contract with Craco Logistics
T-2677 (7-25-86)

Perry & Turner Trucking Co., Inc.' - Order Granting Contract Carrier Authority to Transport Group 1, General Commodities, Statewide, Under Continuing Contract with Blue Bell, Inc.
T-2634 (7-3-86)

Phillips, George Womack, II - Errata Order Correcting Docket Number in Order Dated December 20, 1985, Granting Temporary Contract Carrier Authority
T-2600 (1-3-86)

Rakes, Jimmy L., Trucking Company, Inc. - Order Granting Contract Carrier Authority to Transport Group 1, General Commodities, and Group 17, Textile Mill Goods and Supplies, Statewide, Under Continuing Contracts with Perry Manufacturing Company and RSM Company
T-2666 (8-27-86)

R.E.M. Trucking Co., Inc. - Order Granting Contract Carrier Authority to Transport Group 3, Petroleum and Petroleum Products, Liquid, in Bulk in Tank Trucks, on Designated Routes Under Continuing Contracts with Sullivan Oil Company, Thomas Oil Company, and Sanford Red Star Oil Company
T-2487 (10-2-86)

Smith, Edgar - Order Granting Contract Carrier Authority to Transport Group 21, Other Specific Commodities, Concrete Pipe, Concrete Block, etc., with Exceptions, Under Bilateral Contract with Adams Products Company on Designated Routes and Under Special Conditions and with Special Exceptions: Restricted Against Cement, Lime, and Mortar in Bulk
T-2662 (7-23-86)

Smith's Trucking, Joe Neil Smith, d/b/a - Order Granting Contract Carrier Authority to Transport Group 19, Unmanufactured Tobacco, in Sheets on Dollies or Jacks Between Robersonville and Williamston, and the Return of Used Sheets, Dollies or Jacks, Under Individual Bilateral Written Contract with R. J. Reynolds Tobacco Company, Winston-Salem
T-2534 (2-27-86)

Taylor-Maid Transportation, Inc. - Order Granting Contract Carrier Authority to Transport Group 16, Furniture Factory Goods and Supplies, Statewide, Under Continuing Contract with Bassett Furniture Industries, Inc.
T-2692 (10-15-86)

Twin City Warehouses, Inc. - Order Granting Contract Carrier Authority to Transport Group 1, General Commodities, Statewide, Under Continuing Contract with Crown Wood Products, AT&T Technologies, Inc., and Gold Standard Construction, Inc.
T-2348, Sub 1 (5-6-86)

AUTHORIZED SUSPENSION

Allen Realty Company, Inc. - Order Granting Authorized Suspension of Operations Under Certificate No. C-1041 Until June 30, 1987
T-1832, Sub 3 (12-3-86)

Baker, Johnie Royster - Order Granting Authorized Suspension of Operations Under Permit No. P-422 Until July 1, 1987
T-2296, Sub 1 (12-17-86)

Barnes, J. A., & Son, Inc. - Order Granting Authorized Suspension of Operations Under Certificate No. C-1303 Pending Compliance with the Final Order for the Sale and Transfer of Certificate
T-2425, Sub 1 (5-16-86)

Chandler Trailer Convoy, Inc. - Order Granting Authorized Suspension of Operations Under Certificate No. C-812 for Time to Negotiate Sale and Transfer of Certificate (Until August 1, 1986)
T-2288, Sub 2 (2-3-86)

E & B Corp. - Order Granting Authorized Suspension of Operations Under Certificate No. C-998 Until December 1, 1986
T-1560, Sub 2 (3-13-86); Until December 1, 1987 (11-17-86)

## ORDERS AND DECISIONS LISTED

Gardner-Creech Oil Co., Inc. - Order Granting Authorized Suspension of Operations Under Certificate No. C-574 Until December 1, 1987
T-790, Sub 6 (12-3-86)

Graebel/North Carolina Movers, Inc. - Order Granting Authorized Suspension of Operations Under Certificate No. C-1256 Until February 1, 1987
T-2333, Sub 1 (1-29-86)

Granville House, Incorporated - Order Granting Authorized Suspension of Operations Under Certificate No. C-858 for Time to Prepare Application for Additional Operating Authority
T-390, Sub 9 (2-6-86)

Granville House, Incorporated - Order Granting Additional Authorized Suspension of Operations Under Certificate No. C-858 for Time to Prepare Application for Additional Operating Authority
T-390, Sub 9 (7-2-86)

HCMA, Inc., c/o David R. Hillier, Trustee - Order Granting Authorized Suspension of Operations Under Certificate No. C-1273 for Time to Apply in Docket No. T-2164 for the Sale of Certificate
T-2382, Sub 1 (2-6-86)

Hadley's Cartage, Charles E. Hadley, d/b/a - Order Granting Authorized Suspension of Operations Under Certificate No. C-1381 for Time to Negotiate Sale and Transfer of Certificate
T-2514, Sub 1 (7-31-86)

Hatcher, M. L., Pick-Up and Delivery Service, Inc. - Order Granting Authorized Suspension of Operation Under Certificate No. C-1015 Until January 1, 1987, Due to Bankruptcy Proceedings
T-1613, Sub 9 (5-8-86)

Hedrick Trucking Company, Inc. - Order Granting Authorized Suspension of Operations Under Certificate No. C-1380
T-2582, Sub 1 (10-15-86)

Hewett's Mobile Home Set-Up and Repair, Harry Bert Hewett, d/b/a - Order Granting Authorized Suspension of Operations Under Certificate No. C-1370 Until July 1, 1987
T-2558, Sub 1 (7-2-86)

Hill-Top Transport, Inc. - Order Granting Authorized Suspension of Operations Under Permit P-127
T-1057, Sub 11 (8-6-86)

Hood Moving & Storage, Inc. - Order Granting Authorized Suspension of Operations Under Certificate C-1302
T-2452, Sub 1 (10-8-86)

## ORDERS AND DECISIONS LISTED

Jay's Mobile Home Moving and Repair Service, Joseph Lee Hudson, d/b/a - Order Granting Authorized Suspension Under Certificate No. C-1382 Until March 27, 1987
T-2556 (5-13-86)

Joyner Trucking Company - Order Granting Authorized Suspension of Operations Under Certificate No. C-242 for Time to Negotiate Sale and Transfer of Certificate Until May 1, 1986
T-122, Sub 4 (2-3-86)

MD-Goldston, Inc. - Order Granting Authorized Suspension
T-2493, Sub 1 (11-5-86)

Mid-State Deliver Service, Inc. - Order Granting Authorized Suspension of Operation Under Certificate No. C-536
T-368, Sub 14 (8-11-86)

Neway Motor Freight, Inc. - Order Granting Authorized Suspension of Operations Under Certificate No. C-1341 to Allow Time to Negotiate Sale and Transfer
T-2527, Sub 1 (3-7-86) Piedmont Mobile Home Movers, Inc. - Order Granting Authorized Suspension of Operations Under Certificate No. C-961 'Until July 1, 1986
T-1943, Sub 2 (1-6-86)

Piedmont Mobile Home Movers, Inc. - Order Granting Authorized Suspension of Operations Under Certificate No. C-961 Due to Illness of one of the Owners Until January 1, 1987
T-1943, Sub 2 (7-2-86)

Polar Transport, Inc. - Order Granting Authorized Suspension of Operations Under Certificate No. C-784 Until May 1, 1987
T-1548, Sub 2 (6-4-86)

Reed Moving & Storage, Reed Warehouse of Charlotte, Inc., d/b/a - Order Granting Authorized Suspension of Operations Under Certificate No. C-1386
T-2616, Sub 1 (10-9-86)

Rowan Freight Co., Inc. - Order Granting Authorized Suspension of Operations Under Certificate No. C-1171 Until December 1, 1986, and Dismissing Show Cause Hearing
T-2142, Sub 3 (6-10-86)

Russell Transfer, Incorporated - Order Granting Authorized Suspension of Operations Under Certificate No. C-1091 Until July 1, 1987, to Allow Time to Negotiate Sale
T-1875, Sub 3 (12-3-86)

Smith's Trucking, Joe Neil Smith, d/b/a - Order Granting Authorized Suspension of Operations Under Permit No. P-495, and Good Cause Appearing
T-2534, Sub 2 (3-7-86)

Smith's Trucking, Joe Neil Smith, d/b/a - Order Granting Authorized Suspension of Operations Under Permit No. P-495 Until July 15, 1987
T-2534, Sub 2 (12-17-86)

## ORDERS AND DECISIONS LISTED

Tatum-Dalton Transfer Company - Order Granting Authorized Suspension Under Certificate No. C-365 Until Disposition of the Application for the Sale and Transfer of Certificate
T-64, Sub 2 (3-4-86)

Thurston Express, Inc - Order Granting Authorized Suspension of Operations Under Certificate No. C-1357 to Allow Time to Negotiate Sale and Transfer
T-2519, Sub 1 (6-4-86); Until November 1, 1986 (9-9-86); Until January 1, 1987 (11-5-86) CERTIFICATES CANCELLED - Termination of Liability/Cargo Insurance Coverage

| Company and Certificate No. | | Docket Number | Date |
|---|---|---|---|
| Able Mobile Home Movers, Charles G. Long, d/b/a | No. C-1323 | T-2473, Sub 2 | 6-11-86 |
| Action Freight Lines, Inc. | No. 1128 | T-1999, Sub 3 | 10-6-86 |
| B & L Motor Freight, Inc. | No. C-1095 | T-1901, Sub 2 | 3-10-86 |
| B & L Trucking Co., Inc. | No. C-499 | T-640, Sub 9 | 11-4-86 |
| Britt, Jackie Clifton | No. P-482 | T-2508, Sub 1 | 8-12-86 |
| Haywood Transfer and Storage Company, Inc. | No. C-734 | T-1009, Sub 8 | 3-13-86 |
| Magann Carolina, Inc. | No. P-456 | T-2391, Sub 2 | 6-11-86 |
| Milovitz Mobile Home Moving, William Ray Milovitz, d/b/a | No. C-1352 | T-1853, Sub 5 | 6-11-86 |
| Modular Transport, Inc. | No. C-1022 | T-2376, Sub 2 | 8-12-86 |
| Pines Mobile Home Park and Service Company, Inc. | No. 1203 | T-2230, Sub 1 | 2-12-86 |
| Rogers Trucking, Inc. | No. C-1286 | T-2405, Sub 1 | 7-1-86 |
| Russell Transfer, Incorporated | No. C-1091 | T-1895, Sub 2 | 3-13-86 |
| Stewart, Herman | No. P-455 | T-2402, Sub 1 | 7-1-86 |
| Winston Carriers, Inc. | No. P-337 | T-1987 | 3-10-86 |

Able Mobile Home Movers, Inc. - Order Cancelling Certificate No. C-1323
T-2473, Sub 3 (6-26-86)

Avery Trucking Co., Inc. - Order Cancelling Permit No. P-358 - Upon Request
T-2071, Sub 2 (8-12-86)

Distribution Service Systems, Inc. - Order Cancelling Certificate No. C-1092
T-2517, Sub 1 (9-9-86)

Huffman, P. T., Transfer, Inc. - Order Cancelling Certificate No. C-222 - Complete Liquidation of Corporation
T-145, Sub 8 (3-18-86)

Hughes Trucking, Curtis Hughes, t/a - Order Cancelling Permit No. P-276
T-1801, Sub 1 (5-16-86)

Isenhower Transfer and Storage Company, Inc. - Recommended Order Cancelling Certificate No. C-689 (9-10-86)

McKoy, Warren - Order Cancelling Contract Carrier Permit No. P-465
T-2434, Sub 2 (12-3-86)

Roberson, Norman - Order Rescinding Order of November 15, 1985, Cancelling Certificate
T-2509 (6-4-86)

Roberts, C.C., Concrete Construction Co., Inc. - Order Cancelling Certificate No. C-1085 - Ceased Operations
T-1874, Sub 3 (3-26-86)

Textile Transportation, Inc. Order Cancelling Contract Carrier Permit No. P-459 - Ceased Operations
T-2233, Sub 2 (11-6-86)

Trans-Southern Trucking Company - Order Cancelling Permit - Upon Request
T-2541, Sub 1 (8-14-86)

Walker Transfer, Inc. - Order Cancelling Certificate No. C-534 and Dismissing Show Cause Hearing
T-707, Sub 5 (1-29-86)

Yellow Transportation Services of Guilford, Inc. - Recommended Order Cancelling Certificate No. C-1279
T-2352 (2-12-86)

