SEVENTY-SEVENTH REPORT

OF THE

NORTH CAROLINA

UTILITIES COMMISSION

ORDERS AND DECISIONS

ISSUED FROM
JANUARY 1, 1987 THROUGH DECEMBER 31, 1987

SEVENTY-SEVENTH REPORT
of the
NORTH CAROLINA UTILITIES COMMISSION

ORDERS AND DECISIONS

Issued from

January 1, 1987, through December 31, 1987

Robert O. Wells, Chairman

Dr. Robert K. Koger, Commissioner

Sarah Lindsay Tate, Commissioner

Edward B. Hipp, Commissioner

Ruth E. Cook, Commissioner

Julius A. Wright, Commissioner

William Walter Redman, Jr.,[1] 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.

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1 William W. Redman, Jr., appointed March 17, 1987, to fill the unexpired term of A. Hartwell Campbell; reappointed on July 1, 1987, to 8-year term

LETTER OF TRANSMITTAL

December 31, 1987

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, 1987, we hereby present for your consideration the report of the Commission's decisions for the 12-month period beginning January 1, 1987, and ending December 31, 1987.

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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1987 ANNUAL REPORT OF ORDERS AND DECISIONS
of the
North Carolina Utilities Commission

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DOCKET NO. M-100, SUB 89

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

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

BY THE COMMISSION: The American National Standards Institute (ANSI) has updated its 1984 Edition of the National Electrical Safety Code, said update being ANSI C2.1987. The Commission is of the opinion that, unless significant cause is shown otherwise, the 1987 Edition of the National Electrical Safety Code should be adopted as the safety rules of this Commission for electric and communications utilities under its jurisdiction.

By Order issued May 5, 1987, in Docket No. M-100, Sub 89, the Commission published proposed revisions to its Rules R8-26 and R9-1, and specified that unless protests or requests for hearing were received within 30 days after the date of said Order, the Commission would determine the matter without public hearing. No comments were received.

IT IS, THEREFORE, ORDERED as follows:

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

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

ISSUED BY ORDER OF THE COMMISSION.
This the 23rd day of June 1987.

(SEAL)

NORTH CAROLINA UTILITIES COMMISSION
Sandra J. Webster, Chief Clerk

APPENDIX A

Rule R8-26. Safety Rules and Regulations - The rules and regulations of the American National Standards Institute entitled "National Electrical Safety Code," ANSI C2. 1987, 1987 Edition, are hereby adopted by reference as the electric safety rules of this Commission and shall apply to all electric utilities which operate in North Carolina under the jurisdiction of the Commission.

Rule R9-1. Safety Rules and Regulations - The rules and regulations of the American National Standards Institute entitled "National Electrical Safety Code," ANSI C2. 1987, 1987 Edition, are hereby adopted by reference as the communication safety rules of this Commission and shall apply to all telephone and telegraph utilities which operate in North Carolina under the jurisdiction of the Commission.

DOCKET NO. M-100, SUB 90

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Rulemaking Proceeding Concerning the Appropriate Cost-Study Group(s) for the SMCRC, MCTA, and NCTA and the Proper Utilization of the Continuing Traffic Study (CTS)	))))	ORDER AMENDING COST-STUDY GROUPS FOR THE SMCRC, MCTA AND NCTA

BY THE COMMISSION: On July 2, 1987, the SMC filed its petition requesting the Commission to reopen said Docket No. M-100, Sub 90, for the purpose of amending its cost-study carriers and has submitted its justification in support thereof as shown in the petition.

By Order dated September 14, 1983, the Commission adopted Rule R1-17(j) - Additional Procedures for filings under G.S. 62-146(g) establishing in Paragraph (j) thereof "Additional Procedures for Collective General Commodities Rate Filings and designated certain motor common carriers members of:

(A) Southern Motor Carriers Rate Conference; (SMCRC)
(B) North Carolina Motor Carriers Association (now North Carolina Trucking Association (NCTA); and
(C) Motor Carriers Traffic Association (MCTA) as cost-study carriers in collective general commodities rate filings coming before the Commission.

The Public Staff has made an investigation into the matter. Also, the Public Staff has met with the principals of the SMC involved in the petition and has examined the proposal very carefully. In addition, a North Carolina Traffic League delegation attended a meeting with the SMC carriers and notified the Commission that they have made agreement with the SMC as to an acceptable change in the present cost-study group(s) which is suggested in Appendix D of their petition.

Upon consideration, the Public Staff's investigation and the confirmation of the cost-study group(s) by the North Carolina Traffic League (shippers) and the matter as a whole, the Commission concludes that this being a matter in the public interest the petition should be granted and that the proposed amendments should be allowed.

IT IS, THEREFORE, ORDERED as follows:

1. The appropriate cost-study groups for the SMCRC, NCTA and MCTA, as shown in Appendix A attached hereto, be, and hereby are, approved.

2. The cost-study groups approved herein be, and hereby are, ordered to furnish North Carolina intrastate traffic and financial data in support of applicable general commodity rate proposals.

ISSUED BY ORDER OF THE COMMISSION.
This the 25th day of August 1987.

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

APPENDIX A

AMENDMENT TO COMMISSION RULE R1-17(j)

Amend Paragraph 2 to be as follows:

2. The cost-study carriers shall be as follows:

A. Southern Motor Carriers Rate Conference cost-study carriers:

All carriers which generate at least one million dollars in North Carolina revenues in the study year, or which generate at least 2% (rounded to the nearest whole percent) of all revenues derived from traffic moving under rates published in the affected tariff in the study year.

B. Designated North Carolina Trucking Association cost-study carriers:

(1) Carpenter Trucking Co., Inc.
(2) A. V. Dedmon
(3) Edmac Trucking Company, Inc.
(4) Sherman & Boddie, Inc.
(5) Wicker Services, Inc.

C. Designated Motor Carriers Traffic Associate cost-study carriers:

(1) Dehart Motors Lines, Inc.
(2) Shippers Freight Lines, Inc. (USA Eastern, Inc.)
(3) South Atlantic Bonded Warehouse Company
(4) Western Carolina Express, Inc.
(5) Terminal Trucking Co.

DOCKET NO. M-100, SUB 113

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of The Tax Reform Act of 1986	)	ORDER RULING ON MOTION FOR MONTHLY REPORTING OF DEFERRED ACCOUNT ACTIVITY

BY THE COMMISSION: On January 27, 1987, the Public Staff - North Carolina Utilities Commission (Public Staff) filed Motion for Monthly Reporting of Deferred Account Activity wherein the Public Staff requested that the Commission require that all companies, subject to the provisions of the Commission Orders in this docket, file monthly reports of all deferred accounting activity related to the tax deferrals. On February 4, 1987, Carolina Telephone and Telegraph Company (Carolina) filed Response in Opposition to Motion for Monthly Reporting of Deferred Account Activity. Additionally, North Carolina Telephone Association, Inc. (NCTA), Southern Bell Telephone and Telegraph Company (Southern Bell), AT&T of the Southern States, Inc. (AT&T), and Utilities, Inc., filed responses in opposition to the Public Staff's motion of January 27, 1987.

On February 23, 1987, the Public Staff filed a reply to the responses of Carolina, Southern Bell, and NCTA.

Upon review of the Public Staff's motion, the responses thereto, and the Public Staff's reply, the Commission concludes that there appears to be a need to clarify the nature and the method of developing the proper amount that each utility should be reflecting in its deferred account pursuant to the Commission Orders issued on this matter on October 23 and December 4, 1986. Therefore, the Commission wishes to make it perfectly clear that the proper amount to be booked to the deferred account should be the difference between revenues billed under rates in effect at January 1, 1987, 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.

Hence, each company should compute the amount to be deferred based on the cost of service approved in its most recent general rate case, adjusted only for the change in the federal income taxes resulting from the Tax Reform Act of 1986. The Commission further concludes that the companies should file quarterly reports on the deferred account activity. Said reports are due 30 days after the end of each quarter, with the first report being due by or before, April 30, 1987.

The Commission intends this Order to be a clear signal as to what should be reflected in the companies' accounting records and related financial statements in regard to this matter. Under no circumstances should the calculation of the tax effects to be placed into the deferred account be reduced by any offsets, such as reduced access charges or increased depreciation expense. This requirement should not be construed to mean that the Commission will not ultimately consider possible offsets for such items as reduced access charge revenue.

After the Commission has concluded a full investigation in this proceeding, then the Commission may consider additional tax savings, or offsets, as denoted hereinabove. Therefore, the amounts being deferred may or may not approximate any rate adjustment that may be ultimately ordered by this Commission to properly reflect the impact of the Tax Reform Act of 1986. The Commission notes, however, that for booking purposes, the calculations based solely on the test year utilized in the most recently approved general rate case cost of service shall serve as an approximate estimation of the impact of The Tax Reform Act of 1986, until such time as the Commission issues an Order concerning the disposition of the dollars recognized in the deferred account. Utilities that have not receive a general rate order in the past 10 calendar years should use the calendar year 1985 for purposes as described herein.

IT IS, THEREFORE, ORDERED as follows:

1. That each and every utility subject to the provisions of this Order shall place in a deferred account the difference between revenues billed under rates in effect at January 1, 1987, 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.

2. That each and every utility subject to the provisions of this Order be, and hereby is, ordered to file a quarterly report presenting the activity in the deferred account spoken to in ordering paragraph number 1. Such filing shall also include 7 copies of all workpapers developed with regard to all accounting entires entered in said deferred account.

3. That the first quarterly report spoken to in ordering paragraph number 2 above should be filed at the Commission's Chief Clerk's Office by, or before, April 30, 1987.

ISSUED BY ORDER OF THE COMMISSION.
This the 10th day of March 1987.

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

DOCKET NO. M-100, SUB 113

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
The Tax Reform Act of 1986) ORDER ESTABLISHING PROCEDURES
) RELATED TO TAXES ON CONTRIBUTIONS
) IN AID OF CONSTRUCTION

HEARD IN: Commission Hearing Room, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on Tuesday, May 12, 1987 at 9:30 a.m.

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

APPEARANCES:

For Carolina Power & Light Company:

Robert W. Kaylor, Associate General Counsel, and H. Ray Starling, Associate General Counsel, Carolina Power & Light Company, Post Office Box 1551, Raleigh, North Carolina 27602

For North Carolina Power Company:

Edgar M. Roach, Jr., Hunton and Williams, Attorneys at Law, Post Office Box 109, Raleigh, North Carolina 27602

For Duke Power Company:

William Larry Porter, Associate General Counsel, and Ronald L. Gibson, Associate General Counsel, Duke Power Company, 422 South Church Street, Charlotte, North Carolina 28207

For Carolina Water Service of North Carolina, Inc.:

Edward S. Finley, Jr., Hunton & Williams, Attorneys at Law, Post Office Box 109, Raleigh, North Carolina 27602

For North Carolina Natural Gas Corporation:

Jeffrey Neill Surles, McCoy, Weaver, Wiggins, Cleveland & Raper, Attorneys at Law, Post Office Box 2129, Fayetteville, North Carolina 28302

For Public Service Company of North Carolina, Inc.:

F. Kent Burns, Burns, Day and Presnell, P.A., Box 2479, Raleigh, North Carolina 27602

For Carolinas Chapter of National Association of Water Companies and Heater Utilities, Inc.:

William E. Grantmyre, Attorney at Law, 263 West Chatham Street, Cary, North Carolina 27511

For Piedmont Natural Gas Company:

Reid L. Phillips, Brooks, Pierce, McLendon, Humphrey & Leonard, Attorneys at Law, Post Office Box Drawer U, Greensboro, North Carolina 27402

For North Carolina Industrial Energy Consumers:

Tom Steed, Jr., Moore and Van Allen, Attorneys at Law, Post Office Box 26507, Raleigh, North Carolina 27611

For North Carolina Rural Water Association, Inc.:

Robert F. Page, Crisp, Davis, Schwentker, Page & Currin, Attorneys at Law, Post Office Drawer 30489, Raleigh, North Carolina 27622

For The Attorney General's Office:

Lorinzo L. Joyner and Lemuel W. Hinton, Assistant Attorneys General, Department of Justice, Post Office Box 629, Raleigh, North Carolina 27602
For: The Using and Consuming Public

For The Public Staff:

Paul L. Lassiter, Theodore C. Brown, and A. W. Turner, Jr., Staff Attorneys, North Carolina Utilities Commission, Post Office Box 29520, Raleigh, North Carolina 27626-0520
For: The Using and Consuming Public

BY THE COMMISSION: On October 23, 1986, the Commission issued an Order in this docket initiating an investigation into the effect of the Tax Reform Act of 1986 (TRA-86) on the public utilities regulated by the Commission. The Commission's Order stated that this docket would examine and quantify the benefits to be derived by each utility arising from the Tax Reform Act of 1986. The Commission's Order of February 3, 1987, scheduled a generic hearing for May 12, 1987, to address all issues, questions and concerns associated with the section of the new law that includes contributed property received by the regulated utilities in income subject to income taxes.

The Commission's Order expressed the concern of the Commission about the financial burden imposed by the Tax Reform Act of 1986 in regard to capital contributions, particularly as such taxation relates to investor-owned public utility water and sewer companies. The Order fixed the time for the filing of testimony and comments by the parties and required interim gross-up of contributed property pending a final decision in this docket and required the affected utilities to file an undertaking for refund. A pretrial conference by the Commission was held on Tuesday, May 5, 1987. The parties were present and represented by counsel. During the conference the parties agreed upon the procedures to be followed at the May 12, 1987, hearing.

On May 6, 1987, the Commission issued its pretrial Order incorporating the agreement of the parties and the rulings of the Hearing Examiner with respect to procedures to be held at the scheduled hearing on May 12, 1987.

The official file in this docket shows the numerous filings, responses and comments filed by the parties. The official file also shows that numerous motions for intervention in this docket have been allowed by the Commission.

The case came on for hearing on May 12, 1987, and the following witnesses gave testimony: David R. Nevil, Manager of Rate Development and Administration, Carolina Power & Light Company, and Susan H. Bennett, Director of Regulatory Accounting for Carolina Power & Light Company; Charles K. Trible, Assistant Controller, North Carolina Power Company; Don T. Stratton, Manager of Regulatory Affairs, Duke Power Company and Walter E. Sikes, Manager of Rate Department, Duke Power Company; Gerald A. Teele, Senior Vice President of North Carolina Natural Gas Corporation; Robert D. Voigt, Vice President - Controller, Public Service Company of North Carolina, Inc.; Barry L. Guy, Vice President and Controller of Piedmont Natural Gas Company; Charles Smith, Charles Smith Builders; Patrick J. O'Brien, Vice President of Finance, Carolina Water Service of North Carolina; William E. Grantmyre, General Manager and House Counsel for Heater Utilities, Secretary/Treasurer of the Carolinas Chapter of the National Association of Water Companies; Homer Barrett, President of the Carolinas Chapter of the National Association of Water Companies, owner of Montclair Water Company and LaGrange Water Works; Walter C. Moorman, Professional Engineer and stockholder in Brookwood Water Corporation; Jocelyn M. Perkerson, a Public Utility Accountant, with the Energy and Utility Division of the Department of Justice; George Dennis, an accountant with the Public Staff - Utilities Commission, and Jerry Tweed, Director of the Water and Sewer Division of the Public Staff.

Based on the foregoing, 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. Before enactment of the Tax Reform Act of 1986, contributions in aid of construction (CIAC) were not generally taxable.

2. TRA-86, however, treats CIAC as taxable income to the following utilities: water, sewer, electric, and natural gas.

3. There are several methods that may be used to collect the income tax on CIAC, including the net present value of future depreciation deductions method (present value method), the full gross-up method, the partial gross-up method and the no gross-up method.

4. Under the present value method, the difference between the tax cost of the CIAC and the future tax benefits through depreciation of the CIAC property is collected from the contributor.

5. Under the full gross-up method, the gross tax cost of the CIAC is collected from the contributor, and future tax benefits from the depreciation of the CIAC property flow through to the ratepayers or must be independently returned to the contributor over the life of the property.

6. Under the no gross-up method, the utility pays the full tax cost of CIAC and collects none of that cost from the contributor.

7. A hybrid of the full gross-up and no gross-up methods is the partial gross-up method where a part but not all of the tax is collected from the contributor.

8. Neither the present value method nor the full gross-up method of collecting the taxes on CIAC will result in any additional costs being passed on to the ratepayers.

9. Under the no gross-up or partial gross-up method, rate base treatment of the tax cost of CIAC is unlikely to have a significant impact on the rates of electric and natural gas companies' customers.

10. Under the no gross-up or partial gross-up method, rate base treatment of the tax cost of CIAC may have a significant impact on customer rates of water and sewer companies.

11. A utility company can recover the tax cost of CIAC through income tax depreciation deductions.

12. The principal method for electric and natural gas utilities to utilize for collecting the income tax on CIAC is the present value method.

13. Should an electric or natural gas utility elect to collect less than the present value of the income tax on CIAC, then justification for this decision must be presented by the utility in its next general rate case proceeding before appropriate ratemaking treatment will be allowed.

14. The full gross-up method for electric and natural gas utilities is disallowed.

15. For purposes of determining the manner in which CIAC related taxes are collected, different rules should be applied to those utilities, primarily water and sewer companies, for which CIAC represent the major source of capital for system growth and expansion.

16. The full gross-up method for collecting the tax on CIAC is mandatory for water and sewer companies.

17. Individual water and sewer companies may apply to the Commission for blanket approval of the present value method.

18. Individual water and sewer companies may apply to the Commission for approval of the partial or no gross-up method, on a case by case basis.

19. The federal tax rate to be used in calculating the full, partial, or present value gross-up methods should be the expected marginal rate from the company's income tax return applicable to the period in which the contribution is subject to taxation.

20. The state income tax rate to be used in calculating the full, partial, or present value gross-up methods should be the marginal rate from the company's income tax return applicable to the period in which the contribution is subject to taxation.

21. Pending a ruling from the North Carolina Department of Revenue, the companies should include gross receipts taxes in determining the full, partial, or present value gross-up methods subject to future refund.

22. The utilities receiving taxable CIAC should report such activity in financial reports submitted to the Commission.

23. The procedures contained in this Order are applicable to CIAC subject to taxation that were not under oral or written contract prior to February 3, 1987.

24. Pursuant to further Commission Order any overcollections resulting from the difference between what a utility collected for CIAC related taxes pursuant to the Commission's Order of February 3, 1987, and what the utility is allowed to collect pursuant to this Order should be refunded to the contributor in accordance to the undertaking agreement attached to the February 3, 1987, Order.

25. All utility companies receiving contributions in aid of construction increased for gross receipts tax, as set out in this Order, should complete and file with the Chief Clerk the undertaking attached hereto as Appendix C.

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

The evidence supporting these findings of fact is found in the record as a whole and is generally uncontested. North Carolina Power Company's witness Trible testified that, prior to the passage of the Tax Reform Act of 1986, CIAC was exempt from taxation pursuant to Section 118(b) of the Internal Revenue Code of 1954. Witness Trible further testified that effective January 1, 1987, Section 118(b) was repealed and CIAC became taxable.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 3 - 7

The evidence supporting these findings of fact is contained in the testimony of the various parties of record and is generally uncontested. Though the applicability of the different collection methods related to the taxes on CIAC was not agreed to by all parties, generally the mechanics of the respective methods were not disputed in the record.

One matter that was not uniformly supported in the record, as to the mechanics of the various collection methods related to taxation on CIAC, is the proper carrying cost rate to be used in the present value method calculation of the present value of the future tax benefits accruing to the utility depreciating the contributed plant on its tax return. Duke Power Company (Duke), North Carolina Natural Gas Corporation (NCNG), and the Public Staff recommend in their respective proposed orders that the proper rate to use is the overall cost of capital allowed in the respective company's last general rate case. In that this rate is the last rate of return reviewed and approved by the Commission for the respective company, the Commission deems this rate to be appropriate in applying the present value method. The Commission notes that the proper application of this rate in the calculations embedded in the present value method is to apply the rate, net of income taxes. The Commission further notes that this procedure is consistent with the Commission's cost of capital calculations incorporated in the levelization programs approved in Docket No. E-7, Sub 408, the last general rate case for Duke Power Company.

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

The evidence supporting these findings is contained in the record as a whole and is generally uncontested. All parties of record agreed that the full gross-up method results in no additional cost being passed on to ratepayers due to the tax on CIAC because the entire tax, plus tax on the tax, is collected from the contributor. Duke Power Company asserted that, if the contributor is charged a fee for the present value of the carrying cost which the utility incurrs during the period between the time when the utility pays the tax on CIAC and when the utility is ultimately reimbursed for this tax payment through depreciation of the CIAC for tax purposes, the company and its customers are adequately compensated. Therefore, this method, referred to elsewhere in this Order as the present value method, does not result in additional costs being passed on to ratepayers due to the tax on CIAC.

The Public Staff contends that the collection of tax on CIAC by an electric or natural gas utility to the extent that said collection is less than the present value of said tax to the utility, after consideration of any future tax benefits, will increase the utility's rate base to the extent of the difference. Most parties at the proceeding, as shown by the testimony of Piedmont Natural Gas Company's witness Guy, testified that the tax related to CIAC should be accounted for in balance sheet accounts. Witness Guy stated that the taxation on CIAC is a timing difference between the books and the tax return and, therefore, like all such timing differences, should be accounted for using the deferred income tax accounts. The Commission notes that this is consistent with the past ratemaking treatment and generally accepted accounting principles for income tax timing differences. Elsewhere in this Order, the Commission has approved, subject to certain exceptions, the present value method for electric and natural gas companies and the full gross-up method for water and sewer companies. If an electric or natural gas utility company collects less than the present value method then its rate base will be increased by the difference. Similiarly, if a water or sewer utility collects less than the full gross-up method its rate base will be increased by this difference.

The record shows that this rate base treatment is unlikely to have a significant impact on the utility rates charged by electric and natural gas companies, due primarily to the fact that the contributed plant received by these companies is generally a very small per cent of total plant additions. Public Service Company of North Carolina notes in its proposed order that CIAC amounts to no more than 2% of its construction budget. The Commission notes that this fact is further supported by recent Commission action in Docket No. E-7, Sub 421, wherein the Commission approved Duke Power Company's proposed changes in the Underground Distribution Installation Plan which excludes certain future underground services from charges that were collected as contributed plant in the past. Therefore, the Commission's action in Docket No. E-7, Sub 421, serves to reduce the amount of CIAC subject to income taxes that Duke Power Company will receive in the future. Conversely, the record shows, as testified to by Carolina Water Service witness O'Brien, that contributed plant is a material and, in many cases, the single most important component of plant additions implemented by water and sewer companies. Witness O'Brien testified that funding tax payments, related to CIAC from company provided capital, would have a significant impact on rates to Carolina Water

Service's customers. This testimony, as to the material burden placed on water and sewer companies if taxes on CIAC are paid from company provided funds, is supported by Carolinas Chapter of the National Association of Water Companies (CCNAWC) witness Grantmyre. Therefore, the Commission concludes that rate base treatment related to taxes on CIAC, as spoken to herein above, would generally be more significant in terms of impact on customer rates for the water and sewer companies than for the electric and natural gas companies.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 11

The evidence of record is clear that the Tax Reform Act of 1986 allows for the depreciation of contributed plant on the utility's tax return, as testified to by the Carolina Power & Light Company witnesses. Hence, the Tax Reform Act of 1986 includes the CIAC in taxable income and then allows it to be depreciated over its useful life for tax purposes. Piedmont Natural Gas Company's witness Guy testified that this situation, of the CIAC being subject to tax and then depreciated over its useful life for tax purposes, is identical to the situation where acceleration depreciation is used for tax purposes, and straight line depreciation is employed on the company's accounting records, only in reverse. The Commission further notes, as alluded to elsewhere herein, that CIAC is neither operating income nor subject to depreciation on the company's accounting books and records kept in accordance to applicable Commission approved system of accounts.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 12, 13, AND 14

The evidence supporting these findings of fact is contained in the testimony of the natural gas and electric company witnesses, the Public Staff witnesses and Attorney General witness Perkerson. Duke Power Company in its proposed order encourages use of the present value method, as did the witnesses for Carolina Power & Light Company and North Carolina Power Company. Further, the proposed order of North Carolina Natural Gas Corporation advocates the present value method. In fact, generally all the electric and natural gas companies support the use of the present value method. For these companies, the Public Staff also supports the present value method. In filed comments, the North Carolina Home Builders Association stated that, if the tax on CIAC should be collected from the contributor, the amount to be collected should take into consideration the present value of the depreciation deduction which may be taken by the utility over the tax life of the contributed property. The only opposition to the present value method for the companies mentioned above was entered by the Attorney General. The Attorney General stated that the present value method calculation probably would not be precise because depreciation rates, tax rates, and the cost of capital are subject to change over time. After a review of the entire record, the Commission concludes that the present value method should be used by the electric and natural gas companies, except as noted below. The Commission notes that the present value method is technically complex and relies upon various accounting estimates, and yields a materially appropriate means to reflect future tax benefits when computing the amount needed to keep the utility financially whole on a present value basis when the tax is paid on CIAC. The Commission further notes that the present value method is the best of the methods presented at the public hearing to insure that the taxes on CIAC collected by the utility from the contributor take into consideration these future tax benefits. In this regard, the Commission agrees with the Attorney General's assertion that returning the

tax benefits to the contributor, as they are realized by the utility on its tax return over the depreciable life of the CIAC, would be both administratively burdensome and cost ineffective. Finally, the Commission notes that generally accepted accounting principles are necessarily applied daily by most companies through the use of various accounting estimates and therefore it is commonly recognized that a principle does not fail because an estimate must be made before said principle is applied.

Even though the present value method was generally supported by the electric and natural gas companies, all of the electric and natural gas companies proposed that the utility companies should have the option to use whatever collection method is deemed appropriate in each particular case, after taking into account all facts and circumstances between the utility and the contributing entity. These companies assert that there may be cases where the contributed plant will result in benefits to all of the utility's customers. As an example, NCNG witness Teale testified that the additional margin to be earned on subsequent sales of natural gas to new industrial customers would offset any additional revenue requirements related to the inclusion in rate base of any tax paid from the utility's funds on CIAC received from said industrial customers.

The Attorney General opposed this option for electric and natural gas companies, absent prior Commission approval. The Public Staff asserted that, for electric and natural gas companies, the burden of proving the appropriateness of any method that collects less than the amount dictated by the present value method should be on the utility in its subsequent general rate case filing. The Public Staff further asserted that, should the utility fail to justify the use of an alternate method, no ratemaking treatment would be afforded any corresponding increase in rate base caused by use of the alternate method.

In regards to the Attorney General's proposal that prior Commission approval should be requested before any collection method may be employed other than full gross-up, the electric and natural gas companies generally responded that said notification should not be necessary. In support of this assertion, these companies stated that the frequency of and overall amount of contributions does not warrant the administrative burden which such a requirement would impose on the Commission, the utilities, and its customers. Based on the foregoing, and the evidence, as spoken to elsewhere herein, that rate base impact to these companies would be very small if the tax collected is less than that resulting from application of the present value method, the Commission concludes that the collection method to be used by the electric and natural gas companies should be optional and not subject to prior Commission approval. This conclusion is reached in conjunction with the previous conclusion, as spoken to above, that the present value method is preferred for use by electric and natural gas companies. Furthermore, should said companies elect to use a method other than the present value method, the burden of proof to support said method should be on the respective company in its next general rate case. Lack of appropriate justification for any alternate collection method that collects less tax than the present value method will result in the difference not being allowed consideration in setting rates in any subsequent general rate case proceeding.

The Commission has approved the present value method for use by electric and natural gas companies. However, the companies have the option to use an alternate method, without prior Commission approval, that will be subject to review, with the burden of proof on the company, in any subsequent general rate case.

The Commission needs to stop here and make it clear what optional methods may be subject to election by the electric and natural gas utilities. The Commission has previously concluded that the present value method is preferable for electric and natural gas companies. This decision was based in part on the fact that this method flows back to the contributor the present value of future tax benefits related to the CIAC. In addition, the Commission has earlier noted that CIAC are a small component of an electric or natural gas companies' plant additions. Therefore, consistent with these facts and decisions, the Commission concludes that the maximum amount an electric or natural gas company should collect from the contributor of CIAC is the amount generated by application of the present value method. Therefore, the Commission expressly prohibits the use of the full gross-up method for electric and natural gas companies. Should an electric or natural gas company choose to use a method generating an amount less than the present value amount, then said decision will be reviewed in the company's next general case, as noted above.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 15

Evidence supporting this finding of fact is contained in the record as a whole, and particularly in the testimony of Attorney General witness Perkerson, the Public Staff witnesses, Carolina Water Service witness O'Brien, and Carolinas Chapter of the National Association of Water Companies witness Grantmyre. As noted elsewhere herein this Order, contributed plant is generally an overwhelmingly material component of a water or sewer company's utility plant, as testified to by Carolina Water Service witness O'Brien. Witness O'Brien stated that over 58% of Carolina Water Service's net plant consisted of contributed plant. Witness Grantmyre testified that water and sewer companies are typically the most capital intensive of all utilities. In addition, witness Grantmyre stated that many water systems are installed by a developer at the developer's cost and then given to the water company to operate and provide utility service. This contribution is now subject to federal income taxes under the Tax Reform Act of 1986. Witness Grantmyre further stated that most water and sewer companies are basically very small and would face extreme difficult financial alternatives if the tax on CIAC is not collected from the contributor. The report of the Public Staff filed April 27, 1987, stated that because of water and sewer companies' relatively high level of contributed plant and small customer base, then should the water or sewer utility elect to pay the CIAC tax from company funds then rates would probably increase frequently and significantly. Based on the foregoing, the Commission concludes that the taxation of CIAC has the potential to financially impact the water and sewer industries more severely than the electric and natural gas industries. Therefore, the Commission concludes that, for purposes of determining the manner in which CIAC related taxes are collected from the contributor, different rules should be applied to those utilities, primarily water and sewer companies, for which CIAC represent the major source of capital for system growth and expansion.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 16, 17, AND 18

The evidence supporting these findings is found primarily in the testimony of the Public Staff witnesses, Attorney General witness Perkerson, Carolina Water Service witness O'Brien, and Carolinas Chapter of the National Association of Water Companies witness Grantmyre. At issue here is what collection method(s) related to taxes on CIAC are appropriate for use by water and sewer companies and whether or not these companies should have an option to choose between various methods, based on the individual circumstances of a particular case.

As to the issue of what collection method is appropriate, all parties testifying on this point stated that the full gross-up method was preferable. The present value method was not specifically presented for water and sewer companies. Based on the foregoing, the Commission concludes that the full gross-up method should be used by water and sewer companies to collect taxes on CIAC, subject to the two provisions set out below. The Commission notes that the full gross-up method places the risk on the developer, rather than the utility, for the ultimate completion of a project. Consequently, the full gross-up method prevents the potentially adverse situation where a water or sewer utility pays from its own funds the tax related to a substantial contribution of a large system serving a generally undeveloped area. Had this situation been allowed to occur, then the company would suffer a drain of capital in the amount of the tax paid, without the assurance of short term cash in flow from the contributed system, because it serves an undeveloped area.

The Commission has previously adopted in this Order the present value method as the preferred collection method for electric and natural gas companies. The merits of this method have been discussed previously. The Commission notes that the present value method requires a cash outlay from a utility's funds prior to recoupment from the tax authorities on the tax return that may not be sustainable by small water and sewer utilities, that are generally characterized as being under severe capital constraints, as testified to by Carolinas Chapter of the National Association of Water Companies witness Grantmyre. Therefore, though the present value method has much merit, in that it flows future tax benefits back to the original contributor on a present value basis, it may not be financially sustainable for most regulated water and sewer companies. Additionally, the Commission observes that many water and sewer companies may not possess the technical expertise required to employ the present value method. Based on the foregoing, the Commission concludes that any water or sewer company desiring to employ the present value method instead of the full gross-up method may file an application to do so with the Commission. The Commission shall consider any said requests on a company by company basis.

Even though they state a preference for the full gross-up method, the witnesses for the water and sewer industry generally advocate the right to choose alternate collection methods related to taxes on CIAC, at the discretion of the utility based on the facts and circumstances of each particular case. These witnesses generally state that there may be instances where the contributed plant will serve to benefit the operations of the utility, and therefore serve to benefit all the company's ratepayers. Examples given, as situations where operations would be enhanced, are where the contributed plant

increases the well or storage capacity on a per customer basis for the utility's entire system. The Public Staff asserted that the full gross-up method should be mandatory for water and sewer companies unless prior approval is received for a different method in a particular case. The Public Staff further recommended that approval should be given only in cases where the utility can show that it is impossible or impractical to collect the CIAC tax from the contributor and that paying the tax out of utility funds will not significantly increase the utility's rates. The Attorney General's position on this matter is that for water and sewer companies the full gross-up method should be mandatory, without exception. Based on the foregoing, the Commission concludes that water or sewer companies should seek prior Commission approval before using any method other than the full gross-up method in any particular case. This approval should be sought on a case by case basis, except where the company has chosen the present value method, as spoken to above.

The Commission notes that should a water or sewer utility company choose, with prior Commission approval, not to collect the tax on CIAC from the contributor, then the utility's rate base will be increased by the unamortized amount of the tax paid. For water and sewer utility companies that establish rates based on the return on rate base methodology, then the utility will be allowed a return on the unamortized tax in its next general rate case proceeding. The question here is what is the appropriate ratemaking treatment for water and sewer companies employing the operating ratio methodology to establish customer rates. For these companies, the Public Staff proposes effectively no ratemaking consideration, in that the unamortized tax paid will be reflected only in rate base, with the amortized portion reducing any tax liability due. Conversely, CCNAWC witness Grantmyre asserts that for operating ratio companies the tax should be amortized over a 5 year period to operating expenses for return. CCNAWC witness Grantmyre further stated that a water or sewer utility should have the right to present evidence to the Commission at a general rate case proceeding that a shorter amortization period may be appropriate. The record shows that the tax depreciation life for much of the CIAC received by sewer and water utilities is approximately 25 years. Therefore, the CCNAWC's proposal would recover the CIAC tax paid from the utility's funds prior to recovery of said tax from the depreciating of the contribution on the utility's tax return. The Commission notes that the Commission has previously concluded that, absence prior approval to the contrary, the full gross-up method should be used by water and sewer companies. Therefore, based on the foregoing, the Commission concludes that the issue of the proper ratemaking treatment for an operating ratio company to be afforded tax on CIAC paid from said utility's funds should be addressed if, and when, the utility applies for approval of an exception to the full gross-up method.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 19

Evidence supporting this finding of fact is found in the record as a whole and is uncontested. The Commission notes that some of the utilities, particularly the smaller ones, affected by the CIAC tax have experienced material fluctuations in federal taxable income in past years, and therefore fluctuations in the applicable federal marginal tax rate. The Commission urges all companies subject to this Order to make every reasonable effort to calculate the federal marginal tax rate applicable to the tax period in which the CIAC becomes taxable and then to incorporate said rate into the CIAC collection method being utilized. The Commission concludes that this effort

will insure that the proper tax liability related to the CIAC will be taken into account. In order to facilitate the Commission's review of this matter on a continual basis in the future, the Commission further concludes that each company should include, in its annual financial report to the Commission, the amount of federal tax collected on CIAC and the amount of federal tax actually paid, related to said collections, with the difference expressly stated.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 20

Evidence supporting this finding of fact is found in the record as a whole and Ratified House Bill 24 which was recently ratified by the General Assembly of North Carolina. Until the enactment of Ratified House Bill 24, some degree of uncertainity surrounded the question of whether contributions in aid of construction are subject to state income tax. Generally, North Carolina income tax laws have closely followed the federal tax laws. Therefore, prior to enactment of the Tax Reform Act of 1986, both the federal and state laws did not include CIAC in taxable income. TRA-86 changed this treatment at the federal level and the Legislature of the State of North Carolina recently adopted certain amendments to the Revenue Act which would also require this treatment at the State level. G.S. 105-130.3 of the Corporation Income Act now states that every corporation doing business in North Carolina shall pay annually an income tax equivalent to 7% of its net income. (See Ratified House Bill 1155, Chapter 622 of the 1987 Session Laws of North Carolina.) The term "net income" is stated to be the same as taxable income as defined in the "Code". The term "Code" is defined in G.S. 105-130.2(1) to mean "the Internal Revenue Code as enacted as of January 1, 1987, and includes any provisions enacted as of that date which become effective either before or after that date." (See Ratified House Bill 24, Chapter 778 of the 1987 Session Laws of North Carolina.) Thus, it appears to the Commission that Ratified House Bill 24 adopts the TRA-86 treatment of including CIAC in taxable income. Therefore, CIAC is subject to state income tax and the utilities receiving CIAC subject to this Order should collect applicable state income tax. Based on the testimony set out elsewhere in this Order as to the proper recovery of federal income taxes associated with CIAC, and consistent with the conclusions related thereto, the Commission concludes that the regulated utilities affected by this Order should collect state income taxes in the same manner as federal income taxes.

Consistent with the Commission's decision under Evidence and Conclusions For Finding of Fact No. 19 concerning the proper marginal federal tax rate to be used by a company employing the full, present value or partial gross-up methods, the Commission further concludes that the appropriate state income tax rate to be applied is the expected state marginal tax rate from the company's state income tax return applicable to the period in which the contribution is subject to taxation. Further, the Commission concludes that each company should include in its annual financial report to the Commission the amount of state tax collected on CIAC and the amount of state tax actually paid, related to said collections, with the difference expressly stated.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 21

The evidence supporting this finding of fact is found in the record as a whole. The proposed orders of Carolina Water Service and the Public Staff

speak directly to this matter. Carolina Water Service takes the position that CIAC should not be subject to gross receipts taxes. It is well established that the gross receipts tax is entirely separate from federal and state income taxes. Franchise taxes, of which the utility gross receipts tax of G.S. § 105-116 is one, are provided for by Article Three of Chapter 105 of the North Carolina General Statutes. Section 105-114 of Article Three provides that "The taxes levied in this Article upon persons and partnerships are for the privilege of engaging in business or doing the act named." G.S. § 105-130.1 of the Corporation Income Tax Division of Article 4 of the Chapter 105 provides that:

> "The general purpose of this Division is to impose a tax for the use of the State government upon the net income of every domestic corporation and of every foreign corporation doing business in this State.
>
> "The tax imposed upon the net income of corporations in this Division is in addition to all other taxes imposed under this Subchapter."

It has been recognized that the General Assembly intended to create a clear distinction between a tax imposed for the privilege of transacting business and one based on a past fact of earned profits. See Eastern Tennessee & Western North Carolina Transportation Company v. Currie, 248 N.C. 560, 104 S.E. 2d 403, aff'd, 359 U.S. 28 (1958). Developments in the field of income tax need not be tracked in application of the gross receipts tax.

Further, the taxes on the CIAC, and likely the CIAC themselves, fall outside the definition of gross receipts. There are two North Carolina cases defining "gross receipts". Southern Bell Telephone and Telegraph Company v. Clayton, 266 N.C. 687, 147 S.E. 2d 195 (1966) [hereinafter Southern Bell]; Secretary of Revenue v. Carolina Telephone and Telegraph Co., 81 N.C. App. 240, 344 S.E. 2d 46, disc. review denied, 318 N.C. 283 (1986) [hereinafter Carolina Telephone]. Both cases involve the construction of G.S. § 105-120(b), which imposes a gross receipts tax on "[e]very person, firm, or corporation, domestic or foreign, owning and/or operating a telephone business for the transmission of messages and/or conversations to, from, through, in or across this State." Id. § 120(a). Section 105-120(b) provides that "Such gross receipts shall include all rentals, other similar charges, and all tolls received from business which both originates and terminates in the State of North Carolina."

In the Southern Bell case, Southern Bell had entered into a series of reciprocal contracts pursuant to which it collected rental fees for the use of its poles from other utilities. Southern Bell included these rental receipts in its reported gross receipts, paid the resulting tax under protest, and sued for its recovery. Id. at 688, 147 S.E. 2d at 196. The Commissioner of Revenue contended that "gross receipts" meant all collections, from any source, while Southern Bell contended that the pole rentals fell outside the scope intended for "rentals" in Section 105-120(b). Id. at 689-90, 147 S.E. 2d at 196. The North Carolina Supreme Court began with a review of the intent behind franchise taxes:

"Franchise taxes are imposed for the privilege of engaging in business in this State. G.S. 105-114. . .. For the privilege of engaging in the telephone business, a telephone company pays 6% of its gross receipts as specified in G.S. 105-120.

"Telephone companies are not engaged in the business of renting either real estate or utility poles. Such rentals, when they occur, are purely incidental arrangements. The income of a telephone company comes from service charges for the transmission of messages by telephones which remain the property of the company. The customer "rents" the telephone in his home or place of business. For a monthly sum (now fixed by the North Carolina Utilities Commission), he may make unlimited local calls. Tolls for long distance calls are extra."

Id. at 690, 147 S.E. 2d at 197 (emphasis in original).

The Supreme Court then reviewed the statutory history of Section 105-120(b), noting that the term "rental" was usually used in relation to the user's rental of telephones, and concluded:

"Receipts from local exchange telephone rentals, other similar charges, and intrastate tolls have always been considered a part of the franchise tax base. They account for the greater part of the Company's income; incidental revenue from pole leases, an infinitesimal part. We think the Legislature used the word include in the sense of 'shall consist of.' It was used, not to broaden the tax base, but to exclude from the base interstate tolls. We hold, therefore, that the word rentals, considered in its context, means local exchange rentals. To hold that the word include, as used in G.S. 105-120(b), is the equivalent of 'also embrace,' would mean that the Legislature added the major portion of the Company's income (rentals from local exchanges, other similar charges, and intrastate tolls) to a miniscule part of it, such as pole rents. That such was the legislative intent seems most improbable.

"'Tax statutes are to be strictly construed against the State and in favor of the taxpayer.' [citing cases]. Had the Legislature intended to tax the telephone companies upon receipts other than revenues obtained from the services they were obligated to furnish the public, we think it would have specifically imposed the tax upon gross receipts from any and all sources whatsoever except those expressly exempted."

Id. at 691, 147 S.E. 2d at 197-198 (emphasis in original).

The situation in the Southern Bell case seems quite similar to the issue of whether CIAC or the taxes imposed thereon constitute gross receipts. G.S. § 105-116(a), similar to Section 105-120, provides in pertinent part:

"Every person, firm or corporation, domestic or foreign, other than municipal corporations, engaged in the business of furnishing electricity, electric lights, current, power or piped gas, or owning and/or operating a water system subject to regulation by the North

Carolina Utilities Commission, or owning and/or operating a public sewerage system shall . . . make and deliver to the Secretary of Revenue . . a report . . . containing the following information:

"(1) The total gross receipts for the three months ending the last day of the month immediately preceding such return from such business within and without this State.

"(2) The total gross receipts for the same period from such business within this State." (emphasis added).

As in the Southern Bell case, public utility companies are not in the business of acquiring utility equipment or cash contributions--they are in the business of supplying utility service for specific rates and should instead be taxed on these receipts, for the tax is meant to be one on the privilege of conducting this business.

Particularly instructive is Cheaspeake & Potomac Telephone Company v. District of Columbia, 325 F. 2d 217 (D.C. Cir. 1963), which the North Carolina Supreme Court cited in support of its decision in the Southern Bell case, 266 N.C. at 691-692, 147 S.E. 2d at 198. In Chesapeake & Potomac Telephone Co., the District of Columbia had attempted to impose a gross receipts tax on funds that the company received for allowing other companies to use its switching equipment. The court held that:

"[W]hen a public service company supplies services or facilities to another public utility company in the same field for the sole purpose of enabling the latter company to serve its customers more efficiently, such services are not 'public utility commodities or services' within the meaning of our statute, and thus are not subject to the gross receipts tax."

Chesapeake & Potomac Telephone Co., 325 F. 2d at 222, as quoted in the Southern Bell case, 266 N.C. at 692, 147 S.E. 2d at 198. This reasoning certainly seems applicable to capital contributions by developers as well.

In the Carolina Telephone case, the Company reported its gross receipts without including receipts from its "yellow pages" advertising. The Franchise Tax Division attempted to assess Carolina Telephone Company for a deficit. Carolina Telephone, 81 N.C. App. at 240-42, 344 S.E. 2d at 47. The Court of Appeals began with a review of the analysis applied in the Southern Bell case, Id. at 242-243, 344 S.E.2d at 48, and held that the "yellow pages" receipts were neither "rentals" nor "tolls" within the meaning of G.S. § 105-120(a). The Court observed:

"We note too that the legislative policy behind franchise tax statues generally supports our holding.

"Franchise taxes are imposed for the privilege of engaging in business in this State. G.S. 105-114. The amount of the tax varies with 'the nature and magnitude of the privilege taxed, the relative financial returns to be expected of the business or activities under franchise, and the burden put on government in regulating, protecting and fostering the enterprise . . . .'

> "The annual franchise tax on telephone companies . . . is imposed 'for the privilege of engaging in such business.' The telephone business is regulated by the North Carolina Utilities Commission pursuant to Chapter 62 of the General Statutes. G.S. 62-110 grants to a telephone company a monopoly on the rendering of telephone service within its service area. 'Nothing in Ch. 62 of the General Statutes, however, confers upon a telephone company a monopoly upon advertising by its business subscribers.'"

Id at 245, 344 S.E. 2d at 49-50 (citations omitted). Similarly, CIAC received by public utilities are not receipts from the type of business for which they are granted a monopoly.

The Commission is also aware of an opinion letter rendered by the Director of the Corporate Income & Franchise Tax Division of the North Carolina Department of Revenue on May 10, 1985, to the Electric Membership Cooperatives (EMCs) stating that the EMCs "have not been subject to franchise tax on contributions in aid of construction, except for refundable contributions, since 1965 when EMC's first became liable for franchise tax. The recent action of the General Assembly to characterize a portion of this tax as a sales tax made no substantive change in the franchise tax law. Consequently we anticipate no change in our previous position with respect to contributions in aid of construction."

Based on the foregoing, the Commission concludes that CIAC are not subject to North Carolina gross receipts taxes. Application of the gross receipts tax to CIAC would unduly burden public utilites and their ratepayers. Nevertheless, the Commission will, in an abundance of caution, request a formal ruling from the North Carolina Department of Revenue (Revenue Department) as to whether or not it is the Department's opinion that CIAC are subject to gross receipts taxes. A copy of the Commission's letter to the Department of Revenue is attached hereto as Appendix B. The Commission is concerned that should the Revenue Department subsequently find that CIAC are subject to gross receipts taxes, despite the Commission's belief to the contrary, utilities would then be placed in an adverse position had those taxes not already been collected on CIAC received prior to the Revenue Department's ruling. Therefore, the Commission concludes that gross receipts taxes should be collected on an interim basis on CIAC subject to this Order. Should the Revenue Department agree with the Commission's opinion that CIAC are not subject to gross receipts taxes then those taxes will be refunded to the contributor.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 22

The evidence supporting this finding of fact is generally found in the testimony of all parties of record. Both Duke Power Company and North Carolina Power assert that no additional reporting requirements related to CIAC are necessary. The general reasoning supporting this position is that the companies are currently required to maintain adequate records documenting CIAC received for the Internal Revenue Service and that since said records are available to be reviewed by the Commission and the Public Staff, then a separate CIAC report is not necessary.

Other companies, such as Piedmont Natural Gas Company, assert that the amount of CIAC received and the related taxes could be included in the annual

financial reports already required to be filed by the respective companies with the Commission. Public Service Company of North Carolina proposed to report such information in the monthly financial reports required by the Commission.

The Public Staff proposed that the CIAC related information be filed in the electric and natural gas companies' monthly financial reports and in the water and sewer companies' annual financial reports. The Attorney General recommended that the electric and natural gas companies should include CIAC related information in their annual financial reports while the water and sewer companies should include the information in a separate report filed annually.

The Commission is concerned that the CIAC activity should adequately be reported to the Commission in order that appropriate review may be achieved. Therefore, the Commission concludes that CIAC information, as spoken to below, should be reported to the Commission and that the Public Staff proposal in this regard as to the mode of reporting is fair and reasonable and should be adopted.

As to the CIAC information that should be included in the reports discussed above, the Commission concludes that the recommendation of the Public Staff should be adopted in this regard. Therefore, the Commission concludes that the following CIAC related information should be provided:

1. Nontaxable CIAC collected
2. Taxable CIAC collected
3. Tax collected on CIAC

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 23

Evidence supporting this finding of fact is found in the record as a whole, and particularly the testimony of Carolina Water Service witness O'Brien, the testimony of Charles Smith of Charles Smith Builders, and the testimony of the Public Staff witnesses. Witness Smith testified that CIAC gross-up requirements should not interfere with existing contracts between developers and utilities. In addition, this concern was expressed by the Public Staff witnesses and is noted in the proposed order of North Carolina Natural Gas Corporation. Based on the foregoing, the Commission concludes that the rules and procedures contained in this Order are applicable to CIAC subject to taxation that was not under oral or written contract prior to February 3, 1987, the date of the Commission's Interim Order requiring gross-up procedures. Consistent with this conclusion, the Commission concludes that utilities receiving CIAC that were under contract prior to February 3, 1987, should be authorized to pay any related taxes on CIAC from the utility's funds.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 24

The evidence supporting this finding of fact is found in the record as a whole. The Commission notes that its Order of February 3, 1987, requires that each utility receiving CIAC increased for applicable taxes, subject to Ordering Paragraph No. 6 of said Order, should complete and file the undertaking attached to said Order. The undertaking requires the utility to make refunds to its contributors of CIAC at 10% interest, if any refunds are subsequently required by the final Order issued in this proceeding.

The Order of February 3, 1987, required the utilities to use the full gross-up method for all CIAC received subsequent to the Order, except to the extent that said application was prohibited by contract already approved by the Commission. To the extent this method required more tax to be collected than the method(s) approved herein, then the Commission concludes that refunds plus interest are due the contributor, in accordance with the undertaking requirements of the February 3, 1987, Order.

The Commission notes that should the North Carolina Department of Revenue agree with the Commission that gross receipts taxes should not be applied to CIAC, then to the extent these taxes are collected pursuant to this Order, or were collected under the February 3, 1987, Order, then additional refunds would be due the contributors. This matter is discussed further under Evidence and Conclusions for Finding of Fact No. 25, as it relates to collections under this Order. In order to avoid the additional administrative burden related to two refunds rather than one refund process, the Commission concludes that any refunds owed contributors pursuant to the February 3, 1987, Order should be deferred until such time as the Revenue Department makes its ruling concerning whether or not CIAC are subject to gross receipts taxes. At that time the Commission will enter a final Order concerning said refunds. The Commission further concludes that the requirements of the undertaking attached to the February 3, 1987, Order are still in full force until said refunds are made. The Commission notes that said undertaking requires the utility to pay the contributor interest at an annual rate of 10% on any amount subject to refund.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 25

Under Evidence and Conclusions for Finding of Fact No. 21, the Commission concluded that the North Carolina Department of Revenue should be requested to provide a ruling as to whether or not CIAC are subject to gross receipts taxes. Should the Revenue Department agree with the Commission that these taxes do not apply to CIAC, then refunds would be due to the contributors where these taxes have been collected. Under Evidence and Conclusions for Finding of Fact No. 24, the Commission discussed the appropriate treatment to be afforded said refunds related to collections pursuant to the Commission's February 3, 1987, Order. As to gross receipts taxes collected on CIAC pursuant to this Order, the Commission concludes that these collections should be returned to the contributor, upon the issuance of further Commission Order, if the Revenue Department concludes that CIAC are not subject to gross receipts taxes. In order to facilitate this refunding, if necessary, the Commission concludes that each utility collecting gross receipts taxes on CIAC subject to this Order should complete and file the undertaking attached hereto as Appendix C.

IT IS, THEREFORE, ORDERED as follows:

1. Regarding Electric and Natural Gas Companies

A. That electric and natural gas companies shall use the present value method with respect to collections of CIAC, except as provided in paragraph (C).

B. That the cost rate to be used in the present value method shall be the overall rate of return granted in the utility's last general rate case, applied on a net tax basis.

C. That electric and natural gas companies may use the partial or no gross-up methods when they find it impractical or impossible to collect the present value of the tax from CIAC contributors. If they use those methods, however, their cost recovery is limited to the inclusion of the unamortized amount of the prepaid taxes in rate base. (For the partial gross-up method, the unamortized amount of prepaid taxes in rate base will result from the difference in amount of income tax that would have been collected under the present value method and the amount of the tax cost of the CIAC collected from the contributor.)

D. That ratemaking treatment for the rate base increment under Ordering Paragraph 1C shall be allowed only after proper justification from the utility.

2. Regarding Water and Sewer Companies

A. That water and sewer companies shall use the full gross-up method with respect to collections of CIAC unless the Commission gives prior approval for a different method in a particular case or unless the company applies for and is granted approval to use the present value method.

3. Regarding All Utilities Covered by This Order

A. That all companies covered by this Order shall report the following three items in addition to current reporting requirements:

(a) Nontaxable CIAC collected;
(b) Taxable CIAC collected;
(c) Tax collected on CIAC.

Electric and natural gas companies shall include these items in their monthly financial reports to the Commission. Water and sewer companies shall include these items in their annual reports to the Commission.

B. That the appropriate state and federal income tax rate to be used in calculating the appropriate amount of tax to be collected from the CIAC contributor shall be the expected marginal tax rate from the company's income tax returns applicable to the period in which the contribution is subject to taxation.

C. That all companies covered by this Order shall report in their annual reports to the Commission the amount of state and federal tax collected on CIAC and the amount of state and federal tax actually paid related to said collection, with the difference expressly stated.

D. That, if a company does not follow the gross-up requirements established by this Order, it shall not recover the costs of the taxes arising from the CIAC through rates or other charges to customers.

E. That all funds collected by the utility companies pursuant to the Commission's Order of February 3, 1987 in this docket that are in excess of those approved in this Order shall be refunded to the contributor with interest as outlined in the undertakings required in the February 3 Order, upon issuance of a further Commission Order.

F. That each utility collecting gross receipts tax on CIAC under this Order be, and hereby is, required to complete and file with the Commission's Chief Clerk the undertaking attached hereto as Appendix C.

G. That all water and sewer utility companies using the full gross-up method to collect taxes related to CIAC be, and hereby are, ordered to use the table shown on Appendix A, attached hereto, as a guideline to compute the increase in contributions needed to recover the taxes on CIAC.

ISSUED BY ORDER OF THE COMMISSION.
This the 26th day of August 1987.

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

APPENDIX A

Schedule of Multipliers Required To Gross Up Capital Contributions To Water and Sewer Companies So As To Provide For Gross Receipts Tax and Income Taxes Related Thereto

Line No.	Corporate Federal Tax Rate (a)	Multiplier Water Company (b)	Multiplier Sewer Company (c)
1.	40%	1.866786	1.906505
2.	39%	1.836183	1.875251
3.	38%	1.806567	1.845005
4.	37%	1.777892	1.815719
5.	36%	1.750112	1.787348
6.	35%	1.723187	1.759851
7.	34%	1.697078	1.733186
8.	33%	1.671749	1.707318
9.	32%	1.647164	1.682210
10.	31%	1.623292	1.657830
11.	30%	1.600102	1.634147
12.	29%	1.577566	1.611131
13.	28%	1.555655	1.588754
14.	27%	1.534345	1.566990
15.	26%	1.513610	1.545815
16.	25%	1.493429	1.525204
17.	24%	1.473779	1.505136
18.	23%	1.454639	1.485588
19.	22%	1.435989	1.466542
20.	21%	1.417812	1.447978
21.	20%	1.400090	1.429879
22.	19%	1.382805	1.412226
23.	18%	1.365941	1.395004
24.	17%	1.349484	1.378196
25.	16%	1.333419	1.361789
26.	15%	1.317731	1.345768

Note 1: Corporate Federal Income Tax Rates - Tax Reform Act of 1986
- Taxable income of $50,000 and below is taxed at 15%.
- Taxable income from $50,000 to $75,000 is taxed at 25%.
- Taxable income from $75,000 to $100,000 is taxed at 34%.
- The benefits of the graduated rate structure are phased out as taxable income increases from $100,000 to $335,000 with an effective marginal tax rate of 39% in this taxable income range.
- Taxable income in excess of $335,000 is taxed at 34%.

Note 2: Corporate State Income Tax Rate - House Bill 1155 Ratified July 16, 1987
- Taxable income taxed at 7% effective for tax years beginning on or after January 1, 1987.

APPENDIX B

The Honorable Helen A. Powers
Secretary of Revenue
North Carolina Department of Revenue
Revenue Building
2 South Salisbury Street
Raleigh, North Carolina 27602

Dear Secretary Powers:

I am writing to request an opinion letter from the North Carolina Department of Revenue pursuant to G.S. 105-264 regarding whether or not public utilities providing electric, natural gas, water and/or sewer utility service in this State must pay gross receipts tax pursuant to G.S. 105-116 on contributions in aid of construction (CIAC). CIAC include such things as special charges collected by a utility from customers or developers to defray the costs of extraordinary utility facilities constructed by the utility for the benefit of such customers or developers. This is generally the case when the cost to serve the customer exceeds the normal allowance used by the utility in line extension plans and other tariffs. Contributions in aid of construction lower the amount of funds that the utility has to invest to provide the service and reduce the utility's rate base for ratemaking purposes. CIAC also include contributions of on-site facilities necessary to provide utility service, such as water and sewer distribution systems installed by the developer of a new subdivision. CIAC can also include funds obtained from federal, state or local grants, damages paid to a utility either for the relocation of lines or for injury to utility plant and settlements received following a supply contract dispute to the extent the settlement terms exceed the terms of the original contract. A majority of the CIAC required by electric utilities, for example, has been to cover the additional cost of providing customers with underground service that was above the cost of an equivalent standard overhead service. Water and sewer utilities frequently require developers to contribute the on-site facilities necessary to provide utility service in a new subdivision or area into which the utility has been requested to extend its service. Water and sewer utilities also generally charge a tap-on fee to new customers as a contribution in aid of construction. The amount of the tap-on fee varies from utility to utility. The tap-on fee for some utilities is designed to recover only the cost of the meter and its

installation. For other utilities, the tap-on fee may be designed to recover all of the plant cost associated with the provision of service to the new customer.

Prior to enactment of the Tax Reform Act of 1986 (TRA-86), contributions in aid of construction were exempt from federal income taxation pursuant to Section 118(b) of the Internal Revenue Code of 1954. This section of the Internal Revenue Code allowed corporate regulated public utilities to treat CIAC as contributions to capital not includable in gross income. Likewise, property received or purchased with the proceeds of a contribution to capital had no depreciable basis for federal income tax purposes. Thus, the contribution was not recognized on the utility's tax return. However, effective January 1, 1987, Section 118(b) was repealed by the TRA-86 and as a result the majority of CIAC must now be treated and reported as taxable ordinary income for federal corporate income tax purposes in the year of receipt.

A careful review of the North Carolina State Revenue Act as set forth in Chapter 105 of the General Statutes has led the Commission to conclude that contributions in aid of construction are not subject to the payment of gross receipts tax under the current revenue laws of this State. The Commission reached this conclusion for the reasons stated in an Order entered this same date in conjunction with a generic investigation undertaken with respect to the impact of the TRA-86 on CIAC in Docket No. M-100, Sub 113. A copy of that Order is attached to this letter. The rationale for the conclusion reached by the Commission that contributions in aid of construction are not subject to North Carolina gross receipts tax is set forth fully on pages 12 - 16 of the attached Order.

To the best of our knowledge, the Department of Revenue has not heretofore taken the position that public utilities should be required to pay gross receipts tax on contributions in aid of construction. In fact, the Commission is aware of an opinion letter rendered by the Director of the Corporate Income & Franchise Tax Division of the Department of Revenue on May 10, 1985, to the Electric Membership Cooperatives (EMCs) stating that the EMCs

> "...have not been subject to franchise tax on contributions in aid of construction, except for refundable contributions, since 1965 when EMC's first became liable for franchise tax. The recent action of the General Assembly to characterize a portion of this tax as a sales tax made no substantive change in the franchise tax law. Consequently we anticipate no change in our previous position with respect to contributions in aid of construction."

For the reasons set forth above, the North Carolina Utilities Commission hereby respectfully requests the Department of Revenue to render an opinion letter regarding whether or not public utilities providing electric, natural gas, water and/or sewer utility service in this State must pay gross receipts tax pursuant to G.S. 105-116 on contributions in aid of construction.

Sincerely,
Robert O. Wells
Chairman

Attachment

APPENDIX C

DOCKET NO. M-100, SUB 113

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
The Tax Reform Act of 1986) UNDERTAKING

NOW COMES the undersigned utility, by and though its undersigned owner/executive officer, and hereby makes its written undertaking to the North Carolina Utilities Commission, pursuant to the Order of August 26, 1987, in this docket, that it will make refunds to its contributors of contributions in aid of construction at 10% interest, if any refund is required by Final Order of the Commission of any gross receipts tax collected from the CIAC contributor pursuant to the Order of August 26, 1987.

This the ____ day of _____ 1987.

_____
Name of Utility

By: _____
(Owner, Executive Officer)

DOCKET NO. M-100, SUB 113

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
The Tax Reform Act of 1986) ORDER TO REQUIRE FILING OF TARIFFS TO
) REDUCE RATES AND REFUND PLANS TO EFFECT
) FLOW THROUGH OF TAX SAVINGS FOR
) THOSE REGULATED COMPANIES NOT COVERED
) BY SPECIFIC ORDERS ON THIS MATTER

BY THE COMMISSION: On October 23, 1986, the North Carolina Utilities Commission entered an Order in this docket initiating an investigation regarding the Tax Reform Act of 1986 and its impact on public utility rates in this State. The Commission Order set forth the following statements concerning the probable impact of the Tax Reform Act on utility rates in North Carolina:

> "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."

The Commission set forth the following decretal paragraphs in the Order of October 23, 1986, regarding the Tax Reform Act of 1986:

"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."

By Order entered in this docket on March 10, 1987, the Commission required all affected utilities to begin filing quarterly reports no later than April 30, 1987, reflecting the status of the deferred account which the utilities were required to establish pursuant to decretal paragraph 2 of the Order dated October 23, 1986.

The utilities subject to this docket subsequently filed information setting forth each company's assessment of the Tax Reform Act of 1986 on its North Carolina intrastate operations.

On May 1, 1987, the Public Staff filed a report in this docket setting forth its assessment of and recommendations regarding the Tax Reform Act of 1986. The Attorney General also filed comments and recommendations regarding the Tax Reform Act in the form of testimony and exhibits on May 1, 1987. Both the Public Staff and the Attorney General noted that the maximum corporate federal income tax rate would be reduced from 46% to 34% effective July 1,

1987, and recommended that the Commission should reduce utility rates in North Carolina effective on that date to reflect the full reduction to the 34% federal income tax rate for corporations.

After reviewing all of the information and comments filed in this docket, the Commission concludes that additional information should be provided. This additional information is stated below:

I. Each regulated electric, natural gas, telephone, water, and sewer company subject to this proceeding, except as noted below, should calculate rate reductions related to tax savings resulting from the Tax Reform Act of 1986 (TRA-86) based on the methodology used by the Public Staff for the respective company in the Public Staff's Report of May 1, 1987, with the following specific inclusions:

   a. The rate reductions related to the tax savings resulting from TRA-86 should be calculated first based on the effective federal income tax rate for calendar year 1987 and second based on the effective federal income tax rate for calendar year 1988.

   b. The impact of House Bill No. 1155 ratified July 16, 1987, by the North Carolina General Assembly may be included in these calculations.

   c. The impact of the Superfund Amendments and Reauthorization Act of 1986 may be included, where appropriate.

   d. The impact of TRA-86 treatment of capitalized overheads may be included for those companies that previously flowed through these tax deductions. This item is discussed on page 20 of the Public Staff's Report of May 1, 1987.

The Commission further concludes that all companies included in the report filed by the Public Staff on May 1, 1987, should file the information noted above, except for the following companies who have included the effects of TRA-86 in recent general rate cases or have already made rate reductions for TRA-86: Carolina Power & Light Company, Duke Power Company, North Carolina Natural Gas Corporation, Pennsylvania and Southern Gas Company, Public Service Company of North Carolina, and AT&T Communications. The Commission notes that Duke Power Company has stated that it will make a subsequent filing of rates to become effective January 1, 1988, to reflect the 34% federal income tax rate. The Commission further concludes that North State Telephone Company (North State) should not be subject to the requirements of this Order but will be subject to further investigation to be established by a further Order of the Commission. This decision is based in part on the fact that North State's last general rate case test period was in the distant past (1952).

As spoken to above, the calculation of the tax savings impact from TRA-86 should be consistent with the guidelines stated hereinabove and the Public Staff's filing of May 1, 1987. For example, each telephone local exchange company (LEC) subject to this Order should divide the gross revenue impact of the tax savings based on the most recent general rate case test period by local service revenues established in said rate case to derive the impact of the tax savings on the company's current local service rates.

Most of the intrastate toll pool telephone LECs filed comments stating that they had incurred reductions to toll pool revenues resulting from the Commission ordered reductions in the Carrier Common Line Charge (CCLC), WATS surcharge, WATS restructure, and the Commission ordered elimination of the Dedicated Access Line Extender charged by local exchange companies to interexchange carriers. The LECs requested that the Commission offset the financial impact of these toll pool reductions with TRA-86 tax savings. In the Order of December 23, 1986, in Docket Nos. P-100, Sub 65, and P-100, Sub 72, the Commission concluded that it was entirely prudent and reasonable that tax savings resulting from the Tax Reform Act of 1986 experienced by the LECs should be used to offset Commission approved reductions in access charges. Additionally, in its Order of March 28, 1987, in Docket No. P-100, Sub 86 the Commission stated the belief that the access revenue shortfall resulting from the elimination of the Dedicated Access Line Extender should be considered in conjunction with this docket's assessment of the impact of TRA-86. After carefully considering this matter, the Commission concludes that the Commission ordered reduction in the CCLC, WATS surcharge, WATS restructure, and the Commission ordered elimination of the Dedicated Access Line Extender charged by the LECs to interexchange carriers should be offset against the impact of TRA-86. In quantifying the gross revenue impact of the WATS restructure, the Commission notes that the telephone LECs should give full consideration to the Public Staff's contention that the splitting of the WATS and 800 Service portion of the WATS restructure ordered in Docket No. P-100, Sub 86 results in an increase in revenues of approximately $1 million dollars. The Commission notes that AT&T Communications followed through on its promise to flow through access charge reductions, on a dollar-for-dollar basis, back to its customers in the form of reduced toll charges. The combined result of the reduced toll charges, which took effect May 1, 1987, plus the reductions in local rates ordered herein, will result in all the net tax savings being experienced by the telephone companies in 1987 being returned to the ratepayers, either in the form of reduced toll rates or in reduced local service rates.

The gross revenue impact of the toll pool reductions should be calculated based on calendar year 1986 traffic levels. The gross revenue impact of the CCLC reduction should reflect only the impact of the change implemented May 1, 1987, as presented by Carolina Telephone Company on page 5 of its January 29, 1987, filing. The gross revenue impact of the toll pool reductions divided by local service revenues for calendar year 1986 yields the local service rate impact of said toll pool reductions.

The Commission notes that LECs subject to this Order that derive toll revenues from standard contracts, and therefore do not participate in the intrastate toll pool, have also experienced recent changes in their intrastate toll rates. Consistent with the treatment allowed for toll pool companies, the Commission concludes that these companies should be allowed to offset any intrastate toll revenue reductions from these changes with tax savings generated by TRA-86. The impact on local service revenues due to these toll changes should be calculated consistent with the guidelines established above for the toll pool LECs.

The Commission notes that its Order in Docket No. P-55, Sub 882 issued March 26, 1987, approved a Southern Bell proposed tariff implementing nonrecurring charges to recover costs incurred to provide dual service. In its Order the Commission noted that Southern Bell's proposed tariff would produce

additional revenues of approximately $1.4 million over the next three years. The Public Staff opposed the tariff filing while stating that Southern Bell had not claimed that it needed additional revenue and had furnished no support for a need for improvement in its earnings. In approving the tariff filing, the Commission noted that it was fair and reasonable to approve the tariff even though it generated additional revenues in view of the upward pressure affecting Southern Bell in the emerging competitive environment in North Carolina. The Commission cited the elimination of the Dedicated Access Line Extender charged by local exchange companies to interexchange carriers as an example of this pressure. Since this Order allows Southern Bell to offset tax savings with the Commission ordered elimination of the Dedicated Access Line Extender then the Commission concludes that said offset should be reduced by the annual gross revenue impact of the dual service tariff approved by Order of March 26, 1987, in Docket No. P-55, Sub 882.

The Commission further concludes that, based on the rate reductions calculated in accordance with the above guidelines, the affected electric and natural gas companies should file tariffs for approval which reflect said rate reductions calculated based on the effective federal income tax rate for calendar year 1987. Said tariff reductions should reflect the Public Staff's methodology of applying test-period tax savings to applicable test-period units or revenues. This tariff filing requirement does not apply to the water and sewer companies that are subject to this Order. The Public Staff's Report of May 1, 1987, shows that the gross revenue impact of TRA-86 on these companies is generally small. Therefore, the Commission concludes that for water and sewer companies the effects of the rate reductions calculated in accordance with the above guidelines should be placed in a deferred account and considered in each water and sewer company's next general rate case. Said deferred account should reflect interest calculated at an annual rate of 10%. The amount to be placed in the deferred account and subject to interest for calendar year 1987 should be calculated by dividing the gross revenue impact of the tax savings, calculated using the calendar year 1987 effective federal tax rate and consistent with the guidelines established above, by the applicable base tariff revenues or units as included in the Public Staff's Report of May 1, 1987. Said tariff reduction should then be multiplied by applicable billing units or revenues for calendar year 1987.

In addition to the tariff filing spoken to above, all natural gas and electric companies subject to this Order should file tariffs effective January 1, 1988, for approval which reflect said rate reductions calculated based on the effective federal income tax rate for calendar year 1988.

All water and sewer companies should place in a deferred account after January 1, 1988, any tax overcollections based on the effective federal income tax rate for calendar year 1988. This calculation should be consistent with the guidelines included above. In addition, the Commission concludes that interest at an annual rate of 10% should be calculated on these dollars placed in the deferred account and that said account balance will be considered in the affected company's next general rate case proceeding.

The telephone LECs subject to this Order should file appropriate local service rates adjusted for the net impact of tax savings, based on the effective federal income tax rate for calendar year 1987, and toll reductions, as discussed herein above. In addition to the tariff filing spoken to above,

all telephone LECs subject to this Order should file appropriate local service rates adjusted for the net impact of tax savings, based on the effective federal income tax rate for calendar year 1988, and net toll reductions, as discussed hereinabove.

Consistent with the rate reductions calculated based on the above guidelines, the Commission concludes that each electric, telephone, and natural gas company subject to this Order should compute the level of refunds due its customers based on the overcollection of income taxes from January 1, 1987, to November 15, 1987. This refund requirement does not apply to the companies that have already reduced rates effective July 1, 1987, for the impact of TRA-86, using the effective federal income tax rate of 34%; nor does it apply to Carolina Power & Light Company whose most recent general rate case Order took into account these tax overcollections achieved in 1987. Any overcollections that may be related to Duke Power Company, who reduced rates January 1, 1987, for the estimated impact of TRA-86 based on a 40% effective federal income tax rate, will be considered in the company's subsequent filing of rates to become effective January 1, 1988. Overcollections achieved by the water and sewer companies will be placed in a deferred account, as spoken to above. Said overcollection achieved by the companies affected by this refund provision should be based on multiplying the calculated rate reduction, computed using the calendar year 1987 effective federal tax rate and consistent with the guidelines established above, times the applicable base tariff rates included in the Public Staff's Report of May 1, 1987. For the telephone LECs the rate reduction from tax savings used in the refund calculation should be offset by the impact of the toll reductions spoken to above. The tariff reduction should be applied to applicable billing units for the period January 1, 1987, to November 15, 1987. Said refunds should include interest calculated at an annual rate of 10%. Each company should include in the tariff filings spoken to above, a rate decrement rider to reflect the refunding of the tax overcollections over a 12-month period. The Commission notes that interest should be computed on the overcollection until the refund period is completed.