## INCORPORATIONS AND TRANSFERS

East Carolina Cartage Company, Inc. - Order Approving Incorporation of Permit No. P-310 from Delmer Ray Ipock, d/b/a East Carolina Cartage Company
T-1922, Sub 5 (8-22-86)

Grady's Moving & Delivery Service, Inc. - Order Approving Incorporation and Transfer of Certificate No. C-1388 from James Robert Grady, Sr., and James Robert Grady, Jr., d/b/a Grady's Moving & Delivery Service
T-2547, Sub 1 (5-23-86)

Great Southern Express, Inc. - Order Approving Incorporation and Transfer of Certificate No. C-1441 from Charles H. Lohr, d/b/a Air/Highway Express
T-2653, Sub 1 (11-6-86)

Hamrick Mobile Homes, Inc. - Order Approving Incorporation and Transfer of Certificate No. C-1292 from Carson Hamrick, d/b/a Hamrick Mobile Homes
T-2380, Sub 4 (12-17-86)

Morehead Moving & Storage, Inc. - Order Approving Incorporation and Transfer of Certificate No. C-630 from Morehead Moving and Storage Company
T-918, Sub 3 (4-21-86)

Routh Transportation, Inc. - Order Approving Incorporation and Transfer of Permit No. P-509
T-2568, Sub 1 (2-4-86)

# ORDERS AND DECISIONS LISTED

## LEASES

Harris, Dick, & Son Trucking Co., Inc. - Order Approving Authority to Lease Certificate No. C-269 from Freightways, Inc.
T-2633, Sub 1 (4-24-86)

## MERGERS

Bulldog Trucking, Inc. - Order Approving Merger of Bulldog Trucking of Georgia, Inc., into Bulldog Trucking, Inc.
T-2545, Sub 1 (11-20-86)

McGil Specialized Carriers, Inc. - Order Approving Merger of Superior Trucking Company, Inc., Certificate No. C-377, into McGil Specialized Carriers, Inc.
T-2650 (5-21-86)

## NAME CHANGE/TRADE NAME

Billings Freight Systems, Inc. - Order Approving Name Change from Billings Transfer Corporation in Certificate No. C-94
T-273, Sub 4 (6-18-86)

Heritage Transport, Inc. - Order Approving Change in Name from Indiana Liquid Transport, Inc., Holder of Certificate No. C-1283
T-2410, Sub 1 (11-4-86)

Lawrence Transportation Systems, Inc. - Order Approving Name Change from Lawrence Transfer and Storage Corporation
T-1765, Sub 2 (1-6-86)

Lumberton Masonary Company, Inc. - Order Approving Name Change from Lumberton Masonary Company - Certificate No. C-1345
T-2518, Sub 2 (11-24-86)

Lumberton Masonary Company - Order Approving Name Change from Lumberton Masonary Company, Inc. - Certificate C-1345
T-2518, Sub 2 (12-5-86)

M & M Movers, Richard C. Hall and Mark A. Hall, d/b/a - Order Approving Name Change from Richard C. Hall, d/b/a M &M Movers
T-1750, Sub 6 (2-13-86)

Mobile Movers of North Carolina, Inc. - Order Approving Name Change from Town Park, Inc., d/b/a Mobile Movers of North Carolina
T-2591 (5-21-86)

Randleman, Thomas W., Tamway Trucking Company, d/b/a - Order Approving Use of Trade Name Tamway Trucking Company
T-2576 (1-13-86)

S & M, Howard Strider and James Murray, t/a - Order Approving Change in Trade Name of Certificate No. C-1378
T-2603, Sub 1 (4-2-86)

Statewide Mobile Home Movers, J. Dalton Cheek, d/b/a - Order Approving Name Change from J. Dalton Cheek
T-2663, Sub 1 (9-25-86)

Thomas, R. P., Trucking Company, Incorporated - Order Granting Motion to Amend Name from R. P. Thomas Trucking Company, Inc.
T-2658 (8-14-86)

Tri State Moving & Storage, Joseph J. Afonso, d/b/a - Order Approving Name Change from Tri County Movers
T-2498, Sub 1 (5-7-86)

Warren Transportation, Inc., of Virginia, Warren Trucking Company, Inc., d/b/a - Order Approving Use of Trade Name
T-2659, Sub 1 (8-6-86)

Wingate/Taylor-Maid Transportation, Inc. - Order Approving Name Change from Taylor-Maid Transportation, Inc., of Permit No. P-525
T-2692, Sub 1 (12-30-86)

## RATES - MOTOR COMMON CARRIERS

Motor Common Carriers - Order Granting Increase
T-825, Sub 293 (6-20-86) - Approving Joint Rate Agreement
T-825, Sub 294 (5-13-86)
T-825, Sub 296 (5-19-86)

## SALES AND TRANSFERS/CHANGE OF CONTROL

Air Cargo Services, Inc. - Order Approving Transfer of Certificate No. C-1290 by Stock Transfer (to Acquire Control) from Thomas E. Fanelli and Barbara N. Fanelli to Jimmy W. Perry, Robert H. Hall, Lonnie C. Poole, Jr., and L. B. Clayton, Jr.
T-2413, Sub 1 (3-24-86)

Barco Pick Up and Delivery Services, James T. and Kathleen Edmondson, d/b/a - Order Approving Sale and Transfer of Certificate No. C-1255 Issued to Clarance J. Barker, d/b/a Barco Pick Up and Delivery Service
T-2337, Sub 1 (1-22-86)

Blue Bird-Diamond Taxi Association, Joseph W. Johnson, Floyd Hector and James Deloatch - Order Approving Transfer of Certificate No. C-1162 from Carl W. Preston, Ronald W. Tabb, and David R. Hall, d/b/a Blud Bird-Diamond Taxi Association
T-2120, Sub 4 (10-2-86)

Bryant Brothers, Inc. - Order Approving Sale and Transfer of Certificate No. C-242 Issued to Joyner Trucking Company
T-2612 (3-24-86)

Burgess Transport, Inc. - Order Approving Sale and Transfer of Certificate No. C-1341 Issued to Neway Motor Freight, Inc.
T-2645 (4-23-86)

## ORDERS AND DECISIONS LISTED

Butler Mobile Home Movers, Mearl Gene Butler, d/b/a - Order Approving Sale and Transfer of Certificate No. C-1080 Issued to Herbert J. Pippin, d/b/a Oak Hill Mobile Home Movers
T-2606 (2-21-86)

Caldwell Freight Lines, Inc. - Order Approving Authority for Dependable Transport Group, Inc., to Acquire Control by Stock Transfer and Merger into Caldwell Freight Lines, Inc., Holder of Common Carrier Certificate No. C-250
T-2722 (10-22-86)

Carolina Cartage and Associates, C.C.C.A., Inc., d/b/a - Order Approving Sale and Transfer of Certificate No. C-1207 Issued to P-Y Transport, Inc.
T-2618 (3-24-86); Errata Order (3-26-86)

Christian Moving Company, A - Order Approving Sale and Transfer of Certificate No. 1063 Issued to Reed Warehouses of Charlotte, Inc., d/b/a Reed Moving & Storage
T-2723 (10-22-86); Errata Order (11-4-86)

Gary's Mobile Home Service, Gary Steven Godfrey, d/b/a - Order Approving Sale and Transfer of Certificate No. C-845 Issued to Fred Lee Anderson, d/b/a Energy And Cost Efficient Homes And Transporting
T-2680 (7-18-86)

Gorris Eggleston Oil Transport, Inc. - Order Granting Petition for Authority for Change of Control of Certificate No. C-163 by Conrad Huffman from Tucker W. McLaughlin by Acquisition of all of its Outstanding Stock
T-136, Sub 4 (11-3-86)

Grandpap Mobile Home Service, Inc. - Order Approving Transfer of Certificate No. C-968 by Stock Transfer from Paul Lee Bean to Dwight Ranson Spann
T-1600, Sub 2 (1-23-86)

Greystone Freight Systems, Inc. - Order Approving Sale and Transfer of Certificate No. C-1015 from M. L. Hatcher Pickup And Delivery Service, Inc.
T-2705 (8-22-86)

Highland Company, The, Highland Trucking, Inc., d/b/a - Order Approving Sale and Transfer of Certificate No. C-1322 Issued to Archie Andrews Company
T-2607 (2-21-86)

Lawrence Transportation Systems, Inc. - Order Approving Sale and Transfer of Certificate No. C-365 Issued to Tatum-Dalton Transfer Company
T-1765, Sub 3 (3-24-86)

McLaurin Trucking Company - Order Approving Sale and Transfer of Certificate No. CP-52 Issued to Bruce Johnson Trucking Company, Inc.
T-1974, Sub 2 (4-23-86)

Morehead Moving & Storage, Inc. - Order Approving Transfer of Control of Certificate No. C-630 by Stock Transfer by McCotter Enterprises, Inc.
T-918, Sub 4 (12-15-86)

## ORDERS AND DECISIONS LISTED

New-Con Transportation, Inc. - Order Approving Sale and Transfer of Certificate No. C-1221 Issued to J. D. Transport, Inc.
T-2542 (1-23-86)

No-Name Movers, Charles Allen Calhoun, d/b/a - Order Approving Sale and Transfer of Certificate No. C-601 Issued to Albert R. Byrd, Jr., d/b/a J.R. Grose Transfer Company
T-2601 (1-22-86)

North Raleigh Mobile Home Supplies, Inc. - Order Approving Sale and Transfer of Certificate No. C-1033 from Arthur Joseph Lesmann & Charles Alton Butler, d/b/a King Arthur's Court
T-2688 (8-22-86)

Observer Transportation Company - Order Approving Sale and Transfer of Certificate No. C-289 Issued to Media Express, Inc.
T-107, Sub 20 (11-19-86); Errata Correcting Certificate No. C-1042 (11-26-86)

Jiffy Express Company - Order Approving Sale and Transfer of Certificate No. C-1320 Issued to Carolina Air Parcel Service
T-2595 (1-22-86); Errata Order (1-28-86)

Pamlico Mobile Home Movers, Inc. - Order Approving Sale and Transfer of Certificate No. C-1387 Issued to Stanley Howard Chambers, d/b/a Chambers Mobile Home Movers
T-2741 (12-15-86)

Pelican Air Pak, Inc. - Order Approving Sale and Transfer of Certificate No. C-1273 Issued to HCMA, Inc.
T-2614 (2-21-86); Errata Order (2-24-86)

S & H Mobile Home Movers, James Dan Smith & Richard Bryan Ward, d/b/a - Order Approving Sale and Transfer of Certificate No. C-1105 Issued to Jasper Sumerlin, d/b/a S & H Mobile Home Movers
T-1914, Sub 4 (3-21-86)

SilverEagle Transport, Inc. - Order Approving Sale and Transfer of Certificate No. C-189 Issued to MD-Goldston, Inc.
T-2738 (11-19-86); Errata Order (11-21-86)

Taylor Transfer & Storage Co., Inc. - Order Approving Sale and Transfer of Certificate No. C-1367 Issued to Larry Wayne Sutphin
T-2733 (11-19-86)

Thurston Motor Lines, Inc. - Order Approving Sale and Transfer of Certificate No. C-1357 Issued to Thurston Express, Inc.
T-480, Sub 32 (11-19-86)

Triple A Transport, Little Creek Trucking, Inc., d/b/a - Order Approving Sale and Transfer of Certificate No. C-1303 Issued to J. A. Barnes & Son, Inc.
T-2638 (4-23-86)

Ward Trucking Corp. - Order Approving Sale and Transfer of Certificate No. C-1381 from Charles E. Hadley, d/b/a Hadley's Cartage
T-2706 (8-22-86)

## MISCELLANEOUS

Colonial Freight Systems, Inc. - Order Granting Request to Self-Insure
T-2004, Sub 6 (11-18-86)

Economy Transport, Inc. - Order Granting Request to Self-Insure in Lieu of Maintaining Cargo Insurance
T-1468, Sub 1 (2-19-86)

Motor Common Carriers - Order Cancelling Order of Suspension and Investigation Notice of Hearing (and Closing Docket)
T-825, Sub 290 (4-16-86)

## RAILROADS

## AGENCY STATIONS

Southern Railway Company - Recommended Order Approving Petition to Discontinue Agency Station at Swannanoa on a Permanent Basis
R-29, Sub 464 (2-7-86)

Southern Railway Company - Order Granting Petition to Close the Agency Station at Marshall and to Reclassify Marshall as a Nonagency Station Under Jurisdiction of the Asheville Agency Station
R-29, Sub 517 (5-6-86)

Southern Railroad Company - Recommended Order Granting Petition to Close the Agency Station at Gastonia and Relocate the Base Station for Mobile Agency Route SOU-NC-11 from Gastonia to Charlotte
R-29, Sub 581 (11-26-86)

## APPLICATIONS/PETITIONS WITHDRAWN

Southern Railway Company - Order Allowing Withdrawal of Petition to Retire and Remove Track No. 389-2 at Belmont
R-29, Sub 554 (9-9-86)

Southern Railway Company - Order Allowing Withdrawal of Petition to Dispose of the Depot Building at Gastonia
R-29, Sub 613 (9-29-86)

Southern Railway Company - Order Allowing Withdrawal of Application for Authority to Retire and Remove Track No. 64-1 at Bryson City
R-29, Sub 629 (12-9-86)

## MOBILE AGENCY AND NONAGENCY STATIONS

Carolina and Northwestern Railway Company, Carolina Division of Southern Railway System as Lessee - Order Granting Petition to Abolish Mobile Agency

Route NS-4 Based at Star and to Revise Mobile Agency Route NS-6 Based at Fuquay-Varina to Serve Star as a Nonagency Station
R-29, Sub 568 (9-10-86)

CSX Transportation, Inc. - Order Granting Application to Consolidate Its Roanoke Rapids Mobile Agency and to Locate the Consolidated Mobile Agency at Rocky Mount
R-71, Sub 149 (11-13-86)

CSX Transportation, Inc. - Order Granting Interim Authority to Reassign Abbottsburg, Bladenboro, Clarkton, and Rosindale from the Chadbourn Mobile Agency to the Fayetteville Mobile Agency No. 2
R-71, Sub 151 (12-23-86)

Norfolk and Western Railway Company - Order Granting Petition to Reclassify the Agency Station Located at Madison to a Nonagency Station
R-29, Sub 606 (11-18-86)

Seaboard System Railroad, Inc. - Recommended Order Approving Petition to Relocate the Henderson Mobile Agency to Raleigh and to Include Henderson and the Nonagency Station of Middlebury in the Service Area of the Relocated Mobile Agency on a Six-Month Trial Basis
R-71, Sub 138 (5-7-86)

Seaboard System Railroad, Inc. - Order Granting Application to Consolidate Mobile Agency Stations #1 and #2 at Wilson and to Relocate the Consolidated Agency to Rocky Mount as an Open Manned Agency Station
R-71, Sub 140 (6-4-86)

Seaboard System Railroad, Inc. - Order Granting Authority to Amend the Station at Riverbend, North Carolina, in the Open and Prepay Station List from a Public to Private Siding
R-71, Sub 142 (6-5-86)

Southern Railway Company - Order Granting Petition to Abandon the Nonagency Station of Becker and Remove to Station from the Open and Prepay Station List
R-29, Sub 524 (2-14-86)

Southern Railway Company - Recommended Order Approving Petition to Abolish Mobile Agency Route NS-1 Based at Elizabeth City; to Reclassify the Former Open Stations of Camden/Shawboro, Edenton, and Hertford as Nonagency Stations, and to Thereafter Place all Stations Served by Mobile Agency Route NS-1 Under the Jurisdiction of the Agency at Elizabeth City Except Moyock, which is to be Governed by the Agency at Norfolk, Virginia
R-29, Sub 540 (4-8-86)

Southern Railway Company - Order Granting Petition to Abandon the Nonagency Station of Icard
R-29, Sub 623 (11-25-86)

# ORDERS AND DECISIONS LISTED

SIDE TRACKS AND TEAM TRACKS - Order Granting Petition to Retire and Remove Track

CAROLINA AND NORTHWESTERN RAILWAY COMPANY, a Subsidiary of Southern Railway System

| Docket Number | Date | Track | Town |
|---|---|---|---|
| R-15, Sub 16 | 1-22-86 | 148-5 | Greenville |
| R-15, Sub 17 | 8-11-86 | 341-1 | Hydro |

CSX TRANSPORTATION, INC. (Successor to Seaboard System Railroad, Inc.)

| | | | |
|---|---|---|---|
| R-71, Sub 139 | 3-5-86 | SV-6 | Scholl |
| R-71, Sub 141 | 6-6-86 | 804 | Relief |
| R-71, Sub 143 | 7-3-86 | Team Track | Kingsboro |
| R-71, Sub 144 | 7-8-86 | SV-9 | Kittrell |
| R-71, Sub 145 | 8-7-86 | 1 | Fremont |
| R-71, Sub 147 | 10-30-86 | 4 | Paschall |
| R-71, Sub 148 | 11-13-86 | Team Track | Ridgeway |
| R-71, Sub 150 | 12-2-86 | Team Track | New Hill |

HIGH POINT RANDELMAN ASHEBORO & SOUTHERN RAILWAY COMPANY

| Docket Number | Date | Track |
|---|---|---|
| R-29, Sub 603 | 9-16-86 | 28-10 - Asheboro Hosiery Mill<br>28-13 - Piedmont Chair Co. |

SOUTHERN RAILWAY COMPANY (NORTH CAROLINA RAILROAD COMPANY)

| Docket Number | Date | Track | Town |
|---|---|---|---|
| R-29, Sub 495 | 10-16-86 | No. 105-10 | Siler City |
| R-29, Sub 514 | 1-28-86 | No. 296-2 | Jamestown |
| R-29, Sub 518 | 3-28-86 | No. 96-1 | Clayton |
| R-29, Sub 519 | 3-28-86 | No. 96-4 | Clayton |
| R-29, Sub 520 | 3-27-86 | No. 87-2 | Nantahala |
| R-29, Sub 521 | 3-7-86 | No. 26-5 | Haw River |
| R-29, Sub 522 | 3-25-86 | No. 114-4 | Murphy |
| R-29, Sub 523 | 2-5-86 | No. 356-6 | Concord |
| R-29, Sub 525 | 1-22-86 | No. 25-9 | Statesville |
| R-29, Sub 526 | 3-28-86 | Nos. 81-14 & 81-31 | Raleigh |
| R-29, Sub 529 | 2-6-86 | No. 357-18 | Concord |
| R-29, Sub 530 | 5-14-86 | No. 5-3 | Charlotte Junction |
| R-29, Sub 531 | 2-7-86 | Track | Troy |
| R-29, Sub 532 | 2-6-86 | Track | Albemarle |
| R-29, Sub 533 | 2-7-86 | Track | Parkwood |
| R-29, Sub 534 | 5-16-86 | Track | Baldwin |
| R-29, Sub 535 | 1-28-86 | Unused Track | Robbins |
| R-29, Sub 536 | 3-6-86 | Track | Cleveland |
| R-29, Sub 537 | 2-7-86 | No. 82-19 | Raleigh |
| R-29, Sub 538 | 1-28-86 | Track - | Oakboro |
| R-29, Sub 541 | 2-14-86 | No. 285-23 | Greensboro |
| R-29, Sub 542 | 4-10-86 | No. 60-3 | Hickory |
| R-29, Sub 543 | 4-10-86 | No. 299-16 | High Point |

| | | | |
|---|---|---|---|
| R-29, Sub 544 | 3-25-86 | Formerly Serving Champion International Corp. | Rutherfordton |
| R-29, Sub 545 | 3-6-86 | No. 227 | Burlington |
| R-29, Sub 548 | 3-11-86 | Track - | Arden |
| R-29, Sub 549 | 3-11-86 | No. 17-2 | Elon College |
| R-29, Sub 550 | 3-27-86 | No. 1 | Biltmore |
| R-29, Sub 551 | 3-20-86 | Unused Track | Wadeville |
| R-29, Sub 552 | 8-7-86 | Unused Track | Wilgrove |
| R-29, Sub 555 | 4-8-86 | No. 282-14 | Greensboro |
| R-29, Sub 557 | 4-8-86 | No. 5-16 | Guilford College |
| R-29, Sub 558 | 4-8-86 | No. 2-11 | Guilford College |
| R-29, Sub 559 | 4-24-86 | No. 21-1 | Hendersonville |
| R-29, Sub 561 | 5-19-86 | No. 91-6 | Topton |
| R-29, Sub 562 | 6-5-86 | No. 4-3 | Guilford College |
| R-29, Sub 563 | 8-8-86 | No. 353-1 | Kannapolis |
| R-29, Sub 564 | 5-19-86 | No. 302-4 | High Point |
| R-29, Sub 565 | 5-16-86 | NS-234 | Raleigh |
| R-29, Sub 566 | 6-27-86 | Nos. 1-6 & 2-9 | Winston-Salem |
| R-29, Sub 567 | 8-7-86 | Mile Post R-6 | Hebron |
| R-29, Sub 569 | 6-9-86 | No. 1-8 | High Point |
| R-29, Sub 570 | 7-9-86 | No. 5-1 | Huntsboro |
| R-29, Sub 571 | 7-22-86 | No. 22-1 | Davidson |
| R-29, Sub 572 | 7-31-86 | No. 65-11 | Bryson City |
| R-29, Sub 573 | 6-9-86 | Track formerly Serving American Bakeries Co. | Fayetteville |
| R-29, Sub 574 | 7-22-86 | No. 78-2 | Pleasant Garden |
| R-29, Sub 575 | 6-27-86 | No. 2-1 | Winston-Salem |
| R-29, Sub 576 | 6-22-86 | No. 51-1 | Lewis- |
| R-29, Sub 577 | 7-22-86 | Unused Track - D-61 | Providence |
| R-29, Sub 578 | 8-26-86 | Formerly Serving Anderson Woodyard | Mocksville |
| R-29, Sub 579 | 7-15-86 | No. 27-1 | Tuxedo |
| R-29, Sub 582 | 8-13-86 | No. 72-9 | Greensboro |
| R-29, Sub 583 | 9-5-86 | No. 45-1 | Sylva |
| R-29, Sub 584 | 8-27-86 | No. 153-2 | Shelby |
| R-29, Sub 585 | 8-11-86 | Track Formerly Serving R. H. Boulingy, Inc. | Charlotte |
| R-29, Sub 587 | 8-11-86 | No. 25-14 | Statesville |
| R-29, Sub 588 | 10-3-86 | Track Formerly Serving G.G. Ray Company | Charlotte |
| R-29, Sub 589 | 10-14-86 | No. 114-10 | Murphy |
| R-29, Sub 590 | 8-26-86 | Spur Track | Simpson |
| R-29, Sub 591 | 9-5-86 | No. 105-1 | Marble |
| R-29, Sub 592 | 8-11-86 | No. 64-1 | Bryson City |
| R-29, Sub 595 | 10-8-86 | Mile Post NB-3.2 | Hackney |
| R-29, Sub 596 | 10-1-86 | No. 2-1 | High Point |
| R-29, Sub 598 | 11-13-86 | No. 13-3 | Brickton |
| R-29, Sub 599 | 12-5-86 | 357-29 | Concord |
| R-29, Sub 600 | 9-11-86 | Track Formerly Serving Henly Paper Company | High Point |
| R-29, Sub 601 | 9-10-86 | Mile Post 184.3 | Wilson |

| | | | |
|---|---|---|---|
| R-29, Sub 602 | 10-2-86 | Portion of Track Formerly Serving Security Storage Warehouse | Goldsboro |
| R-29, Sub 604 | 10-15-86 | Portion of No. 3-2 | Salisbury |
| R-29, Sub 605 | 11-25-86 | S-139-11 | Biltmore |
| R-29, Sub 614 | 11-25-86 | Formerly Serving Taylor Mobile Homes and Taylor Lumber Company | Troy |
| R-29, Sub 616 | 11-25-86 | 91-20 | Hickory |
| R-29, Sub 618 | 11-25-86 | 73-2 | Valdese |
| R-29, Sub 620 | 11-25-86 | 180-2 | Forest City |
| R-29, Sub 621 | 12-9-86 | Serving Jiffy Manufacturing | High Point |
| R-29, Sub 622 | 12-3-86 | 46-10 and 46-15 | Sylva |
| R-29, Sub 626 | 11-25-86 | 59-1 | Bilboa |
| R-29, Sub 631 | 12-5-86 | Serving Taylor Murphy Company | Boswell |

## MISCELLANEOUS

Southern Railway Company - Order Allowing Withdrawal of Petition to Retire and Remove Track No. 20-9 at Hendersonville
R-29, Sub 527 (1-23-86)

Southern Railway Company - Order Granting Petition to Dispose of the Depot at Burlington/Graham
R-29, Sub 539 (4-25-86)

Southern Railway Company - Order Granting Petition to Dispose of Depot Buildings at Hendersonville and Pisgah Forest
R-29, Sub 553 (4-10-86)