Finally, it should be stated that the Commission has given much consideration to the Public Staff and Attorney General's proposal to prohibit the local telephone operating companies from taking any credit on their tax savings for the earlier ordered reductions in access charges, which resulted in the dollar-for-dollar reduced toll rates discussed earlier. This proposal, in effect, would require the telephone companies to pass more than 100% of the tax savings through in either the form of reduced access charges or reductions in local rates. However, these parties (either one or the other) argue that the access charge/toll reductions should not be considered because the local telephone companies have allowed rates of return which were set in a period during which inflation rates were higher than the present rate and that other individual tariff changes which have been allowed in 1987 have produced additional revenues which have not been taken into account.

The impracticality of following this proposal is that there are numerous local telephone operating companies in North Carolina and the circumstances are different for many of them. To require the flow through of the federal tax savings without allowing an offset for these access charge reductions ordered by the Commission would likely place some LECs in a position of having to immediately file for rate increases. Therefore, subscribers of these affected telephone companies could experience a decrease and then an increase in their

local rates. Such up and down effects on rates disrupt reasonable budgeting practices by both homes and businesses and should be avoided if the net gain to the customers is not significant. For these companies, any net gain would appear to be insignificant and, in fact, could result in a net loss to subscribers if such action prompts a telephone company to file for an earlier and larger rate increase.

Secondly, it is true that there have been changes in individual tariffs for certain telephone companies which have or will result in additional annual revenues to those companies. However, many of these companies have received approval to increase depreciation rates and these additional expenses will far outweigh the additional annual revenues derived from individual tariff changes. In fact, it appears likely that these additional depreciation charges will materially lower the earned rate of return of these companies in 1987 and in subsequent years.

In summary, we recognize the Public Staff and Attorney General's concerns. However, we believe that the action they propose (to order, in effect, more than 100% flow through of federal income tax savings) is impractical and unreasonable in that such action does not differentiate between the given circumstances of the various local telephone companies.

IT IS, THEREFORE, ORDERED as follows:

1. That each regulated electric, natural gas, telephone, water, and sewer company included in this proceeding except Carolina Power & Light Company, Duke Power Company, North Carolina Natural Gas Corporation, Pennsylvania and Southern Gas Company, Public Service Company of North Carolina, AT&T Communications, and North State Telephone Company be, and hereby is, ordered to calculate rate reductions related to tax savings resulting from the Tax Reform Act of 1986 based on the methodology used by the Public Staff for the respective company in the Public Staff's Report of May 1, 1987, with the following specific inclusions:

a. The rate reductions related to the tax savings resulting from TRA-86 should be calculated first based on the effective federal income tax rate for calendar year 1987 and second based on the effective federal income tax rate for calendar year 1988.

b. The impact of House Bill No. 1155 ratified July 16, 1987, by the North Carolina General Assembly may be included in these calculations.

c. The impact of the Superfund Amendments and Reauthorization Act of 1986 may be included, where appropriate.

d. The impact of TRA-86 treatment of capitalized overheads may be included for those companies that previously flowed through these tax deductions. This item is discussed on page 20 of the Public Staff's Report of May 1, 1987.

2. That the affected companies be, and hereby are, ordered to file the workpapers supporting the rate reductions calculated in accordance with paragraph 1 above no later than November 9, 1987.

3. That the telephone LECs subject to this Order be, and hereby are, ordered to calculate the impact of toll reductions to be used as offsets to the rate reductions calculated in accordance with ordering paragraph 1 above. The toll reductions should be calculated in accordance with the guidelines established in this Order.

4. That the affected telephone LECs be, and hereby are, ordered to file the workpapers supporting the calculations in accordance with paragraph 3 above no later than November 9, 1987.

5. That the affected electric and natural gas companies be, and hereby are, ordered to file no later than November 9, 1987, tariffs reflecting the rate reductions calculated in accordance with paragraph 1 above and based on the effective federal income tax rate for calendar year 1987.

6. That the affected electric and natural gas companies be, and hereby are, ordered to calculate overcollections during the period January 1, 1987, to November 15, 1987, related to the tax savings generated by TRA-86 and to include in the tariffs filed pursuant to ordering paragraphs 5 and 7 a rate decrement refunding said overcollections over a 12-month period, in accordance with the guidelines established in this Order.

7. That the affected electric and natural gas companies be, and hereby are, ordered to file no later than November 9, 1987, tariffs effective January 1, 1988, reflecting the rate reductions calculated in accordance with paragraph 1 above and based on the effective federal income tax rate for calendar year 1988.

8. That the affected water and sewer companies be, and hereby are, ordered to place in a deferred account the revenue impact of TRA-86 for the period beginning January 1, 1987, calculated consistent with the guidelines included in this Order.

9. That the affected telephone LECs be, and hereby are, ordered to file no later than November 9, 1987, tariffs reflecting the rate reductions calculated in accordance with paragraphs 1 and 3 above and based on the effective federal income tax rate for calendar year 1987.

10. That the affected telephone LECs be, and hereby are, ordered to calculate overcollections during the period January 1, 1987, to November 15, 1987, related to tariff adjustments filed pursuant to ordering paragraph 9. Said overcollections should be reflected as a rate decrement to the tariffs filed pursuant to paragraphs 9 and 11 in order to refund said overcollections over a 12-month period.

11. That the affected telephone LECs be, and hereby are, ordered to file no later than November 9, 1987, tariffs effective January 1, 1988, reflecting the rate reductions calculated in accordance with paragraphs 1 and 3 above and based on the effective federal income tax rate for calendar year 1988.

12. That the Public Staff, the Attorney General, and other interested parties may file comments on the filings ordered herein no later than November 30, 1987.

13. That the appropriate amortization of accumulated excess deferred income taxes will be considered in each company's next general rate case or such other proceeding as the Commission may determine to be appropriate. Any additional amounts relating to the adjustment that should have been made by the company for the flow back of excess deferred income taxes shall be placed in a deferred account and should ultimately be refunded to ratepayers with interest.

ISSUED BY ORDER OF THE COMMISSION.
This the 20th day of October 1987.

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

Commissioner Tate, concurring in part and dissenting in part.
Commissioner Cook, dissenting in part and concurring in part.

COMMISSIONER TATE, CONCURRING IN PART, DISSENTING IN PART. I dissent to this Order because I believe the procedure is not lawful under Chapter 62 of the General Statutes or court decisions and because I believe it sets a precedent which will come back to haunt this Commission.

The overall regulatory scheme in this state provides that rates shall be set in general rate cases or in complaint cases (G.S. 62-133, G.S. 62-134 and G.S. 62-137). This refund procedure is neither, and yet the Majority has decreased the rates for every utility in North Carolina in one quick stroke. The North Carolina Supreme Court has given us specific directions:

> "The basic theory of utility rate making, pursuant to G.S. 62-133, is that rates should be fixed at a level which will recover the cost of the service to which the rate is applied, plus a fair return to the utility. A utility company may not properly be denied the right to charge such a rate, for the present use of its service, for the reason that, in a preceding month, the utility earned an excessive rate of return due to the fact that an expense which it was expected to incur in such previous month did not materialize. For example, rates for use of a utility's service are set at a level which will enable the company to pay, among other items, its anticipated tax expense. If by virture of some change in the tax law, it develops that the company did not incur the anticipated expense for the payment of which it collected revenues in prior months, its rates for present and future service may not be cut, on that account, below what it otherwise would be entitled to charge for the present or future service." (Emphasis Added) North Carolina Utilities Commission v. Edmisten, 291, N.C. 451, 468-69, 232 S.E.2d 184 (1977)

The court's instructions could not be more specific. The Commission simply cannot decrease one item of expense except after a full evidentiary hearing in a complaint case or a rate case. Of course, no one's rights are prejudiced when a utility volunteers to reduce its rates.

I acknowledge that the Tax Reform Act of 1986 (TRA-86) resulted in unanticipated revenues due to the lowering of corporate tax rates. I also acknowledge that it would be equitable for the utilities to return this unexpected windfall to its customers, and a number have voluntarily agreed to

do so. But the Legislature has not seen fit to provide the Utilities Commission with equitable jurisdiction, nor have any court decisions allowed us that discretion. It is not enough to find that our Orders are fair - they must also be lawful.

The Majority has failed to state any legal justification for the "flow through". It may be because there is NONE. It may be that the Majority considers the predivestiture "flow through" of intra-state toll revenues to telephone companies to be a precedent. But the "flow through" of toll revenue increases was determined in a Southern Bell toll rate case (P-100, Sub 45) and all companies affected could (and did) intervene and offer evidence to protect their interests.

I have earlier said that this decision will come back to haunt us. In ordering the companies to decrease their rates because one expense item has changed, this Commission has opened the floodgates to future confusion. If the corporate tax rate is raised, will there be a commensurate rate increase for all utilities? If interest costs increase, or if insurance premiums rise, will the Commission raise consumers rates? How and where do we draw a line once we have abandoned our legal limitations? The legal framework in Chapter 62 of the General Statutes gives the Commission powers and restrictions; I believe the Majority has exceeded our authority.

While I consider the Commission ordered tax "flow through" unlawful, many companies have voluntarily agreed to reduce their rates. I concur with the Majority that the prior Order of this Commission in P-100, Sub 72 must be honored. Both consumers and utilities should be able to rely on our doing what we have said we will do.

Sarah Lindsay Tate, Commissioner

COMMISSIONER RUTH E. COOK, DISSENTING IN PART AND CONCURRING IN PART. I respectfully dissent from the Majority's decision to flow through less than 100% of the tax savings to telephone subscribers that result from the Tax Reform Act of 1986 (TRA-86). My position would result in an additional local rate reduction for telephone customers in North Carolina of approximately $21.6 million on an annual basis. I otherwise concur in and support the Majority decision to the extent it requires electric and natural gas utilities to flow through 100% of these tax savings to their customers.

By Order issued October 23, 1986, in this docket, the Commission initiated an investigation into the Tax Reform Act of 1986. In that Order, the Commission, in straightforward and uncomplicated language, set forth the purpose and objective of its investigation. The Commission stated:

> . . . 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. . . (emphasis added).

Notwithstanding this previously announced commitment to flow through to ratepayers "any and all" costs savings realized from tax reform, the Majority

now has determined that telephone companies should be permitted to retain approximately $21.6 million in federal tax savings in order to offset certain past rate reductions that are resulting in revenue loss to the companies.

At the time those rate reductions of access charges were announced by the Commission in Docket Nos. P-100, Subs 65 and 72, it was known that such actions would result in a revenue loss. One naturally follows the other. The Commission obviously felt at that time that the level of reductions was justified and that the reductions still allowed the telephone companies to earn sufficient revenues to cover their costs and to earn a fair return for their shareholders. For the Commission to have done otherwise would have violated the Constitution and laws of North Carolina. In addition, the Commission in that Order stated:

> . . . It seems reasonable to assume that reduced access prices will be translated into reduced long-distance rates and, therefore, stimulation of the LEC's access network will occur.

Further, while allowing these offsets, the Majority ignored other rate increases that are resulting in significant revenue gain to the companies.

It is my view that this docket should be simple and straightforward and limited to its original intent. One hundred percent (100%) of the tax savings that the companies are experiencing should be flowed through to the local ratepayers. This, in fact, is what the Majority has ordered for the natural gas and electric utilities. It has not done so for the telephone companies. Why the discrepancy?

No one of the Majority argues that the ratepayers of telephone companies are not entitled to the refund authorized by the tax reductions ordered by TRA-86 and reflected in the Commission Order setting up this docket. The ratepayers have paid through rates as though the old 46% federal income tax (FIT) rate was in effect. Under the Majority decision, they are still paying at an effective rate of approximately 43% although the companies are being taxed at an FIT rate of 40%.

How then did the Majority manage not to give back to the ratepayers what was theirs in the first place? Simple, the Majority claimed to give the ratepayers their full entitlement, when in fact, they only gave half by allowing "access charge offsets."

The Majority's assertion that the position which I advocate, and which was also advocated by the Public Staff and Attorney General, would result in a flow-through of more than 100% of the tax savings to the LECs' ratepayers is totally without merit. The Majority's arithmetic is painfully skewed. To arrive at the assertion that the Public Staff's and Attorney General's proposals would flow through more than 100% of the tax savings is simply misleading. They added two separate and unrelated matters; the Majority combined the 100% flow-through recommended by the Public Staff and the Attorney General and added the reduced access charges to that. The access charge reductions ordered by the Commission are in no way related to or required by the Tax Reform Act of 1986. The Majority is comparing apples and oranges in seeking to justify its decision to allow a tax offset for access charges and, to a significantly lesser degree, toll pool reductions.

The Majority seeks to justify its decision to allow the telephone companies to retain tax savings by pointing out that subsequent to implementation of its tax reform investigation, in an Order issued on December 23, 1986, in Docket Nos. P-100, Subs 65 and 72, the Commission stated that:

> . . . it was 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. . . .

As a member of the Commission who voted for that Order, I did not anticipate that this single general sentence in the Evidence and Conclusions section of the Order, not in an ordering paragraph, would be used as a back-door approach to ratemaking, depriving the public of the protections of a general rate case by not requiring the companies to prove any alleged revenue deficiencies in a proper forum. Further, that sentence directly contradicts more specific language of that same Order. The Commission stated in the same section of Evidence and Conclusions the following:

> . . .
> 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 position.
>
> 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. . . .
>
> 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. (emphasis added).

I submit that to offset tax savings resulting from the TRA-86 with access charge reductions is, in effect, a local rate increase. I do not believe the one sentence from Docket Nos. P-100, Subs 65 and 72, to the exclusion of the far lengthier language I have quoted above, unalterably binds the Majority to the course of action they have taken, by which they have, in substance, raised the local rates of telephone customers by not flowing through 100% of the tax reductions. No compelling justification has been stated by the Majority in support of their "access charge offset;" nor can I understand the legal basis for their action. In fact, the Majority elevates that one sentence above what I believe Chapter 62 of the North Carolina General Statutes requires.

There has been no showing of a bona fide need for the Majority's tax savings' offset. More important, this was not the correct forum for such a showing. In the proper forum, a general rate case, the telephone companies would have to (1) give public notice of any requested rate increases, (2) prefile testimony to prove such need, (3) withstand cross-examination of their testimony, (4) respond to any persons objecting to rate increases during the public hearings, and (5) otherwise meet the requirements attendant to rate cases. The Majority has, in essence, saddled ratepayers with an increase in rates without their knowledge.

The level of earnings that the telephone companies are now and have been achieving in recent years makes the Majority decision truly incomprehensible, even from an equity standpoint. Most of the LECs appear to be enjoying a level of earnings on common equity capital beyond that approved by the Commission. In fact, their earnings are more reflective of returns that investors expect on high risk venture capital undertakings rather than the level of return to be expected from relatively low risk investment in the common stock of a public utility.

The Majority notes in its Order that "AT&T Communications followed through on its promise to flow through access charge reductions, on a dollar-for-dollar basis, back to its customers in the form of reduced toll charges." It should be added that AT&T also flowed through, on a dollar-for-dollar basis, 100% of the savings it realized from tax reform through a further reduction in toll rates. AT&T has recently proposed yet another rate reduction, presumably as a result of increased profits and competitive market pressure.

It is not my position that the Commission should consider all changes in a telephone company's cost of service since its last general rate case proceeding in this docket. My position is to the contrary. I do not believe that any factor other than the impact of tax reform is appropriate for consideration in this docket. Tax expense is a major component of the cost of service for most, if not all, major utilities operating in this State. Due to tax reform there has been or soon will be a decrease of approximately 26% in the level of federal income tax expense that is now being collected in public utility rates. Since the Majority's decision does not require the LECs to reduce local rates dollar-for-dollar to reflect this 26% reduction, the companies are being allowed to recover from ratepayers a cost that does not now exist. Such action is unjustified. The losses in revenues claimed, but not proven, by the LECs occurred from May 1, 1987, through the present date. For the Majority to now say that those losses will be compensated by the refunds otherwise due the ratepayers without requiring a general rate case smacks of retroactive ratemaking, a practice specifically prohibited by North Carolina law.

A reduction in rates in this proceeding should be based solely on the impact of the Tax Reform Act of 1986. This Act of the United States Congress materially impacts the cost of providing public utility service. I see no reason to provide preferential treatment to the LECs. They should be treated no differently than electric and natural gas companies. Requiring the LECs to flow through 100% of the tax savings which result from the Tax Reform Act of 1986 will not result in a proliferation of general rate case filings in view of their current high levels of earnings. Moreover, it stands to reason that the earnings of the companies will remain the same if the same percentage of tax savings the companies are receiving is passed on to the ratepayers. I do not believe that requiring a 100% flow-through of all tax reductions as a result of TRA-86 requires a hearing, because calculating the refunds is simply an arithmetic calculation anticipated by the provisional rates set up by the Order initiating this investigation.

Finally, it should be stated once again that the Majority, while permitting offsets against income tax expense reductions, has held no hearing and has taken no evidence in order to determine the accuracy of the amounts to be offset. In some instances there is disagreement among certain companies as to the proper measurement of revenue loss due to the access charge reductions on an industry-wide basis as well as on a company-by-company basis. In addition, as previously stated, the Majority has elected not to consider all revenue increases or revenues (net of costs) from new services which were allowed in the same time frame, in determining the appropriateness of the offsets.

In my opinion, the Majority has engaged in a give-away. The General Assembly has not given this Commission equity jurisdiction in the area of setting utility rates. Utility companies have a set procedure in the statutes for increasing their revenues. They also have a set procedure in the statutes if they have an emergency need for money. The General Assembly did not set out a procedure whereby, when funds are due consumers, the Commission, without the procedural safeguards of a rate case, can simply refuse to return money to ratepayers that is rightfully theirs, thereby denying to ratepayers the safeguards that the General Assembly wisely established in Chapter 62. Nor can this Commission obviate the requirements of Chapter 62 on the basis of one gratuitous line from an Order in a different docket. The segment of the public that will probably be most astonished by what the Majority has done in this Order will be the LECs. If anything, they have simply learned the value of the phrase--there's no harm in asking.

If the electric and natural gas companies had thought that the Commission was contemplating allowing offsets, I do not doubt that they, too, would have found any number of expenses to be offset against a 100% reduction of the tax savings.

In summary, I believe that it is entirely just, reasonable, and fair to flow through, as a reduction to the rates of all major investor-owned public utilities, 100% of the income tax expense reductions resulting from the Tax Reform Act of 1986. I believe that the Majority decision which allows telephone companies to retain for stockholders a minimum of $21.6 million in tax savings is not justified.

The Majority seems to have followed the adage that half a loaf is better than none, because that, in fact, is what the Majority has ordered. I am registering my dissent, because, as a matter of law, I believe local telephone subscribers are entitled to the whole.

Ruth E. Cook, Commissioner

DOCKET NO. M-100, SUB 113

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
The Tax Reform Act of 1986) ORDER REQUIRING REFUNDS
) AND MODIFYING MULTIPLIERS

BY THE COMMISSION: On August 26, 1987, the Commission issued Order Establishing Procedures Related to Taxes on Contributions In Aid of Construction wherein each affected utility was ordered to collect gross receipts taxes on contributed plant on an interim basis. This collection on an interim basis was established, subject to refund, pending the North Carolina Department of Revenue's (Department) response to the Commission's request for a ruling on whether or not contributions in aid of construction (CIAC) are subject to gross receipts taxes. The Commission concluded in the Order that gross receipts taxes should not apply to CIAC but further concluded that in an abundance of caution the Department should be requested to rule on this matter.

By letter of October 1, 1987, the Secretary of Revenue responded that, based on the opinion of the Attorney General, the North Carolina Department of Revenue concludes that CIAC does not constitute taxable gross receipts within the meaning of G.S. 105-116. Based on the foregoing, the Commission concludes that since CIAC are not subject to gross receipts taxation, then said taxes should not be collected from contributors of CIAC. Further, consistent with the Commission Orders of February 3, 1987, and August 26, 1987, the Commission concludes that any gross receipts taxes related to CIAC that have been previously collected should be refunded to said contributors.

The Commission Order of August 26, 1987, noted that the Order of February 3, 1987, requires that each utility receiving CIAC increased for applicable taxes, subject to Ordering Paragraph No. 6 of said Order, should complete and file the undertaking attached to said Order. The undertaking required the utility to make refunds to its contributors of CIAC at 10% interest, if any refunds were subsequently required by the final Order issued in this proceeding. The Commission Order of August 26, 1987, further noted that to the extent the full gross up method, required pursuant to the Order of February 3, 1987, results in any CIAC related tax collections greater than the method(s) approved in the August 26, 1987, Order, then this difference should be refunded to the contributor, in accordance with the undertaking requirements of the February 3, 1987, Order. The Commission concluded that said refunds should not be implemented until such time as the North Carolina Department of Revenue makes its ruling concerning whether or not CIAC are subject to gross receipts taxes. This deferral of refund was established in order to avoid the additional administrative burden related to two refunds, should the Department

conclude that CIAC are not subject to gross receipts taxes, rather than one refund process. In that the Department has now ruled that CIAC are not subject to gross receipts taxes, and since the Commission has concluded that refunds are appropriate where said taxes have been previously collected, the Commission concludes that the refunds deferred from the August 26, 1987, Order should be included in the gross receipts tax refund process.

The Commission notes that the refunds spoken to herein are subject to the undertakings attached either to the February 3, 1987, or August 26, 1987, Orders, and therefore the refunds are subject to interest, calculated at an annual rate of 10%. The Commission concludes that said refunds should be implemented as soon as possible. The refunds should be in the form of a onetime disbursement. The Commission further concludes that each company should file monthly reports with the Commission's Chief Clerk on the refund process until said refund process is complete.

In its Order of August 26, 1987, the Commission included in Appendix A a table to be used as a guideline for water and sewer utilities to compute the increase in contributions needed to recover the taxes on CIAC. Since this schedule includes consideration of gross receipts taxes, then this schedule should be amended to remove the impact of the gross receipts taxes. Therefore, the Commission concludes that water and sewer utilities should use the table on Appendix A, attached to this Order, as a guideline to compute the contributions needed to recover the taxes on CIAC, and that said table replaces the one attached to the August 26, 1987, Order.

IT IS, THEREFORE, ORDERED as follows:

1. That all funds collected by the utility companies pursuant to the Commission Order of February 3, 1987, in this docket that are in excess of those approved in the August 26, 1987, Order be, and hereby are, ordered to be refunded to the contributor with interest as outlined in the undertaking required in the February 3, 1987, Order.

2. That each utility that has collected gross receipts taxes on CIAC under either the Orders of February 3, 1987, or August 26, 1987, be, and hereby is, ordered to refund to the contributor said taxes with interest, as outlined in the undertakings attached to said Orders.

3. That all water and sewer utility companies using the full gross-up method to collect taxes related to CIAC be, and hereby are, ordered to use the table on Appendix A, attached hereto, as a guideline to compute the increase in contributions needed to recover the taxes on CIAC.

4. That all utility companies affected by the refund provisions in ordering paragraphs one and two above be, and hereby are, ordered to file monthly reports on the refund process with the Commission's Chief Clerk until the refund process is completed.

5. That all affected utilities be, and hereby are, ordered to terminate the collection of gross receipts taxes from the CIAC contributor as of the date of this Order.

ISSUED BY ORDER OF THE COMMISSION.
This the 20th day of October 1987.

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

APPENDIX A

Schedule of Multipliers Required to Gross Up Capital Contributions
To Water and Sewer Companies So As To Provide For
Income Taxes Related Thereto

Line No.	Corporate Federal Tax Rate (a)	Multiplier Water and Sewer Companies (b)
1.	40%	1.792115
2.	39%	1.762736
3.	38%	1.734305
4.	37%	1.706776
5.	36%	1.680108
6.	35%	1.654260
7.	34%	1.629195
8.	33%	1.604879
9.	32%	1.581278
10.	31%	1.558361
11.	30%	1.536098
12.	29%	1.514463
13.	28%	1.493429
14.	27%	1.472971
15.	26%	1.453066
16.	25%	1.433692
17.	24%	1.414827
18.	23%	1.396453
19.	22%	1.378550
20.	21%	1.361100
21.	20%	1.344086
22.	19%	1.327492
23.	18%	1.311303
24.	17%	1.295505
25.	16%	1.280082
26.	15%	1.265022

Note 1: Corporate Federal Income Tax Rates - Tax Reform Act of 1986
- Taxable income of $50,000 and below is taxed at 15%.
- Taxable income from $50,000 to $75,000 is taxed at 25%.
- Taxable income from $75,000 to $100,000 is taxed at 34%.

- The benefits of the graduated rate structure are phased out as taxable income increases from $100,000 to $335,000 with effective marginal tax rate of 39% in this taxable income range.
- Taxable income in excess of $335,000 is taxed at 34%.

Note 2: Corporate State Income Tax Rate - House Bill 1155 Ratified July 16, 1987

- Taxable income taxed at 7% effective for tax years beginning on or after January 1, 1987.

DOCKET NO. M-100, SUB 113

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
The Tax Reform Act of 1986) ORDER MODIFYING ORDER
) OF OCTOBER 20, 1987

BY THE COMMISSION: On October 20, 1987, the North Carolina Utilities Commission entered an Order in this docket establishing procedures to implement tariff reductions and refunds related to tax savings generated by the Tax Reform Act of 1986 (TRA-86). On October 27 and 28, 1987, the Public Staff and the Attorney General, respectively, filed motions to modify the implementation plan included in the Order of October 20, 1987. Piedmont Natural Gas Company, Inc., filed a response in opposition to the Attorney General's motion on November 3, 1987.

The modified plan supported by the Public Staff contains the following points:

1. One tariff reduction, implemented on January 1, 1988, to reflect the 34% federal income tax rate.
2. Refund plans to be based on federal tax overcollections during calendar year 1987.
3. Refund plans to be filed by February 15, 1988, with an effective date beginning no later than April 1, 1988.
4. Refunds may be returned to customers over a 12-month period or through a one-time credit to bills.
5. Local exchange telephone companies should reduce recurring local service rates only.

The Attorney General's modified plan is essentially the same as that supported by the Public Staff except that the tax overcollection refund for 1987 would be made by means of a one-time refund or credit to customer bills not later than April 1, 1988.

On November 2, 1987, Piedmont Natural Gas Company filed a motion for reconsideration and stay in this docket whereby the Commission was requested to:

(1) Reconsider the Order dated October 20, 1987, to the full extent that said Order is applicable to Piedmont; and

(2) Pending reconsideration and further Order of the Commission or, in the event Piedmont's request for reconsideration is denied, pending a final order on appeal, to stay all provisions of the Order which are intended to require Piedmont to reduce its rates and/or to refund any amounts previously collected.

On November 3, 1987, General Telephone Company of the South filed a response in this docket setting forth the following recommendations and requests:

1. That the Commission should consider applying some portion of the rate reduction related to TRA-86 to intraLATA long distance rates and charges.
2. That General should be allowed to reduce the premium charge of $1.00 for residential customers and $1.50 for business customers for "Touch Call" service.
3. That General should be allowed a tax reduction offset of approximately $694,000 related to the implementation of the revised Uniform System of Accounts (U.S.O.A.).

On November 4, 1987, Carolina Telephone Company filed a response in this docket generally concurring in the recommendations of the Public Staff and the Attorney General.

The Commission has given much consideration to the modifications proposed by the Public Staff and the Attorney General. The Commission concludes that the utilities subject to this Order should be required to file only one set of tariffs in this docket decreasing rates effective January 1, 1988, to reflect the 34% federal corporate income tax rate. These tariffs shall be filed not later than November 23, 1987. The tariffs to be filed by the local exchange telephone companies should reduce only basic recurring local service rates. The request made by General Telephone Company to reduce intraLATA long distance rates and rates for "Touch Call" service is hereby denied.

IT IS, THEREFORE, ORDERED as follows:

1. That the Commission's Order of October 20, 1987 which established procedures to implement tariff reductions and refunds related to tax savings generated from TRA-86 be, and hereby is, modified as follows:

A. The utilities subject to this Order shall file tariffs in this docket not later than November 23, 1987, reducing rates based on the 34% federal income tax rate; said tariffs to become effective January 1, 1988.
B. The local exchange telephone companies shall reduce only recurring basic local service rates for any tax savings calculated in accordance with the October 20, 1987, Order.

2. That the Commission will rule upon the motion for reconsideration and stay filed by Piedmont Natural Gas Company, Inc., by further Order.

3. That the Commission will rule upon the request filed by General Telephone Company of the South for a tax reduction offset related to the rewrite of the U.S.O.A. by further Order.

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

ISSUED BY ORDER OF THE COMMISSION.
This the 6th day of November 1987.

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

DOCKET NO. M-100, SUB 113

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
The Tax Reform Act of 1986) ORDER DENYING MOTIONS FOR
) RECONSIDERATION AND STAY
) AND REAFFIRMING PRIOR ORDERS

BY THE COMMISSION: On October 23, 1986, the North Carolina Utilities Commission entered an Order in this docket initiating an investigation regarding the Tax Reform Act of 1986 (TRA-86) and its impact on public utility rates in this State. The Commission Order set forth the following statements concerning the probable impact of the Tax Reform Act on utility rates in North Carolina:

> "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."

The Commission set forth the following decretal paragraphs in the Order of October 23, 1986, regarding the Tax Reform Act of 1986:

> "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."

By Order entered in this docket on March 10, 1987, the Commission required all affected utilities to begin filing quarterly reports no later than April 30, 1987, reflecting the status of the deferred account which the utilities were required to establish pursuant to decretal paragraph 2 of the Order dated October 23, 1986.

The utilities subject to this docket subsequently filed information setting forth each company's assessment of the Tax Reform Act of 1986 on its North Carolina intrastate operations.

On May 1, 1987, the Public Staff filed a report in this docket setting forth its assessment of and recommendations regarding the Tax Reform Act of 1986. The Attorney General also filed comments and recommendations regarding the Tax Reform Act in the form of testimony and exhibits on May 1, 1987. Both the Public Staff and the Attorney General noted that the maximum corporate federal income tax rate would be reduced from 46% to 34% effective July 1, 1987, and recommended that the Commission should reduce utility rates in North Carolina effective on that date to reflect the full reduction to the 34% federal income tax rate for corporations.

On October 20, 1987, the Commission entered an Order in this docket establishing the procedures to implement tariff reductions and refunds related to the corporate income tax savings generated by TRA-86. The provisions of that Order did not apply to the following public utility companies who have either included the effects of TRA-86 in recent general rate cases or have already reduced rates to reflect the effects of TRA-86: Carolina Power & Light Company; Duke Power Company; North Carolina Natural Gas Corporation; Pennsylvania and Southern Natural Gas Company; Public Service Company of North Carolina, Inc., and AT&T Communications of the Southern States, Inc. North State Telephone Company was also excluded from the provisions of the Order of

October 20, 1987, and will be subject to a further investigation which will be established by further Order.

On October 27 and 28, 1987, the Public Staff and the Attorney General, respectively, filed motions to modify the implementation plan included in the Order of October 20, 1987.

The modified plan supported by the Public Staff contained the following points:

1. One tariff reduction, implemented on January 1, 1988, to reflect the 34% federal income tax rate.
2. Refund plans to be based on federal tax overcollections during calendar year 1987. 3. Refund plans to be filed by February 15, 1988, with an effective date beginning no later than April 1, 1988.
4. Refunds may be returned to customers over a 12-month period or through a one-time credit to bills.
5. Local exchange telephone companies should reduce recurring local service rates only.

The Attorney General's modified plan was essentially the same as that supported by the Public Staff except that the tax overcollection refund for 1987 would be made by means of a one-time refund or credit to customer bills not later than April 1, 1988.

On November 2, 1987, Piedmont Natural Gas Company, Inc. (Piedmont) filed a motion for reconsideration and stay in this docket whereby the Commission was requested to:

(1) Reconsider the Order dated October 20, 1987, to the full extent that said Order is applicable to Piedmont; and
(2) Pending reconsideration and further Order of the Commission or, in the event Piedmont's request for reconsideration is denied, pending a final order on appeal, to stay all provisions of the Order which are intended to require Piedmont to reduce its rates and/or to refund any amounts previously collected.

On November 3, 1987, Piedmont also filed a response in opposition to the Attorney General's modified plan insofar as that plan would require Piedmont to refund any amounts previously collected or to reduce rates.

On November 3, 1987, General Telephone Company of the South (General Telephone Company) filed a response in this docket setting forth the following recommendations and requests:

1. That the Commission should consider applying some portion of the rate reduction related to TRA-86 to intraLATA long distance rates and charges.
2. That General should be allowed to reduce the premium charge of $1.00 for residential customers and $1.50 for business customers for "Touch Call" service.
3. That General should be allowed a tax reduction offset of approximately $694,000 related to the implementation of the revised Uniform System of Accounts (U.S.O.A.).

On November 4, 1987, Carolina Telephone Company filed a response in this docket generally concurring in the recommendations of the Public Staff and the Attorney General regarding modifications to the Commission's implementation plan.

On November 6, 1987, the Commission entered an Order in this docket modifying the Order of October 20, 1987, as follows: The Commission concluded that the utilities subject to the Order of October 20, 1987, should be required to file only one set of tariffs in this docket decreasing rates effective January 1, 1988, to reflect the 34% federal corporate income tax rate. These tariffs are to be filed not later than November 23, 1987. The tariffs to be filed by the local exchange telephone companies (LECs) should reduce only basic recurring local service rates. The request made by General Telephone Company to reduce intraLATA long distance rates and rates for "Touch Call" service was denied.

On November 6, 1987, Heins Telephone Company (Heins) filed a motion for reconsideration and stay in this docket whereby the Commission was requested to reconsider the Order of October 20, 1987, as it relates to Heins and to stay the portion of said Order requiring a rate reduction effective January 1, 1988, until the Commission considers a general rate case which the Company intends to file by March 31, 1988.

On November 9, 1987, the Attorney General filed a motion for reconsideration in this docket whereby the Commission was requested to reconsider the Order of October 20, 1987, and to deny any tax reduction offset to the local exchange companies related to reductions in certain toll pool revenues.

On November 9, 1987, the Public Staff filed a reply in opposition to the motion for reconsideration and stay filed by Piedmont and the request filed by General Telephone Company in the letter filed on November 3, 1987.

On November 10, 1987, the Attorney General filed a response in opposition to the motion for reconsideration and stay filed by Heins.

On November 10, 1987, General Telephone Company filed a motion requesting an extension of time to file rate reduction tariffs.

WHEREUPON, the Commission reaches the following

FINDINGS AND CONCLUSIONS

The record in this proceeding clearly establishes good cause to (1) deny the motions for reconsideration filed by Piedmont, General Telephone Company, Heins Telephone Company, and the Attorney General, and (2) reaffirm the Orders entered in this docket on October 20, 1987, and November 6, 1987, for the following reasons.

Motion for Reconsideration and Stay Filed by Piedmont Natural Gas Company, Inc.

Piedmont asserts that the Order entered in this docket on October 20, 1987, exceeds the legal authority possessed by the Commission in the following respects:

1. The Order purports to change lawfully established rates without affording Piedmont a hearing as required by G.S. 62-136.

2. The Order constitutes retroactive ratemaking in violation of North Carolina law.

3. The Order violates the constitutional protection against confiscation of a utility's property.

4. The Order is based on data which is more than two years old and, therefore, fails to fix rates based on a "recent" test period as required by law.

5. The Order denies Piedmont the right to recover its prudently incurred costs contrary to law.

The Public Staff and the Attorney General have submitted very compelling arguments in opposition to the legal issues raised by Piedmont in its motion for reconsideration and stay. The Commission hereby adopts those positions as follows:

1. The Order does not deny Piedmont the right to a hearing as guaranteed by G.S. 62-136. The Public Staff maintains that Piedmont's reliance on G.S. 62-136 is unfounded. The Commission agrees. In the first place, this docket is not the adjudicatory-type proceeding contemplated by that statute. State ex rel. Utilities Commission v. Edmisten, 30 N.C. App. 459, 227 S.E. 2d 593, rev'd on other grounds, 291 N.C. 451, 232 S.E.2d 184 (1976), states that the part of that statute relevant to Piedmont's argument "refers to rate-fixing as envisioned by G.S. 62-133." 30 N.C. App. at 470, 227 S.E. 2d at 509.