Southern Railway Company - Order Granting Petition to Permit a Five-Day Week Operation of the Freight Agency Station at Oxford
R-29, Sub 594 (8-22-86)

Southern Railway Company - Order Allowing Withdrawal of Petition to Retire and Remove Track No. 100-1, an Unused. Public Track and Coal Chute, at Andrews
R-29, Sub 617 (11-12-86)

## TELEPHONE

### APPLICATIONS WITHDRAWN

American Network Services - Order Allowing Withdrawal of Application
P-178 (10-27-86)

### CERTIFICATES

AT&T Communications of the Southern States, Inc. - Order Amending Certificate of Public Convenience and Necessity
P-140 (3-12-86)

Piedmont Paging Limited Partnership - Order Granting Interim Construction Authority and Approving Rates and Charges and Initial Service Policies and Regulations
P-173 (5-28-86)

COMPLAINTS

ALLTEL Carolina, Inc. - Order Dismissing Complaint of the Town of Denton, a Municipal Corporation, and Closing Docket
P-118, Sub 38 (5-1-86)

Carolina Telephone and Telegraph Company - Order Closing Docket in Complaint of Peerless, Incorporated
P-7, Sub 705 (11-21-86)

Carolina Telephone and Telegraph Company - Order Closing Docket in Complaint of Mrs. Sue H. Lockamy
P-7, Sub 707 (10-2-86)

Carolina Telephone and Telegraph Company - Order Closing Docket in Complaint of County of Currituck, William S. Richardson, County Manager
P-7, Sub 708 (10-2-86)

Heins Telephone Company - Recommended Order Denying Complaint of David A. Hamby, Helps Ministry
P-26, Sub 91 (1-23-86); Final Order Affirming Recommended Order (3-25-86)

MCI Telecommunications Corporation - Order Closing Document in Complaint of Jim B. Mallory
P-141, Sub 1 (9-18-86)

Southern Bell Telephone and Telegraph Company and BellSouth Advertising and Publishing Corporation - Order Closing Docket in Complaint of Continental Limousine Service, Incorporated
P-55, Sub 855 (6-24-86)

Southern Bell Telephone and Telegraph Company and BellSouth Advertising and Publishing Corporation - Order Closing Docket in Complaint of Raleigh Tire Company
P-55, Sub 862 (8-5-86)

Southern Bell Telephone and Telegraph Company - Order Accepting Agreement of the Parties and Closing Docket in Complaint of Harry Smith and Photosynthesis
P-55, Sub 876 (10-3-86)

SouthernNet Services, Inc., and TMC of Columbia, S.C./Fayetteville, N.C. - Order Closing Docket in Complaint of Earl Spann
P-89, Sub 26 (11-21-86)

EXTENDED AREA SERVICE (EAS)

Alltel Carolina, Inc. - Order Requiring EAS Poll
P-118, Sub 36 (9-16-86)

Alltel Carolina, Inc. - Order Approving EAS
P-118, Sub 36 (12-17-86)

Carolina Telephone and Telegraph Company - Order Ruling on EAS Matter
P-7, Sub 697 (5-13-86); Additional Order on EAS Matter (5-15-86); Order of Clarification (7-10-86); Order Requiring EAS Poll of Grifton Subscribers (9-10-86) (Commissioner Tate, Dissenting)

Carolina Telephone and Telegraph Company - Order Authorizing Implementation of Extended Area Service
P-7, Sub 697 (11-13-86) (continuation of above docket)

Central Telephone Company - Order Requiring EAS Poll of all Subscribers Served Through the Hildebran Exchange
P-10, Sub 423 (2-21-86)

## MERGERS

ALLTEL Corporation, The Heins Company, and Heins Telephone Company - Order Approving the Merger of Heins Company into ALLTEL Corporation
P-26, Sub 94 (6-26-86)

## OPTIONAL LOCAL MEASURED SERVICE (OLMS)

Carolina Telephone and Telegraph Company - Order Extending Local Measured Service Experiment
P-7, Sub 679 (12-30-86)

Southern Bell Telephone and Telegraph Company - Order Extending Local Measured Service and Residential Message Rate Experiment
P-55, Sub 806 (12-29-86)

## SALES AND TRANSFERS

ALLTEL Cellular Associates of the Carolinas - Order Transferring Certificate to Resell Cellular Mobile Radio Telephone Service from ALLTEL Mobile Communications of the Carolinas, Inc., and Approving Tariff
P-149, Sub 1 (5-7-86)

Business Telecom, Inc. - Order Transferring Assets and Certificate from TelaMarketing Communications of Eastern North Carolina to Business Telecom, Inc.
P-165, Sub 1 (7-30-86)

Phone America of Carolina, Inc. - Order Transferring Certificate from TelaMarketing Communications of Charlotte of all Assets and Operating Authority
P-166, Sub 1 (8-29-86); Amendment to Order in Response to Motion for Reconsideration and Deleting Ordering Clause No. 7 (11-5-86)

SouthernNet Services, Inc. - Order Transferring Assets and Operating Authority from TelaMarketing Communications of Columbia, SC/Fayetteville
P-156, Sub 4 (8-18-86)

US Sprint Communications Company - Order Transferring Certificates from GTE Sprint Communications Corporation and US Telecom-Communications Services Company
P-175 (4-28-86)

## SECURITIES

ALLTEL Carolina, Inc. - Order Approving Loan from the Rural Telephone Bank of $4,515,000
P-118, Sub 37 (2-3-86)

ALLTEL Carolina, Inc. - Order Approving Loan of $5,547,000 from Northern Telecom Inc.
P-118, Sub 41 (6-25-86)

Carolina Telephone and Telephone Company - Order Granting Authority to Issue and Sell up to Fifty Million Dollars ($50,000,000) Principal Amount 30-Year Debentures
P-7, Sub 701 (5-14-86)

Central Telephone Company - Order Granting Authority to Issue and Sell up to $56,000,000 First Mortgage Sinking Fund Bonds, Series EE
P-10, Sub 426 (12-18-86)

Continental Telephone Company of North Carolina - Order Granting Authority to Sell First Mortgage Bonds
P-128, Sub 14 (10-20-86)

General Telephone Company of the South - Order Granting Authority to Issue and Sell Common Stock
P-19, Sub 208 (2-19-86)

General Telephone Company of the South - Order Granting Authority to Issue and Sell First Mortgage Bonds and/or Promissory Notes
P-19, Sub 209 (5-16-86); Revised Order (5-21-86)

General Telephone Company of the South - Order Granting Authority to Issue and Sell Common Stock
P-19, Sub 210 (10-29-86)

## SPECIAL CERTIFICATES

Special Certificate for the Provision of Customer-Owned Coin, Coinless, and Key-Operated Pay Telephone Instruments:

| Docket Number | Date | Company |
|---|---|---|
| SC-1 | 4-8-86 | James E. Cantrell |
| SC-2 | 4-8-86 | Sunray Industries, Inc., Donald E. Ray II, d/b/a |
| SC-3 | 4-8-86 | Coin Telephones, Inc. |
| SC-4 | 4-8-86 | Continental Telephones |
| SC-5 | 4-8-86 | Winston Salem Smart Phone Vending, Inc. |
| SC-6 | 4-8-86 | Tarheel Pay Phone Co. |

## ORDERS AND DECISIONS LISTED

| | | |
|---|---|---|
| SC-7 | 4-23-86 | Communications Central, Inc. |
| SC-8 | 4-23-86 | U.S. Telecom |
| SC-9 | 5-7-86 | Cleveland R. Barham |
| SC-10 | 5-1-86 | Seneca Foods |
| SC-11 | 5-7-86 | Speakeasy Telephone |
| SC-12 | 5-7-86 | Belle Inter-Connect |
| SC-13 | 5-7-86 | Convenient Corner, Inc. |
| SC-14 | 5-7-86 | Billie Veasey |
| SC-15 | 5-7-86 | American Health Spa, Inc. |
| SC-16 | 5-14-86 | Affiliated Communication Systems, Inc. |
| SC-17 | 5-14-86 | The New Telephone Company |
| SC-18 | 5-21-86 | Eastern Fuels, Inc., d/b/a Red Apple Markets |
| SC-19 | 5-21-86 | Phones Unlimited & Telecommunications, Inc. |
| SC-20 | 5-30-86 | Dial One Telephone & Electronics Corporation |
| SC-21 | 5-21-86 | Carlton Stuart Upchurch, Jr. |
| SC-22 | 6-3-86 | Central Communications |
| SC-23 | 6-5-86 | Public Telephone Service |
| SC-24 | 6-11-86 | W. Monty Livingston |
| SC-25 | 6-11-86 | BCS Communications, Inc./Richard Gillespie |
| SC-26 | 6-11-86 | GJB & Associates, d/b/a National Telephone Services |
| SC-27 | 6-11-86 | Southern Pay Phones, Inc. |
| SC-28 | 6-17-86 | Zeb V. & Hazel L. Bailey |
| SC-29 | 6-17-86 | Cedar Square Grocery |
| SC-30 | 6-17-86 | William Sheffield |
| SC-31 | 6-17-86 | T&T Payphones |
| SC-32 | 6-24-86 | ITC-Telephone |
| SC-33 | 6-24-86 | Brian Keith Bailey |
| SC-34 | 6-24-86 | Gary D. Newell |
| SC-35 | 6-30-86 | Convenient Communications |
| SC-36 | 6-30-86 | David R. Fox |
| SC-37 | 6-30-86 | Dewey A. Southard, d/b/a Dewey's Enterprises |
| SC-38 | 6-30-86 | Greg Roten |
| SC-39 | 6-30-86 | Friendly Center, Inc. |
| SC-40 | 7-9-86 | AT&T Communications of the Southern States, Inc. |
| SC-41 | 7-9-86 | AMI Marketing, Inc. |
| SC-42 | 7-9-86 | Terry Dwayne Sprinkle |
| SC-43 | 7-9-86 | Presto Food Stores |
| SC-44 | 7-9-86 | Public Telecommunication Systems |
| SC-45 | 7-9-86 | Alan Wesley Perry |
| SC-46 | 7-9-86 | GDC Associates International |
| SC-47 | 7-9-86 | Robert T. Gribble |
| SC-48 | 7-15-86 | Evander Britt III |
| SC-49 | 7-15-86 | Stoney Hollow Condominium Regime |
| SC-50 | 7-15-86 | M.H.C. & Associates, Marion H. Cobb |
| SC-51 | 7-15-86 | J. Kevin Brown |
| SC-52 | 7-28-86 | Charles C. Bradshaw |
| SC-53 | 7-28-86 | Anthony & Angela Brown |
| SC-54 | 7-28-86 | Tracy Festa |
| SC-55 | 7-28-86 | William H. Booth, Jr. |
| SC-56 | 7-30-86 | Allen Enterprises |
| SC-57 | 7-30-86 | Ray W. Bey |
| SC-58 | 7-30-86 | Edgar A. Thomas, Jr. |
| SC-59 | 7-30-86 | Lois Reich |

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|---|---|---|
| SC-60 | 8-6-86 | Home Phone Service of Catawba County, Inc. |
| SC-61 | 8-6-86 | Royal Petroleum, LTD. |
| SC-62 | 8-6-86 | Pay Tel Communications, Inc. |
| SC-63 | 8-6-86 | Roger D. Thomas |
| SC-64 | 8-11-86 | Atlantic Coin Communications |
| SC-65 | 8-11-86 | H & W Communications |
| SC-66 | 8-11-86 | Forsyth Memorial Hospital |
| SC-67 | 8-11-86 | Federal Realty Service Group |
| SC-68 | 8-11-86 | Eastern Petroleum Corporation |
| SC-69 | 8-11-86 | Michael Douglas Glover |
| SC-70 | 8-20-86 | Point-Of-View Restaurant |
| SC-71 | 8-20-86 | Steve Stallings |
| SC-72 | 8-20-86 | James B. Lemons |
| SC-73 | 8-20-86 | Smartphone, Inc. of Raleigh |
| SC-74 | 8-20-86 | Charles R. Blake |
| SC-75 | 8-26-86 | B & L Service |
| SC-76 | 8-26-86 | Ved V. Pathak |
| SC-77 | 8-26-86 | Mark J. King |
| SC-78 | 8-26-86 | Stephen M. Lutz |
| SC-79 | 8-26-86 | Anleco, Inc. |
| SC-80 | 8-26-86 | Tarheel Telephone Services |
| SC-81 | 9-4-86 | Tommy Waggoner, Jr. |
| SC-82 | 9-4-86 | Tayloe Enterprises |
| SC-83 | 9-4-86 | Galaxy Communications, Incorporated |
| SC-84 | 9-4-86 | Phillip M. Barrow, d/b/a Gastown Oil Company |
| SC-85 | 9-4-86 | Edward Stephenson |
| SC-86 | 9-4-86 | Abbott Laboratories |
| SC-87 | 9-9-86 | Alain David Flexer |
| SC-88 | 9-9-86 | Cramer Wood Products |
| SC-89 | 9-9-86 | George Debidart |
| SC-90 | 9-9-86 | James Neal Musser |
| SC-91 | 9-9-86 | Jack Andrews |
| SC-92 | 9-16-86 | Peach Tele-Com, Inc. |
| SC-93 | 9-16-86 | Thomas M. Pettit |
| SC-94 | 9-23-86 | John J. Peck |
| SC-95 | 9-23-86 | Rufus Davis Pritchard, Jr. |
| SC-96 | 9-23-86 | P & K Coin Phones, Inc. |
| SC-97 | 9-23-86 | Dewey Alan Plyler |
| SC-98 | 9-23-86 | Joan J. Hager |
| SC-99 | 9-23-86 | Tkachuk Enterprises, Inc. |
| SC-100 | 10-2-86 | Huffman Oil Co., Inc. |
| SC-101 | 10-2-86 | Ravji Patel |
| SC-102 | 10-2-86 | Whapp, Inc. - McDonald's |
| SC-103 | 10-2-86 | The Telephone Connection, Inc. |
| SC-104 | 10-8-86 | Interstate 66 |
| SC-105 | 10-8-86 | C & D Communications |
| SC-106 | 10-8-86 | Ann M. Bradford, d/b/a McCoys Services |
| SC-107 | 10-14-86 | William B. Allnutt, Jr. |
| SC-108 | 10-14-86 | Superior Components, Inc. |
| SC-109 | 10-14-86 | William Moser |
| SC-110 | 10-22-86 | Reklau Enterprises |
| SC-111 | 10-28-86 | Burroughs Communications, Inc. |
| SC-112 | 10-28-86 | Randy Broadway - STP Enterprises |

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| SC-113 | 11-5-86 | Emporiums Stores, Ltd. |
| SC-114 | 11-5-86 | William Alfred Dula, Jr. |
| SC-115 | 11-5-86 | LeVan & Associates |
| SC-116 | 11-5-86 | Capitol Dominion Corporation |
| SC-117 | 11-5-86 | Racetrac Petroleum, Inc. |
| SC-118 | 11-12-86 | Jade Communications |
| SC-119 | 11-12-86 | Pizza Hut of South Wilmington Street |
| SC-120 | 11-12-86 | Joyce Haynes |
| SC-121 | 11-19-86 | Oakwood Management Company |
| SC-122 | 11-19-86 | Dominick H. Scalise |
| SC-123 | 11-19-86 | Jackson Park Associates |
| SC-124 | 12-10-86 | Bobby Raybon |
| SC-125 | 12-10-86 | Leon M. Hudgins |
| SC-126 | 12-18-86 | Open Pantry Food Mart of the Carolinas, Inc. |
| SC-127 | 12-18-86 | L & M Communication |
| SC-128 | 12-29-86 | John S. Oldham |
| SC-129 | 12-29-86 | Aubrey H. Junker, Jr. |
| SC-130 | 12-29-86 | Baileys Convenient Marts |

## TARIFFS

ALLTEL Carolina, Inc. - Order Approving Tariffs and Notice to Customers
P-118, Sub 39 (12-9-86)

AT&T Communications of the Southern States, Inc. - Order Approving Tariff Filing as Amended
P-140, Sub 10 (3-12-86)

Business Telecom, Inc. - Order Approving Tariff as Filed and as Further Amended
P-165 (1-31-86)

Continental Telephone Company of Virginia - Order Approving Tariff
P-28, Sub 41 (9-5-86)

Discount Watts Line, Inc. - Order Approving Tariff as Filed and as Further Amended
P-171 (1-31-86)

GTE Spring Communications Corporation - Order Approving Tariff Filing
P-161 (3-13-86)

MCI Telecommunications Corporation - Order Granting Motion and Approving Revised Tariffs
P-141 (1-19-86)

Phone America of Carolina, Inc. - Order Approving Tariff as Filed and as Further Amended
P-166 (1-31-86)

Southern Bell Telephone and Telegraph Company - Order Allowing Withdrawal of Tariff Filing and Closing Docket
P-55, Sub 868 (7-9-86)

Southern Bell Telephone and Telegraph Company - Order Approving Tariff Filing
P-55, Sub 877 (10-13-86); Order Approving Tariff (11-5-86)

SouthernNet Services, Inc. - Order Suspending Tariff Filing
P-156, Sub 3 (6-10-86); Order Approving Tariff Filing and Requiring Revised Notice to Customers (7-22-86)

Tel-Amco, Tel/Man, Inc., and Tel/Man, Inc., d/b/a - Order Approving Tariff Filing
P-137, Sub 1 (3-26-86)

TelaMarketing Communications of Eastern North Carolina - Order Approving Tariff as Filed and as Further Amended
P-162 (1-31-86)

TelaMarketing Communications of Eastern North Carolina - Order Approving Tariff as Filed and as Further Amended
P-163 (1-31-86)

TelaMarketing Communications of Eastern North Carolina - Order Approving Tariff as Filed and as Further Amended
P-164 (1-31-86)

TelaMarketing Communications of Eastern North Carolina - Order Approving Tariff as Filed and as Further Amended
P-167 (1-31-86)

United States Transmission Systems, Inc. - Order Approving Revised Tariffs
P-159 (11-26-86)

US TELECOM - Communications Services Company - Order Approving Tariff Filing
P-169 (1-27-86)

MISCELLANEOUS

Business Telecom, Inc. - Order Requiring Filing of Proposed Plan
P-165 (2-11-86)

Carolina Telephone and Telegraph Company - Order Allowing Reclassification of Exchange Rate Groups
P-7, Sub 703 (10-15-86)

Discount Watts Line, Inc. - Order Requiring Filing of Proposed Plan
P-171 (2-11-86)

MCI Telecommunications Corporation - Order Denying Application for Protective Order
P-141, Sub 3 (10-22-86)

TelaMarketing Communications of Eastern North Carolina - Order Approving Compensation Plan
P-162 (7-28-86)

TelaMarketing Communications of Columbia, S.C./Fayetteville, N.C. - Order Requiring Filing of Proposed Plan
P-164 (2-11-86)

Western Union Telegraph Company - Order Changing Docket Number in Application for a Certificate to Provide InterLATA Telecommunications Services and for Establishment of Initial Rates
P-174 (2-13-86)

## WATER AND SEWER

### APPLICATIONS WITHDRAWN

Glynnwood Mobile Home Park Association - Order Withdrawing Application and Closing Docket
W-847 (1-9-86)

Lester Development Corporation - Order Allowing Withdrawal of Application for Certificate to Furnish Sewer Service in Kynwood Subdivision, Forsyth County, Closing Docket, Cancelling Hearing, and Requiring Public Notice
W-877 (7-25-86)

Mercer Environmental Corporation - Order Allowing Withdrawal of Rate Increase Application, Cancelling Hearing, and Closing Docket
W-198, Sub 20 (5-20-86)

Pine Knoll Village Wastewater Treatment Plant, Pine Knoll Associates, d/b/a - Order Allowing Withdrawal of Application and Closing Docket
W-851 (7-22-86)

Sugarloaf Properties, Inc. - Order Cancelling Hearing and Closing Docket (Applicant Requested Application be Withdrawn)
W-840 (3-28-86)

Webb Creek Water and Sewage, Inc. - Order Withdrawing Application and Closing Docket
W-864, Sub 1 (6-6-86)

### AUTHORIZED ABANDONMENT

Clearwater Utilities, Inc. - Recommended Order Authorizing Abandonment of Water Service in Pint Forest Subdivision on December 1, 1986
W-846, Sub 2 (8-22-86)

### CANCELLATIONS

Finger, Jon R. - Order Authorizing Discontinuance of Water Service in Sheffield Subdivision, Cabarrus County
W-644, Sub 1 (7-16-86)

Hayden Vanderburg Enterprises, Inc. - Order Authorizing Discontinuance of Utility Service and Cancelling Franchise
W-761, Sub 1 (7-16-86)

Propst Water Supply, Cloyd Propst, d/b/a - Order Authorizing Discontinuance of Water Utility Service on 9th Avenue and 22nd Street, Hickory, and to Allow Service to Be Provided by the City of Hickory, Catawba County
W-291, Sub 1 (8-13-86)

Quail Run Water System, Arnold Philbeck, d/b/a - Order Cancelling Franchise (the City of Kings Mountain is now Providing Water Service in Quail Run Subdivision)
W-662, Sub 4 (4-15-86)

Silver Maples Mobile Estates - Order Authorizing Partial Discontinuance of Service in Paradise Estates Subdivision, Cabarrus County
W-776, Sub 1 (7-22-86)

CERTIFICATES

A-1 Utilities, Mayberry Pump and Well Company, Inc., d/b/a - Order Granting Certificate to Furnish Water Service in Hanover Downs Subdivision, Wake County, and Approving Rates
W-871, Sub 1 (7-16-86)

Alpha Utilities, Inc. - Order Granting Certificate to Furnish Water Service in Rolling Meadows Subdivision, Wake County, and Approving Rates
W-862, Sub 1 (8-13-86)

Alternative Waste Treatment Systems, Inc. - Recommended Order Granting Certificate to Furnish Sewer Service in Devonwood Oaks Mobile Home Park and in the Performance Road Area, Mecklenburg County, and Approving Initial Rates
W-839 (1-14-86)

Blue Creek Utilities, Inc. - Recommended Order Granting Certificate to Furnish Sewer Service in West Park Shopping Center, Gateway Subdivision, and Pollard IGA Grocery Store #1, Onslow County, and Approving Rates
W-857 (4-10-86)

Brookwood Water Corporation - Order Granting Certificate to Provide Water Service in Longleaf Subdivision, Cumberland County, and Approving Rates
W-177, Sub 23 (6-17-86)

C & L Utilities, Inc. - Recommended Order Granting Water and Sewer Franchise, Approving Initial Rates, and Requiring the Filing of Exhibits
W-535, Sub 5 (10-8-86)

Carolina Pines Utility Company, Inc. - Recommended Order Granting Franchise to Provide Water and Sewer Service in Carolina Pines Subdivision, Craven County, and Approving Rates
W-870, Sub 1 (10-3-86)

Carolina Water Service, Inc., of North Carolina - Order Granting Franchise to Provide Sewer Service in Huntwick Subdivision, Cabarrus County, and Approving Rates
W-354, Sub 44 (7-22-86)

Carolina Water Service, Inc., of North Carolina - Order Granting Franchise to Provide Water and Sewer Service in Abington Subdivision, Forsyth County, and Approving Rates
W-354, Sub 46 (7-22-86)

Carolina Water Service, Inc., of North Carolina - Order Granting Certificate to Provide Sewer Service in Pine Knolls Village Shopping Center, Carteret County, and Approving Rates
W-354, Sub 49 (8-20-86)

Carolina Water Service, Inc., of North Carolina - Order Granting Franchise to Furnish Sewer Service in Sequoia Place Subdivision, Forsyth County, and Approving Rates
W-354, Sub 51 (10-21-86)

Carolina Water Service, Inc., of North Carolina - Order Granting Franchise to Furnish Sewer Service in Hestron Park Shopping Center, Carteret County, and Approving Rates
W-354, Sub 52 (10-29-86)

Carolina Water Service, Inc., of North Carolina - Order Granting Franchise to Furnish Water and Sewer Service in Willowbrook Subdivision in Johnston and Wake Counties, and Approving Rates
W-354, Sub 53 (10-14-86)

Carolina Water Service, Inc., of North Carolina - Order Granting Franchise to Furnish Sewer Service in Kynwood Subdivision, Forsyth County, and Approving Rates
W-354, Sub 54 (10-8-86); Errata Order (11-18-86)

CAC Utilities, Inc. - Order Granting Certificate to Provide Sewer Utility Service in Beachwood Subdivision, Wake County, and Approving Rates
W-812, Sub 2 (6-18-86); Errata Order (6-23-86)

CAC Utilities, Inc. - Order Granting Certificate to Provide Sewer Utility Service in Wildwood Green Subdivision, Wake County, and Approving Rates
W-812, Sub 3 (7-2-86)

Clearwater Utilities, Inc. - Order Granting Franchise to Furnish Water Service in Stewarts Ridge Subdivision, Wake County, and Wilders Village Subdivision, Franklin County, and Approving Rates
W-846, Sub 3 (11-7-86)