The present docket is not such a proceeding. It has a rulemaking docket number. It affects all utilities across the board, and does not single out any utility for special consideration. Its purpose is to make a broad policy decision regarding treatment of tax savings flowing from the 1986 Tax Reform Act. A long line of United States Supreme Court cases has recognized a "distinction in administrative law between proceedings for the purpose of promulgating policy-type rules or standards, on the one hand, and proceedings designed to adjudicate disputed facts in particular cases on the other." United States v. Florida East Coast Railway Co., 410 U.S. 224, 245 (1973). In that case, the Interstate Commerce Commission had proposed incentive payments. The Court noted that the payments were applicable to all rail carriers and that "[n]o effort was made to single out any particular railroad for special consideration based on its own peculiar circumstances." Id. at 247. The Court therefore found that adjudicatory proceedings were not required.

The Court distinguished between an adjudicatory "hearing" and a rulemaking "hearing." The Court held that "the term 'hearing' ... does not necessarily embrace either the right to present evidence orally and to cross-examine opposing witnesses, or the right to present oral argument to the agency's decisionmaker." Id. at 240. While much of the Court's analysis in the case revolves around statutory interpretation of the word "hearing," the Court also makes it clear that no "right," constitutional or otherwise, is violated by conducting the proceeding without an adjudicatory hearing. Later cases, e.g., Vermont Yankee Nuclear Power Corp. v. Natural Resources Defense Council, Inc., 435 U.S. 519 (1978), carry forward this concept of less formal hearings for rulemaking than for adjudication of particular cases.

Therefore, Piedmont's reliance on G.S. 62-136 for a right to a hearing is mistaken. G.S. 62-136 is not applicable to this rulemaking proceeding.

Furthermore, the Public Staff submits that even if the Commission should determine that this is a proceeding which should be conducted under G.S. 62-136, Piedmont has received as much of a hearing under the circumstances of this case as the statute contemplates. The Commission agrees. This case is uniquely bulky and unwieldy. Administrative agencies must have some flexibility in carrying out their duties. The Commission has essentially conducted a "paper hearing" in this docket. See, e.g., Stewart, The Development of Administrative and Quasi-Constitutional Law in Judicial Review of Environmental Decision-making: Lessons from the Clean Air Act, 62 IOWA L. REV. 713 (1977), Cf. Vermont Yankee Nuclear Power Corp. v. Natural Resources Defense Council, Inc., 435 U.S. 519 (1978). Piedmont has been able to file testimony, reply comments to contest the testimony of other parties, and any other documents the Company wishes. In light of the great freedom and latitude the Commission has given the parties to file documents in this docket and the alternative manner in which a full-scale adjudicatory hearing would have proceeded, the Commission believes that the requirements of G.S. 62-136 have in fact been satisfied (even though, as noted above, there was no need to do so).

Assuming for the sake of argument that Piedmont is given a hearing in this docket, what then is to be litigated? No facts are in dispute. Why should the Commission schedule a hearing if there is nothing left to hear? The Commission believes that this lack of disputed facts is yet another indication that this docket is a rulemaking, not an adjudicative, matter.

2. The Order does not constitute retroactive ratemaking. The Public Staff asserts that Piedmont misunderstands the term "retroactive ratemaking." The clearest definition of the term is found in State ex rel. Utilities Commission v. Edmisten, 291 N.C. 451, 232 S.E. 2d 184 (1976). The State Supreme Court said, "Technically, retroactive ratemaking occurs when an additional charge is made for past use of utility service, or the utility is required to refund revenues collected, pursuant to then lawfully established rates, for such past use." Id. at 468, 232 S.E. 2d at 194. This docket was commenced by an Order entered on October 23, 1986, requiring all utilities to place revenues relating to the Tax Reform Act changes in a deferred account beginning on January 1, 1987. If the Commission had, for example, on October 20, 1987, attempted to reach back to January 1, 1987, for refunds, retroactive ratemaking would be an issue. In this docket, however, the Commission anticipated that problem and issued a prospective Order on October 23, 1986, establishing a provisional rate to reflect the impact of TRA-86 effective January 1, 1987. No revenues for past use were affected, and thus no retroactive ratemaking issue is involved.

Furthermore, no party, including Piedmont, appealed the Commission Order of October 23, 1986. Any party which now protests the ordered rate reductions and refunds is barred from such attack by the failure to appeal. Piedmont has also failed to acknowledge that the prohibition against retroactive ratemaking does not apply to provisional rates.

3. The Order does not unconstitutionally confiscate Piedmont's property.

The Public Staff asserts that no constitutional provision has been violated. The Commission agrees. Piedmont alleges a "due process" clause violation. The Commission has not conducted this proceeding arbitrarily or in a manner that prevented Piedmont or any other party from having more than sufficient input. The Commission has been open and fair in all its proceedings and has provided more "due process" protections than are constitutionally required. All the cases cited by Piedmont state that the Commission may reduce a utility's rates as long as it meets due process. The Commission has not only met but has exceeded those requirements in this docket. Thus, the Order of October 20, 1987, meets all constitutional standards relating to the so-called "confiscation" issue.

4. The Order fixed rates on a recent test period. The Public Staff asserts that the Commission has also met the "recent" test period requirement. The Commission agrees. The rule cited by Piedmont is phrased in flexible terms. Rule R1-17(b)(8) speaks of "the last twelve consecutive months for which data are available..." (emphasis added). G.S. 62-133 does not state any time requirement at all, but the cases interpreting it also allow flexibility. The very case cited by Piedmont, State ex rel. Utilities Commission v. City of Durham, 282 N.C. 308, 193 S.E. 2d 95 (1972), recognizes that the period cannot be more recent than is practicable.

In this case, the Commission met that City of Durham test. The most "practicable" test period was the one used in each utility's last general rate case. No other audited reliable data was available. The Commission, in compliance with the flexible approach authorized by the statute and rule, chose the most reasonable, practicable test period. Nothing else is required.

5. The Order does not violate the plain language of the case of Utilities Commission v. Edmisten and does not deny Piedmont the right to recover its prudently incurred costs. The Public Staff assets that the Edmisten case is not contrary to the Commission's Order. The Commission agrees. Piedmont has quoted extensively from Edmisten, but not extensively enough.

Piedmont quotes the Court as follows:

> "The basic theory of utility rate making, pursuant to G.S. 62-133, is that rates should be fixed at a level which will recover the cost of the service to which the rate is applied, plus a fair return to the utility. A utility company may not properly be denied the right to charge such a rate, for the present use of its service, for the reason that, in a preceding month, the utility earned an excessive rate of return due to the fact that an expense which it was expected to incur in such previous month did not materialize. For example, rates for use of a utility's service are set at a level which will enable the company to pay, among other items, its anticipated tax expense. If, by virtue of some change in the tax law, it develops that the company did not incur the anticipated expense, for the payment of which it collected revenues in prior months, its rates for present and future service may not be cut, on that account, below

> what it otherwise would be entitled to charge for the present or future service."

291 N.C. 451, 468-69, 232 S.E. 2d 184, 194-195 (1976).

Piedmont did not, however, quote the next two sentences of the opinion, where the Court stated:

> "Likewise, a failure of the utility, in a previous period, to earn the anticipated return over and above its then expenses does not authorize it to charge its present customers a rate higher than reasonable for present service in order to compensate for the past deficit. 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, 232 S.E. 2d at 195 (emphasis added).

Clearly, the Court was not addressing the situation this docket presents. This docket does not have the "reaching back" problem that the Edmisten court condemned. As stated earlier, the Commission anticipated the issue and the Order of October 23, 1986, preceded the January 1, 1987, effective date of the relevant tax changes.

Later in the same paragraph quoted above, the Edmisten court further clarified its point. Quoting a Mississippi telephone case, the court said, "It is generally held that neither losses sustained nor profits gained by a public utility in the past may be taken into account in fixing rates to be charged in the future." Id. at 470, 232 S.E. 2d at 195. Again the court is concerned with a "reaching back" problem that the Commission's Order of October 23, 1986, makes inapplicable in this docket. Thus, the tax language on which Piedmont almost totally relies applies only to cases in which the Commission attempts to "reach back" to cover past losses or gains, quite a different case from this docket.

Rather than being controlled by Piedmont's view of Edmisten, this docket is on point with State ex rel. Utilities Commission v. C.F. Industries, Inc., 299 N.C. 504, 263 S.E. 2d 559 (1980). In that case, the Commission established a provisional rate (the CTR) just as it did in the October 23, 1986, Order in this docket. On review by the Supreme Court (and in a case decided three years after Edmisten), the CTR was upheld. The Court pointed out that the CTR was not a final rate, but was provisional. Thus, the Court continued, it "does not constitute retroactive general ratemaking." Id. at 509, 263 S.E. 2d at 562.

In this docket, the Commission established provisional rates by the Order of October 23, 1986. The Commission has not attempted to "reach back" beyond that date in violation of Edmisten. The Commission has done nothing more than to set up provisional rates and then make a final decision relating to those rates as specifically approved in CF Industries. Neither Edmisten nor any other case prohibits the Commission's correct handling of this case.

In its motion for reconsideration, Piedmont suggests that it will voluntarily reduce its rates to about fifty percent (50%) of what the

Commission has ordered the Company to do. Piedmont indicates that if this offer is accepted, the Company will not appeal the Commission's Order.

The Public Staff vigorously objects to Piedmont's offer and opposes acceptance of it. The Commission agrees with the Public Staff on this point. Almost all other utilities have either complied with or have indicated they will comply with the Commission's Order. Several utilities agreed to the rate decreases recommended by the Public Staff's even before the Commission entered the Order of October 20, 1987. Piedmont has presented no compelling justification to support a different treatment for it from that applied by the Commission to all other affected utilities.

As stated previously, this proceeding has been conducted like a rulemaking proceeding, with all utilities being treated similarly. (The Commission did treat telephone companies differently, but no one company was singled out. Those companies as a group were treated alike. As a matter of regulatory policy, the Commission decided that a portion of the tax savings resulting from TRA-86 to the LECs should be used to reduce intrastate access charges.) Here Piedmont is asking to be treated specially, with no compelling justification. Piedmont's circumstances are no different than those of any other utility. With the ordered rate decreases, Piedmont is in an identical situation to where it would have been had the Tax Reform Act of 1986 never been passed. Piedmont claims that its rate of return is jeopardized by this docket, but if the Company complies with the Commission's Order, its rate of return will be identical to what it would have been had the Act never passed. The Commission feels compelled to deny Piedmont the preferential treatment which the Company is seeking.

Motion for Reconsideration and Stay filed by Heins Telephone Company

Heins set forth the following statements in support of its motion:

"1. The Order requires LECs, including Heins, to file tariffs effective January 1, 1988, reflecting rate reductions based on the effective federal income tax rate for the calendar year 1988. For the purpose of this tariff reduction, only the reduction in the tax rate is to be considered. Other changes in revenues, expenses, and investments are not to be considered. Unfortunately, other changes have occurred at Heins which must be considered. When consideration is given to these other items, even if Heins were able to retain the benefit of all of the reduction in the 1988 tax rate, it would still fall short by hundreds of thousands of dollars of earning its authorized rate of return. Any flow through of the benefits of lower tax rates forces the Company into the filing of a general rate case as soon as possible.

"2. Because of the short fall in earnings, Heins will file by March 31, 1988, based on a 1987 test year, an application for a general increase in its local rates. The amount of the proposed increase will depend on the Commission's action in this docket.

"3. Heins has strong doubts as to the legal authority of the Commission under G.S. 62-133, as interpreted by the Supreme Court in Utilities Commission v. Edmisten, 291 N.C. 451, 232 S.E. 2d 184, to

order a rate reduction under these circumstances. Aside from the legal question, it simply is unfair to Heins to require it to reduce its rates until it can go through a hearing to raise the rates back to a level which is higher than before the reduction. It will also cause much customer confusion to have rates reduced and then raised back to an even higher level in just a few months.

"4. Heins submits that the most equitable way to handle this problem is for the Commission to stay its Order and permit Heins to continue to collect its present rates and to place in escrow the amount by which rates would have been reduced until the Commission's final Order in its rate case. If the Commission then determines that Heins is not entitled to keep all or a portion of the funds held in escrow, it will refund the excess amounts to its customers with statutory interest. In this way, Heins will collect only the proper amount from its customers."

The Attorney General has submitted very compelling arguments in opposition to Heins' motion for reconsideration and stay. Consequently, the Commission hereby finds good cause to deny Heins' motion for the following reasons:

1. In its motion, Heins states it has strong doubts as to the legal authority of the Commission under G.S. 62-133 as interpreted by Utilities Commission v. Edmisten, 291 N.C. 451, 232 S.E. 2d 184 to order a rate reduction under these circumstances. The Commission believes that the citation to Edmisten is inappositive. By Commission Orders entered in Docket Nos. M-100, Sub 13, and P-26, Sub 93, on October 23, 1986, and February 17, 1987, respectively, that part of Heins' rates which relates to decreased tax expenses has been provisional since January 1, 1987, and has been kept in a defered account. Heins did not appeal either of the Orders establishing provisional rates and thus should be barred from attacking them now. See, generally, Utilities Commission v. Thornburg, 316 N.C. 238, 259, 342 S.E. 2d 28 (1986).

2. Heins further states that it intends to file an application for a general rate increase by March 31, 1988, and thus to compel the Company to decrease rates now will be unfair to Heins and confusing to its customers. As to customer confusion, if Heins files a rate case by March 31, 1988, a rate decision will not be effect until late October 1988 at the earliest, nearly a year from now and nearly 11 months from the ordered decrease. The Commission does not believe rate changes separated by 11 months will confuse customers.

3. As to any unfairness to Heins, if the Company's fiscal position is unduly jeopardized by a rate reduction, the Commission notes that the Company has the ability to request and receive interim rate relief if it can justify its need at the time of its rate filing. Further, the instant rate decrease is ordered because of decreased federal income tax expense. To the extent Heins offers to keep disputed dollars in escrow, the result would be to withhold dollars from ratepayers which can be directly traced to a tax expense which is no longer a legal obligation owed the IRS.

Request for Reconsideration filed by General Telephone Company of the South

General requests that the Company should be allowed a tax reduction offset of approximately $694,000 related to the implementation of the revised Uniform

System of Accounts. The Public Staff opposed the proposed U.S.O.A. offset for reasons very similar to those set forth with respect to Piedmont's motion for reconsideration. The Commission agrees with the Public Staff and finds good cause to deny General's request for the following reasons.

This docket has generally treated all utilities alike. Telephone companies, including General, were treated somewhat differently in order to reduce intrastate access charges, but only as a class. General now seeks special treatment. For all the reasons noted above, the Commission believes this preferential treatment is inappropriate and would open the door for countless negotiations.

Any dissatisfied utility, including Piedmont, Heins, and General, has a simple remedy if it believes it needs higher rates. The utility has the right to file for a general rate increase. That remedy completely protects any utility that believes it is not earning enough to cover its costs. The Commission also feels compelled to note that all regulated electric, natural gas, and telephone companies in this State have had unmistakable notice since October 23, 1986, when this docket was initiated, that the Commission clearly intended to order rate reductions resulting from the effects of TRA-86. Almost 13 months have now elapsed since the Commission began this investigation and, interestingly enough, there have been no general rate cases filed during that period of time as a result of TRA-86. This is a clear indication that the actions taken by the Commission in this docket have not been arbitrary, capricious, or unduly harmful to the regulated utilities who have been ordered to reduce rates and make refunds as a result of TRA-86. The public utilities subject to this Order have now had almost 13 months to evaluate their financial situations and to seek rate relief if they felt they would be irreparably or significantly harmed by the Commission's announced intention to reduce rates in this docket. This they have not done.

Motion for Reconsideration filed by the Attorney General

The Commission also finds good cause to deny the motion for reconsideration filed by the Attorney General.

The Commission has given due consideration to the Attorney General's proposal to deny the local telephone exchange companies an offset to TRA-86 tax savings due to certain Commission ordered toll pool reductions. The Commission approved this offset treatment after careful consideration in the October 20, 1987, Order. The Commission concludes that the Attorney General's proposal should be denied. As noted in the October 20, 1987, Order, the Attorney General's proposal would require the telephone companies to pass more than 100% of the tax savings through either in the form of reduced access charges or reductions in local rates. In the Order of December 23, 1986, in Docket Nos. P-100, Sub 65, and P-100, Sub 72, the Commission concluded that it was entirely prudent and reasonable that TRA-86 tax savings experienced by the LECs should be used to offset Commission approved reductions in access charges. The Commission notes that AT&T Communications of the Southern States, Inc., followed through on its promise to flow through access charge reductions, on a dollar-for-dollar basis, in the form of reduced toll charges. The combined result of the reduced toll charges, which took effect May 1, 1987, plus the reductions in local rates required by the Order of October 20, 1987, will result in all the net tax savings experienced by the telephone companies being

returned to the ratepayers, either in the form of reduced toll rates or in reduced local service rates. Furthermore, the Commission allowed the rate reduction offsets in question as a matter of regulatory policy in order to reduce intrastate access charges and to forestall the possibility that certain LECs might have to file general rate cases as a direct result of the toll pool revenue reductions ordered by the Commission.

FURTHER CONCLUSIONS

For all of the reasons set forth above, the Commission finds good cause to deny each of the motions for reconsideration and stay filed in this docket and to reaffirm the Orders previously entered on October 20, 1987, and November 6, 1987. The Commission has carefully evaluated all of the data and information submitted in this docket by the affected utilities, the Public Staff, the Attorney General, and other interested parties and concludes that it is fair and reasonable to reduce utility rates and require refunds in recognition of TRA-86. The Commission is comfortable with this course of action and does not believe that such course of action is, in any way, unfair or harmful to the utilities subject to this docket. The Commission further concludes that justice does not require that a stay of the Orders in question should be granted pursuant to G.S. 62-95 pending possible judicial review.

This proceeding is also identical to Docket No. M-100, Sub 103, in which the rates and charges of all regulated public utilities were reduced on a prospective basis to reflect the reduction of the North Carolina gross receipts tax rate from 6% to 3.22% effective January 1, 1985. In that docket, the Commission ordered the regulated electric, natural gas, and telephone utilities to reduce rates to reflect the lower gross receipts tax rate which became effective as a result of statutory changes enacted by the General Assembly. None of the affected utilities appealed or resisted that Order. Docket No. M-100, Sub 103, was conducted as a rulemaking proceeding and no adjudicatory hearing was felt to be necessary. Nor did any party request a hearing. Rate reductions were approved by the Commission on the basis of tariffs and supporting data and workpapers filed by the affected utilities as well as written comments and recommendations offered by other interested parties. In this proceeding, the Congress of the United States has reduced the federal income tax rate for corporations from 46% to 34% effective July 1, 1987. Both matters should be handled consistently and in the same manner.

This docket deals exclusively with the effects of TRA-86 on current utility rates. To expand the scope of this docket to consider the myriad of other issues that the various companies could raise and have raised would in effect place the Commission in the untenable position of trying to

simultaneously conduct a general rate case for each and every utility subject to this Order. This would be procedurally impossible and would expand the scope of this docket to unmanageable dimensions. Nor will there be any mismatching of revenues, expenses, or rate base as a result of this rate reduction. Such rate reduction will only preclude the affected companies from collecting, prospectively or under a provisional portion of their rates, a significant cost they are not now incurring as a result of TRA-86.

IT IS, THEREFORE, ORDERED as follows:

1. That the motion for reconsideration and stay filed by Piedmont Natural Gas Company, Inc., be, and the same is hereby, denied.

2. That the motion for reconsideration filed by General Telephone Company of the South be, and the same is hereby, denied.

3. That the motion for reconsideration and stay filed by Heins Telephone Company be, and the same is hereby, denied.

4. That the motion for reconsideration filed by the Attorney General be, and the same is hereby, denied.

5. That the utilities subject to this Order shall file tariffs in this docket not later than November 23, 1987, reducing rates based on the 34% federal income tax rate, said tariffs to become effective January 1, 1988. The local exchange telephone companies shall reduce only recurring basic local service rates for any tax savings calculated in accordance with the Order of October 20, 1987.

6. That each of the utilities subject to the provisions of this Order shall calculate and file the amount of tax expense overcollections realized during the period January 1, 1987, through December 31, 1987, and a plan to refund these overcollections to their customers. These calculations and refund plans shall be filed in this docket not later than February 15, 1988, with an effective date beginning no later than April 1, 1988. The refund plans should include interest at the rate of ten percent (10%) per annum on the overcollected amounts until the time of refund. At the option of each utility, the refund plans may refund the overcollections by either a one-time refund or billing credit or over a period of time not to exceed twelve (12) months.

7. That, except as modified herein, the Orders previously entered in this docket on October 20, 1987, and November 6, 1987, be, and the same are hereby, reaffirmed.

8. That the Chief Clerk shall mail a copy of this Order to all regulated electric, natural gas, and telephone companies operating in North Carolina. The Chief Clerk shall also mail a copy of this Order to all water and sewer companies having annual revenues in excess of $250,000.

ISSUED BY ORDER OF THE COMMISSION.
This the 17th day of November 1987.

NORTH CAROLINA UTILITIES COMMISSION
Sandra J. Webster, Chief Clerk

(SEAL)

Commissioner Sarah Lindsay Tate dissents.
Commissioner Ruth E. Cook dissents in part. Commissioner Cook would have allowed the motion for reconsideration filed by the Attorney General.

DOCKET NO. M-100, SUB 113

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Tax Reform Act of 1986	)	ORDER ALLOWING NORTH CAROLINA POWER, NANTAHALA POWER AND LIGHT COMPANY, AND PIEDMONT NATURAL GAS COMPANY TO REDUCE RATES EFFECTIVE JANUARY 1, 1988

BY THE COMMISSION: On October 23, 1986, the North Carolina Utilities Commission entered an Order in Docket No. M-100, Sub 113, initiating an investigation regarding the Tax Reform Act of 1986 and its impact on public utility rates in this State. The Commission Order set forth the following statements concerning the probable impact of the Tax Reform Act on utility rates in North Carolina.

> "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."

The Commission set forth the following decretal paragraphs in the Order of October 23, 1986, regarding the Tax Reform Act of 1986.

> "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."

The utilities subject to this docket subsequently filed information setting forth each company's assessment of the Tax Reform Act of 1986 on its North Carolina intrastate operations.

By Order entered in this docket on March 10, 1987, the Commission required all affected utilities to begin filing quarterly reports no later than April 30, 1987, reflecting the status of the deferred account which the utilities were required to establish pursuant to decretal paragraph No. 2 of the Order dated October 23, 1986.

On May 1, 1987, the Public Staff filed a report in this docket setting forth its assessment of and recommendations regarding the Tax Reform Act of 1986. The Attorney General also filed comments and recommendations regarding the Tax Reform Act in the form of testimony and exhibits on May 1, 1987. Both the Public Staff and the Attorney General noted that the maximum corporate federal income tax rate will be reduced from 46% to 34% effective July 1, 1987, and recommended that the Commission should reduce utility rates in North Carolina effective on that date to reflect the full reduction to the 34% federal income tax rate for corporations.

On October 20, 1987, the Commission entered an Order in this docket establishing the procedures to implement tariff reductions and refunds related to the corporate income tax savings related to TRA-86.

On November 6, 1987, the Commission entered an Order modifying the October 20, 1987, Order, by ordering the affected telephone local exchange companies (LECs) to reduce only recurring basic local service rates for any tax savings calculated in accordance with the October 20, 1987, Order.

On November 23, 1987, Piedmont Natural Gas Company (Piedmont), Nantahala Power and Light Company (Nantahala), and North Carolina Power (N.C. Power) filed tax savings calculations and proposed tariff reductions in accordance with the Commission's Orders of October 20, 1987, and November 6, 1987. On November 30, 1987, Barnardsville Telephone Company (Barnardsville) filed its response to said Orders.

The proposed tariffs filed by Piedmont, Nantahala, N.C. Power, and Barnardsville were considered during the Commission Staff Conference on Monday, December 7, 1987. The Public Staff recommended that the rate reductions be allowed as filed.

Based on the foregoing, the Commission concludes that the rate reductions noted above should be allowed. The Commission notes that the rate reduction proposed by Barnardsville is zero due to the fact that Barnardsville's reduction in toll pool revenues is greater than TRA-86 generated tax savings, as shown in the Company's November 30, 1987, filing and as calculated in accordance with the Commission's October 20, 1987, Order.

The Commission further concludes that said rate reductions are allowed effective January 1, 1988. This rate reduction will result in each company's tariffs reflecting the current 34% corporate federal income tax rate. Therefore, the Commission concludes that beginning January 1, 1988, each company included in this Order no longer needs to add dollars to the deferred account required by the Commission Order of October 23, 1986, related to rates charged after January 1, 1988. The Commission notes that the balance in said deferred account at December 31, 1987, should include the tax overcollections during 1987, calculated in accordance with the Commission's Orders previously issued in this docket. The Commission further notes that said deferred account balance continues to be subject to interest, in accordance with Commission Orders issued in this docket.

IT IS, THEREFORE, ORDERED as follows:

1. That the tariffs filed by Piedmont, Nantahala, and N.C. Power in this docket on November 23, 1987, be, and the same are hereby, allowed to become effective January 1, 1988.

2. That additional deferrals related to rates charged for service rendered on or after January 1, 1988, required by decretal paragraph No. 2 of the Commission Order of October 23, 1986, are no longer necessary for the companies affected by this Order.

3. That the December 31, 1987, balance in the deferred account established in accordance with decretal paragraph No. 2 of the Commission Order of October 23, 1986, should include the tax overcollections during 1987, calculated in accordance with Commission Orders issued in this matter.

4. That Barnardsville be, and hereby is, allowed to make no changes in tariffs in this docket because its Commission-ordered toll pool reductions are greater than its TRA-86 tax savings.

5. That the appropriate amortization of accumulated excess deferred income taxes will be considered in each company's next general rate case or such other proceeding as the Commission may determine to be appropriate. Any additional amounts relating to the adjustment that should have been made by the

company for the flow back of excess deferred income taxes shall be placed in a deferred account and should ultimately be refunded to ratepayers with interest.

ISSUED BY ORDER OF THE COMMISSION.
This the 10th day of December 1987.

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

DOCKET NO. M-100, SUB 113
DOCKET NO. P-55, SUB 888

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

DOCKET NO. M-100, SUB 113

In the Matter of
The Tax Reform Act of 1986)
)
DOCKET NO. P-55, SUB 888) ORDER DENYING TRIANGLE J
) COUNCIL OF GOVERNMENTS'
In the Matter of) MOTION TO DEFER
Investigation into the Request of the) IMPLEMENTATION OF THE
Triangle J Council of Governments for) TAX REFORM ACT OF 1986
Toll Free Calling in the Triangle J) RELATED TARIFF REDUCTIONS
Region)

BY THE COMMISSION: On December 10, 1987, Triangle J Council of Governments (TJCOG) made a motion requesting the Commission to defer implementation of Tax Reform Act of 1986 (TRA-86) related tariff reductions for the local exchange companies (LECs) serving the Triangle J region until the Commission has had the opportunity to consider using those tax savings to offset increases in basic rates which might be required to put toll-free calling into effect in the Triangle J region. The affected LECs are Carolina Telephone and Telegraph Company (Carolina), Central Telephone Company (Central), General Telephone Company of the South (GTE), Heins Telephone Company (Heins), Mebane Home Telephone Company, Inc. (Mebane), and Southern Bell Telephone and Telegraph Company (Southern Bell).

Southern Bell, Carolina, GTE, and the Public Staff all responded to TJCOG's motion in a timely manner. Southern Bell did not oppose TJCOG's motion but noted many administrative complications. Carolina did not support TJCOG's motion, but if the Commission approved it, then deferrals should be strictly limited to those exchanges that are likely candidates for EAS and not the entire Triangle J region. GTE did not oppose TJCOG's motion in principle, but had similar concerns that such deferrals should be geographically limited. The Public Staff requested that TJCOG's motion be denied. It argued that the Commission's tax docket Order of October 20, 1987, in which only access charge reductions were to be subject to offset by the LECs, should not be altered at this late date. The Public Staff also noted that the Commission had not even yet determined the geographical scope to be included in a Triangle EAS plan, that plans had not been assessed, that costs had been neither calculated nor apportioned, and that many months of cost studies, hearings and possibly polls

will be necessary. The Public Staff further stated its belief that "it would be clearly unwise and arguably unlawful" to reduce the rates of some customers of the LECs while deferring reduction for others merely because such persons lived in an area which might be included in an unspecified plan. Indeed, some customers are served by exchanges that cross regional boundaries, and it is unclear how such persons should be treated.

After careful consideration of the pleadings and arguments related to TJCOG's motion, the Commission concludes that TJCOG's motion to defer implementation of the tax savings afforded by TRA-86 should be denied. Opposing parties have raised substantial questions of law and policy that would make granting such a motion most unwise.

TJCOG's motion, if granted, would create an administrative nightmare in two already very complicated dockets. The tax reductions are scheduled to start flowing to customers in just a few weeks beginning on January 1, 1988. There is insufficient time to make the necessary adjustments with the requisite thoroughness. Moreover, there is already an expectation among telephone customers in Triangle J and statewide that their basic telephone rates are going to be reduced. The Commission should not at this late date disappoint such expectations for the sake of a plan that is presently undefined both in scope and in cost. Lastly, the Commission is sensitive to the mandate of G.S. 62-140 that there should be no unreasonable discrimination among utility customers. Substantial questions have been raised about the legality of treating ratepayers differently on the basis of geography and an unspecified plan. There are other groups of persons in other geographical areas who are similarly situated to those in Triangle J but would nevertheless be treated differently.

IT IS, THEREFORE, ORDERED that TJCOG's motion to defer implementation of the TRA-86 tariff reductions be denied.

ISSUED BY ORDER OF THE COMMISSION.
This the 15th day of December 1987.

NORTH CAROLINA UTILITIES COMMISSION
Sandra J. Webster, Chief Clerk

(SEAL)

Commissioner Robert K. Koger dissents.
Chairman Robert O. Wells dissents.

COMMISSIONER KOGER AND CHAIRMAN WELLS, DISSENTING. The majority has today denied Triangle J's motion which requested that the scheduled tax reform related decreases in monthly basic rates to Triangle subscribers be deferred pending a determination of their possible use in offsetting the costs of an expanded area calling plan for the Triangle J area. While the majority's opinion cannot be interpreted to indicate prejudice against an enlarged calling plan for the Triangle J area, we believe that their action will effectively preclude the adoption of Triangle J's proposed calling plan in the foreseeable future. It appears that we will now be left to consider only the much more limited calling plans as proposed by the various telephone companies.

Our objection to today's action by the Commission is based on the fact that the toll-free calling plan sponsored by Triangle J has only a narrow

chance of winding safely through the circuitous political and economic route necessary to achieve approval and the fact that the majority has now eliminated the one element (the use of tax savings to mitigate lost toll revenues) that might have enabled the Triangle J plan to navigate that route successfully. Because action bearing on Triangle J's plan is likely to affect telephone communications in this area for decades, we would have, at least, allowed the telephone subscribers in the affected Triangle J area to vote directly on the issue of delaying the tax related decreases prior to denying the motion. This poll could have been done quickly and simply by a letter-poll conducted by the individual telephone companies and monitored by the Public Staff. Representatives of all parties could have formulated a ballot with agreed upon explanations.

Why is this issue so important to the success of Triangle J's calling plan? The answer is somewhat complex. One needs to first recognize that, to a significant extent, the telephone companies which serve the main part of the Triangle have come to depend upon the vast, Commission-sanctioned profits that they make on the high volume of Triangle generated toll traffic. In turn, these profits are used to subsidize basic local telephone services. One can appreciate how extremely difficult it is for the telephone companies, the Utilities Commission, and telephone customers (particularly those who make few toll calls in the Triangle) to voluntarily "wean" themselves of the subsidy that these toll revenues provide to the basic rates. As the Triangle grows and as communication needs across the Triangle continue to increase, the subsidy will become larger and it will become even more difficult to "wean" ourselves from it.

By denying Triangle J's motion, the majority eliminates the use of a psychological "edge" that might restore some balance between costs and revenues in providing telephone service in the Triangle area. This psychological "edge" was discussed by a public witness (residential user) who testified in favor of the Triangle J plan at our night hearing. His testimony was to the effect that telephone subscribers would be more likely to agree to relinquish a modest decrease (the tax savings would amount to approximately a dollar a month in Southern Bell's service areas) in turn for receiving a greatly expanded calling area as opposed to agreeing to pay a similar amount over their then current rate for the expanded service. In our opinion, it would be extremely unlikely for a majority of the residential subscribers in the Triangle to vote to increase their rates by approximately $1.00 per month. Given human nature, however, they might vote to forego the $1.00 per month decrease in present rates for a greatly enlarged calling area even though they might make but few calls. Given the majority's action today, we will never know for sure.

Regarding the argument that many subscribers do not need expanded area calling, several Triangle J witnesses, including Wake County Commissioner Herb Stout, argued that there were many indirect benefits that the residents of the Triangle would derive from implementing toll-free calling in the Triangle. Not the least of which, he maintained, was the continuation of this area as a vibrant, productive community which would have the funds to help the less fortunate among us. He also suggested that low-income subscribers meeting a given income test should be allowed to opt out of the Triangle J EAS plan.

The government and business leaders who testified before us were unanimous in their opinion on the need to unify the Triangle area by telephone and

challenged us to be creative and innovative in our deliberations. Permitting the telephone subscribers to vote on the use of the tax savings would have at least demonstrated that the Commission has an interest in keeping Triangle J's plan alive until all plans could be fully considered. (In conducting any such a poll, of course, we should advise all telephone subscribers that we have intentionally given Triangle J proponents the psychological "edge" as described above because they have convinced us that there are many indirect benefits associated with allowing the citizens of the Triangle area to communicate more freely.)

If a vote were to be taken, and we believe it could be accomplished in four to five weeks, further work on the various plans could be done as soon as the votes were tallied. If the vote is "no", then refunds with interest could be made to the Triangle telephone subscribers. If the vote were "yes", then alternate plans could be developed utilizing these funds. However, no final approval would have to be given until a final vote on a plan or alternate set of plans was voted on by the Triangle subscribers. If no plan were approved by a majority, then the tax reform refunds could be refunded to the Triangle residents with interest.

We agree that this procedure is complicated, and we also recognize that the Commission has previously announced that all telephone subscribers of regulated telephone companies in North Carolina would receive a tax related decrease in their basic rates beginning in January 1988. However, the Commission is making a decision that may affect the Triangle area for decades, and, therefore, we believe that a few weeks' delay is fully justified while a poll of affected subscribers is taken.

In responding directly to this Order, there are essentially two questions raised in the majority's opinion. One is that the Commission should not defer the tax savings in the Triangle area because of the administrative problems involved in going up against the January 1, 1988, deadline. The other is that to do so for the Triangle area would be discriminatory under G.S. 62-140.

We have discussed the administrative problems above and there is no denying there would be some. However, such problems would not be insurmountable. The social and economic value to be achieved from a unified telecommunications system for the Triangle is well worth some short-term administrative complications.

As to the discrimination problem, the ban in G.S. 62-140 applies only to "unreasonable" preference or advantage or prejudice or disadvantage. This does not mean that there can be no distinctions. The courts have held that differences are reasonable and thus justifiable when there are substantial differences in service or conditions. Such factors include (1) quantity of use, (2) time of use, (3) manner of service, and (4) costs of rendering service. State ex rel. Utilities Commission v. Bird Oil Co., 302 N.C. 14 (1981). The courts have also recognized the value of service principle. Obviously, EAS amounts to a different "manner of service" justifying a difference in rates. EAS is also a legitimate objective for the Commission to seek. Applying the tax proceeds as an offset rather than a flow-through is a reasonable means to a legitimate objective. Customers in the Triangle are getting value, just not a flow-through as other customers in the State are.

As to the argument that there is discrimination because others similarly situated, such as the Triad, cannot utilize the tax offset, we see no reason why the Triad area, which has requested similar treatment, could not be treated the same way as the Triangle. Based on our knowledge of existing extended calling areas in the State, the Triangle and Triad areas are unique in North Carolina.

A quick review of the toll-free calling areas of our three other large metropolitan centers in North Carolina; i.e., Charlotte, Wilmington, and Asheville, shows that each has significant local calling from communities into their main urban center, particularly Charlotte and Wilmington, which have local calling plans which reach into several counties. Charlotte has toll-free calling throughout Mecklenburg County and extended area calling to towns and cities in Cabarrus, Union, Gaston, Iredell, and Stanly Counties. Wilmington has toll-free calling to communities in New Hanover County and in portions of Pender, Brunswick, and Columbus Counties. Asheville citizens have toll-free calling throughout Buncombe County and service into a portion of Henderson County.