Corriher Water Service, Inc. - Order Granting Certificate to Furnish Water Service in Popular Trails Subdivision, Cabarrus County, and in Dogwood Estates Subdivision, Rowan County, and Approving Rates
W-233, Sub 11 (6-24-86)

Crescent Utilities, Inc. - Recommended Order Granting Franchise to Furnish Sewer Service in Piedmont Crescent Country Club, Piedmont Crescent Professional Village, Quarry Hills Clubhouse, and Aridyne Corporation in Alamance County, and Approving Rates
W-850 (6-9-86)

CWB Utilities, Inc. - Order Granting Certificate to Furnish Sewer Service in Piney Green Shopping Center in Onslow County, North Carolina, and for Approval of Rates
W-852 (2-18-86)

Emerald Plantation Utility Company - Recommended Order Granting Certificate to Furnish Sewer Service in Emerald Plantation Subdivision in Carteret County, and Approving Rates
W-843 (1-27-86)

Farm Water Works, Van Harris Realty, Inc., d/b/a - Recommended Order Granting Certificate to Provide Water Service in Winding Creek Farm Subdivision in Lee County and Approving Rates
W-844 (3-12-86); Errata Order (3-17-86)

Green Spring Valley Mobile Estates, Estate of W.P. Beard and R.L. Beard, d/b/a - Recommended Order Granting Water and Sewer Utility Franchise to Provide Water and Sewer Service in Green Spring Valley Mobile Estates Subdivision, Wake County, and Approving Rates
W-897 (11-17-86)

Hasty Water Utilities, Inc. - Order Granting Certificate to Provide Water Service in Brookfield and Westridge Subdivisions in Wake County, Approving Rates, and Requiring Public Notice
W-736, Sub 20 (5-6-86)

Hasty Water Utilities, Inc. - Order Granting Certificate to Furnish Water Sèrvice in Wood Way, Twin Creek, Arrow Spring, and Springfield North Subdivisions, Wake County, and Approving Rates
W-736, Sub 21, and W-736, Sub 22 (4-15-86)

Hasty Water Utilities, Inc. - Order Granting Certificate to Furnish Water Service in Woods of Tiffany and Hampton Ridge Subdivisions in Wake County and Approving Rates
W-736, Sub 23 (5-28-86)

Hasty Water Utilities, Inc. - Order Granting Franchise to Provide Water Service in Sheffield Manor and Stone Creek Subdivisions, Wake County, and Approving Rates
W-736, Sub 24 (7-22-86)

Hasty Water Utilities, Inc. - Order Granting Certificate to Provide Water Service in Thornburg and Brighton Woods Subdivisions, Wake County, and Approving Rates
W-736, Sub 25 (9-17-86)

Hasty Water Utilities, Inc., - Order Granting Franchise to Furnish Water Service in Wind Haven South Subdivision, Wake County, and Shallow Lakes Subdivision, Johnston County, and Approving Rates
W-736, Sub 26 (10-8-86)

Hasty Water Utilities, Inc. - Order Granting Franchise to Furnish Water Service in Matherly Subdivision, Wake County, and Approving Rates
W-736, Sub 27 (10-8-86)

Hasty Water Utilities, Inc. - Order Granting Franchise to Furnish Water Service in Rolling Ridge and Dunnalee Downs Subdivisions, Wake County, and Approving Rates
W-736, Sub 28 (11-18-86)

Heater Utilities, Inc. - Order Granting Franchise to Provide Water Service in Wedgewood Square, Wildwood Green, Stillwater Landing, and Kings Grant Subdivisions, Wake County, and Approving Rates
W-274, Sub 36 (7-29-86)

Heater Utilities, Inc. - Order Granting Certificate to Provide Water Service in Woods of Ashbury, Oak Hollow, Briarwood Phase III, and Sutton Estates Subdivisions, Wake County, and Approving Rates
W-274, Sub 37 (8-20-86)

Heater Utilities, Inc. - Order Granting Certificate to Furnish Water Service in Somerset, Yates Mill Run, and Castle Ridge Subdivisions, Wake County, and for Approval of Rates
W-274, Sub 38 (9-3-86)

Hilltop Subdivision Water System, Boyd E. Abernethy, d/b/a - Recommended Order Granting Franchise to Furnish Water Service in Hilltop Subdivision, Burke County, and Approving Rates
W-863 (5-14-86)

Holly Hills Water - Recommended Order Granting Water Utility Franchise to Furnish Water Service in Holly Hills Estates Subdivision, Jackson County, and Approving Rates
W-855 (5-5-85); Errata Order (5-23-86)

Horse Creek Farms Utilities Corporation - Recommended Order Granting Sewer Utility Franchise in Wedgewood Park Subdivision, Onslow County, and Approving Rates
W-888 (7-17-86)

Hudson Cole Development Corporation - Recommended Order Granting Certificate to Furnish Water and Sewer Service in Cole Park Plaza Shopping Center and Cole Place Development in Chatham County, and Approving Rates
W-875 (7-15-86)

Hydraulics, Ltd. - Order Granting Full Operating Authority to Provide Water Service in Hidden Hills Subdivision, Forsyth County
W-218, Sub 25 (4-17-86)

Hydraulics, Ltd. - Order Granting Franchise to Furnish Water Service in Ingram Estates Subdivision, Forsyth County, and Approving Rates
W-218, Sub 35 (10-21-86)

Hydraulics, Ltd. - Order Granting Franchise to Furnish Water Service in Red Mountain Subdivision, Durham County, and Approving Rates
W-218, Sub 38 (12-17-86)

Hydraulics, Ltd. - Order Granting Franchise to Furnish Water Service in Bon Aire Subdivision, Guilford County, and Approving Rates
W-218, Sub 39 (12-17-86)

Independence Water System, Gerald T. Smith, d/b/a - Recommended Order Granting Certificate to Furnish Water Utility Service in Independence Village Subdivision, Union County, and Approving Rates
W-858 (6-30-86)

Inlet Bay Utilities, Inc. - Recommended Order Granting Franchise to Furnish Sewer Utility Service in Eastwood Business Park, New Hanover County, and Establishing Initial Rates
W-828 (5-23-86)

Inlet Bay Utilities, Inc. - Order Granting Certificate to Furnish Water and Sewer Service in North Chase Subdivision, New Hanover County, and Approving Rates
W-828, Sub 3 (6-17-86)

Kitty Hawk Utilities, Inc. - Recommended Order Granting Certificate to Furnish Sewer Service to Barclay Towers, McGinnis Realty and Development Company, and Kitty Hawk Land Company, Dare County, and Approving Rates
W-859 (12-17-86)

L & L Construction, Inc. - Recommended Order Granting Certificate to Furnish Water Service in Ridgewood Subdivision, Burke County, and Approving Rates
W-854 (4-8-86)

Lee, Ira D., & Associates, Inc. - Recommended Order Granting Certificate to Furnish Water and Sewer Service in Deerchase Subdivision, Wake County, and Approving Rates
W-876 (9-4-86)

Lewis Water Company, Inc. - Order Granting Certificate to Provide Water Service in Magnolia Springs Subdivision, Gaston County, and Approving Rates
W-716, Sub 6 (5-28-86)

Lewis Water Company, Inc. - Order Granting Certificate to Provide Water Service in Forest Cove Subdivision, Gaston County, and Approving Rates
W-716, Sub 7 (12-17-86)

Mid South Water Systems, Inc. - Order Granting Certificate to Furnish Water and Sewer Service in Heathers Subdivision, Mecklenburg County, and Approving Rates
W-720, Sub 39 (2-18-86)

Mid South Water Systems, Inc. - Order Granting Franchise to Furnish Water and Sewer Service in Providence Road West Subdivision, Mecklenburg County, Granting Interim Rates, and Requiring Public Notice
W-720, Sub 40 (3-6-86)

Mid South Water Systems, Inc. - Order Granting Franchise to Furnish Water and Sewer Service in Mint Hill Festival Subdivision, Mecklenburg County, and Approving Rates
W-720, Sub 41 (6-2-86); Errata Order (6-23-86)

Mid South Water Systems, Inc. - Order Granting Franchise to Furnish Water and Sewer Service in Castaway Shores Subdivision, Iredell County, Approving Interim Rates, and Requiring Public Notice
W-720, Sub 42 (3-28-86)

Mid South Water Systems, Inc. - Order Granting Certificate to Provide Water Service in Oak Estates Subdivision in Cabarrus County and Approving Rates
W-720, Sub 44 (5-28-86)

Mid South Water Systems, Inc. - Order Granting Certificate to Provide Water Service in Springdale Subdivision in Catawba County and Approving Rates
W-720, Sub 46 (9-17-86)

Mid South Water Systems, Inc. - Order Granting Certificate to Provide Water Service in Valley Court Estates Subdivision in Polk County and Approving Rates
W-720, Sub 47 (7-2-86)

Mid South Water Systems, Inc. - Order Granting Certificate to Provide Water and Sewer Service in Spinnaker Bay Subdivision, Catawba County, and Approving Rates
W-720, Sub 51 (9-9-86)

Mid South Water Systems, Inc. - Order Granting Certificate to Furnish Water Service in Farmwood North Subdivision, Mecklenburg County, and Approving Rates
W-720, Sub 52 (8-27-86)

Mid South Water Systems, Inc. - Order Granting Certificate to Furnish Water Service in Moss Lake Subdivision, Cleveland County, and Approving Rates
W-720, Sub 53 (8-27-86)

Mid South Water Systems, Inc. - Order Granting Franchise to Furnish Water and Sewer Service in Satterwhite Subdivision, Mecklenburg County, and Approving Rates
W-720, Sub 54 (10-8-86)

Nags Head Village Service Company, Inc. - Recommended Order Granting Franchise to Furnish Sewer Service in Nags Head Village Subdivision, Dare County, and Approving Rates
W-882 (7-31-86)

Nero Utilities, Inc. - Recommended Order Granting Certificate to Furnish Water and Sewer Service in Amherst Subdivision, Wake County, and Approving Rates
W-881 (11-7-86)

North State Utilities, Inc. - Recommended Order Granting Franchise to Furnish Sewer Service in Monticello Subdivision, Wake County, and Approving Rates
W-848 (3-19-86); Order Adopting Recommended Order (3-25-86)

North State Utilities, Inc. - Recommended Order Granting Franchise to Furnish Sewer Service in Woods of Ashbury Subdivision, Wake County, and Approving Rates
W-848, Sub 1 (7-2-86)

North State Utilities, Inc. - Order Granting Franchise to Furnish Sewer Service in Sutton Estates Subdivision, Wake County, and Approving Rates
W-848, Sub 2 (9-9-86)

North State Utilities, Inc. - Order Granting Franchise to Furnish Sewer Service in Banbury Woods Subdivision, Wake County, and Approving Rates
W-848, Sub 3 (9-9-86)

North State Utilities, Inc. - Order Granting Franchise to Furnish Sewer Service in Holly Brook Subdivision, Wake County, and Approving Rates
W-848, Sub 4 (11-7-86)

Oak Ridge Water Systems, Inc. - Recommended Order Granting Water Utility Franchise and Approving Rates
W-841 (1-16-86)

Ogden Village Utilities, Inc. - Recommended Order Granting Franchise to Furnish Sewer Utility Service in Ogden Village Shopping Center in New Hanover County and Approving Rates
W-836 (1-22-86)

Outer Banks Beach Club, Inc. - Recommended Order Granting Franchise to Furnish Sewer Service to Certain Customers in Kill Devil Hills, Dare County, and Approving Initial Rates
W-887 (12-31-86)

Oyster Bay Utilities, Inc. (c/o Sloan Realty) - Recommended Order Granting Sewer Utility Franchise in Oyster Bay Plantation Subdivision, Brunswick County, and Approving Rates
W-831 (5-15-86)

Piedmont Construction and Water Company, Inc. - Order Granting Franchise to Furnish Water Service in Grayson Park and River Hill Estates Subdivisions, Iredell County, and Approving Rates
W-262, Sub 29 (7-2-86)

Roberson Brothers Utilities - Recommended Order Granting Water and Sewer Utility Franchise for Richfield Subdivision, Wake County, and Approving Rates
W-837 (5-8-86)

River Run Utilities, Inc. - Order Granting Franchise to Furnish Sewer Service in River Run Shopping Center, Brunswick County, and for Approval of Rates
W-853 (2-18-86)

S H Corporation of Wake County, Inc. - Order Granting Certificate to Furnish Sewer Service in Springhaven Subdivision, Wake County, and Approving Rates
W-806, Sub 1 (11-13-86)

Sentry Utilities, Inc. - Order Granting Franchise to Furnish Sewer Service in Springdale Acres Subdivision, Onslow County, and Approving Rates
W-811, Sub 1 (5-14-86)

Sierra Villa Water Company, Inc. - Recommended Order Granting Franchise to Furnish Water Service in Sierra Villa Subdivision, Harnett County, and Approving Rates
W-867 (5-14-86)

Triangle Construction Company, Inc. - Recommended Order Granting Water Utility Franchise to Furnish Water Service in Timberbrook Subdivision in Iredell County and Approving Rates
W-842 (1-24-86)

United Systems Company, Inc. - -Recommended Order Granting Franchise to Provide Sewer Service in White Forest Subdivision, Mecklenburg County, and Approving Rates
W-886 (9-11-86)

Vance Rural Water System, Inc. - Recommended Order Granting Franchise to Furnish Water Service in Hunters Ridge Subdivision, Vance County, and Approving Rates
W-890 (10-17-86)

Viewmont Acres, Gladys B. Haynes and George W. Smith, d/b/a - Recommended Order Granting Franchise to Furnish Water Service in Viewmont Acres Subdivision, Buncombe County, and Approving Rates and Discharging Refund Obligation
W-856 (8-27-86)

Wake Utilities, Inc. - Recommended Order Granting Certificate to Furnish Water and Sewer Service in Fieldstream Subdivision, Wake County, and Approving Rates
W-891 (9-3-86)

WPM Associates - Recommended Order Granting Franchise to Provide Sewer Service in Kings Grant Subdivision, Wake County, and Approving Rates
W-878 (9-11-86)

## CERTIFICATES AMENDED

North Topsail Water and Sewer Company - Order Amending Certificate to Provide Sewer Service in North Topsail and Topsail Reef Subdivision and Approving Bond
W-754, Sub 3 (9-2-86)

## COMPLAINTS

Bailey's Utilities, Inc. - Order Closing Docket in Complaint of the Residents of Friendship Village
W-365, Sub 19 (1-2-86)

Brandywine Bay Utility Company - Order Closing Docket in Complaint of Homeowners Association of Oak Bluff, the Villas, and Brandywine, et al.
W-693, Sub 2 (3-25-86)

Carolina Water Service, Inc., of North Carolina - Recommended Order in Complaint of Robert J. and Jane M. Boyer
W-354, Sub 48 (8-26-86)

Clear Flow Utilities, Inc. - Order Closing Docket in Complaint of Hoke A. Wagoner, Jr.
W-738, Sub 16 (1-2-86)

Dolphin Bay Development - Recommended Order in Complaint of Eddie Evans and Thomas E. Arthur Against Realistic Development, Inc., James A. Williams, President
W-828, Sub 1 (5-30-86)

Fisher Utilities, Inc. - Order Dismissing Complaint of W. L. Basham, d/b/a Basham and Basham Construction Company
W-365, Sub 24 (6-3-86)

Fisher Utilities, Inc. - Order Closing Docket in Complaint of Ron Gardner
W-365, Sub 26 (1-15-86)

Glendale Water, Inc. - Order Requiring Improvement in Complaint of Phyllis Vermillion et al.
W-691, Sub 29 (2-10-86)

La Grange Waterworks - Order Closing Docket in Complaint of Mrs. Grover C. Wright
W-200, Sub 17 (1-15-86)

North Topsail Water and Sewer, Inc. - Order Closing Docket in Complaint of Mr. and Mrs. J. W. Graham
W-754, Sub 1 (3-26-86)

Spring Water Company, Inc. - Order Closing Docket in Complaint of Nancy K. Prater
W-337, Sub 7 (6-24-86)

## DECLARING UTILITY STATUS

| Company | Docket Number | Date |
|---|---|---|
| Burnett Construction Company, Inc. - Interim Approval | W-892 | 8-6-86 |
| CAC Utilities, Inc. | W-812, Sub 2 | 6-3-86 |
| CAC Utilities, Inc. | W-812, Sub 3 | 6-13-86 |
| Carolina Water Service, Inc. of North Carolina Granting Interim Approval | W-354, Sub 51 | 8-21-86 |
| Carolina Water Service, Inc., of North Carolina | W-354, Sub 53 | 9-10-86 |
| C.V.T.P., Inc. - Granting Interim Approval | W-828, Sub 3 | 8-25-86 |
| Inlet Bay Utilities | W-828, Sub 2 | 6-9-86 |
| Inlet Bay Utilities | W-828, Sub 4 | 6-9-86 |
| Jones Dairy Farm Corporation (name amended 9/29) | W-898 | 9-25-86 |
| Kitty Hawk Utilities, Inc. | W-859 | 3-28--86 |
| Lee, Ira D., & Associates, Inc. | W-876 | 4-28-86 |
| Mid South Water Systems, Inc. | W-720, Sub 55 | 11-25-86 |
| Nero Utilities, Inc. - Granting Interim Approval | W-881 | 5-22-86 |
| North State Utilities, Inc. Interim Approval | W-848, Sub 1 | 6-3-86 |
| North State Utilities, Inc. Interim Approval | W-828, Sub 2 | 8-21-86 |
| North State Utilities, Inc. Interim Approval | W-828, Sub 3 | 8-21-86 |
| North State Utilities, INc. | W-848, Sub 4 | 10-14-86 |
| Pine Knoll Village WWTP, Pine Knoll Associates, d/b/a | W-851 | 1-6-86 |
| Sentry Utilities, Inc. | W-811, Sub 1 | 3-4-86 |
| S H Corporation of Wake County | W-806, Sub 1 | 9-23-86 |
| United Systems Company, Inc. - Interim Approval | W-886 | 6-9-86 |

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|---|---|---|
| Wake Utilities, Inc. - Granting Interim Approval | W-891 | 7-9-86 |
| WPM Associates - Granting Interim Approval | W-878 | 5-7-86 |
| Webb Creek Water & Sewage, Inc. | W-864 | 2-6-86 |
| Webb Creek Water & Sewage, Inc. | W-864, Sub 1 | 3-13-86 |

## DISCONTINUANCE OF SERVICE

Kannapolis Real Estate Agency, Inc. - Order Authorizing Discontinuance of Water Utility Service in North Princeton Park Subdivision, Cabarrus County
W-25, Sub 6 (9-30-86)

Sherwood Forest Water System, C. J. Moss, d/b/a - Order Granting Discontinuance of Water Service in Berkshire Subdivision and Sherwood Forest Extension Area in Cabarrus County and to Allow Service to Be Provided by Water and Sewer District of Cabarrus County
W-409, Sub 5 (11-25-86)

Simco, Inc. - Mid South Water systems, Inc. - Order Authorizing Discontinuance of Water System in North Hills Subdivision on October 29, 1986
W-356, Sub 2 (10-2-86)

## NAME CHANGE

Jones Dairy Farm Corporation - Order Changing Trade Name of Utility from J. V. Utilities
W-898 (9-29-86)

## RATES

BRTR, Inc. - Recommended Order Granting Partial Increase in Rates in all Its Service Areas in Henderson County
W-762, Sub 2 (12-12-86)

Brookside Water Company - Order Granting Rate Increase for Water Service in Brookside Subdivision, Haywood County
W-330, Sub 4 (1-31-86)

Brookside Water Company - Recommended Order Granting Partial Increase in Rates for Water Service in Brookside Subdivision, Haywood County
W-330, Sub 5 (12-11-86)

Cape Fear Water Company, Inc. - Recommended Order Granting Increase in Rates for Water Service in All Its Service Areas in Cumberland County
W-232, Sub 4 (11-24-86)

Cliffdale Water Company, John Ludwig, Trustee - Order Granting Rate Increase for Water Service in Mayfair, Cloverleaf, and Cresthaven Subdivision, Cumberland County
W-203, Sub 8 (9-3-86)

Community Utilities, Inc. - Recommended Order Granting Partial Rate Increase for Water Service in Seven Lakes Development, Moore County
W-845, Sub 1 (8-29-86); Errata Order (9-4-86)

Dockery Water Systems, Inc. - Order Granting Partial Rate Increase for Water Service in all Its Service Areas, Gaston County, and Requiring Public Notice
W-721, Sub 2 (5-20-86)

Duke Power Company - Recommended Order Granting Increase in Rates and Charges for Water Service in Rutherfordton, Spindale, and Ruth Service Areas, Rutherford County
W-94, Sub 12 (5-13-86)

Foxhall Village Utilities - Recommended Order Granting Rate Increase for Water and Sewer Service in Foxhall Village Subdivision, Wake County, and Requiring Report
W-777, Sub 1 (5-23-86)

H and M Water Company, Inc. - Order Granting Rate Increase for Water Service in Mansfield Park and Mitchell Village Subdivisions, Carteret County
W-147, Sub 3 (12-15-86); Errata Order (12-18-86)

Harmony Heights Water Company - Recommended Order Granting Rate Increase
W-630, Sub 2 (9-9-86)

Holiday Island Property Owners Association, Inc. - Recommended Order Granting Increase in Rates for Water Service in Holiday Island Subdivision, Perquimans County
W-386, Sub 5 (12-11-86)

Hydraulics, Ltd. - Recommended Order Granting Partial Rate Increase
W-218, Sub 32 (1-17-86)

Jackson Utility Company - Recommended Order Granting Increase in Rates for Water and Sewer Service in Its Service Areas in Jackson County, and Requiring Installation of Meters
W-448, Sub 2 (12-15-86)

Marmarose Company, The - Recommended Order Granting Partial Rate Increase
W-865 (9-4-86)

McCullers Pines Water System - Order Approving Rates and Reguiring Public Notice
W-727, Sub 1 (6-24-86)

Mid South Water Systems, Inc. - Recommended Order Approving Increase in Rates for Water Service in all of Its Service Areas and Requiring Improvements
W-720, Sub 37 (4-2-86)

North Crest Water System, Inc. - Order Granting Rate Increase and Requiring Public Notice
W-496, Sub 1 (1-7-86)

Northwood Water Company - Recommended Order Granting Partial Rate Increase for Water Utility Service in Northwood Subdivision, Orange County, and Requiring Refund
W-690, Sub 1 (2-12-86); Errata Order (6-6-86)

Piedmont Construction and Water Company, Inc. - Recommended Order Granting Rate Increase for Water Service in Subdivisions in Catawba, Iredell, and Alexander Counties
W-262, Sub 27 (2-10-86)

Ruff Water Company - Recommended Order Granting Partial Increase in Rates for Water Service in All Its Service Areas in Gaston County
W-435, Sub 6 (6-10-86); Errata Order (6-16-86)

Simco, Inc. - Bruce M. Simpson, President and Registered Agent, and Harold S. Helms - Order Authorizing $11.00 Monthly Flat Rate
W-356, Sub 2 (5-29-86)

Skyland Drive Water System - Order Approving Rate Increase for Water Service in Skyland Drive Subdivision, Gaston County
W-642, Sub 2 (11-13-86)

Spring Industries, Inc. - Recommended Order Granting Increase in Rates for Water and Sewer Service in Springfield Village Subdivision, Scotland County
W-650, Sub 1 (12-5-86)

Touch and Flow Water System - Recommended Order Denying Rate Increase for all of Its Service Areas and Transfer of Franchise and Requiring Improvements
W-201, Sub 34, and W-201, Sub 35 (5-13-86)

Valleydale Water Company - Lewis E. Watford, d/b/a - Recommended Order Granting Partial Rates Increase for Water Service in Valleydale Subdivision in Gaston County
W-272, Sub 2 (7-15-86)

Woodlake Country Club, Woodlake Partners, d/b/a - Order Approving Interim Availability Rate
W-789 (2-12-86)

SALES AND TRANSFERS

A-1 Utilities, Mayberry Pump and Well Company, Inc., d/b/a - Order Approving Transfer of Franchise to Furnish Water Service in Robinfield Estates Subdivision, Wake County, from A-1 Pump and Water Conditioners, and Approving Rates
W-871 (7-16-86)

Alpha Utilities, Inc. - Recommended Order Allowing Transfer of Franchise to Furnish Water Service in Altice Estates Subdivision in Wake County from James B. Ward, d/b/a Altice Utilities, and Approving Rates
W-862 (5-22-86)

Brookwood Water Corporation and LaGrange Waterworks Corporation - Order Approving Transfer of Franchise (Subject to Customer Protests) to Provide Water Service in Hollywood Heights, Southgate, and Wells Place IX Subdivisions from Cape Fear Water Company tc Brookwood Water Corporation in Docket No. W-177, Sub 25, and Approving Rates and Approving Transfer of Franchise to Provide Water Service in Cliffdale Forest And Kings Mill Subdivisions from Cape Fear Water