For all of the reasons set forth above, we would have granted the Triangle J motion and feel compelled to dissent from the majority's decision.

Robert K. Koger, Commissioner
Robert O. Wells, Chairman

December 15, 1987

DOCKET NO. M-100, SUB 113

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of The Tax Reform Act of 1986	)	ORDER REQUIRING TARIFF FILINGS AND MODIFYING PREVIOUS ORDERS

BY THE COMMISSION: On December 7, 1987, the Public Staff presented at the Commission Staff Conference certain problems it had with the telephone local exchange companies' (LECs) filings in accordance with the Commission Orders of October 20, 1987, and November 6, 1987. All interested parties were given until December 16, 1987, to file written comments on the concerns raised by the Public Staff.

The first area subject to comment is an issue raised initially by Alltel-Carolina, Heins, and Sandhill Telephone Companies (Alltel Companies) and Carolina Telephone and Telegraph Company (Carolina), concerning the use of changes in customer premises equipment (CPE) after the end of the test period to reduce tax savings generated by the Tax Reform Act of 1986 (TRA-86).

The Commission has carefully reviewed the comments concerning this matter. In coming to a decision on this matter, the Commission has again focused on the original intent of this docket, as set out in the decretal paragraphs in the Commission Order of October 23, 1986, 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."

Generally, the Commission has consistently followed this Order in coming to decisions related to the issues that have been raised concerning the implementation of said Order. The intent of this docket as expressed by the October 23, 1986, Order is to adjust each affected company's test period cost of service for the impact of TRA-86 and to reflect said impact on rates that were established in the company's last general rate case that was based on said cost of service. The only exception to this basic methodology is that the Commission has allowed the LECs to offset TRA-86 tax savings with certain Commission ordered toll pool reductions, as spoken to in the October 20, 1987, Order.

The Commission has considered all other information submitted by the parties related to events occurring after the end of each affected company's last general rate case test period. Generally, this information was provided in filings prior to the October 20, 1987, Order and therefore was ruled upon in said Order. Except for consideration of the impact of the Commission ordered toll pool reductions, as spoken to above, all other offsets to tax savings were denied in said Order.

The Commission has already ruled on the inappropriateness of the inclusion of the loss of CPE revenue as an offset to TRA-86 tax savings in the October 20, 1987, Order. The issue raised by the parties here, as it relates

to CPE, is one of mechanical application of relating test period tax savings to current tariff reductions. Though the arguments may appear to be complex on this issue, the appropriate solution is clear and rather simple when one focuses on the initial Order in this docket, and the Commission's decisions in the Orders of October 20, 1987, and November 6, 1987.

In its initial Order, the Commission concluded that tariff rates established in each affected company's previous general rate case should be reduced by the TRA-86 impact on the test year cost of service. The Commission established the procedure to implement said tariff reductions in its Order of October 20, 1987. The Commission modified the October 20, 1987, Order on November 6, 1987, in determining that each LEC should reduce only recurring basic local service rates for any tax savings calculated in accordance with the October 20, 1987, Order. As a result of these orders, the LECs have been directed to calculate the impact of TRA-86 tax savings on the Company's most recent general rate case test year and to reduce basic local recurring rates for said impact.

In reviewing the current matter, the Commission has taken judicial notice of the entire record established in each company's last general rate case. In particular, the Commission has reviewed the rate structure approved therein, and the reasoning supporting the establishment of said rate structure. Based on this review, the Commission concludes that it is appropriate to reduce only recurring basic local service rates and EAS additives, as spoken to elsewhere herein, for the test period impact of TRA-86 tax savings.

Once the Commission's prior Orders are taken into account on how the TRA-86 impact on test period cost of service should be calculated and what rates should be reduced as a result of said impact, it is clear that the CPE adjustment proposed by the Alltel Companies and Carolina in this instance is inappropriate. The instant proposal would apply a portion of TRA-86 tax savings related to test period cost of service to CPE. This is simply not consistent with the Commission Orders on this matter. In order to insure that only recurring basic local service rates and EAS additives are reduced for the impact of TRA-86, the Public Staff's position on this matter must be accepted.

Carolina asserts that Southern Bell Telephone and Telegraph Company (Southern Bell) is being treated differently on this CPE issue. This is simply not the case in that Southern Bell cannot be compared to the other LECs. All of the other LECs had CPE revenues included in their last general rate cases, while Southern Bell did not. This fact accounts for any mechanical deviation that may appear in comparing the methodology employed by Southern Bell and that employed by the LECs in deriving current rate reductions related to the impact of TRA-86 on test period cost of service. The Commission decision in this matter assures that all TRA-86 tax savings, after consideration of toll pool reductions, will be used to reduce recurring basic local service rates and EAS additives for both Southern Bell and all other LECs.

The next issue raised by the Public Staff at Commission Staff Conference on December 7, 1987, also concerns the mechanics of relating the impact of TRA-86 tax savings on test period cost of service to current rates. Many of the LECs have adopted the methodology advanced by the Public Staff in this regard.

Again, this problem appears to be more complex than the solution. The methodology advanced by the Public Staff would derive the test period impact on rates to be reduced in accordance to Commission Orders and to maintain the integrity of this mathematical calculation in deriving the impact on current rates. In contrast, Carolina has computed the TRA-86 impact on total local service revenues and applied that methodology to derive the TRA-86 dollar impact on current rates to be reduced. In order for Carolina's methodology to be an appropriate substitute, the rate of growth for all elements of local service revenues would have to be the same as the rate of growth experienced by the services that the Commission has deemed appropriate to reduce. Carolina notes that the impact of the Public Staff's methodology is different among the LECs. This assertion is a mathematical and operational certainty. However, this assertion does not in any way negatively reflect on the merits or appropriateness of this methodology. The Commission must determine the methodology that best reflects the impact on current rates consistent with the Commission's decisions as to the proper rate reductions related to the impact of TRA-86 on test period cost of service. Clearly, identifying this impact on rates to be reduced at the previous general rate case level is the best methodology to ensure that current rates reflect the decisions of the Commission. Therefore, the Commission concludes that test period TRA-86 tax savings should be related to recurring basic local service revenues, and EAS additives. The integrity of this calculation should be consistently maintained in establishing the impact of TRA-86 related tax savings on current rates. This conclusion is consistent with the methodology advanced by the Public Staff and supported by the Attorney General.

The last matter to be addressed relates to what rates should be reduced due to TRA-86 tax savings. The Commission Order of November 6, 1987, ordered the LECs to reduce recurring basic local service rates. The Public Staff concluded that this reduction should apply to EAS additives, while Southern Bell, Carolina, Concord Telephone Company, and Alltel-Carolina concluded that the reduction should not apply to EAS additives. Much of the comments filed by the parties centered on whether EAS additives are basic services. The Commission does not think the definition of basic service has been investigated and reviewed enough in this docket to make a conclusive ruling as to whether or not EAS is basic service. However, the Commission has reviewed the proposal of the Public Staff to reduce EAS rates due to TRA-86 tax savings and concludes that this proposal is reasonable. In coming to this conclusion, the Commission has considered the rate structure approved for each LEC in its previous general rate case and the reasoning supporting said rate structure.

The Public Staff's presentation at the Commission Staff Conference on December 7, 1987, presented many other problems that the Public Staff had with the LECs' rate reduction filings. A summary of these problems is shown on Appendix II attached to the Public Staff's Supplemental Agenda. Some of these items are related to the matters discussed and decided upon elsewhere in this Order. However, many of these items have not been addressed herein. At the December 7, 1987, Commission Staff Conference the Public Staff recommended that the Commission request each affected company whose rate reduction has not been approved to work with the Public Staff to resolve these remaining issues.

The Commission understands that the parties have agreed to the proper WATS restructure amount to be used in computing toll pool reductions to be used to offset TRA-86 tax savings in accordance with the Commission Order of

October 20, 1987. The Commission commends the parties for working together to reach this agreement.

Based on the foregoing, the Commission concludes that it is appropriate to request that each affected telephone LEC, the Attorney General, and the Public Staff make every reasonable effort to resolve any remaining differences that prevent agreement on the tariff filings ordered by the Commission in this docket. Should these efforts fail to achieve agreement, the Commission concludes that the unreconciled issues should be brought before the Commission for appropriate decision-making as soon as possible.

The Commission further concludes that each telephone LEC affected by this Order should file tariff reductions not later than January 11, 1988, to become effective not later than February 1, 1988. These tariff reductions should be consistent with the Commission Orders of October 20, 1987, and November 6, 1987, and this Order.

IT IS, THEREFORE, ORDERED as follows:

1. That the proposal to consider CPE changes outside the test year as offsets to TRA-86 tax reductions be, and hereby is, denied.

2. That the Public Staff's proposal to reduce EAS additives due to TRA-86 tax savings be, and hereby is, approved.

3. That the proposal to relate test period tax savings only to rates being reduced, as advanced by the Public Staff, be, and hereby is, approved.

4. That each LEC affected by this Order should make every reasonable effort to work with the Public Staff and the Attorney General to resolve any remaining differences that may prohibit agreement on appropriate TRA-86 related rate reductions, calculated consistent with the Commission Orders issued in this docket.

5. That should the efforts denoted in ordering paragraph No. 4 fail, then the affected parties be, and hereby are, required to present any unreconciled issues before the Commission as soon as possible.

6. That the telephone LECs affected by this Order be, and hereby are, required to file tariff reductions, and supporting workpapers, not later than January 11, 1988, to become effective not later than February 1, 1988.

ISSUED BY ORDER OF THE COMMISSION.
This the 22nd day of December 1987.

NORTH CAROLINA UTILITIES COMMISSION
Sandra J. Webster, Chief Clerk

(SEAL)

DOCKET NO. M-100, SUB 114

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Petition for Declaration of Exemption from Regulation Under G.S. 62-260 of Waste or Contaminated Petroleum Products, in Bulk, Incidental to the Clean-Up of a Leak or Spill of Petroleum Products	))))))	ORDER ADOPTING RULE R2-53.4

BY THE COMMISSION: On July 15, 1987, the Commission received a petition filed on behalf of Southern Pump and Tank Company (SPATCO), which is principally engaged in the business of selling pumps, tanks, and related equipment used in connection with the distribution and retailing of petroleum products, seeking a declaratory ruling of the exemption from regulation under G.S. 62-260(a)(17) of waste or contaminated petroleum products, in bulk, incidental to the clean-up of a leak or spill of petroleum products within North Carolina.

By Order entered in this docket on August 24, 1987, the Commission initiated a proceeding to consider whether the transportation of waste or contaminated petroleum products, in bulk, incidental to the clean-up of a leak or spill of petroleum products within North Carolina is exempt from regulation pursuant to G.S. 62-260.

The Order of August 24, 1987, was mailed to all motor carriers holding authority issued by this Commission; the Department of Human Resources, Governor's Waste Management Board; and the Department of Natural Resources and Community Development, Environmental Management Division. The Order was also published in the Commission's Calendar of Hearings.

The Order further provided that parties desiring to file comments should do so on or before September 16, 1987, and that the Commission would render its decision in this matter based upon the record and any comments filed by interested parties.

Comments in support of the petition for the transportation of commodities described herein were timely filed with the Commission by Carolina Freight Carriers Corporation, Cherryville, North Carolina, and the Department of Natural Resources and Community Development, Division of Environmental Management. A letter in opposition to the exemption was filed by Robert L. Macon, Garner, North Carolina.

Upon consideration of the comments and the entire record in this matter, the Commission is of the opinion, finds and concludes that the transportation of waste or contaminated petroleum products, in bulk, incidental to the clean-up of a leak or spill of petroleum products within North Carolina is exempt from regulation under G.S. 62-260(a)(17).

IT IS, THEREFORE, ORDERED as follows:

1. That the Commission's Rules and Regulations are hereby amended to include Rule R2-53.4 as set forth in Appendix A attached hereto to become effective as of the date of this Order.

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

ISSUED BY ORDER OF THE COMMISSION.
This the 3rd day of November 1987.

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

APPENDIX A

Rule R2-53.4 Exemption of Waste or Contaminated Petroleum Products, In Bulk.

The transportation of waste or contaminated petroleum products, in bulk, incidental to the clean-up of a leak or spill of petroleum products is exempt from regulation under G.S. 62-260 of the Public Utilities Act.

DOCKET NO. E-100, SUB 53

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Biennial Determination of Avoided Cost Rates for Sale and Purchase of Electricity Between Electric Utilities and Qualifying Facilities - 1986/1987	)	ORDER ESTABLISHING STANDARD RATES AND CONTRACT TERMS FOR QUALIFYING FACILITIES

HEARD IN: Commission Hearing Room, 217 Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on November 5 - 7 and 12, 1986.

BEFORE: Chairman Robert O. Wells, Presiding; and Commissioners Edward B. Hipp and Julius A. Wright

APPEARANCES:

For the Respondents:

Robert W. Kaylor, Associate General Counsel, Carolina Power & Light Company, Post Office Box 1551, Raleigh, North Carolina 27602
For: Carolina Power & Light Company

William Larry Porter, Associate General Counsel, and Ronald L. Gibson, Assistant General Counsel, Duke Power Company, Post Office Box 33189, Charlotte, North Carolina 28242
For: Duke Power Company

Edgar M. Roach, Jr., Hunton and Williams, Attorneys at Law, Post Office Box 109, Raleigh, North Carolina 27602,

and

John E. Cunningham, Post Office Box 26666, Richmond, Virginia 23261
For: Virginia Electric and Power Company

Edward S. Finley, Jr., Hunton and Williams, Attorneys at Law, Post Office Box 109, Raleigh, North Carolina 27602
For: Nantahala Power and Light Company

Richard L. Kucharski, Legal Counsel, Western Carolina University, Cullowhee, North Carolina 28723
For: Western Carolina University

For the Intervenors:

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

Lemuel W. Hinton, Assistant Attorney General, North Carolina Department of Justice, Post Office Box 629, Raleigh, North Carolina 27602-0629
For: The Using and Consuming Public

Thomas R. Eller, Jr., Attorney, Suite 205, Crabtree Center, 4600 Marriott Drive, Raleigh, North Carolina 27612
For: Carolina Utility Customers Association, Inc.

Ralph McDonald, Bailey, Dixon, Wooten, McDonald, Fountain & Walker, Attorneys at Law, Post Office Box 12865, Raleigh, North Carolina 27605-2865
For: Carolina Industrial Group for Fair Utility Rates (CIGFUR II)

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

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

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

producers shall reflect the cost that the purchasing utility can avoid as a result of obtaining energy and capacity from these sources, rather than generating an equivalent amount of energy itself or purchasing the energy or capacity from other suppliers.

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

Under Section 210 of PURPA and the related FERC rules, each regulated utility is required to file projections of its incremental energy and capacity costs and its capacity construction schedules with its state regulatory authority for review and use in setting appropriate rates for purchase and sale of electricity between electric utilities and qualifying facilities. The first filings of such data were required by November 1, 1980, and on a biennial basis thereafter.

This Commission at the outset determined to implement Section 210 of PURPA and the related FERC regulations by holding biennial proceedings. The instant proceeding is the fourth such proceeding to be held by this Commission since the enactment of PURPA. In each of the prior three biennial proceedings, the Commission has determined separate avoided cost rates to be paid by each of the four major electric utilities to the respective qualifying facilities (QFs) that are interconnected with them. Avoided cost rates for a fifth electric utility, Western Carolina University, were also set in the third biennial proceeding. The Commission has also reviewed and approved other related matters involving the relationship between the electric utilities and the respective qualifying facilities interconnected with them, such as terms and conditions of service, contractual arrangements, and interconnection charges.

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

On May 6, 1986, the Commission issued its Order Establishing Biennial Proceeding, Requiring Data and Scheduling Public Hearing. That Order made Carolina Power and Light Company (CP&L), Duke Power Company (Duke), Virginia Electric and Power Company d/b/a North Carolina Power in North Carolina (Vepco), Nantahala Power and Light Company (Nantahala) and Western Carolina University (WCU) parties to the proceeding to establish the avoided cost rates each utility is to pay for power purchased from qualifying facilities pursuant to the provisions of Section 210 of PURPA and the FERC regulations implementing those provisions and to establish the rates each is to pay for power purchased from small power producers as required by G.S. 62-156. The Order required each

of the five electric utilities to file proposed standard rates and contracts and direct testimony. All five filed data and testimony by September 9, 1986. On July 22, 1986, the Public Staff filed a motion to delay the date for filing its direct testimony from October 3, 1986, to October 17, 1986. On August 6, 1986, the Commission allowed the Public Staff's motion.

On September 2, 1986, the Carolina Utility Customers Association, Inc. (CUCA) filed a petition to intervene. On September 9, 1986, the Commission allowed CUCA's intervention.

By Order of September 11, 1986, the Commission required the five electric utilities who were parties to these proceedings to file a current status report by October 27, 1986 of their activities regarding cogeneration and small power production facilities.

On September 15, 1986, Carolina Industrial Group for Fair Utility Rates (CIGFUR-II), an industrial group comprised of Federal Paper Board Company, Inc., Huron Chemicals of America, Inc., LCP Chemicals & Plastics, Inc., Monsanto Company, Texasgulf, Inc., and Weyerhauser Company, filed a Petition to Intervene. The Commission allowed CIGFUR II to intervene by Order issued September 17, 1986.

On September 16, 1986, the Clifton Corporation filed its Petition to Intervene as a formal party and motion to require the respondent electric utilities to serve upon it copies of certain data. On September 17, 1986, the Commission issued an Order allowing the Clifton Corporation to intervene, requiring CP&L, Duke, Vepco, Nantahala and WCU to provide the Clifton Corporation with certain data required to be filed pursuant to the Commission's May 6, 1986, or subsequent Commission Orders and deferring ruling on the Clifton Corporation's discovery motion contained in the Petition to Intervene until after any responses by the parties. The Commission also ordered that responses by the parties were to be filed not later than September 26, 1986. Duke filed its Opposition to the Clifton Corporation Data Request on September 23, 1986. On September 26, 1986, Carolina Power and Light Company filed its Response to Clifton Corporation Data Request stating its objection to discovery request number 2(b) and its reasons therefore. The Commission issued its Order Denying Discovery Motion of the Clifton Corporation on October 6, 1986.

On October 1, 1986, CUCA filed a Motion seeking to have the Commission extend the time for discovery and the filing of intervenor testimony and to vacate the November 5, 1986, hearing date and to reschedule the hearing upon the respondent utilities filing and serving certain data, revisions and updates. In the alternative CUCA asked for an extension of time to file its testimony. Carolina Power & Light Company's Response to CUCA Motion was filed on October 1, 1986. Response by Virginia Electric and Power Company to CUCA Motion was filed on October 6, 1986. On October 6, 1986, the Commission issued an Order Granting Extension of Time, which noted CIGFUR II's oral motion for an extension of time to file its testimony and exhibits and which granted CUCA and CIGFUR II until October 24, 1986 to file their testimony and exhibits and denied the other requests for relief. On October 9, 1986, the Commission issued an order granting the Public Staff's oral motion for an extension of time until October 24, 1986, to file its testimony and exhibits.

On October 20, 1986, WCU filed notices of affidavit and affidavits of Gregory L. Booth and Jana K. Hemric. The Public Staff filed the testimony and exhibits of Dr. Ben Johnson on October 24, 1986. On that same date, CUCA filed the testimony of Nicholas Phillips, Jr.

Vepco filed its Status Report on Cogeneration and Small Power Producer Activity for operations in North Carolina on October 27, 1986. CP&L's Current Status Report of Cogeneration and Small Power Production Activities was also filed on October 27, 1986. Duke filed its status report on that same date. Nantahala filed its status report on October 28, 1986. WCU filed its status report on October 29, 1986 in the form of an affidavit by George Wooten.

By Order issued October 21, 1986, the Commission scheduled a prehearing conference for October 29, 1986. The prehearing conference was held before Hearing Examiner Robert H. Bennink, Jr. on October 29, 1986, beginning at 9:30 a.m. in the Commission Hearing Room. All parties except the Clifton Corporation were present. The Prehearing Order was issued by the Commission on October 31, 1986, based on the statements, stipulations, and rulings made during the prehearing conference, including the stipulation by the parties that the prefiled testimony of N. Edward Tucker, Jr., on behalf of Nantahala Power and Light Company, could be copied into the record without Mr. Tucker being present or cross-examined.

Motion of Western Carolina University was filed November 3, 1986, requesting that pursuant to agreement reached between the parties, the prefiled testimony of George W. Wooten and prefiled affidavits of Jana K. Hemric and Gregory L. Booth, as modified by the answers in the University's Answer to Interrogatories, be copied into the record as though given orally from the witness stand. WCU further requested that it be excused from appearing at the hearing since its only evidence was that of Wooten, Booth, and Hemric and it had no cross-examination for any other party. On November 5, 1986, the Commission issued an Order Allowing Motion of Western Carolina University.

In addition to the foregoing, there were other motions, orders and filings not specifically mentioned, which are a matter of record.

The matter came on for hearing on November 5, 1986, as previously noticed and scheduled. The prefiled testimony of George W. Wooten, Controller of WCU; the prefiled affidavit of Jana K. Hemric, CPA with Booth & Associates; the prefiled affidavit of Gregory L. Booth, Executive VP of Booth & Associates; and the University's Answer to Interrogatories were copied into the record without those witnesses being present to testify. Pursuant to stipulation at the prehearing conference, the prefiled testimony of Nantahala witness N. Edward Tucker, Jr., was copied into the record without witness Tucker being present to testify.

Wells Eddleman appeared and offered testimony as a public witness on behalf of himself and Kudzu Alliance. Witness Eddleman pointed out the effect that avoided cost rates have on the total MW of cogeneration under contract when comparing CP&L with Duke. He objected to raising retail rates while at the same time lowering rates for purchases from QFs; and he disagreed with using a peaking unit for calculating capacity credits while using average system fuel cost for calculating energy credits.

Vepco presented the testimony of a panel consisting of James E. McIntyre, Jr., Rate Research Manager; James P. Carney, Economic Analysis Manager; G. Patrick Rooney, Supervisor - Administrative Services Power Supply; and Robert W. Carney, Supervisor - Cogeneration and Support Services. Witness McIntyre presented a revised Rate Schedule 19 - Power Purchases from Cogeneration and Small Power Production Qualifying Facilities to be available only to QFs with (1) generating facilities of five megawatts (MW) or less designated as new capacity under 18 C.F.R. 292.304(b), or (2) generating facilities rated at 100 kilowatts (KW) or less on which construction began before November 9, 1978, or (3) hydroelectric generating facilities of 80 MW or less owned or operated by small power producers as defined in G.S. 62-3(27a). He also presented a proposed revised Rate Schedule 19H - Power Purchases at Levelized Rates from Cogeneration and Small Power Production Qualifying Facilities, which will be available to QFs with either a generating facility of five MW or less designated as new capacity under 18 C.F.R. 292.304(b) or hydroelectric generating facilities of 80 MW or less. The proposed Rate Schedule 19H provides for levelized energy and capacity payments for five through fifteen year periods. Witness James Carney presented testimony describing how the Company had calculated its avoided capacity costs and energy costs and how the avoided costs had been translated into payments for QFs. Witness Rooney presented testimony discussing the Company's generation expansion plans, the determination of the Company's avoided capacity costs and the determination of the avoided fuel costs. Witness Robert Carney testified regarding the Company's experience negotiating cogeneration and small power production contracts and proposed modifications to the standard contracts previously approved by the Commission for use in negotiations with cogenerators and small power producers. He also discussed proposed adjustments in the standard contracts to reflect revisions in the energy payments for line loss savings and variable operation and maintenance expenses.

Duke Power Company presented the testimony of a panel consisting of John N. Freund, Manager of Rate Design; Walter E. Sikes, Manager of Rates; and Steve W. Smith, Industrial Marketing Specialist in the Marketing and Rates Department. Witness Freund explained the calculations supporting the Company's proposed revised standard rates available to qualifying facilities under its proposed Rate Schedule PP. Witness Sikes testified concerning the Company's position in regard to customer owned generation and its willingness to purchase the output of such generation. He also testified regarding the risks related to long term levelized rate contracts. Witness Smith testified regarding the Company's experience with qualifying facilities and the Company's practice regarding interconnection charges. He also presented the Company's standard Purchased Power Agreement which is used to develop the Company's standard contract.

Carolina Power & Light Company offered the testimony of G. Wayne King, Supervisor of Rate Studies. Witness King presented the Company's proposed Cogeneration and Small Power Producer Schedule, CSP-10, which is an update of the Company's existing schedule CSP-9A and is based on the methodology approved by the Commission for deriving Schedule CSP-9A. Mr. King's testimony also supported several changes in the language of the tariff in order to more clearly define the availability section and the protection clause should the QF not be able to deliver full contract performance. Witness King pointed out CP&L's status to date and explained some of the planning impacts experienced by CP&L as a result of QF additions to its systems.

The Public Staff presented the testimony of Dr. Ben Johnson of Ben Johnson Associates, Inc. Dr. Johnson's testimony was organized into six sections: 1) a brief review of the background of PURPA as it relates to cogeneration and small power production; 2) the advantages and disadvantages of cogeneration from a public policy perspective; 3) the rates proposed by Duke, CP&L, and Virginia Electric in this proceeding; 4) an examination of Duke's and CP&L's theoretical approach to developing avoided costs and a presentation of some alternatives; 5) specific flaws in the Companies' avoided cost calculations; and, 6) his recommended avoided cost rates.

Nicholas Phillips, Jr. of Drazen-Brubaker & Associates, Inc. testified on behalf of Carolina Utility Customers Association, Inc. (CUCA). Mr. Phillips testified concerning Duke and CP&L's revised standard rates for purchases from qualifying facilities, the appropriate methodology for these revisions and the proper design of such rates. He commented upon Duke's and CP&L's proposed revisions to rates for purchases from qualifying facilities and made certain recommendations.

CUCA also presented testimony by representatives of several of its individual members. In accordance with Commission Orders, CUCA had prefiled the direct testimony of three witnesses on November 6, 1986: Robert A. Vogler, Director of Utilities for R. J. Reynolds Tobacco Company (Reynolds), Robert M. Campbell, Manager of Corporate Services, for Lithium Corporation of America (Lithium) and B. Edward Brammer, a general partner and President of Multitrade Group, Inc. (Multitrade). Witness Vogler testified concerning the benefits of cogeneration and the problems Reynolds has encountered as a cogenerator. He requested the Commission to order Duke to do the following: 1) increase the Schedule PP avoided cost prices and make them available to all QFs without regard to size; 2) make fixed annual avoided cost payment schedules on a 5, 10, and 15 year term available to all QFs regardless of size, and with the term to be the choice of the QF; and 3) allow Reynolds to transfer from Rate Schedule PG to Rate Schedule OPT for its purchases of power from Duke and from Rate Schedule PG to Rate Schedule PP for its sales of power to Duke, both without further delay or penalty. Witness Campbell testified regarding Lithium's problems with Duke's PG rate, the ineligibility of QFs with a capacity greater than 5 MW for the standard 5, 10 or 15 year rates in Schedule PP, and in support of Mr. Phillips' methodology and rates. Witness Brammer testified in regard to Multitrade's inability to construct its proposed Burlington cogeneration facility if certain of Duke's proposed rates are adopted, and in support of the availability of long term contracts to all QFs, and in support of Mr. Phillips' rates and methodology.

All parties to the proceeding were provided an opportunity to file briefs and proposed orders with the Commission within 30 days of the mailing of the final transcript in the proceeding; i.e., 30 days from December 4, 1986. On December 18, 1986, the Commission granted a Virginia Electric and Power Company motion to extend the time for filing briefs and proposed orders until January 15, 1987.

Following the filing of briefs and proposed orders, certain statements, motions and responses were filed, as will be hereinafter discussed.

Based upon the foregoing, the testimony and exhibits offered at the hearing and the entire record in this proceeding, the Commission now makes the following:

FINDINGS OF FACT

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

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

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

4. Capacity credits for CP&L and Duke may appropriately be based on combustion turbine generating units for purposes of this proceeding.

5. Energy credits may appropriately be based on system average incremental costs when capacity credits are based on a peaking unit.

6. Capacity credits may appropriately be spread over all "on-peak" hours consistent with the on-peak and off-peak hours of the retail TOD rates.

7. Proposed Rate Schedule CG for Nantahala Power and Light Company is reasonable and should be approved.

8. Western Carolina University's proposed Small Power Production Supplier Reimbursement Formula is reasonable and should be approved.

9. Proposed Rate Schedules 19 and 19H and associated contracts and terms and conditions for Virginia Electric and Power Company are reasonable and should be approved except for Paragraphs VI thereof which should be reworded as hereinafter provided and, as so reworded, approved.

10. Proposed Rate Schedule CSP-10 for Carolina Power and Light Company is reasonable and should be approved.

11. Proposed Rate Schedule PP for Duke Power Company is reasonable and should be approved except as follows: (1) the proposed energy credits should

be adjusted to include the allowance for fuel inventory in the energy credits instead of in the capacity credits; (2) the proposed capacity credits should be adjusted to reflect a 20% reserve margin instead of the 89% availability factor used by Duke; and (3) the working capital component of the avoided costs should be calculated in the manner adopted by the Commission in the previous biennial proceeding.

12. The interconnection practices of the utilities should not be revised in this proceeding. Such practices should continue to be applied to qualifying facilities and to retail customers alike. Individual complaints regarding such interconnection practices can best be handled on a case-by-case basis under NCUC Rule R1-9.

13. Separate rates for supplementary power, back-up power, and maintenance power, should not be determined for Duke, or more particularly for Duke's Schedule PG, in this proceeding. Specific complaints about the rates, terms and conditions of Schedule PG can best be addressed in a proceeding under NCUC Rule R1-9.

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

The evidence in support of these findings is contained in the testimony of Duke witness Sikes, Vepco witness McIntyre, Public Staff witness Johnson, and CUCA witnesses Phillips, Campbell and Brammer.

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

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

G.S. § 62-156(b)(1), which applies to small power producers as defined by G.S. § 62-3(27a), provides, "Long-term contracts for the purchase of electricity by the utility from small power producers shall be encouraged in order to enhance the economic feasibility of small power production facilities."

Prior to the immediately preceding avoided cost proceeding (Docket No. E-100, Sub 41A), CP&L and Duke were required to offer standard long-term levelized rate options to all qualifying facilities. Vepco was required to offer such options only to small power producers as defined in G.S. § 62-3(27a), i.e., hydroelectric facilities of 80 megawatts or less capacity. The standard long-term levelized rate options were ordered by this Commission

in order to encourage the development of cogeneration and small power production facilities. As a result of concerns raised by the utilities and the Public Staff in the Sub 41A proceeding with respect to the effect of these options, the Commission revised this requirement and limited the standard long-term levelized rate options to hydroelectric facilities of 80 MW of less and to nonhydroelectric qualifying facilities with generating capacities of five megawatts or less.

CP&L and Duke proposed no changes in the availability of long-term levelized rates; however, Duke witness Sikes expressed concern about the effect of long-term levelized rates on the ratepayers because of the uncertainty inherent in a lengthy contract. His suggestion was to require performance bonds from the qualifying facilities receiving the long-term levelized rates. Vepco witness McIntyre expressed similar concerns. He testified that if long-term levelized rates are continued, their availability should be limited to hydroelectric facilities and non-hydroelectric facilities of 5 megawatts or less capacity and, further, that the term of such rates should be limited.

Public Staff witness Johnson testified that while there were uncertainties, risks and disadvantages associated with long-term levelized rates, he believed the benefits outweighed the costs. Once a contract is signed with a qualifying facility, the utility is relieved of the risks of cost overruns and operating and capital costs increases which are not rolled into rates on an ongoing basis. Further, the short lead times for qualifying facilities to come on line allow utilities more flexibility in planning, and the small size of qualifying facilities helps smooth out the matching of loads and resources. And finally, cogeneration promises substantial savings over the long-run, assuming rates are correctly set.

CUCA witness Phillips testified that long-term contracts based on avoided cost-based rates should be available to all qualifying facilities on a nondiscriminatory basis regardless of size or energy source. He testified that known rates are necessary to the planning of large cogeneration facilities. In further support of its position, CUCA presented witness Brammer, President of Multitrade Group of North Carolina, Inc., who testified to Multitrade's inability to negotiate a long-term, non-levelized but escalating contract with Duke for its proposed 24 MW cogeneration facility in Burlington. The facility, if constructed, would have sold electricity to Duke and steam to Burlington Industries to replace steam now being produced by fossil fuel. The facility would have burned wood waste. However, Multritrade's lender withdrew its financing.

Contemporaneously with the filing of its proposed order, the Public Staff filed a Statement of Position in response to Mr. Brammer's testimony. In that statement, the Public Staff recommended that the current availability of long-term levelized rates be continued, but that a new type of contract be created, that being a long-term contract with non-levelized rates for any QF regardless of size which uses renewable resources as its primary fuel source. Only those QFs which produce electric energy or useful thermal energy using primarily biomass, waste, peat, solar or wind energy, or other renewable resources (but not coal, oil, bottled natural gas, or natural gas piped in from out-of-state) would be eligible for these long-term contracts. The Public Staff recommended that the QFs eligible for this new type of contract be given the options of long-term contracts at a minimum at the variable rate approved

by the Commission at the time the contract is entered into with a reasonable escalation clause to reflect changing conditions, or at a mutually agreed upon rate arrived at through good faith negotiations or at a rate set by the Commission through arbitration.

Duke filed a Response to the Public Staff's proposal of a new type of contract in which Duke objected on grounds that the proposal would impair its ability to negotiate contracts with larger non-hydroelectric qualifying facilities on a case-by-case basis.

CUCA filed a lengthy Response to the Public Staff proposal in which it asserted, among other things, that limiting the availability of long-term levelized rates constitutes illegal discrimination and is unsupported by evidence. CUCA asserted that the Public Staff's proposal contributes nothing to the ability of larger non-hydroelectric facilities to evaluate financial feasibility with reasonable certainty before construction begins.

The Public Staff filed a Reply to CUCA denying that the present limited availability of long-term levelized rates constitutes illegal discrimination and again pointing out that PURPA does not require long-term rates at all. The Public Staff noted that North Carolina ranks ninth among the states in the number of qualifying facilities applying to FERC and, thus, that cogeneration and small power production are not being surpressed in North Carolina. The Public Staff went on to withdraw its proposal for a new type of contract and to reassert its support for the present limited availability of long-term levelized rates.

CP&L filed comments on CUCA's Response in which it asserted that the present limited availability of long-term levelized rates does not represent unjust or illegal discrimination. CP&L denied that the five megawatt limit on the generating capacity of non-hydroelectric facilities is arbitrary; it asserted that this limit is correlated to the maximum capacity that would normally be connected to an electric distribution system. Larger facilities would more likely be connected to the transmission system, necessitating adjustments to the standard rates.

The Commission has carefully considered the testimony and the arguments presented by all parties. The Commission concludes that the present limited availability of long-term levelized rates should be continued. The Commission finds no unjust or illegal discrimination in this scheme for the reasons argued by the Public Staff & CP&L. The PURPA regulations themselves distinguish between facilities on the basis of size by limiting the requirement of standard rates to facilities of 100 kilowatts or less capacity. The regulations permit, but do not require standard rates for larger facilities. If standard long-term levelized rates are ordered for larger facilities, the Commission finds nothing in PURPA or the FERC regulations adopted pursuant thereto which prohibits limiting the availability of long-term levelized rates to fewer than all qualifying facilities.

The Commission set the present limited availability of long-term levelized rates on the basis of five megawatts capacity in the last biennial proceeding, and no party appealed from that decision. We find the limitations supported by that Order and by the argument presented above by CP&L. In the past, the Commission has stated the limit on the availability of long-term levelized

rates to non-hydroelectric facilities in terms of facilities with generating capacity of five megawatts or less. However, the Commission realizes that there may exist non-hydroelectric qualifying facilities with generating capacities of more than five megawatts which consume some of that capacity internally and only contract to sell five megawatts or less of generating capacity. Since the risk of default relates to the capacity which is subject to sale, the Commission has, on its own initiative, decided to restate the maximum limit on the availability of long-term levelized rates to non-hydroelectric qualifying facilities as those facilities contracting to sell generating capacities of five megawatts or less. Although no such issue was raised at the hearing the Commission finds it appropriate to make this change.

Thus, based on the foregoing and the record as a whole in this proceeding, the Commission concludes that CP&L, Duke and Vepco should offer long-term levelized rates for 5-year, 10-year, and 15-year periods as standard options only to qualifying facilities which are either (a) hydroelectric generating facilities of 80 megawatts or less capacity which are owned or operated by a small power producer as that term is defined in G.S. 62-3(27a) or (b) any other qualifying facility contracting to sell generating capacity of five megawatts or less. The long-term levelized rates approved hereinafter for CP&L, Duke and Virginia Electric shall be available as standard rate options only to the qualifying facilities described above. The standard levelized rate options of 10 or more years should include a condition making contracts under those options renewable for subsequent term(s) at the option of the utility on substantially the same terms and provisions and at a rate either (1) mutually agreed upon by the parties negotiating in good faith and taking into consideration the utility's then avoided cost rate and other relevant factors or (2) set by arbitration. CUCA opposed making these contracts subject to renewal at the option of the utility; however, the Commission finds this appropriate in order to allow utilities to continue to rely and plan on the basis of generating capacity for which they have contracted for ten or more years in the past.

The General Assembly has clearly indicated in G.S. 62-156 a policy of encouraging hydroelectric facilities. Additionally, we note that many of the risks associated with standard long-term levelized rate options are either not present or tend to be minimized in the case of most hydroelectric facilities. For example, hydroelectric facilities are not subject to the risks associated with changes in fossil fuel costs or the business risks associated with the heat recovery aspect of cogeneration projects. Further, more of the capital costs involved in a hydroelectric facility tend to be "up front" costs which must be financed. Levelized rates facilitate financing by providing a degree of certainty and by allowing an income stream which more evenly matches the debt payments required by financing. Finally, we note that hydroelectric facilities by their very nature tend to entail a degree of permanency and stability as regards the major components of the facility, such as the dam and powerhouse. In light of the foregoing reasons, we believe and conclude that CP&L, Duke and Vepco should continue to offer long-term levelized rate options to hydroelectric qualifying facilities less than 80 MW as standard rate options.

We further conclude that these three utilities should offer such standard rate options to nonhydroelectric qualifying facilities contracting to sell generating capacities of five megawatts or less. The risks associated with a

nonhydroelectric qualifying facility in the event of a default on a long-term levelized rate contract of five megawatts or less capacity is relatively small in terms of dollar exposure and impact on supply when contrasted with the risks associated with such a default on a larger contract. This is the primary reason for which the Commission limits the availability of long-term levelized rates to non-hydroelectric qualifying facilities.

With respect to nonhydroelectric qualifying facilities contracting to sell greater than five megawatts capacity, they should continue to have the options of contracting at the standard variable rates set by the Commission or negotiating rates and contract terms with CP&L, Duke and Vepco. The Commission believes that the concerns expressed with respect to long-term levelized rates for such qualifying facilities can best be addressed in the context of free and open negotiations between qualifying facilities and the utilities. CUCA witness Brammer testified that his Company entered into negotiations with Duke in December 1984, but, after negotiating for a year and a half, was unable to get any reasonable agreement from Duke. He testified that leaving large nonhydroelectric qualifying facilities to negotiating with a utility "is the same thing as excluding" them from PURPA. CUCA witness Campbell of the Lithium Corporation testified that his Company had undertaken a 6.6 megawatt cogeneration project at Bessemer City. He also testified that it is rank discrimination to exclude large cogeneration facilities from standard rates and that it is "a myth" to think that large cogeneration projects have bargaining power against Duke. These two witnesses questioned the good faith of Duke in its negotiations with qualifying facilities. The Commission takes such charges seriously. The Commission has weighed the testimony of the witnesses presented by CUCA. However, absent a complaint proceeding, we cannot deal with the specific fact situations raised by their testimony. The Commission made clear the scope of the present proceeding in its Order of May 6, 1986. The Commission previously suggested a complaint proceeding as the appropriate forum for such witnesses in Duke's rate case order of October 31, 1986, in Docket No. E-7, Sub 408. The Commission again points out that a complaint proceeding is the appropriate forum in which to present such an issue. The fact that a complainant must carry the burden of proof is a matter of statute. G.S. 62-75. The burden is imposed on all complainants equally, and we find no basis for deviating from that statute in this instance.

The Commission expects all utilities to negotiate in good faith with qualifying facilities for such terms as are fair to the qualifying facility as well to the utility's ratepayers. The Commission takes this opportunity to stress again the responsibility of the utilities in their negotiations. Any qualifying facility may file a complaint with the Commission if it feels that a utility is not negotiating in good faith.

As in the past, the Commission will set no guidelines for such negotiations. We would expect such negotiations to address such problems as the following:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Another concern addressed at these hearings was protection for the utilities against the financial loss they might otherwise suffer if a qualifying facility with a long-term contract at levelized rates defaults after receiving overpayments during the early part of the contract. Duke suggested that a performance bond should be required of all QFs receiving long-term levelized rates. Vepco proposed that suitable protection should be required of qualifying facilities receiving long-term levelized rates. The Commission will not require such protection on hydroelectric qualifying facilities or on nonhydroelectric qualifying facilities contracting at standard levelized rate options since these projects do not pose the increased risks that justify such

guaranties. For nonhydroelectric qualifying facilities contracting to sell more than five megawatts capacity, the Commission concludes that the appropriate protection is a matter best left to negotiation. The utilities should determine on a case by case basis, depending upon the size of a given facility, the reputation of its parent or affiliated companies, and other factors, whether some form of protection is warranted, recognizing that nonlevelized payments create less of a risk.

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

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 3

The Commission's conclusion that Nantahala should not be required to offer any standard long-term levelized rate options to qualifying facilities flows from the Commission's ruling in the last biennial proceeding that the unique nature and circumstances of Nantahala's power supply arrangements make such options infeasible. That ruling has not been challenged by any party in this proceeding. While Nantahala owns some generating units, it is unable to serve its load from that source alone. It therefore must purchase capacity and/or energy under contract from TVA. Because of these contractual arrangements and the inherent uncertainty and monthly variations involved in such arrangements, it is not feasible to require Nantahala to offer any form of standard long-term levelized rate options to qualifying facilities.

The same considerations apply to WCU. WCU has no generating facilities of its own and buys all of its power from Nantahala under an arrangement which is similar to that between Nantahala and TVA.

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

The evidence supporting these findings of fact are found in the testimony and exhibits of CP&L witness King, Duke witness Freund, Public Staff witness Johnson, and CUCA witness Phillips.

Witness King testified that the capacity credits proposed by CP&L were based on the current costs of a combustion turbine (CT) and the proposed energy credits were based on a production cost simulation model, PROMOD. He explained that the proposed capacity credits are the same ones currently in effect, and that CP&L had not been able to update them yet due to the uncertainty associated with the new federal tax regulations. On the other hand, he testified that the proposed energy credits are approximately 40 percent lower than the ones currently in effect due to decreasing average fuel costs. Altogether, the methodology used by CP&L to determine the proposed capacity

credits and energy credits is the same methodology approved by the Commission in the previous biennial proceeding.

Witness Freund testified that the capacity credits proposed by Duke were also based on the current costs of a CT and the proposed energy credits were based on a production cost simulation model. He explained that the proposed capacity credits reflect income and equity return, depreciation expense, state and federal income taxes, property taxes and insurance, as well as fuel inventory, cash working capital and an allowance for a reserve margin. However, he said that the proposed capacity credits do not reflect the recent federal tax law changes. The methodology used by Duke to determine the proposed capacity credits and energy credits is essentially the same methodology approved by the Commission in the previous biennial proceeding, except for certain differences discussed elsewhere in this Order.

Public Staff witness Johnson contended that the methodologies used by CP&L and Duke were based on the peaker method developed by the National Economic Research Association, Inc. (NERA). The NERA method estimates the avoided capacity cost using the capital costs of a CT, and it estimates the avoided energy cost using the marginal running cost of the entire system. Witness Johnson contended that one of the basic assumptions underlying the NERA method is that the system is an optimal system; i.e., that the existing generating units are operating at an optimal number of hours for least cost performance. He contended that an examination of each company's methodology revealed that each company's hypothetical CTs were projected by the production cost simulation models to run significantly fewer hours than the optimal hours in the underlying NERA theory; therefore, he contended, each company's proposed energy credits are understated.

Although witness Johnson disagreed with the avoided energy costs resulting from the CP&L and Duke methodologies, he agreed with the use of a CT for calculating avoided capacity costs. Nevertheless, he took issue with the capacity credits proposed by each company. He pointed out that each company's proposed capacity credits required a QF to operate for 3120 or 4160 on-peak hours per year respectively in order to receive the full avoided capacity cost of a CT. He contended that each proposal required a QF to operate for many more hours than the hypothetical CT which each company is supposed to be avoiding. He suggested that the avoided cost of a CT be spread over 1154 or 1555 hours respectively, which he said represents the optimal number of hours operation for a hypothetical CT under the CP&L and Duke methodologies.

CUCA witness Phillips contended that capacity credits for CP&L and Duke should be based on the capacity costs of a base load coal unit, and that their energy credits should be based on the running costs of a base load coal unit. He also contended that if capacity credits were based on a CT, then energy credits should also be based on the running cost of a CT.

As requested in this proceeding, the Commission takes judicial notice of its final order in Docket No. E-100, Sub 41A. In that order, the Commission stated:

> The Commission is of the opinion that capacity credits may appropriately be based on CT generating units and that the advantages of using a CT for such calculations outweigh the disadvantages. Use

of a CT provides a more accurate measure of capacity cost per kW in current dollars than generating units requiring longer construction lead times and more complex facilities subject to greater regulatory and environmental uncertainties. A CT is an appropriate proxy for the capacity-related portion of the total costs of a generating unit, whether such unit is a base load unit or a peaking unit.

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

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

The Commission remains of the opinion that capacity credits may appropriately be based on CT generating units for purposes of this proceeding. As discussed in its Order in the previous biennial proceeding, the cost of a hypothetical CT is regarded as a proxy for the cost of the capacity related portion of any generating unit which might be added to the system in order to increase the system capacity at the time of the system peak. If the actual generating unit to be added is a peaking unit, then the hypothetical CT is a close approximation; and if the actual unit to be added is a base load unit, then the cost of a hypothetical CT is a reasonable proxy for the capacity related portion of the cost of the base load unit (i.e., that portion of the cost of the base load unit which would be needed to supply additional capacity at the time of the system peak). Nevertheless, the Commission might still consider capacity credits based on a base load unit in future proceedings if it should become appropriate to do so.

The Commission also remains of the opinion that energy credits may appropriately be based on system average incremental costs for purposes of this proceeding. As discussed in its Order in the previous biennial proceeding, the avoided energy costs are not unit specific. The use of a hypothetical CT for calculating capacity credits does not mean that such unit should be used for calculating energy credits. Capacity credits reflect costs avoided at the time of the system peaks, while energy credits reflect costs avoided at all times.

A new generating unit might be needed to supply additional KWH at the time of the system peaks (assuming the existing generating units are already fully committed at those times), but in most instances existing generating units could supply the additional KWH at times other than the system peaks (since such existing generating units are not normally fully committed at times other than the system peaks). Witness Johnson assumes that the system is optimal, so that the existing generating units cannot supply additional KWH at times other than the system peaks as cheaply as a new generating unit. The Commission remains unconvinced that such a situation exists with respect to the utilities in North Carolina.

Finally, the Commission is of the opinion that capacity credits may appropriately be spread over all "on-peak" hours consistent with the on-peak and off-peak hours utilized in the retail TOD rates of each company. The on-peak and off-peak hours contained in the respective avoided cost rates of CP&L and Vepco coincide with the on-peak and off-peak hours contained in the repective retail TOD rates of those companies. The on-peak and off-peak hours contained in the avoided cost rates of Duke are not the same as the on-peak and off-peak hours contained in their retail TOD rates (except Schedule PG) although they are very roughly similar. The Commission is not persuaded that the on-peak hours utilized for capacity credits should be different from the on-peak hours utilized for retail TOD rates in the manner suggested by the intervenors in this case, but it cannot find sufficient discussion in the record on which to base a conclusion regarding the manner in which the on-peak hours applicable to Duke's capacity credits vary from the on-peak hours in Duke's retail TOD rates (except Schedule PG). Therefore, the Commission declines to modify the on-peak or off-peak hours applicable to Duke's avoided cost rates in this proceeding, and encourages further discussion of the matter in future proceedings.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 7

The evidence pertaining to Nantahala's calculations of avoided cost rates is contained in the testimony of Nantahala's witness Tucker, which was stipulated into the record without Mr. Tucker being called to the stand. According to his prefiled testimony, the rates in Nantahala's proposed Schedule CG do not differ from the standard rates currently approved by the Commission. Nantahala purchases from TVA the capacity and energy needed to serve that portion of Nantahala's load which is greater than what Nantahala's own generating resources can produce. Since purchases of capacity and/or energy by Nantahala from qualifying facilities would generally reduce what Nantahala would otherwise purchase from TVA under the Interconnection Agreement between Nantahala and TVA, the amounts which Nantahala proposes to pay to qualifying facilities for capacity and/or energy sold to Nantahala are geared to the cost savings under that agreement.

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

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 8

The evidence pertaining to WCU's calculation of avoided costs is contained in the testimony and exhibits of WCU witnesses Wooten, Hemric and Booth, which

were stipulated into the record. WCU does not generate its own electricity but buys its power wholesale from Nantahala Power and Light Company at rates approved by the FERC. The avoided cost formula proposed by WCU would reimburse a qualifying facility based on the rates charged to WCU by Nantahala at any point in time, and is the same formula approved by the Commission in Docket No. E-100, Sub 41A. Other than the clarification of certain issues requested by the Public Staff through interrogatories, the answers to which were copied into the record, no party challenged the avoided cost formula proposed by WCU. The Commission concludes that the proposed Small Power Production Supplier Reimbursement Formula should be approved.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 9

The evidence pertaining to Vepco's calculations of avoided costs is contained in the testimony and exhibits of Vepco witnesses James E. McIntyre, James P. Carney, G. Patrick Rooney and Robert W. Carney and Public Staff witness Ben Johnson.

To estimate its avoided capacity costs, Vepco used a capacity expansion plan that matches loads and resources and determines the difference between installed and required capacity. The Company does not propose to pay a capacity credit for 1987 since the plan does not show a requirement for additional capacity this year. The Company uses a mix of capacity costs and firm purchases to estimate its avoided capacity costs for the years 1988 through 1989. For the period beyond 1989, the Company uses the differential revenue requirement approach, assuming the addition of a combined cycle combustion turbine. The combustion turbine portion of the Chesterfield Power Station is the next planned addition to the Company's system, and it is expected to be on line in June of 1990.

The Company developed its avoided energy costs by using PROMOD, a production cost simulation model, to project the Company's total production costs both with and without QF generation over the two-year period, January 1, 1987, through December 31, 1988, (for Rate Schedule 19), and for each year of the five-year period, 1987 through 1991 (for Rate Schedule 19H). The difference in the projected total production costs with and without QF generation was divided by the related QF generation to determine the Company's per kilowatthour (kWh) avoided energy costs. The avoided production costs associated with the five-year period were then levelized for Rate Schedule 19H. These avoided production costs were then adjusted by adding the variable operation and maintenance expenses, and they were further adjusted for voltage specific line losses to derive the Company's avoided energy costs.

Public Staff witness Johnson testified that although he had not studied the rates proposed by Vepco, a comparison of those rates to his recommended rates for CP&L and Duke suggests that they are not unreasonable.

As in previous proceedings on this subject, Vepco has proposed two standard contracts for power purchases from QF's -- one for QF's of less than 100Kw and a more detailed contract for QF's of 1000 KW or greater. The Company's proposed Schedules 19 and 19H also include modifications to the terms and conditions of service under the schedules. The proposed contracts and terms and conditions were unopposed at the hearing. Subsequent to the hearing, on April 8, 1987, the Public Staff filed a Motion to Require Modification of

Virginia Electric's Proposed Rates Schedules 19 and 19H. By its Motion, the Public Staff asserted that Paragraphs VI of Vepco's rate schedules provide in essence that the schedules may be modified at any time and that the energy and capacity purchase prices therein are subject to change if Vepco is required by law to compute such prices on a basis other than 100% of avoided costs. The Public Staff argued that this language renders contracts thereunder uncertain and presents financing problems to cogenerators and small power producers. The Public Staff asked that the paragraphs be deleted from the rate schedules. CUCA filed a Response and Motion on April 13, 1987, agreeing with the Public Staff but urging that the relief be expanded to require all utilities to delete all language depriving any qualifying facility of standard full avoided cost contracts. The Public Staff filed a Response to CUCA on April 17, 1987, asserting that CUCA's response "is inaccurate and misleading and is based on CUCA's faulty interpretation of PURPA . . . " Vepco filed its Response on April 28, 1987, in which it agreed to deletion of the first paragraph of Paragraph VI as to Schedule 19H but argued that Paragraph VI is appropriate as to Schedule 19 since this schedule provides for variable rates which are subject to change on a periodic basis.

The Commission agrees with Vepco that the second paragraph under Paragraph VI of Schedule 19H deals with a subject other than that argued by the Public Staff and that this paragraph should remain. As to the first paragraph of Paragraph VI as it is stated in both Schedules 19 and 19H, the Commission concludes that a rewording of the paragraph is in order. The Commission agrees with Vepco that it is appropriate to put potential qualifying facilities on notice that Vepco's rate schedules are subject to change as provided by law. The Commission holds biennial proceedings such as the present one for the very purpose of reexamining and modifying the rates and contract provisions offered to qualifying facilities by the electric utilities of the State. However, Paragraph VI includes further language which can be interpreted to provide that not only the rates and provisions available in the rate schedules but also the rates and provisions of executed contracts might be modified by the Commission. This is the concern of the Public Staff. In the 1982 biennial proceeding, the Commission concludes that language which would have had such an effect should be stricken from the standard contracts of CP&L and Duke since such language renders contracts "little more than day-to-day agreements" and thus would inhibit financing and discourage cogeneration and small power production in the State. The Commission believes that the same reasoning applies herein. Therefore, the Commission orders Vepco to reword the first paragraph of Paragraph VI of Schedules 19 and 19H to read only as follows: "The provisions of this schedule, including the rates for purchase of electricity by the Company, are subject to modification at any time in the manner prescribed by law, and when so modified, shall supersede prospectively the rates and provisions hereof; however, such modifications shall not affect the rates and provisions of contracts which are executed and effective prior thereto." The Commission concludes that Vepco's proposed Schedule 19H as well as its Schedule 19, with the rewording of Paragraphs VI hereinabove provided, should be approved. The Commission further concludes that the modifications proposed by Vepco to its standard contracts with qualifying facilities are reasonable and should be approved.

Nevertheless, the Commission considers the adoption of the tables of capacity credits attached to schedules 19 and 19H to be a novel approach which has not been fully discussed by all parties. In essence, the capacity credits

provided in the schedules will vary according to the amount of QF capacity already under contract. Such an approach might be suitable for each of the companies besides Vepco. Therefore, the Commission will adopt the table of capacity credits on a trial basis for purposes of this proceeding, and will require Vepco to keep the Commission and the Public Staff informed of the response of actual and potential QFs to the table of capacity credits over the next two years.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 10

The evidence pertaining to CP&L's avoided cost rates is contained in the testimony and exhibits of CP&L witness G. Wayne King, Public Staff witness Ben Johnson, and CUCA witness Nicholas Phillips.

As discussed elsewhere herein, the methodology used by CP&L to determine its proposed capacity credits and energy credits is the same methodology approved by the Commission in the previous biennial proceeding. The Commission has already concluded elsewhere herein that capacity credits may be based on CT generating units; that energy credits may be based on system average incremental costs even though capacity credits are based on a CT; and that capacity credits may be spread over the same on-peak hours utilized in the retail TOD rates. Therefore the Commission concludes that the avoided cost rates contained in proposed Schedule CSP-10 should be approved.

CP&L also proposed two changes to its Terms and Conditions for the Purchase of Electric Power. The previously approved rate schedule CSP-9A contained a section devoted to early contract termination or change in contract capacity. Witness King testified that to improve the organization of both the rate schedule and the Terms and Conditions, the section should be moved from the rate schedule to the Terms and Conditions. He testified that additional language should be added to the Terms and Conditions in order to clarify the Company's rights and the developers' obligations should the QF not be able to make consistent energy deliveries over the long term.

CP&L also proposed to revise the applicability section of rate schedule CSP-10 in order to restrict the Schedule to QF energy which passes over the distribution system but not the transmission system, since the rates do not reflect avoided transmission losses. The proposed administrative changes to the rate schedule and to the terms and conditions were uncontroversial and uncontested in this proceeding by any party. Therefore, the Commission concludes that the proposed administrative changes should be approved.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 11

The evidence pertaining to the calculations of avoided cost rates for Duke is contained in the testimony and exhibits of Duke witnesses John N. Freund, Steve W. Smith and Walter E. Sikes, Public Staff witness Ben Johnson and CUCA witness Nicholas Phillips, Jr.

As discussed elsewhere herein, the methodology used by Duke to determine its proposed capacity credits and energy credits is the same methodology approved by the Commission in the previous biennial proceeding, except for certain adjustments. The Commission has already concluded elsewhere herein that capacity credits may be based on CT generating units; that energy credits

may be based on system average incremental costs even though capacity credits are based on a CT; and that capacity credits may be spread over the same on-peak hours utilized by Duke for Schedule PP in the prior biennial proceeding.

Public Staff witness Johnson took issue with several of the adjustments contained in Duke's calculations of capacity credits and energy credits which have not yet been discussed. He challenged Duke's proposal to include fuel inventory costs as a component of avoided capacity cost instead of avoided energy cost; he challenged Duke's calculation of the working capital component of avoided costs based on a lead-lag analysis; and he challenged Duke's calculation of the reserve margin component of avoided capacity cost based on an 89% availability factor for CTs.

The Commission is still of the opinion, as discussed in its Order in the previous biennial proceeding, that the fuel inventory component of avoided costs is energy related and belongs in the energy credit. The Commission made the same determination when Duke proposed to include the fuel inventory component in its capacity credits in the previous biennial proceeding, and still rejects Duke's argument that fuel inventory is fixed cost and must therefore be associated with the fixed cost portion of a generating unit.

The Commission is also of the opinion that the working capital component of Duke's avoided costs should be calculated in the manner recommended by witness Johnson. Duke failed to include an allowance for working capital in its energy credits in the previous biennial proceeding, and the Commission concluded in that proceeding that such allowance should have been included. In this proceeding, witness Freund stated that both the proposed capacity credits and the proposed energy credits include an allowance for working capital. However, the company's work papers in support of its working capital calculations appear to be inadequate to allow an analysis of the calculations by the intervenors. Witness Johnson recommended that the working capital component of avoided costs be calculated using the same method proposed by the Public Staff in the last biennial proceeding and adopted therein by the Commission. He also pointed out that it was the same method utilized by CP&L.

The Commission is further of the opinion that the reserve margin component of avoided capacity costs should be based on a 20% reserve margin instead of the 89% availability factor utilized by Duke. The Commission made the same determination in the last biennial proceeding when Duke proposed to use an 89% availability factor. The Commission's determination in this matter is also consistent with the comparable calculations by CP&L.

The Commission concludes that Duke's proposed Schedule PP should be approved, except that the rates should be modified to reflect revisions to the fuel inventory, working capital and reserve margin components of the avoided costs as discussed herein.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NO. 12

The interconnection practices of the utilities were not an issue of controversy in this proceeding. The Commission therefore concludes that the determinations made and the standards established in the last biennial proceeding should continue to apply.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 13

This finding of fact is prompted by the testimony of CUCA witnesses Phillips, Vogler and Campbell.

In Duke's last general rate case in Docket No. E-7, Sub 408, CUCA witness Phillips proposed that the services offered under Schedule PG be "unbundled" in order to provide separate rates for (1) supplementary, (2) back-up, and (3) maintenance service on a firm and an interruptible basis. Duke witness Denton testified in that case that the Company was studying whether such an "unbundling" of services was feasible. In the current proceeding in Docket No. E-100, Sub 53, witness Phillips again recommends that supplementary, back-up, and maintenance services be unbundled from Schedule PG and offered separately on a cost justified basis.

The Commission is of the opinion that separate rates for supplementary, back-up, or maintenance services should not be established in this proceeding. There is insufficient evidence in the record of this proceeding on which to make such determination. However, the Commission makes the observation that no party has sought a review of Schedule PG or an unbundling of services in a complaint proceeding under NCUC Rule R1-9, and that such a proceeding would be an appropriate forum in which to generate the information needed for making a determination on the issues.

CUCA witnesses Vogler and Campbell testified concerning dissatisfaction with Schedule PG by Reynolds and Lithium. Witness Vogler requested that the Commission order Duke to allow Reynolds to transfer from Schedule PG to Schedule OPT for the purpose of purchasing retail power from Duke, and to transfer from Schedule PG to Schedule PP for the purpose of selling power to Duke.

The Commission is of the opinion that it should not order Duke to allow Reynolds to transfer from Schedule PG to alternative rate schedules. Schedule PG requires a customer who chooses that rate schedule to sign at least a five year contract and to give thirty months notice of intent not to renew the contract. It is presumed that both Reynolds and Lithium signed contracts with Duke since they are now served under Schedule PG. Schedule PG is a voluntary rate schedule, and the alternative rate schedules will be available to them upon expiration of their current contracts for Schedule PG. The Commission also notes that neither party has sought a review of its contract with Duke in a formal complaint proceeding under NCUC Rule R1-9.

CUCA contends that large industrial customers volunteer for Schedule PG primarily because they cannot obtain long-term rates for sales of power to Duke under Schedule PP. However, Schedule PG also contains rates under which the customer must purchase retail power from Duke, and such rates have not remained stable. Therefore, CUCA seeks to make retail Schedule OPT or comparable rates available to large industrial customers for retail purchases from Duke while retaining the long-term rates for sales of power to Duke under Schedule PG. The Commission is of the opinion that such a procedure would merely circumvent the Commission's decision to not require standard long-term levelized rates under Schedule PP for large QFs.

IT IS, THEREFORE, ORDERED as follows:

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

2. That the rate schedules, contracts, and terms and conditions proposed in this proceeding by Nantahala Power and Light Company, by Western Carolina University, and by Carolina Power and Light Company, are hereby approved.

3. That the rate schedules, contracts, and terms and conditions proposed in this proceeding by Vepco are hereby approved subject to the rewording of Paragraphs VI of Schedules 19 and 19H as hereinabove provided.

4. That the rate schedules, contracts and terms and conditions proposed in this proceeding by Duke Power Company are hereby approved, subject to the modifications as follows:

(a) The proposed energy credits and capacity credits shall be adjusted to include the allowance for fuel inventory in the energy credits instead of in the capacity credits;

(b) The proposed capacity credits shall be adjusted to reflect a 20% reserve margin instead of the 89% availability factor used by the Company; and

(c) The energy credits and capacity credits shall be adjusted to reflect calculation of the working capital component of the avoided costs in the manner proposed by the Public Staff and adopted by the Commission in the previous biennial proceeding.

5. That CP&L, Duke, Vepco, Nantahala, and WCU shall within 10 days after the date of this Order file rate schedules, contracts and terms and conditions implementing the findings, conclusions and ordering paragraphs herein.

6. That Vepco shall file a written report once a year for the next two years with the Commission and the Public Staff discussing the reponse of actual

and potential qualifying facilities to the form of the capacity credits being offered in the tables attached to its Rate Schedules 19 and 19H.

ISSUED BY ORDER OF THE COMMISSION.
This the 7th day of May 1987.*

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

*Date corrected by Errata Order Issued May 8, 1987.

DOCKET NO. E-100, SUB 54

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Investigation and Rulemaking Proceeding to Consider Least-Cost Integrated Planning	)))	ORDER INSTITUTING INVESTIGATION AND RULEMAKING PROCEEDING

BY THE COMMISSION: By this Order the Commission is instituting a general investigation to consider the adoption of a new approach to electric utility planning which is called "Least-Cost Integrated Planning." Least-cost energy resources are those additional sources of energy supply or energy demand reductions that can be obtained for the total least-cost to utilities and their ratepayers. Least-cost integrated planning describes a strategy or process which takes a broad perspective of energy planning by including conservation programs, load management programs, and other energy efficiency measures and technologies as additional sources of energy supply or energy demand reductions which must be considered along with new generating plants in providing adequate, reliable electric utility service on a least-cost basis.

The Commission believes that a least-cost energy strategy is the policy of this State. Such a policy is expressly set forth in our Public Utilities Act. G.S. 62-155(a) provides that it is the policy of the State of North Carolina to conserve energy through efficient utilization of all resources.

G.S. 62(2) provides and declares that it is the public policy of North Carolina:

(1) To provide fair regulation of public utilities in the interest of the public;

(2) To promote the inherent advantage of regulated public utilities;

(3) To promote adequate, reliable and economical utility service to all of the citizens and residents of the State;

(4) To provide just and reasonable rates and charges for public utility services without unjust discrimination, undue preferences or advantages, or unfair or destructive competitive practices and consistent with long-term

management and conservation of energy resources by avoiding wasteful, uneconomic and inefficient uses of energy;

* * * *

(6) To foster the continued service of public utilities on a well-planned and coordinated basis that is consistent with the level of energy needed for the protection of public health and safety and for the promotion of the general welfare as expressed in the State energy policy;

(7) To seek to adjust the rate of growth of regulated energy supply facilities serving the State to the policy requirements of statewide development.

* * * *

G.S. 62-110.1 provides, in pertinent part, as follows:

(a) Notwithstanding the proviso in G.S. 62-110, no public utility or other person shall begin the construction of any steam, water, or other facility for the generation of electricity to be directly or indirectly used for the furnishing of public utility service, even though the facility be for furnishing the service already being rendered, without first obtaining from the Commission a certificate that public convenience and necessity requires, or will require, such construction.

* * * *

(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 of 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, and the program of the Commission for the ensuing year in connection with such plan.

(d) In acting upon any petition for the construction of any facility for the generation of electricity, the Commission shall take into account the applicant's arrangements with other electric utilities for interchange of power, pooling of plant, purchase of power and other methods for providing reliable, efficient and economical electric service.

(e) As a condition for receiving such certificate the applicant shall file an estimate of construction costs in such detail as Commission may require. The Commission shall hold a public hearing on each such application and no certificate shall be granted unless the Commission has approved the estimated construction costs and made a finding that such construction will be consistent with the Commission's plan for expansion of electric generating capacity.

(f) The Commission shall maintain an ongoing review of such construction as it proceeds and the applicant shall submit each year during construction a progress report and any revisions in the cost estimates for the construction.

* * * *

The Appellate Courts of this State have stated that the purpose of G.S. 62-110.1 is to prevent the costly overbuilding of central power plants. State ex rel Utilities Commission v. High Rock Lake Association, 37 N.C. App. 138, 245 S.E. 2d 787, cert. denied, 295 N.C. 646, 248 S.E. 2d 257 (1978). More specifically, G.S. 62-110.1(d) mandates that in considering whether to certificate a new plant the Commission must consider power pooling and "other methods for providing reliable, efficient and economical electric service." (Emphasis added).

The Commission recognizes that least-cost energy planning is already being practiced in this State to a measurable degree. However, the Commission believes that there is a need to establish express policies and rules to ensure that the present ad hoc case-by-case approach to planning becomes a fully integrated approach leading to the implementation of both supply-side and demand-side energy planning on a least-cost basis. The primary difference in this proposed approach is the integration of all of the available options into the plan and an evaluation of all of the options utilizing cost and benefit criteria.

GENERAL ORDERS - ELECTRICITY

I. Background

The Commission takes pride in having already made considerable progress in implementing the concept of least-cost integrated planning in this State. In load forecasting proceedings, the Commission requires utilities to file demand forecasts based upon econometric models designed to identify two or three possible scenarios for demand growth. These forecasts also incorporate the impact of price-induced demand reductions and utility-sponsored conservation and load reduction programs. In these load forecast proceedings, the Commission also considers a totally independent forecast made by the Public Staff of the Utilities Commission which includes a determination of the effect of conservation and load management in meeting future demand.

In these proceedings, the Commission also requires utilities to submit resource plans specifying how they intend to meet future demand through various supply-side options and through various demand-side options and conservation programs. The Public Staff also submits an independent resource plan.

During the past twelve years, the Commission has approved numerous utility programs implementing conservation, load-management, peak load pricing, and more recently cogeneration and small power production. A chronological listing of these programs is attached hereto as Appendix A. In addition, the Commission was instrumental in 1980 in establishing the North Carolina Alternative Energy Corporation (AEC), a quasi-public, nonprofit corporation which has the responsibility to find and implement conservation and alternative energy systems to moderate the growth of electricity demand in this State. The AEC is supported by the State's electric utility industry. A more detailed description of the AEC is attached to this Order as Appendix B.

In summary, much progress has been made to date in implementing a policy of providing electricity economically and efficiently. For the most part, however, an ad hoc, case-by-case approach has been utilized. No formally integrated plan on a comprehensive basis is now in place.

II. A New Approach

The Commission now proposes to adopt a set of rules that will depart from the case-by-case, ad hoc approach. Specifically, the Commission proposes the adoption of a least-cost integrated plan having the following general elements:

a. A forecast of future demand growth;
b. An assessment of all supply-side options for managing the forecasted demand;
c. An assessment of all demand-side options for meeting the forecasted demand;
d. Integration of all supply-side and demand-side options based on the relative cost-effectiveness of each resource; and
e. A short-term implementation plan.

The Commission is hereby proposing a specific set of rules for comment by all interested parties. Adoption of formal rules will seek to ensure:

1) the use of state-of-the-art approaches;
2) consistency among utility plans; and
3) systematic review by all interested parties.

The approach the Commission has decided to propose is similar in many ways to the plan adopted by the State of Nevada and the plan proposed for adoption in the State of Texas. This approach is somewhat unique in that the covered electric utilities are required to file both a long-term least-cost resource plan and a two-year implementation plan in which the utilities describes how they plan to implement their least-cost resource plans.

An aspect of the Nevada and Texas plans that makes sense to this Commission is that the initial development of least-cost resource plans will rest with the utilities, but these plans will be reviewed by the Commission, the Public Staff, and other parties. The Commission is of the opinion that if integrated demand-side and supply-side planning is to be utilized by investor-owned utilities, the expertise and data for such plan development must originate from within. This increases the likelihood that utilities will stand behind their plans and fully incorporate them as a management objective and tool. A meaningful review of utility planning and implementation will require an independent and expert review by this Commission. To this end, the Commission could seek such outside expert assistance as may be needed. Further, the Commission may call upon the Public Staff to provide such expertise as it can pursuant to G.S. 62-15(h).

The Commission is aware that the approach which is set forth in the proposed rules is only one approach. Several other states are now proceeding to implement a least-cost planning strategy, and the Commission encourages all parties to this docket to examine the varied approaches prior to commenting on the proposed rules to determine if ideas from other states have merit. States whose approaches the Commission has reviewed include Nevada, Wisconsin, Texas, Illinois, California, Vermont and Oregon.

A copy the rules proposed by the Commission as a means to establish a least-cost integrated plan in this State is attached to this Order as Appendix C. These proposed rules closely follow a draft rule which has been proposed for adoption in the State of Texas. The Commission desires to receive comments on the proposed rules from the regulated electric utilities, the Public Staff, the Attorney General, and any other interested parties. The Commission intends to move toward the adoption of formal rules designed to implement least-cost integrated planning in this State on the basis of the comments to be filed in this docket. The Commission does, however, reserve the right to schedule a public hearing in this docket, if necessary and advisable, after review of the written comments to be filed in response to this Order.

IT IS, THEREFORE, ORDERED as follows:

1. That the proposed rules attached hereto as Appendix C regarding least-cost integrated planning are hereby published for comment.

2. That Carolina Power & Light Company, Duke Power Company, North Carolina Power, Nantahala Power and Light Company, the Public Staff, and the Attorney General are hereby made parties to this proceeding.

3. That the parties to this proceeding shall file initial written comments with respect to the proposed rules attached hereto as Appendix C not later than Monday, June 22, 1987. Reply comments shall be filed not later than Monday, July 20, 1987.