Company to LaGrange Waterworks Corporation in Docket No. W-200, Sub 19, and Approving Rates
W-177, Sub 25, and W-200, Sub 19 (11-26-86); Errata Order (12-2-86)

Cape Fear Utilities, Inc. - Order Allowing Transfer of Its Water System in Westchester and Windsor Estates Subdivision, New Hanover County, to the City of Wilmington (Owner Exempt from Regulation)
W-279, Sub 16 (12-31-86)

Carolina Pines Utility Company, Inc. - Recommended Order Approving Franchise Transfer from Carolina Pines Construction Company, Inc., and Approving Rate Increase
W-870 (9-4-86)

Carolina Water Service, Inc., of North Carolina - Recommended Order Granting Authority to Transfer Franchise to Provide Water and Sewer Service in Brandywine Bay Subdivision, Carteret County, from Brandywine Bay Utility Company; for Authority to Increase the Rates for Providing Water and Sewer Service in Brandywine Bay Subdivision; for Immediate Approval of Temporary Operating Authority; and to Increase Rates
W-354, Sub 43 (5-29-86)

Clearwater Utilities, Inc. - Order Approving Transfer of Franchise to Provide Water Service in Heather Glen Subdivision, Durham County, from Water Systems Corporation, and Approving Rates
W-846, Sub 1 (4-29-86)

Clearwater Utilities, Inc. - Order Approving Transfers of the Franchise to Provide Water Utility Service in Ashley Hills North, Amber Acres North, Tuck-a-Hoe, Country Crossings, Pine Forest, and Neuse Woods Subdivisions in Wake County from Dream Weaver Utilities, Inc., and Scheduling Public Hearing
W-846, Sub 2 (6-10-86)

Clearwater Utilities, Inc. - Order Closing Docket
W-846, Sub 2 (12-16-86)

Clearwater Utilities, Inc. - Recommended Order Approving Transfer in Neuse Woods Subdivision and Approving Rates
W-846, Sub 2 (8-14-86)

Consolidated Utilities, Inc. - Order Allowing Transfer of Water System in Southgate Subdivision, New Hanover County, to the City of Wilmington (Owner Exempt from Regulation)
W-332, Sub 4 (12-31-86)

Corriher Water Service, Inc. - Order Granting Transfer of the Franchise to Provide Water Service in Edgewood Subdivision, Rowan County, from Edgewood Water System and Approving Rates
W-233, Sub 12 (7-7-86)

Crestview Water System, Jim Shuping, d/b/a - Order Approving Transfer of Franchise from Crestview Water Systems, Inc., and Approving Rates
W-325, Sub 3, and W-325, Sub 4 (9-4-86)

Fairview Water System, W.A. Weston, Sr., and W. K. Shaw, d/b/a - Order Approving Transfer of Franchise to Provide Water Service in Fairview Wooded Acres Subdivision, Wake County, from W. A. Weston, Sr.
W-902 (10-29-86)

Harmony Heights Water Company, George F. Boahn, d/b/a - Recommended Order Approving Transfer of Water Service in Harmony Heights Subdivision, Hoke County, from Harmony Heights Water Company, and Approving Rates
W-896 (12-19-86)

Juniper Water Company, Thomas B. Allen, d/b/a - Order Authorizing Transfer of Franchise to Provide Water Service in Milhaven Park Subdivision, Mecklenburg County, from Mrs. Annie Phifer, d/b/a Allen Hills Water Company, and Approving Rates
W-868 (11-13-86)

McNeil and Deal, Mrs. Nan H. McNeil and D. W. Deal, d/b/a - Order Allowing Transfer of the Water Utility System Serving Rocky Point Subdivision in Wilkes County from McNeil and Deal to 421 West Sanitary District
W-596, Sub 1 (5-6-86)

Mid South Water Systems, Inc. - Order Approving Transfer of Water and Sewer Franchise in Mallard Head Condominium Development from Mallard Head Condominiums, Inc., Approving Interim Rates, and Requiring Public Notice
W-720, Sub 38 (1-2-86)

Mid South Water Systems, Inc. - Order Approving Transfer of Franchise to Provide Water and Sewer Service in Harborgate Subdivision, Mecklenburg County, from Harrco Utility Corporation and Approving Rates
W-720, Sub 45 (9-17-86)

Mosley and Nash Water Corporation - Order Allowing Transfer of Water Certificate in Four Seasons Subdivision in Northampton County to Northampton County and Cancelling Franchise
W-475, Sub 2 (7-8-86)

Parrish & Weathers - Recommended Order Affirming Bench Order and Approving Partial Rate Increase for Sewer Service in Ashley Hills Subdivision, Wake County
W-880 (7-31-86); Order Adopting Recommended Order of July 31, 1986 (8-1-86)

Piedmont Construction and Water Company, Inc. - Order Approving Transfer of Water Franchise in Leisure Lakes Subdivision in Iredell County, from Modern Plumbing Company of Charlotte and Approving Rates
W-262, Sub 30 (4-23-86)

Pinehurst Water Company and Pinehurst Sanitary Company - Recommended Order Granting Transfer of Water and Sewer Systems Serving the Village of Pinehurst from Pinehurst, Inc., and Granting Authority to Increase Rates
W-6, Sub 10, and W-6, Sub 11 (2-28-86)

Pine Valley Water Company, Inc. - Order Allowing Transfer of Public Utility Systems to Owner Exempt from Regulation
W-242, Sub 7 (9-9-86)

Rumple, Forrest - Order Approving Transfer of Water Service in Oak Grove Subdivision, Surry County, from Yadkin Water Corporation and Cancelling Franchise
W-585, Sub 2 (5-28-86)

Scotsdale Water and Sewer, Inc. - Order Approving Transfer of Franchise to Provide Water Service in Wrightsboro Subdivision, Hoke County, from Raeford Plumbing and Heating, and Approving Rates
W-883, Sub 1 (10-29-86)

South Mountain Water Works, Powell & Keith Hildebran, d/b/a - Recommended Order Granting Transfer of Franchise to Furnish Water Service in Rollins Park Subdivision, Burke County, from Kiser Water System, and Approving Rates
W-866 (6-12-86)

Tri-South Construction Co., Inc. - Order Approving Transfer of Franchise to Provide Water Service in Oakland Heights Subdivision, Davie County, from Hope Brothers Builders, Inc., and for Approval of Rates
W-849 (9-29-86)

Umstead Water Company - Order Approving Transfer of Water Service Serving Umstead Industrial Park, Wake County, from Umstead Water Company to the City of Raleigh
W-282, Sub 3 (11-5-86)

Wagner, W. Charles, - Recommended Order Approving Transfer of Water Service in Windsor Park Subdivision, Caldwell County, from Arthur V. Farmer, and Approving Rates
W-889 (12-31-86)

Wastewater Services, Inc. - Recommended Order Approving Transfer of Franchises for Water and Sewer Service in Buffalo Meadows Subdivision, Ashe County, from Bruce Magers, Trustee in Bankruptcy for Jim Lyons, and Approving Rate Increase
W-869 (12-3-86)

White Oak Utilities, Inc. - Order Granting Transfer of Water and Sewer Service in White Oak Plantation in Johnston County from Dreamweaver Utilities, Inc., and White Oak Plantation, Inc.
W-861 and W-861, Sub 1 (2-25-86); Errata Order (6-9-86)

Zemosa Acres Water System, Niblock Construction Company, Inc., d/b/a - Recommended Order Approving Transfer of the Water Utility Franchise for Zemosa Acres Subdivision from Franklin C. Niblock, Jr., d/b/a Zemosa Acres, and Granting Partial Rate Increase
W-744, Sub 1, and W-744, Sub 2 (3-28-86)

## SECURITIES

Associated Utilities, Inc. - Order Approving Stock Transfer from R.C. Fowler and Myrtle Fowler to Larry W. Skipper and Charlie M. Skipper
W-303, Sub 6 (1-7-86)

Dockery Water Systems, Inc. - Order Approving Transfer of 50% of Its Stock from Berlon Lee Dockery to Gary Boling, Gastonia
W-721, Sub 3 (7-17-86)

Transylvania Utility Company - Order Approving Transfer of Stock from the Existing Holder to Richard J. Ford
W-378, Sub 3 (12-1-86)

## TARIFFS

Carolina Blyth Utility Company - Order Approving Tariff Revisions
W-503, Sub 3 (10-8-86)

Mercer Environmental Corporation - Order Amending Tariff
W-198, Sub 19 (1-7-86)

## TEMPORARY OPERATING AUTHORITY

Clearwater Utilities, Inc. - Order Granting Temporary Operating Authority
W-846 (1-10-86)

Hasty Water Utilities, Inc. - Order Granting Temporary Operating Authority and Requiring Public Notice
W-736, Sub 20 (2-25-86)

Northwestern Woods Well System, Lawrence Litaker, d/b/a - Recommended Order Granting Temporary Operating Authority to Furnish Water Service in Cabarrus Northwest Woods Subdivision, Cabarrus County, and Approving Rates
W-860 (5-1-86); Order Adopting Recommended Order Issued 5-1-1986 (5-1-86)

River Run Development, Gilbert Lett, d/b/a - Recommended Order Granting Temporary Operating Authority to Furnish Water Service in River Run Subdivision in Lee County and Approving Rates
W-884 (8-20-86); Supplemental Order (8-25-86)

Viewmont Acres, Gladys B. Haynes, d/b/a - Order Granting Temporary Operating Authority, to Furnish Water Service in Viewmont Acres Subdivision, Buncombe County, Approving Interim Rates, Setting Hearing, and Requiring Public Notice
W-856 (4-15-86)

## MISCELLANEOUS

Carolina Water Service, Inc., of North Carolina - Order Amending Order of December 18, 1985
W-354, Sub 43 (1-7-86)

Coastal Plains Utility Company - Order Restricting Water Use in Cedar Hills Subdivision, Lee County, and Brookfield, Greenview Ranches, Handy Beach, and Wilmington Beach Subdivisions, New Hanover County, and Requiring Public Notice
W-215, Sub 8 (7-23-86)

Dream Weaver Utilities, Charles A. Perry, d/b/a - Order Removing Restrictions of Nonessential Water Use in Tuck-A-Hoe Subdivision, Wake County, as Issued in

## ORDERS AND DECISIONS LISTED

Order of April 17, 1985, and Closing Docket
W-786, Sub 6 (6-20-86)

Faw, Francis S. - Order Restricting Water Use in Eastview Acres Subdivision, Catawba County, and Requiring Public Notice
W-87, Sub 10 (7-23-86)

Fisher Utilities, Inc. - Order Restricting Water Use in Friendship Village in Lee County and Requiring Public Notice
W-365, Sub 27 (5-2-86)

Green Hi-Win Farms Water System (Owned by W. L. McCleney) - Recommended Order Dismissing Show Cause Proceeding
W-873 (11-21-86)

Lakeside Estates Water Company, Daniel B. Colemen, d/b/a - Order Closing Docket
W-814 (7-8-86)

Mobile Hill Estates - Order Appointing Emergency Operator Effective March 13, 1986
W-224, Sub 3 (3-13-86)

Old Farm Water System, Inc. - Order Restricting Water Use in Old Farm Subdivision, Rowan County, and Requiring Public Notice
W-568, Sub 1 (7-18-86)

Piedmont Construction and Water Company, Inc. - Order Restricting Water Usage in Belle Meade Subdivision in Catawba County through July 27, 1986
W-262, Sub 31 (6-27-86)

Piedmont Construction and Water Company, Inc. - Order Continuing Water Restriction Until December 5, 1986
W-262, Sub 32 (10-3-86)

Piedmont Construction and Water Company, Inc. - Order Allowing Connection, Modifying Water Restriction, and Requiring Public Notice
W-262, Sub 33 (10-14-86)

Scientific Water and Sewage, Inc. - Recommended Order Granting Increase in Sewer Tap on Fees in the Summersill Estates Subdivision, Onslow County
W-176, Sub 18 (11-13-86)

Simco, Inc. - Order Declaring Emergency
W-356, Sub 2 (4-17-86)

Tarlton Real Estate Corporation - Order Restricting Water Use in Betts Brooke, Greenwood, Ponderosa, and Smith Fork I Subdivisions, Catawba County, and Requiring Public Notice
W-657, Sub 4 (7-23-86)

Water System in Chowan Valley Estates Subdivision - Order Restricting Water Use and Requiring Public Notice
W-829, Sub 1 (9-26-86)