4. That any other party who wishes to formally intervene in this docket shall file a petition to intervene not later than Monday, June 22, 1987, and shall also file initial and reply comments with regard to the proposed rules on Monday, June 22, 1987, and Monday, July 20, 1987, respectively.

ISSUED BY ORDER OF THE COMMISSION.
This the 25th day of March 1987.

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

Note: For Appendices See Official File in Clerk's Office

DOCKET NO. G-100, SUB 46

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Rulemaking Proceeding to Adopt New Rule R6-5.1 Regarding Notice of Changes in Gas Tariffs	)	ORDER ADOPTING RULE R6-5.1

BY THE COMMISSION: On November 25, 1986, and December 1, 1986, the Commission entered Orders in this docket initiating a rulemaking proceeding proposing the adoption of a new rule regarding the manner of filing notice of changes in gas tariffs. The proposed rule provided as follows:

Rule 6-5.1. Notice of tariff changes.

Each tariff filing involving any change in any existing tariff, whether made in the context of a general rate case or any other type of proceeding, shall include a copy of the existing tariff showing by cross-outs and italicized inserts all proposed changes in rates, charges, terms and conditions, service rules and regulations, and other text.

The Commission allowed the natural gas utilities and other interested parties a period of 30 days within which to file written comments on the proposed new rule. No comments have been filed.

The Commission concludes that good cause exists to adopt Rule R6-5.1 effective the date of this Order.

IT IS, THEREFORE, ORDERED that Rule R6-5.1, attached hereto as Appendix A, be, and the same is hereby, adopted effective the date of this Order.

ISSUED BY ORDER OF THE COMMISSION.
This the 21st day of January 1987.

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

APPENDIX A

Rule R6-5.1. Notice of tariff changes.

Each tariff filing involving any change in any existing tariff, whether made in the context of a general rate case or any other type of proceeding, shall include a copy of the existing tariff showing by cross-outs and italicized inserts all proposed changes in rates, charges, terms and conditions, service rules and regulations, and other text.

DOCKET NO. G-100, SUB 47

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Investigation of the Regulatory Framework for Natural Gas Utilities	)	ORDER REQUIRING ADDITIONAL COMMENTS AND REPORT FILINGS

BY THE COMMISSION: This docket was established as a result of the Commission's increasing concern that there are a number of existing and emerging issues in the natural gas distribution industry that may need to be addressed and resolved by this Commission in order to maintain, if not enhance, the quality of public utility natural gas distribution services to be provided in North Carolina in the future. On February 27, 1987, an Order Requiring Comments was issued that required the natural gas utility companies to file comments on the matters noted in said Order. The Public Staff, the Attorney General, and all other interested parties were requested to file comments subsequent to the initial filing of comments by the companies. Finally, all parties were given the opportunity to file reply comments.

The time to file comments was extended twice upon the request of certain companies. Ultimately, the four natural gas local distribution companies (LDCs), the Public Staff, the Attorney General, Carolina Utility Customers Association (CUCA), and four industrial customers served by the LDCs filed comments. The four industrial customers filing comments were Firestone Tire and Rubber Company, E.I. du Pont de Nemours and Company, Allied-Signal Incorporated, and E.J. Snyder and Company, Inc.

The Commission Order of February 27, 1987, requested the parties to file comments on the following matters:

1. Should the gas utility's customers be divided into two classes of customers: those who must receive bundled gas service from the utility and those who will be allowed to pick and choose from a variety of transmission and procurement options?

2. If the division noted in number 1 is made, what would be the proper framework for optimizing the procurement and transmission of gas for these customer groups?

3. Should the gas utility be allowed to implement a negotiated priority charge that would allow low priority customers to enhance their position in times of curtailment? (A low priority customer not paying the charge would be curtailed before a low priority customer paying the charge.)

4. Should the gas utility be allowed to provide its customers access to firm interstate capacity that is not needed by the utility to meet its current needs by agreeing to use interstate capacity rights on their behalf?

5. Should underground storage be made available to customers on an unbundled basis?

6. Should there be a minimum period for transmission only service? Should there be a maximum period?

7. How should fixed costs incurred on behalf of a customer that defaults on a transmission service agreement be recovered?

8. What is the proper recovery mechanism for take or pay liabilities resulting from long-term contracts signed before the current market of adequate supply developed?

9. In conjunction with number 1 above, do the residential and commercial customers require a higher level of supply and price reliability than the industrial customers?

10. What is the proper cost allocation basis to allocate fixed costs to the customer classes? Should the allocations be based on embedded cost, short-run marginal cost, long-run marginal cost, or some other cost level?

11. What studies are currently being conducted by the responding party in the matter of cost allocation for the natural gas industry?

12. Should there be a natural gas availability charge applicable to customers who choose to use alternate fuel sources, but may switch back to natural gas at a later time?

13. Should the natural gas distribution companies be obligated to provide future service upon demand to any customer who has currently chosen to switch to an alternate fuel source?

14. With due consideration of past instances of natural gas curtailments, what types of gas promotion programs, if any, are appropriate under current market conditions of vast supply? Briefly describe the programs, if any.

15. In conjunction with number 14 above, what markets are expected to provide natural gas sales growth in the future?

16. Please include all additional comments deemed to be appropriate.

The Commission has given much consideration to the comments filed by all parties. Many of the parties raised additional issues and points of concern related to the establishment of an effective natural gas regulatory framework. Most of these additional concerns are summarized in the filing by the Public Staff. After a review of these additional concerns and issues, the Commission concludes that the LDCs should be required to file additional comments on the following matters:

1. What should be the guidelines used to measure the prudency of commissions paid by the LDCs to procurement subsidiaries?

2. Should the current use of storage facilities and the recovery of said costs change in times of increased transportation gas movement?

3. What is the proper mechanism for gas cost savings achieved by the LDCs purchasing off system natural gas to be allocated between the customer classes?

4. What are the proper guidelines and procedures needed to regulate transactions between the LDCs, their affiliates, and customers?

5. In order to establish proper oversight of direct gas purchases by LDCs from producers the following problems need to be addressed:

a. What is the proper mechanism to review these transactions?

b. What type of information is needed to ensure an appropriate review?

c. What procedures are necessary, if any, to facilitate the confidentiality of the information needed to fulfill any review requirements?

d. What should be the standard(s) used to measure the prudency of the LDCs' purchases?

6. What changes need to be made to the Purchase Gas Adjustment due to the LDCs in the future purchasing gas from sources other than Transco?

a. Do accounting procedures related to gas costs need to be changed?

b. What procedures would be appropriate to determine reasonable cost?

c. What procedures would be appropriate if costs were determined to be imprudent?

7. Should the Commission continue its current policy of encouraging transportation, rather than mandating it?

8. What type of transportation should be mandated or encouraged (i.e. is firm transportation other than by an LDC for its sales customers a viable possibility)?

9. Should the Commission's current policy of setting transportation rates using full margin be continued?

10. How should pipeline capacity be allocated?

a. Consider both LDCs' pipeline capacity and their rights to interstate capacity.

b. What charge should be associated with this allocation?

c. Should excess firm capacity, if any, be allocated to end users for the transportation of customer-owned gas?

11. What type of supply backup service should the LDCs have to provide and at what cost to those who elect to transport their own gas?

12. What services, if any, in addition to transportation and standby or backup retail service can be or should be unbundled from the traditional retail sale and for which customers or classes of customers?

13. To what extent is bypass a realistic problem in North Carolina and, if it is, what steps should be taken to prevent it?

14. How should investments made to specifically serve a new transportation customer be recovered from that customer?

15. What is the process by which the varying costs of gas will be assigned in the future as CD gas supplies diminish; should two portfolios be developed, as in California, and how would this approach be meshed with normal rate case methodologies?

The Commission is concerned with all of the above issues. The Commission is particularly concerned with the establishment of proper oversight procedures over the LDCs' direct purchases of natural gas. The Commission has taken note of the reporting requirements established in Docket No. G-100, Sub 49, with regard to the manner in which the present cost sharing mechanisms and procedures and the present transportation tariffs are working for Piedmont Natural Gas Company (Piedmont), Public Service Company of North Carolina, Inc. (Public Service), and North Carolina Natural Gas Corporation (NCNG), during Transco's interim open access period. In striving to establish appropriate oversight procedures over LDCs' direct purchases of natural gas, the Commission will consider these reports, in addition to the comments filed as a result of this Order and the Order of February 27, 1987. In addition to the reports currently filed in Docket No. G-100, Sub 49 the Commission concludes that Piedmont, Public Service, and NCNG should each file monthly in this docket a report showing any purchase contracts between the utility or its affiliates and natural gas producers that have a duration of more than six months. This information should show by contract, the amount of gas to be purchased under the contract, contract price per dekatherm and the duration of said contract.

The Commission notes that several parties have asked for hearings on certain issues raised in the comments filed as a result of the Commission Order of February 27, 1987. Additionally, all parties note the uncertainty related to federal regulation of the natural gas industry and the effects this uncertainty has on intrastate regulation. Based on the foregoing, the Commission concludes that a hearing should not be held at this time on the matters included in the filings in this docket. The Commission further concludes that public hearings may need to be held in the future on some or all of the matters subject to comment in this docket.

IT IS, THEREFORE, ORDERED as follows:

1. That the natural gas utility companies be, and hereby are, required to file comments on the additional matters noted in this Order on or before February 10, 1988.

2. That the Attorney General, the Public Staff, and other interested parties be, and hereby are, requested to file comments on the additional matters noted in this Order on or before February 24, 1988.

3. That all parties filing comments pursuant to ordering paragraphs 1 and 2 above be, and hereby are, allowed to file reply comments on or before March 7, 1988.

4. That Piedmont, Public Service, and NCNG be, and hereby are, ordered to file monthly reports showing any purchase contracts between the utility or its affiliates and natural gas producers that have a duration of more than six months. Said reports should show by contract, the amount of gas to be purchased under the contract, contract price per dekatherm, and the duration of said contract.

ISSUED BY ORDER OF THE COMMISSION.
This the 28th day of December 1987.

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

DOCKET NO. G-100, SUB 49
DOCKET NO. G-9, SUB 257

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

Docket No. G-100, SUB 49

In the Matter of
Interim Open Access Transportation Procedures on Behalf of Local Distribution Companies in North Carolina

Docket No. G-9, Sub 257

In the Matter of
Application of Piedmont Natural Gas Company, Inc., for Approval of Transportation Procedures

ORDER RULING ON PETITION OF THE PUBLIC STAFF AND PETITION OF PIEDMONT NATURAL GAS COMPANY, INC.

BY THE COMMISSION: Effective August 13, 1987, Transcontinental Gas Pipeline Corporation (Transco) "opened" its system as an interim open access pipeline providing transportation pursuant to Section 311 of the Natural Gas Policy Act of 1978 on behalf of local distribution companies and intrastate pipelines. Transco's agreement to open its system is for the interim period through April 30, 1988. This period includes the summer period through October 31, 1987, and the winter period of November 1, 1987, through April 30, 1988.

On August 14, 1987, the Public Staff filed a Petition with the Commission in Docket No. G-100, Sub 49. By its Petition, the Public Staff asserts that Transco's agreement is contingent upon the LDCs purchasing 50% of their firm sales contract quantity (CD-2 gas) during the period, that the cost of CD-2 gas is currently $2.5057 per dekatherm while the cost of spot market gas is currently around $1.80 per dekatherm, that it is "highly probable" that large

industrial users will forego purchases at the LDCs' regular sales rates in favor of transportation of spot market gas bought by or for them, and that the LDCs' high priority customers will end up bearing all of the higher cost of the CD-2 gas which the LDCs must purchase under Transco's interim open access procedures. The Public Staff therefore asked the Commission to require (1) that all spot market gas transported by the North Carolina LDCs during the remainder of the summer period under Transco's interim open access procedures be used for system supply, (2) that the net cost of gas savings associated with such spot market gas be placed in the PGA deferred account for refunding to the LDCs' customers at the end of the interim period; and (3) that procedures to be applied during the winter period be the subject of a further order. The Public Staff asked that its Petition be granted or that an oral argument be scheduled on the Petition.

By Order of August 18, 1987, the Commission scheduled an oral argument for the purpose of considering the Petition.

Comments and/or petitions to intervene were filed by Public Service Company of North Carolina, Inc. (Public Service), on August 20, 1987, by the Carolina Utility Customers Association, Inc. (CUCA), on August 21 and 24, 1987, by the Aluminum Company of America (Alcoa) on August 24, 1987, by AT&T Technologies, Inc., on August 25, 1987, and by End Users Supply System on August 26, 1987.

The first oral argument was held as scheduled on August 25, 1987. The following parties appeared and participated in the oral argument: Public Staff, Attorney General, Piedmont, Public Service, NCNG, CUCA, AT&T, and End Users Supply System. In addition to the parties, Steve Stroud, Vice Chairman of the North Carolina Economic Development Board, and Charles Heath of Heath and Associates, appeared and made statements to the Commission.

Following the oral argument, on August 28, 1987, Piedmont filed a Petition to Clarify, Amend and Extend Transportation Procedures in Docket No. G-9, Sub 257. Almost two years ago, on October 29, 1985, the Commission issued an Order in this docket approving certain transportation procedures pursuant to which Piedmont may transport gas. The procedures were designed to effect a sharing of spot market gas savings among Piedmont's customers. The procedures were set to terminate at the end of October, 1987. By its Petition of August 28, 1987, Piedmont seeks to clarify, amend, and extend its previously approved transportation procedures in order "to permit a continued sharing of the benefits of the savings from gas not purchased under pipeline rate schedules . . . " The new procedures were proposed effective September 1, 1987, through April 30, 1988. Piedmont proposes that CD gas be the first to flow through its system with the commodity cost of all such gas allocated to all sales customers, that Piedmont's FT gas (30,000 dt per day) be the next to flow through the system with the savings from such gas allocated to all sales customers, that Piedmont next transport customer-owned gas for eligible industrial customers who request such to the extent that it has capacity available, and that to the extent Piedmont purchases any additional spot market gas for sale to its customers, all savings from such gas not required to offset negotiated losses be allocated to all sales customers. Piedmont argues that its proposed procedures are fair since the benefits from less expensive FT and spot market gas will be shared by all customers, since no one group of customers will be able to usurp all of the benefits arising under Transco's

interim open access, and since customers who wish to purchase and transport their own gas will be permitted to do so to the extent that capacity is available.

On September 2, 1987, the Public Staff filed its Response to Piedmont's Petition. The Public Staff's filing was made in both dockets. The Public Staff recommends that Piedmont's proposal, with certain modifications, be approved for the summer period and that a similar approach be adopted "as a compromise procedure" for the other North Carolina LDCs for the summer period. The Public Staff recommends that a hearing be scheduled to determine transportation procedures for the winter period.

On September 8, 1987, CUCA filed its Response urging the Commission to deny the relief sought by Piedmont's Petition and the Public Staff's Response as beyond the authority of the Commission to grant without a full evidentiary hearing.

By Order of September 3, 1987, the Commission scheduled a second oral argument for the purposes of considering Piedmont's Petition and the Public Staff's recommendation that an approach similar to Piedmont's be adopted for the other North Carolina LDCs for the summer period.

The second oral argument was held as scheduled on September 8, 1987. Appearances and arguments were made by the Public Staff, the Attorney General, Piedmont, Public Service, NCNG, CUCA, Alcoa, and End Users Supply System. In addition to the parties, statements were made by Jon M. Tyner of Allied-Signal, Inc.; Charles Heath of Heath and Associates; and White Watkins, North Carolina Department of Commerce Assistant Secretary for Traditional Industries.

The Commission has been criticized for its scheduling of these filings for oral argument and for the limited time allowed to prepare. The filings involve matters that of necessity require prompt action. The first oral argument was scheduled at the request of the Public Staff; the second oral argument was scheduled to determine how Piedmont's Petition and the Public Staff's compromise proposal had been received by the other parties. We do not believe that any party has been prejudiced by our scheduling of these matters for oral argument. The oral arguments have helped the Commission understand the procedural and substantive context of the filings made herein.

The Public Staff has argued that during the interim open access period the right to transportation is contingent upon the LDCs purchasing certain quantities of CD-2 gas and, thus, that spot market gas and CD-2 gas are "inextricably tied together." Therefore, the Public Staff has argued that it would be unfair for industrial customers to receive the benefits of transporting lower cost spot market gas while high priority customers are left to bear the full cost of the more expensive CD-2 gas. The Public Staff has argued that all spot market gas transported by the LDCs during the interim open access period should be used for system supply and that this will result in "a lower overall cost of gas for all customer classes with none receiving a disproportionate share of the benefits and none bearing a disproportionate share of the cost." Following the first oral argument, the Public Staff recognized two problems: the effective closing of the distribution systems to transportation of customer-owned gas and the lack of an evidentiary hearing. The Public Staff therefore made its compromise proposal in order to address

these problems. The Public Staff proposed assigning to sales customers a quantity of spot market gas equal to 15% of the LDCs' system contract (in anticipation of conversion of 15% to FT gas on November 1) and, thus, leaving some capacity for transportation of customer-owned gas. The Public Staff argued that this should be effective for the summer period and that an evidentiary hearing should be held to deal with the winter period. Although the Public Staff is not convinced that its second proposal gives the high priority market the recognition that it deserves in return for buying the gas that makes transportation possible, the Public Staff has argued that its second proposal is a realistic compromise.

The Attorney General has argued that procedures should be established to ensure that no customer class is excluded from the benefits of transportation of cheap gas supplies. The Attorney General supports the calls for an evidentiary hearing. The Attorney General supports Piedmont's Petition with the modifications proposed by the Public Staff.

At the first oral argument, both Public Service and NCNG argued that the Public Staff's original proposal would reverse a long-standing policy of the Commission and the companies to allow for transportation of customer-owned gas. They both argued that the Public Staff's proposal would put the State at a disadvantage in its attempts to attract industry, and that the proposal should not be allowed without an evidentiary hearing. Public Service argued that its residential customers are already receiving significant benefits from the purchase of spot market gas through operation of Rider D. It was asserted that these benefits have amounted to approximately $2.5 million from the time Rider D was adopted through July 1987.

At the second oral argument, Public Service argued that it does not understand the Public Staff compromise proposal, that the proposal is inconsistent with Rider D, that Public Service is already transporting more gas than would be permitted under the compromise proposal, and that the compromise proposal is unworkable on Public Service's system. Public Service argued that if the Public Staff's Petition is denied, the benefits of transportation will inure 5/6th to system supply and 1/6th to end users. This statement is based on estimates that 2 million dts of customer-owned gas could be transported before cool weather sets in and interruptible transportation is cut off while 10 million dts of spot market gas could be transported during the entire interim open access period. At the second oral argument, NCNG argued that its load profile is different from Piedmont's and that the Public Staff's compromise proposal would be arbitrary and unfair as to NCNG's industrial customers. It argued that treating 15% of its contract demand as system supply would have about the same effect on its system as the Public Staff's original proposal to treat all transportation as system supply. Further, NCNG argued that it has the IST mechanism to share the benefits of spot market gas and transportation with non-IST customers. It argued that the present tariffs furnish adequate protection to the high priority market and still allow service to the industrial market on a fair basis.

Piedmont pointed out many factors that must be considered in determining how the benefits of cheaper gas purchases should be shared, including the danger of losing industrial customers to alternative fuels, frequent changes in Transco's transportation policies, the need to arrange for long-term supply, the allocation of available capacity, and the need to attract and keep industry

in the State. Piedmont argued that its transportation procedures in Docket No. G-9, Sub 257, have resulted in the refund of $28 million in savings on spot market gas during the 20 month period from adoption of the procedures until June 1987. Piedmont argued that it can see merit to both the Public Staff and industrial positions. Piedmont previewed the proposal that it filed on August 28, 1987, by announcing that under Transco's interim open access procedures, Piedmont could increase its FT transportation rights to approximately 30,000 dts a day and that it intended to do so. At the second oral argument, Piedmont explained its proposed transportation procedures and argued that every class of customers would receive benefits. Piedmont argued against the modifications to its transportation procedures requested by the Public Staff, which are that the procedures be made effective back to August 1 and that they terminate at the end of the summer. Piedmont argued that there is a procedural difference as to it, since it is voluntarily proposing a reduction in its rates, and thus that no evidentiary hearing is required.

The industrial intervenors--CUCA, Alcoa, and AT&T--all emphasized the need for an evidentiary hearing on the Public Staff's Petition. They cited the concern of North Carolina industries about energy costs and cited the ability to transport customer-owned gas as one means to reduce costs and keep North Carolina industry competitive with the industry of other states and countries. They argued that the Public Staff's Petition is contrary to federal gas policy and would hinder the State's efforts to attract industry. They argued that workers, not just shareholders, suffer when plants in North Carolina must cut back production or close.

End Users is a Texas corporation founded by natural gas producers to address the trend toward industrial customers turning from natural gas to alternative fuels. The corporation makes large volumes of spot market gas available for sale to industrial customers and others. It has many customers in North Carolina. End Users argues that if the Public Staff's Petition is allowed, the immediate losers will be the State's industrial community and its employees and the ultimate losers will be allied service industries, the economy of the state as a whole, and the captive residential customers. End Users argues that we now have a system that was put into place following evidentiary hearings and that it provides full margin transportation rate benefits to the high priority gas customers.

The statements of the individuals who appeared before the Commission--Messrs. Stroud, Heath, Tyner and Watkins--stressed the adverse effect that the Public Staff's Petition would have on the competitiveness of North Carolina industry, the temporary nature of Transco's interim open access, and the need for an evidentiary hearing. These individuals raised several questions as to how the proposals under consideration would work.

The Commission has carefully weighed and considered the arguments and statements made at both oral arguments.

The Commission will first consider Piedmont's Petition to Clarify, Amend, and Extend Transportation Procedures in Docket No. G-9, Sub 257. Piedmont's original Petition to establish transportation procedures was considered by the Commission during its Regular Commission Staff Conference of October 28, 1985. Piedmont and the Public Staff reached agreement, and the Commission entered its Order on October 29, 1985, approving the transportation procedures as agreed

upon. Piedmont's present Petition will modify and extend transportation procedures through Transco's interim open access period. A major modification is to provide for 30,000 dt per day of FT gas to be allocated to all sales customers rather than the previously approved 10,000 dt per day allocated to firm customers. The Public Staff supports the Petition but would modify it in two ways: the Public Staff would make the allocation of FT gas effective August 1, 1987, rather than September 1, 1987, as proposed by Piedmont; and the Public Staff would approve the Petition at this time only for the summer period of the interim open access period. CUCA filed a Response to Piedmont's Petition in which it asked that the Petition be denied "as being in excess of the Commission's statutory authority to approve outside of the context of a general rate case." CUCA argued that there was no need for the Commission to act on Piedmont's Petition since Piedmont had an ongoing obligation to provide the cheapest gas possible to its customers and also to provide transportation.

The Commission concludes that the standing of Piedmont's Petition is clearly distinguishable from the standing of the Public Staff's Petition. Piedmont's transportation procedures constitute part of the utility's rates. See G.S. 62-3(24). Thus, Piedmont's Petition seeks a change of its rates. G.S. 62-134 authorizes a public utility to change its duly established rates following 30 days' notice to the Commission and, further, authorizes the Commission to allow changes in rates without requiring the 30 days' notice. This statute authorizes the Commission to suspend a rate change and to enter upon a hearing; however, the statute does not require the Commission to do so. We believe that Piedmont's Petition comes within the procedural provisions of G.S. 62-134. The Commission has provided sufficient notice of Piedmont's Petition by its Order scheduling an oral argument thereon. We conclude that Transco's interim open access procedures, Piedmont's right to convert 15% of its contract demand to FT transportation and Piedmont's proposal to allocate this increased FT gas to all its sales customers as of September 1, 1987, all provide good cause for the Commission to allow Piedmont's Petition to become effective as proposed on September 1, 1987. We recognize that the Public Staff has proposed certain modifications to the procedures outlined in the Petition and that some objections to the procedures have been voiced. We will therefore, pursuant to G.S. 62-134, condition our allowance of this change in rates by providing that the change shall be subject to an investigation upon the filing of a complaint by any person pursuant to the Commission's complaint statute, G.S. 62-73.

The Petition of the Public Staff does not fit within the procedural framework of G.S. 62-134. Although the Public Staff has proposed that procedures similar to Piedmont's be applied to Public Service and NCNG, those utilities have not proposed such changes in their rates. They have opposed such changes. Therefore, our decision as to Piedmont's Petition cannot be applied to Public Service and NCNG. As to those utilities, the Public Staff's filings more closely resemble a complaint proceeding designed to effect changes in those utilities' rates.

The rates of Public Service and NCNG already include provisions for sharing the benefits of cheaper gas purchases. Public Service has its Rider D and NCNG has its IST Rider. The Public Staff feels that as a result of interim open access, these utilities' high priority customers are entitled to greater benefits than they are now receiving through Rider D and the IST. Thus, the issue is not whether the benefits of transporting cheaper gas should be shared,

but the degree and manner in which the sharing should be effected. The Public Staff would have us order a change in the present sharing mechanisms and procedures on the basis of Transco's interim open access. We do not believe that this fact alone provides sufficient basis for either ordering the relief sought by the Public Staff or ordering any form of interim relief. It is obvious from the oral arguments that parties may differ as to defining and measuring the sharing of transportation benefits, as well as the appropriate level of sharing. The appropriate sharing of the benefits of interim open access is a complicated issue involving many considerations. The fact of Transco's interim open access is only one consideration to be weighed. The Commission must also consider the efficacy of the sharing mechanisms and procedures already in place. We must consider end users who have relied upon previously approved transportation procedures in arranging for the purchase of their own gas supply. We must consider industrial customers who desire transportation in order to deal with rising energy costs. It has been argued that the relief sought by the Public Staff would have far-reaching consequences on our State's economy, and these considerations must be weighed. Another very practical consideration is the uncertain nature of Transco's interim procedures and the limited time available to act. It has been argued that Transco can cancel its interim procedures at any time. At best, the interim procedures will be in place only through April 1988. The summer portion of the interim period last only through October 1987, a period of about six weeks. It is impossible for the Commission to conduct an evidentiary hearing on a matter of such importance and complexity and to issue a decision thereon in time for the decision to have any real effect on the summer period. The Commission therefore concludes that the relief and the compromise relief sought by the Public Staff as to the summer period should be denied since sharing mechanisms and procedures are already in place for Piedmont, Public Service and NCNG; since insufficient basis exists for the Commission to act without affording a full evidentiary hearing; and since insufficient time remains for an evidentiary hearing to be held as to the summer period.

As to the winter period, the relevant facts are less clear. It seems undisputed that interruptible transportation on the Transco system will end with the onset of the winter period and, therefore, that interruptible transportation capacity for customer-owned gas will no longer be available. However, there has been a suggestion that the LDCs' firm transportation rights might be used for transportation of customer-owned gas during the winter period. In asking for a hearing as to the winter, the Public Staff states the issues as follows: "whether or not the LDCs should allocate all or part of their additional firm transportation rights to end users; if so, at what charge; if not, how should the gas cost savings associated with system supply be allocated." Before the Commission decides whether to schedule a hearing as to the winter period, we believe that the facts should be more specifically developed in order to reveal whether a hearing is in fact appropriate. To this end, the Commission will require certain reports as hereinafter specified and will schedule a hearing upon the filing of a complaint pursuant to G.S. 62-73.

In order to monitor open access, the Commission finds it appropriate to require Piedmont, Public Service, and NCNG to make certain filings with the Commission with regard to the manner in which the present sharing mechanisms and procedures and the present transportation tariffs are working during Transco's interim open access period. First, the Commission will require Piedmont, Public Service, and NCNG each to file with the Commission a statement

of its policy with regard to allocating its FT entitlement and firm transportation capacity to end users or to the benefit of end users during the forthcoming winter period. The statements of policy should be filed with the Commission within 10 days from the date of this Order. Second, each LDC shall file a monthly report with the Commission reflecting, as a minimum, the following information. Such data shall be presented on a monthly and cumulative basis.

a. Volumes and cost of CD-2 gas purchased by the LDC,

b. Volumes and cost of FT gas transported by the LDC, broken down to show volumes and cost of FT gas transported for system supply and volumes and cost of FT gas transported for end users.

c. Volumes and cost of spot market gas purchased by the LDC for system supply,

d. Volumes and cost of spot market gas purchased by the LDC on behalf of end users,

e. Volumes of spot market gas transported by the LDC on behalf of end users and estimated cost thereof,

f. Net cost of gas savings associated with such spot market gas realized by the LDC,

g. A schedule showing how such cost of gas savings will be allocated among customer classes and a statement of the methodology used to allocate such savings, and

h. A statement of whether or not it was necessary to negotiate the transportation charge for the volumes transported on behalf of end users and, if so, the volumes transported, the transportation rate, the difference between the full margin transportation rate and the negotiated rate, and the gross revenues derived therefrom.

This last reporting requirement, item h above, is prompted by the fact that Section 311 transportation under Transco's interim open access must be "on behalf of" local distribution companies or intrastate pipelines. Pursuant to an inquiry from the Commission, counsel for the LDCs addressed the circumstances under which they regard transportation of customer-owned gas as being on behalf of the LDC. Counsel for Public Service stated, "[a]s far as Public Service is concerned, all of the gas that it transports, it earns exactly the same amount of money on the transportation of the gas that it would if it sold the gas." The Commission assumes that transportation of customer-owned gas by all three LDCs is being conducted at full margin. However, it has been suggested to the Commission that the LDCs' transportation tariffs may allow negotiation of transportation rates to less than full margin levels. In order to monitor the application of the LDCs' transportation tariffs, the Commission will require Piedmont, Public Service, and NCNG each to report to the Commission when its transportation rates are negotiated to less than full margin levels.

Although not necessary to our decision herein, the Commission wishes to speak to our State's need for another source of pipeline gas supply. The parties were asked to address this need at the second oral argument and there was virtually unanimous agreement on the need for another pipeline, in addition to Transco, to supply North Carolina LDCs. Mr. Watkins stated that the Department of Commerce is pursuing another pipeline for North Carolina on an informal basis. Piedmont stated that it was doing everything it could to bring additional supplies into the State. We support these efforts.

IT IS, THEREFORE, ORDERED as follows:

1. That the transportation procedures set forth in the Petition to Clarify, Amend, and Extend Transportation Procedures filed in Docket No. G-9, Sub 257, on August 28, 1987, should be, and the same hereby are, allowed to go into effect as filed effective September 1, 1987, subject to an investigation upon the filing of a complaint pursuant to G.S. 62-73;

2. That the Petition filed in Docket No. G-100, Sub 49, by the Public Staff on August 14, 1987, and the compromise relief sought by the Response filed by the Public Staff on September 2, 1987, should be, and the same hereby are, denied as to the summer period;

3. That Piedmont, Public Service, and NCNG shall within 10 days from the date of this Order each file with the Commission a statement of its policy with regard to allocating its FT entitlement and firm transportation capacity to end users or to the benefit of end users during the forthcoming winter period; and

4. That Piedmont, Public Service, and NCNG shall file the monthly reports as specified hereinabove within 45 days of the close of each monthly reporting period beginning with the month of August 1987 and continuing for the remainder of Transco's interim open access and the filing of such monthly reports shall terminate for the month ending April 30, 1988, unless otherwise ordered by the Commission.

ISSUED BY ORDER OF THE COMMISSION.
This the 21st day of September 1987.

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

DOCKET NO. P-100, SUB 41

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Changes in Tariff Relating to Service Observing Equipment Provided by Telephone Utilities Operating in North Carolina	)))))	ORDER GRANTING MOTIONS TO RELIEVE CAROLINA TELEPHONE AND GENERAL TELEPHONE OF DUTIES RELATIVE TO SERVICE OBSERVING EQUIPMENT

BY THE COMMISSION: On November 26, 1986, Carolina Telephone and Telegraph Company ("Carolina Telephone") filed a Motion in this docket requesting that the Commission approve the deletion of Section 14.18 of Carolina Telephone's General Subscriber Services Tariff entitled "Service Observing Arrangements" and that the Commission rescind, alter or amend the Order issued on March 7, 1977 in Docket No. P-100, Sub 41, so as to relieve Carolina Telephone of obligations with respect to service observing equipment which it can no longer effectively comply.

On December 22, 1986, General Telephone Company of the South ("General Telephone") filed a similar Motion with the Commission requesting the Commission to amend its Order of March 7, 1977, in this docket so as to relieve General Telephone of its duties relative to service observing equipment which was imposed by that docket and to permit General Telephone to delete its Tariff Section 14.23.1e. which had been filed in compliance with the March 7, 1977 Order.

In its Motion, Carolina Telephone alleged essentially that as a result of major changes in the telecommunications industry since the issuance of the Order of March 7, 1977, in this docket, Carolina can no longer adequately comply with the Order for the following reasons: Carolina Telephone no longer offers service observing equipment, and the only standards that now govern the use of such equipment by Carolina customers are those adopted by the Commission in this docket; customers can obtain service observing equipment from any of the many telephone vendors, and Carolina does not have complete records identifying which customers use this equipment and can no longer identify current service observing subscribers from its records; since the Company cannot identify customers which use this equipment, Carolina Telephone is unable to comply with the standards imposed by the Order of March 7, 1977. These standards required Carolina Telephone to affix a label to each telephone station subject to observation stating the possibility of service observing; required Carolina Telephone to place a reference symbol in the directory to signify that a particular subscriber used service observing equipment; required the subscriber to sign an annual letter of compliance; and required Carolina to send a list annually to the Commission with the names of service observing subscribers.

In its Motion, General Telephone asked to be relieved of duties with respect to service observing equipment for essentially the same reasons as alleged by Carolina Telephone in its Motion of November 26, 1986.

Both Carolina Telephone and General Telephone cited to the Commission the Commission's Order of September 2, 1986, in Docket No. P-55, Sub 761, and

Docket No. P-100, Sub 41, which granted the Motion of Southern Bell to relieve the Company of duties relative to service observing equipment, for substantially the same reasons as alleged by General Telephone and Carolina Telephone.

No responses have been filed in this docket to the Motions of Carolina Telephone and General Telephone.

Upon consideration of the Motion of Carolina Telephone and the Motion of General Telephone, the judicial notice of the Commission's Order of September 2, 1986, in Docket No. P-55, Sub 761, and Docket No. P-100, Sub 41, relating to Southern Bell, and the entire record in this docket, the Commission is of the opinion that the Motions of the two companies should be allowed. The Commission agrees that because of the major changes in the telecommunications industry since the Order of March 10, 1977, the two companies can no longer comply with the standards adopted by the Commission in this docket governing the use of service observing equipment. The companies no longer have service observing tariffs in effect nor do they offer for sale or lease service observing equipment to their subscribers. The customers of the two companies may acquire service observing equipment from many independent vendors of such equipment. Since Carolina Telephone and General Telephone no longer exercise control over service observing equipment and cannot identify current service observing subscribers from their records, the companies cannot insure that each telephone station subject to service observation complies with the Commission's standards set forth in Docket No. P-100, Sub 41.

For the reasons set forth above, the Commission is of the opinion, and so concludes that the two companies can no longer comply with the standards adopted by the Commission in this docket governing the use of service observing equipment and that the two companies should be relieved from the obligations imposed by the Order of March 7, 1977, subject, however, to the following provision: Any subscriber who voluntarily requests that a notice or reference symbol be placed in the directory signifying that the subscriber uses service observing equipment will be permitted the use of such symbol by the companies, and a notice to that effect shall be placed at the front of the directory. At the request of the subscriber, the following language shall also be included at the front of the directory to explain the reference symbol:

> "Service observing equipment is furnished to the subscriber solely for the purpose of determining the need for training or improving the quality of service rendered by its employees in the handling of telephone calls to or from the subscriber of an impersonal business nature."

IT IS, THEREFORE, ORDERED as follows:

1. That the Motion of Carolina Telephone and Telegraph Company for approval of the deletion of Section 14.18 of Carolina's General Subscribers' Services Tariff entitled "Service Observing Arrangements" be, and the same is hereby, allowed.

2. That the Motion of General Telephone Company of the South requesting the Commission to permit General to delete its Tariff Section 14.28.1e. be, and the same is hereby, allowed.

3. That the Motions of Carolina Telephone and General Telephone filed in this docket requesting that they be relieved from the obligations imposed by the Order of March 7, 1977, in this docket with respect to service observing equipment be, and the same are hereby, allowed, subject, however, to the following provision: Any subscriber who voluntarily requests that a notice or reference symbol be placed in the directory signifying that the subscriber uses service observing equipment will be permitted the use of such symbol in the directory by the companies, and a notice to that effect shall be placed at the front of the directory in which the symbol appears. At the request of the subscriber, the following language shall also be included in the front of the directory to explain the reference symbol:

> "Service observing equipment is furnished to the subscriber solely for the purpose of determining the need for training or improving the quality of service rendered by its employees in the handling of telephone calls to or from the subscriber of an impersonal business nature."

ISSUED BY ORDER OF THE COMMISSION.
This the 20th day of February 1987.

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

DOCKET NO. P-100, SUB 72

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Investigation to Consider Whether Competitive Intrastate Offerings of Long-Distance Telephone Service Should be Allowed in North Carolina and What Rules and Regulations Should be Applicable to Such Competition if Authorized	)	ORDER REVISING CEILING RATE PLAN

BY THE COMMISSION: On February 22, 1985, and July 22, 1986, the Commission entered Orders in this docket regarding the capped or ceiling rate plan which sets forth the Commission's general policies governing tariff filings and rate changes for AT&T Communications of the Southern States, Inc. (AT&T), and newly certificated long-distance companies operating as interexchange carriers (IXCs) and resellers in North Carolina during the initial phases of long-distance competition.

On April 28, 1987, the Commission entered an Order in this docket requesting all interested parties to submit comments and/or reply comments with respect to whether it is appropriate and advisable to amend or revise in any manner the capped rate plan as it applies to changes in capped rates in particular. This proceeding was initiated as a result of a tariff filing made by Business Telecom, Inc., (BTI), whereby BTI requested authority to

restructure its rates for Econocall Service in a manner such that certain of the Company's rates would exceed its ceiling on capped rates.

The current ceiling rate plan provides for the following plan with respect to changes in capped rates.

"To increase ceiling rates, the Commission's existing rules covering tariff changes and general rate increases will apply."

Comments in response to the Order of April 28, 1987, were filed on May 22, 1987, by AT&T, General Telephone Company of the South (General or General Telephone Company), Central Telephone Company of North Carolina (Central or Central Telephone Company), the North Carolina Long Distance Association (NCLDA), and the Public Staff. U.S. Sprint Communications Company (U.S. Sprint) filed comments on May 27, 1987. Reply comments were filed thereafter by AT&T, U.S. Sprint, and the Public Staff. A discussion of each party's position on this matter follows.

AT&T

AT&T advocates revision of the ceiling rate plan to allow interexchange carriers and resellers increased flexibility in changing rates above current capped rates. AT&T suggests that flexibility should be allowed and implemented by determining that proposed rate increases are not general rate cases in at least two situations:

1. When the proposed rate increases are accompanied by proposed decreases in rates which result in zero impact on the utility's earnings and

2. When rate increases are proposed to reflect only reasonable increases in costs or expenses, such as taxes, access charges, or inflation as measured by the consumer price index.

AT&T does not suggest that such filings not be subject to investigation and hearing, but rather that the data to be filed should be minimized. If the Commission is unwilling to revise its rules as suggested by AT&T, then AT&T suggests a revision and streamlining of the Commission's rules governing general rate proceedings.

It is AT&T's belief that all carriers should be treated equally in rate case revisions.

General Telephone Company

General contends that the competitive current environment in North Carolina warrants some form of regulation for long-distance carriers. An alternative to the current capped rate plan suggested by General is the allowance of a predetermined maximum percentage annual increase in rates. It is General's position that such a plan would give carriers greater flexibility and could promote long-distance competition in areas where it does not currently exist.

The relaxed rate regulation should apply to resellers, IXCs, and local exchange companies (LECs) in General's opinion.

Central Telephone Company

Central believes that continuation of the capped rate plan is not appropriate. Given the present level of long-distance competition and equal access in the State, Central advocates complete deregulation of interexchange interLATA long-distance service.

NCLDA

NCLDA recommends that the Commission adopt the following policy with respect to tariff changes for resellers:

1. Any rate changes should be allowed on 14 days' notice.

2. Additions of new services and cities should be allowed to become effective immediately upon filing with the Commission.

3. Changes in existing services should be allowed to become effective 14 days after notice is given to customers.

U.S. Sprint Communications Company

U.S. Sprint recommends elimination of the capped rate plan as it applies to competitive carriers operating in North Carolina. It is U.S. Sprint's position that the current plan has outlived its usefulness, is inappropriate and unnecessary in a competitive marketplace, and is impossible to administer, given the variation between rates and services of AT&T and those of its competitors.

Public Staff

The Public Staff in its initial comments states a belief that no major revisions are necessary to the present ceiling rate plan. The Public Staff does recommend two minor changes. The Public Staff recommends that a precise definition for ceiling rates should be scheduled as follows:

> Ceiling rates mean a cap or upper limit on each rate element in a rate schedule without regard to the total charge for a call or calls.

The Public Staff also believes the current ceiling rate plan is ambiguous regarding certain notice requirements to subscribers. The Public Staff recommends that the current section on "Changes in Rates below the Capped Rates, Discontinuance of Service" should be modified as follows:

> To increase rates up to the carrier's capped rates, the carrier must file a tariff and proposed subscriber notice with the Public Staff at least 14 days prior to the proposed effective date of the change. In addition, the proposed subscriber notice must be sent to the affected subscribers at least 14 days prior to the proposed effective date of the change. This requirement is also applicable for any rate restructure which would result in increases or a combination of increases and decreases to the carrier's subscribers not exceeding the capped rates.

All decreases in rates may become effective after filing appropriate tariffs and a proposed subscriber notice with the Public Staff at least 14 days prior to the proposed effective date. In addition, the proposed subscriber notice must also be sent to the affected subscribers at least 14 days prior to the proposed effective date. To discontinue service, the carrier must file a tariff and proposed subscriber notice with the Public Staff at least 60 days prior to the proposed effective date. In addition, the proposed subscriber notice must also be sent to the affected subscribers at least 60 days prior to the proposed effective date.

The Public Staff recommends no further revisions to the ceiling rate plan, particularly revisions that would reduce regulatory constraints. Further relaxation of regulatory requirements, in the Public Staff's opinion, would severely weaken the measure of protection needed by the general public while a competitive environment in North Carolina is still in its formative stages.

The Public Staff in reply comments acknowledges the comments of all other parties recommending termination of the present capped rate plan or modification of many of its provisions. The Public Staff acknowledges that an argument can be made that restrictions on rate increases above capped rates for interexchange carriers or resellers in today's competitive environment are unnecessary. However, the Public Staff argues against complete abandonment of price regulation. At a minimum, the Public Staff recommends that carriers should be required to provide understandable statements of rate changes in notices to their subscribers and that they should also be required to maintain carrier-specific uniform statewide rates. The Public Staff urges the Commission to continue with its long-standing practice to declare the scope of proceedings on a case-by-case basis, rather than adopting the position of AT&T.

CONCLUSIONS

The Commission has carefully considered the comments of all of the parties and concludes that modifications to the present ceiling rate plan are justified. Certainly, all of the parties commenting acknowledged that the continued emergence of competition in the long-distance market in North Carolina warrants further relaxation of regulatory price constraints on long-distance carriers.

Likewise, with the lessening of regulatory pricing constraints, the Commission would expect to see a more rigorous competitive long-distance market emerge. Beginning with the February 22, 1985, Order, the initial competition Order, the Commission has acknowledged the benefits to be obtained by North Carolina telephone subscribers from the gradual substitution of competition for regulation in the telecommunications long-distance market. These benefits include but are not limited to a greater variety of choices among providers of long-distance telephone service and services obtained from these carriers, the more rapid emergence of technological innovation in North Carolina, and lower long-distance telephone rates. The Commission notes that there are currently 14 long-distance carriers certified to provide service in North Carolina. AT&T has reduced its interLATA North Carolina message toll service rates twice since the introduction of competition with many other carriers following AT&T's lead. The data filed in Docket No. P-100, Sub 92 indicates that all of the local exchange companies in the State are moving rapidly to provide state-of-the-art

telecommunications services to their customers. The facilities-based long-distance carriers in the State are building state-of-the-art networks, and AT&T is expending capital to enhance its facilities. Thus, many of the benefits to be gained by North Carolina subscribers from the introduction of competition in the long-distance telecommunications market are already being experienced.

The Commission concludes that further regulatory constraints may be relaxed and that the long-distance carriers other than AT&T (and excluding LECs) should be allowed to (1) raise rates, without any ceiling or capped rates being applicable, on 14 days' notice to affected customers and the filing of applicable tariffs and customer notices with the Commission and the Public Staff and (2) lower rates by filing appropriate tariffs with the Commission and Public Staff 14 days prior to the proposed effective date. These companies do not possess market power and therefore are unable to extract monopoly profits from their subscribers. Thus, no harm will likely befall subscribers from this pricing flexibility since customers of these companies may choose another carrier if unhappy with the prices charged or services rendered by a particular carrier. As a result of this change in the capped rate plan, BTI may refile its proposed tariff and notice to customers for consideration by the Commission.

The Commission believes that the notice requirement should be strengthened and that more stringent notice requirements will further enhance the competitive market in North Carolina. Since perfect information is a criterion of the perfectly competitive market, the attempt to make quality information more readily available to subscribers can only lead to a more competitive telecommunications market in North Carolina. The Commission is particularly interested in providing such information for the less sophisticated telephone subscribers in North Carolina. Therefore a comparison of intrastate MTS and like rates has been formulated by the Commission and Public Staff and is attached hereto as Appendix A, Schedule 1. The Commission would like to formulate a similar schedule of interstate rates as shown in Appendix A, Schedule 2 and calls upon the long-distance companies to file such information within 30 days from the date of this Order. Comments may also be filed on Appendix A, Schedule 1 within 30 days from the date of this Order. The Commission believes the burden of updating the form should rest primarily with the carriers themselves and that any tariff changes (intrastate or interstate) in MTS or like rates (increases or decreases) should be accompanied by a separate listing of the information shown on Appendix B on a company-specific basis. This will enable the Commission to more readily keep the information on a current basis. Upon completion of this informational report, the Commission plans to require that each notice to customers of a rate increase should include the following message:

> A rate comparison of long-distance telephone carriers may be obtained by writing the Consumer Services Division, Public Staff, North Carolina Utilities Commission, Post Office Box 29520, Raleigh, North Carolina 27626-0520. A self-addressed stamped envelope must accompany each request.

The Commission further concludes that elimination of the capped rate pricing scheme is not justified at this time for AT&T. A policy of treating market participants equally has steadfastly been maintained in the past, and

the Commission is reluctantly altering its policy in this regard at this time. Since AT&T is the only long-distance carrier providing originating interLATA long-distance service to all portions of the State and the only provider of certain types of telecommunications services in the State, the Commission believes full pricing flexibility for AT&T is not in the public interest at this time. This matter will be monitored on an on-going basis by the Commission with a goal of establishing regulatory policies at parity for all carriers as soon as reasonably possible.

AT&T currently can reduce rates 14 days after filing revised tariffs with the Commission and the Public Staff, as can all IXCs and resellers. The Commission does, however, believe that AT&T should be allowed greater flexibility in the filing of other types of rate requests. Specifically, rate treatment as non-general case proceedings involving the situations outlined by AT&T in its comments regarding rate requests which reflect no impact on net income or only reasonable increases in costs or expenses such as taxes, access charges, or inflation as measured by the consumer price index may be reasonable and appropriate. The current statutes give the Commission authority to declare the scope of a proceeding by determining whether it is either a general rate case or a case confined to the reasonableness of a specific single rate, a small part of the rate structure, or some classification of users involving questions which do not require a determination of the entire rate structure and overall rate of return; G.S. 62-137. Thus, the Commission will consider filings of AT&T on a case-by-case basis to determine whether said filings may be handled as a complaint case and thus on a non-general rate case basis. A ruling will be made within 14 working days of a tariff filing by AT&T as to whether said filing is to be handled as a general rate case or a complaint case. Cost support data should be a part of any such filing. The Commission will endeavor to treat filings deemed to be non-general rate case matters in as expeditious a manner as possible. The Commission recognizes that having alternative regulatory treatments for various carriers is not an optimal regulatory scheme; however, the Commission believes such a policy is in the public interest at this time and will only be maintained so long as it is justified. The ceiling rate plan as modified herein is attached hereto as Appendix C.

The Commission also believes that the relaxed pricing regulations should not be extended to the LECs at this time since the intraLATA markets in which these companies operate still retain regulatory barriers to entry. These barriers include a prohibition on facilities-based intraLATA competition and retention of 1+ intraLATA traffic. As competition progresses, the Commission believes that this issue of further regulatory flexibility must be addressed from the LECs as well.

The NCLDA requested that any rate change should be allowed on 14 days notice, that additions of new services and cities should be allowed to become effective immediately with the Commission, and that changes in existing services should be allowed to become effective 14 days after notice is given to customers. The Commission has specifically addressed these issues previously with the exception of the additions of new services and cities. The Commission believes the existing rules dealing with the addition of new services are reasonable and should remain unchanged. In the Commission's opinion, the addition of originating service areas should be allowed on one day's notice to the Commission and the Public Staff by an appropriate tariff filing. The

Commission expects carriers to keep their tariffs current as they expand into additional originating service areas.

IT IS, THEREFORE, ORDERED as follows:

1. That the ceiling rate plan applicable to interexchange carriers and resellers be, and is hereby, modified as shown in Appendix C.

2. The all certified long-distance carriers shall file the information required in Appendix A, Schedule 2 for interstate operations within 30 days from the date of this Order. Comments on Appendix A, Schedules 1 and 2 may be filed within 30 days from the date of this Order.

3. That a copy of this Order shall be served upon each local exchange company, each certified or with certificate pending long distance company operating in the State, the Public Staff, and the Attorney General.

ISSUED BY ORDER OF THE COMMISSION.
This the 25th day of August 1987.

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

APPENDIX A
SCHEDULE 1

COMPARISON OF LONG DISTANCE COMPANIES' RATES

The chart shows the rates that would be applicable for direct-dialed intrastate long distance message telecommunications service (MTS) with equal access service. The chart does not reflect any operator services, travel card, or credit card charges. The information provided in Schedule 1 was current as of August 15, 1987. However, the carriers' rates may change from time to time; thus it is advisable to contact the carrier directly prior to making a choice. The services provided by some carriers are available only in selected areas of North Carolina. In addition, some carriers have limited areas where calls may be completed.

NOTE: FOR TABLES OF COMPARISON OF INTRASTATE LONG DISTANCE COMPANIES - RATES, see Official Order in the Office of the Chief Clerk

APPENDIX B

Company Name: _____

	Day Rate		Evening Rate		Night/Weekend Rate	
Mileage Band	Initial Minute	Additional Minute	Initial Minute	Additional Minute	Initial Minute	Additional Minute

-- Rates should be shown in cents per minute reflecting the rate for a presubscribed equal access residence customer.

-- Discounted rate periods may be shown as a flat percent discount (only if applicable).

-- State in footnote the minimum time for a call and time increments for billing purposes (ie: 1/10 minute increments).

-- State in footnote when discounted rate periods are in effect.

-- State in footnote any initial fees, monthly fees, monthly minimum amounts, or volume discount amounts if applicable. Amounts should be for residence customers.

APPENDIX C

DOCKET NO. P-100, SUB 72

Initial Establishment of Rates, Charges, and Regulations

All new carriers seeking authority to provide long-distance service shall file tariffs with the application for a certificate reflecting the proposed immediate service area, regulations, rates, and charges.

Changes in Rates - Other Common Carriers (OCCs) and Resellers

To increase rates the OCCs (facilities-based carriers) and resellers other than AT&T Communications of the Southern States, Inc. (AT&T), must file tariffs and a proposed subscriber notice or notices with the Public Staff at least 14 days prior to the proposed effective date of the change. In addition, the proposed notice to customers must be sent to the affected subscribers at least 14 days prior to the effective date of the change. If the proposed notice is found to be inadequate, the implementation date of the rate change will be suspended until such time as customers are adequately notified. This requirement is also applicable for any rate restructure which would result in increases or a combination of increases or decreases to the carrier's subscribers. All decreases in rates may become effective after filing appropriate tariffs with the Public Staff at least 14 days prior to the proposed effective date.

Changes in Rates - AT&T

Proposed increases in rates above AT&T's current capped rates will be evaluated on a case-by-case basis to determine whether such matters may be handled as either a complaint proceeding or as a general rate proceeding. AT&T should file proposed tariffs along with a written explanation of its filing, cost support and a proposed customer notice for review by the Commission and the Public Staff. A determination of the procedures for handling said filing will be made within 14 working days from the date of any such filing.

All decreases in rates may become effective after filing appropriate tariffs with the Public Staff at least 14 days prior to the proposed effective date.

Discontinuance of Service - All Carriers and Resellers

To discontinue service, the carrier must file appropriate tariffs and a proposed subscriber notice with the Public Staff at least 60 days prior to the proposed effective date of the change. In addition, the proposed subscriber notice must be sent to the affected subscribers at least 60 days prior to the proposed effective date.

Additions of New Services - All Carriers and Resellers

To add a new service to the carrier's offerings, the carrier must file appropriate tariffs with the Public Staff at least 30 days prior to the effective date of the change.

Additions to Service Area

Carriers will be allowed to add new originating service areas on one day's notice to the Commission and the Public Staff by an appropriate tariff filing.

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 Consumers Through an Interstate Residential Subscriber Line Charge Waiver Mechanism	)))))	ORDER ADOPTING EXPANDED SUBSCRIBER LINE CHARGE WAIVER PROGRAM

BY THE COMMISSION: By Final Order entered in this docket on June 4, 1986, the North Carolina Utilities 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 concludes that this program should be expanded effective July 1, 1987, to include all of the regulated local exchange companies (LECs) operating in North Carolina throughout their service territories and should provide for a 100% match of the federal subscriber line charge. The Federal Communications Commission (FCC) adopted an expanded waiver program pursuant to its Decision and Order released December 27, 1985, in CC Docket Nos. 78-72 and 80-286. This expanded program provides for a waiver of the full amount of the interstate subscriber line charge for telephone subscribers receiving benefits under a qualifying state and local telephone company assistance plan.

The experimental subscriber line charge waiver program initially adopted by the Commission was approved by the FCC pursuant to letter dated May 22, 1986. In that letter, the FCC made the following pertinent statements regarding its expanded assistance program:

> "The Bureau is pleased that the North Carolina Utilities Commission has chosen to use the benefits made available by the federal lifeline assistance program. We 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 Commission concludes that good cause now exists to expand the subscriber line waiver program for recipients of aid to families with dependent children and supplemental security income benefits effective July 1, 1987, to include all regulated local exchange companies operating in North Carolina throughout their service territories and to provide for a 100% match of the federal subscriber line charge. This match will be accomplished by means of a reduction in local service rates for qualifying customers equal to the federal subscriber line charge. The Commission hereby requests the regulated LECs to meet with representatives of the North Carolina Department of Human Resources to develop the general procedures and guidelines necessary to implement this expanded assistance plan effective July 1, 1987. The Commission anticipates that the regulated LECs will continue to utilize the general procedures regarding certification and verification of eligibility which were previously approved in conjunction with the 50% experimental waiver plan.

IT IS, THEREFORE, ORDERED as follows:

1. That the subscriber line waiver program for recipients of aid to families with dependent children and supplemental security income benefits should be expanded effective July 1, 1987, to include all regulated local exchange companies operating in North Carolina throughout their service territories and shall provide for a 100% match of the federal subscriber line charge. This match shall be accomplished by means of a reduction in local

service rates for qualifying customers equal to the federal subscriber line charge.

2. That a copy of this Order shall be filed with the Chief, Common Carrier Bureau, Federal Communications Commission for review and approval.

3. That the regulated LECs, in conjunction with the North Carolina Department of Human Resources, are hereby requested to develop the general procedures and guidelines necessary to implement the expanded subscriber line waiver program effective July 1, 1987. The regulated LECs shall be responsible for filing monthly progress reports with the Commission beginning March 2, 1987, and thereafter on the first business day of each month, until the Commission has entered a final Order approving all necessary procedures and guidelines.

ISSUED BY ORDER OF THE COMMISSION.
This the 22nd day of January 1987.

NORTH CAROLINA UTILITIES COMMISSION
Sandra J. Webster, Chief Clerk

(SEAL)

Commissioner Sarah Lindsay Tate abstains.
Commissioner J. A. Wright dissents.

Docket No. P-100, Sub 80

Commissioner Julius A. Wright, dissenting.

I must dissent from the majority on this decision. While the ideal behind this decision, universal telephone service and/or helping the poor and needy keep their telephones, is commendable, this program will not achieve that goal. In fact, I believe this program (born most assuredly in a political passion to garner votes, raised by well meaning supporters, then nurtured to fruition by unknowing legislators) will grow to unbelieveable size and expense while not helping even one individual keep his telephone. For these reasons and the following reasons, I must say, "No, no, a thousand times no."

This program came about after the judicial breakup of the telephone system and the introduction by the FCC of the "interstate subscriber line charge." This charge, initially $1.00 now raised to $2.00, was instituted to pay for the privilege of long distance access in the now dismembered telephone network. Somewhere in this judicial miasma a well meaning individual must have decided that this $2.00 charge would destroy poor families leaving them telephoneless and broken. Thus was born this "waiver program."

Unfortunately, the majority decision goes even further than what I preceive to be the intent of the General Assembly. The General Assembly amended G.S. 62-140 to authorize this Commission to "match any reduction in the interstate subscriber line charge authorized by the Federal Communications Commission." However, at the time the General Assembly acted, the FCC authorized only a 50% waiver of the $2.00 charge: Thus, a matching of this 50% waiver would result in a total waiver of $2.00. After the General Assembly amended G.S. 62-140, the FCC authorized a 100% waiver of the $2.00 charge. While the General Assembly's language may now authorize a total waiver of

$4.00, I do not believe that the General Assembly foresaw more than a $2.00 waiver when it acted.

I am also forced to dissent because of the nature of this decision's implementation. On Februry 24, 1986, in this docket, this Commission authorized a one-year pilot program in three counties and said in that Order:

> "The Commission believes that this information [gained in the pilot program] would enable all parties to evaluate the efficiency and cost effectiveness of the program." (emphasis and explanation added)

This one-year pilot program was started in July 1986. Now comes this Commission, six months later, terminating the pilot program and expanding the program statewide. Yet, its studies to date suggest that the program is cost ineffective and there is not one shred of evidence in the six-month pilot program that even suggests one subscriber's telephone was saved. Apparently, the majority has adopted the Ferdinard Marcos policy making philosophy, which is to ignore the results, declare yourself the winner, and carry on.

More specifically, relating to the costs involved, Southern Bell filed a report on the pilot program on November 25, 1986. This report indicated the following:

	TOTAL $	PER RECIPIENT	
Monthly Cost	$2,105.00	$ 1.50	
Start-up and Nonrecurring Expenses	$30,418.00	$21.72	
Waiver per Month		$ 2.00	(now $4.00)

From the above data it is obvious that the monthly recurring costs including the waiver will be a minimum $5.50 per recipient. If it also takes $21.72 per recipient to start the program, then we are talking costs of more than $5.50 per month per recipient to the ratepayers and taxpayers while the participants only receive $4.00. The government would be financially better off to increase AFDC and SSI payments by $4.00 per recipient rather than to go through this program's convoluted chicanery under the pretense of saving poor people's telephones.

This leads me to another immense and apparently ignored flaw in this whole scheme. As I stated earlier, there have been no indications that one single subscriber's telephone has been saved by this program. Indeed, I would argue that if our goal is universal service and helping the truly poor have a telephone, this program misses the boat entirely. Simple logic should tell us that the really poor, destitute people don't even own a telephone; therefore, this waiver scheme won't help them at all!

To sum up this argument about the aborted pilot study and its ignored results, I can only conclude that the majority and no intention of logically assessing the cost effectiveness or efficiency of this program as stated in the earlier Order. Rather, this exercise was merely a training ground for the administrators of the program.

To say the least, this pilot project effort runs counter to all my experience in private enterprise where pilot projects were evaluated based on their costs and whether or not they achieved the desired objectives. If the objectives were not achieved, the idea was dropped. On the other hand, in government any program once started acquires a kudzu complex in that it grows without bounds and can't be killed. We then lose sight of the program's original objectives because promoters and recipients of the program all proclaim it successful by pointing out the large numbers of people now participating. This idea of success is somewhat akin to saying the General Custer's mission of finding Indians was successful because he found a whole bunch of them. Obviously, the number of participants in a program is no measurement that the idea is successful. Yet, for lack of any evidence other than the 1404 participants, the majority has apparently declared the pilot program a success and given statewide birth to a money hungry monster. We haven't save one telephone. We haven't even reached the abject poor who don't have a phone. No evidence suggests that we are one step closer to preserving universal service. Unfortunately, as this program grows and millions of dollars are spent and wasted, no one will remember or care why the program was started in the first place!

My final arguments against this Order involve the general administration of the program. I am appalled at what I see as administrative errors in the program's implementation. For example, an individual can participate in this waiver scheme and still subscribe to custom calling features. That is ridiculous. Furthermore, while large numbers of people can participate, other who may be truly needy cannot. Last but not least, the so-called purging of noneligible recipients takes place only twice a year. I am not confident this purging will be particularly accurate, but even if it were accurate the glacial timeliness of the purging will give many nondeserving recipients several months of undeserved benefits!

Surely we can come up with a better, more cost effective program. In fact, if an effective idea were offered that really accomplished the goal of ensuring telephone service for the medically or otherwise needy, then I would support such a program. But I believe this ill conceived scheme is opening up a veritable Pandora's box while robbing the ratepayers and taxpayers under the pretense of helping the poor.

I cannot support such an ill conceived, ill-advised program. It does not achieve its desired objective, it is administratively unsound, and it is cost ineffective. For these reasons, I can neither condone nor participate in such a decision.

Julius A. Wright
Commissioner

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 Consumers Through an Interstate Residential Subscriber Line Charge Waiver Mechanism	))))	ORDER APPROVING IMPLEMENTATION OF EXPANDED SUBSCRIBER LINE CHARGE WAIVER PROGRAM

BY THE COMMISSION: On January 22, 1987, the Commission entered an Order in this docket expanding the subscriber line charge waiver program for recipients of aid to families with dependent children and supplemental security income benefits effective July 1, 1987, to include all regulated local exchange companies operating in North Carolina throughout their service territories and to provide for a 100% match of the federal subscriber line charge. This match will be accomplished by means of a reduction in local service rates for qualifying customers equal to the federal subscriber line charge. The Commission requested the regulated LECs to meet with representatives of the North Carolina Department of Human Resources to develop the general procedures and guidelines necessary to implement this expanded assistance plan effective July 1, 1987. The Commission anticipates that the regulated LECs will continue to utilize the general procedures regarding certification and verification of eligibility which were previously approved in conjunction with the 50% experimental waiver plan.

By letter dated January 9, 1987, the Commission served a copy of its Order Adopting Expanded Subscriber Line Charge Waiver Program on the Federal Communications Commission for review and approval. By letter dated March 5, 1987, the Federal Communications Commission approved the expanded subscriber line charge waiver program for implementation in North Carolina as follows:

* * *

"Based on the information supplied by the North Carolina Utilities Commission, the Bureau finds that the North Carolina program meets the requirements of the FCC lifeline program. We expect that the North Carolina Utilities Commission will notify this Commission if it extends the lifeline program or decreases the state-provided benefits. Accordingly, North Carolina should direct local exchange telephone companies operating in North Carolina to file appropriate revisions to their access tariffs stating that the subscriber line charge does not apply to those subscribers receiving a reduction in their local service rates."

* * *

A copy of the FCC's approval letter is attached hereto as Appendix A.

On the basis of the foregoing, the North Carolina Utilities Commission is of the opinion that the expanded subscriber line charge waiver program heretofore adopted by Order entered on January 22, 1987, should in fact be implemented effective July 1, 1987.

IT IS, THEREFORE, ORDERED as follows:

1. That the regulated local exchange companies subject to the jurisdiction of the North Carolina Utilities Commission shall file appropriate revisions to both their interstate and intrastate tariffs in conformity with the provisions of this Order. These tariffs shall be filed with an effective date of July 1, 1987.

2. That a copy of this Order shall be filed with the Chief of the Common Carrier Bureau of the Federal Communications Commission.

3. That the regulated local exchange companies, in conjunction with the North Carolina Department of Human Resources, are hereby requested to continue their efforts to develop the general procedures and guidelines necessary to implement the expanded subscriber line charge waiver program effective July 1, 1987. The regulated LECs shall continue to file monthly progress reports in this docket pursuant to decretal paragraph 3 of the Order dated January 22, 1987.

ISSUED BY ORDER OF THE COMMISSION.
This the 31st day of March 1987.

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

Commissioner J. A. Wright dissents.

NOTE: For Appendix A, see the official file in the Chief Clerk's office.

DOCKET NO. P-100, SUB 81

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Deregulation of Embedded Customer Premises Equipment By General Telephone Company of the South	)	ORDER REGARDING TRANSFER OF DETARIFFED CUSTOMER PREMISES EQUIPMENT

BY THE COMMISSION: The Federal Communications Commission (FCC) in Docket No. 81-893 required that all embedded customer premises equipment (CPE) owned by independent telephone companies be detariffed and removed from regulated service by December 31, 1987. On August 26, 1985, the North Carolina Utilities Commission (Commission) issued its FCC certified deregulation plan for CPE. The Commission's deregulation plan requires that all embedded CPE investment (except CPE needed by the disabled) and the associated depreciation reserves, deferred taxes, and unamortized investment tax credits be transferred to nonregulated operations or to a nonregulated affiliate at December 31, 1987. The economic value placed on this CPE, as set forth in the Commission plan, would be the larger of net book value or the value as determined through the capital budgeting process.

By its Order dated June 2, 1987, the Commission granted General Telephone Company of the South's (Company or GENTEL) request to deregulate its embedded CPE as of October 31, 1987, rather than December 31, 1987. This Order allowing the early deregulation was granted contingent upon GENTEL'S filing by July 15, 1987, certain information and upon rate stability and the maintenance of records through the end of 1987.

On July 15, 1987, GENTEL filed the required information consisting of present and projected CPE units, present and projected rental rates, book amounts for the Company's gross investment in CPE and the related depreciation and tax reserves, projected expenses and taxes, a present value analysis of projected cash flows related to CPE, and various supporting data.

On October 28, 1987, the Public Staff, based upon its review and analysis of the data filed on July 15, 1987, by GENTEL, filed its recommendation that net book value is a reasonable proxy for economic value for purposes of GENTEL'S transfer of its CPE. Also, the Public Staff recommended that the excess deferred income taxes, associated with the CPE, resulting from the reduction in the federal income tax rate by the Tax Reform Act of 1986 (TRA-86) be reclassified to a miscellaneous deferred credit account for later disposition by the Commission.

The Public Staff calculated GENTEL'S net book value and adjusted net investment in CPE at October 31, 1987 as follows:

Gross investment	$16,540,415
Depreciation reserve	(12,631,216)
Net book value	3,909,199
Deferred tax reserves	(1,189,836)
Unamortized ITCs	(519,578)
Adjusted net investment	$ 2,199,785

The term net book value used in the context of CPE deregulation is defined by the FCC for purposes of CPE deregulation as the gross investment in the customer premises equipment less the associated depreciation reserve. Whereas, the term adjusted net investment is defined, for purposes of this docket, as net book value less the associated accumulated deferred income tax reserves and unamortized investment tax credits. In this docket, adjusted net investment represents the appropriate book amounts to be transferred from the regulated to nonregulated accounts. Additionally, under the Commission's plan, to determine if any regulatory gain should be recorded related to the transfer, the embedded CPE base is to be valued at the larger of two methods of valuation - net book value versus a capital budgeting valuation. The capital budgeting valuation involves estimating cash inflows and cash outflows for each period of the investment project and expressing these periodic net cash flows on a present value basis.

The deferred tax reserve and unamortized investment tax credits (ITCs) shown above are exclusive of the excess deferred tax reserves and certain unamortized ITCs which in the Public Staff's opinion should remain on the regulated books. Under the Public Staff's capital budgeting model the economic value of the CPE was determined to be $3,601,703. Since this capital budgeting

valuation ($3,601,703) is less than the embedded CPE net book value amount ($3,909,199), the Public Staff concluded that the net book value was the appropriate basis on which the embedded CPE transfer should be made and, therefore, no gain should be recorded on the transfer. This recommendation is consistent with the Commission's deregulation plan requiring that the economic value of the embedded CPE to be transferred would be the larger of net book value or the value as determined through the capital budgeting process.

As presented in the November 2, 1987, Commission Conference Agenda the Public Staff stated that the findings in its October 28, 1987, report had been discussed with and reviewed by GENTEL. The only issue contested by the Company is the Public Staff's proposed treatment of the excess deferred tax reserves of $339,146 resulting from the reduction in the federal income tax rate by the TRA-86. GENTEL is concerned that the Public Staff's proposal to keep these excess deferred taxes on the regulated books may possibly be a violation of the Internal Revenue Code normalization requirements, thereby risking the loss of the tax benefits from using accelerated depreciation. GENTEL requests that the excess deferred tax reserves be transferred to its nonregulated operations, pending a definitive Internal Revenue Service (IRS) ruling on the matter. The Public Staff stated in its report that it strongly disagrees with the Company that its proposed treatment of leaving the excess deferred tax reserves related to CPE in the regulated accounts would result in any possible violation of the tax law normalization requirements. However, due to the pertinence of this issue to all North Carolina local exchange carriers, the Public Staff stated that it would not object to GENTEL, with input from the Public Staff, requesting a ruling on the matter from the IRS.

During the period until a ruling is received from the IRS, the Public Staff recommended that GENTEL be required to record the excess deferred tax reserves as Other Deferred Credits. Since this account can be either a regulated or nonregulated account, depending on the nature of the items contained in the account, the Public Staff believes that recording the excess reserves in the Other Deferred Credits account is the best accounting approach. Otherwise, to record the item in a nonregulated account could result in unnecessary complications, assuming an IRS ruling favorable to the Public Staff's position on this matter.

The Commission has carefully reviewed the filings in this docket and concludes that GENTEL'S embedded CPE net book value is a reasonable proxy for economic value for GENTEL to use to effectuate the October 31, 1987, transfer of its embedded CPE to its nonregulated operations. Further, the Commission finds that good cause exists to require GENTEL to set aside its excess deferred tax reserves in the amount of $339,146 in regulated accounts pending later disposition by the Commission and to require GENTEL in consultation with the Public Staff and the Attorney General, to undertake steps to seek a private letter ruling from the IRS on the issue of whether the Commission's treatment of the excess deferred tax reserves is in violation of the tax law normalization requirements.

IT IS, THEREFORE, ORDERED as follows:

1. That GENTEL shall reclassify its embedded CPE investment and associated reserve accounts from its regulated to its nonregulated accounts and set aside the associated $339,146 of excess deferred tax reserves in its

regulated accounts, in accordance with the journal entries and amounts set forth in Exhibit 1, Schedule 1 of the Public Staff's October 28, 1987, filing in this docket.

2. That the excess deferred taxes shall be held in the account - Other Deferred Credits pending later disposition by the Commission upon receipt of GENTEL'S receipt of a ruling from the IRS as to whether the Commission's treatment violates the requirements of the Internal Revenue Code and the IRS normalization requirements. GENTEL shall, in consultation with the Public Staff and the Attorney General, immediately undertake steps to seek such a ruling from the IRS.

3. That if the Public Staff and/or the Attorney General are unable to reach agreement with GENTEL as to the content of the letter to be sent to the IRS, then either party shall have the right to attach such explanation or addendum to GENTEL'S letter as it believes appropriate and GENTEL should be required to file such comments with the IRS contemporaneous with the letter.

4. That GENTEL shall serve on all parties to this docket a copy of its filing with the IRS.

5. That if the IRS seeks additional information from GENTEL, the above procedures shall apply.

6. That if any meeting should take place between the IRS and GENTEL regarding the ruling, the Public Staff and the Attorney General shall be offered the opportunity to attend the meeting.

7. That GENTEL shall promptly advise the Commission as to the ruling of the IRS and the Commission shall proceed as appropriate at that time.

ISSUED BY ORDER OF THE COMMISSION.
This the 6th day of November 1987.

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

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 ON MOTIONS FOR RECONSIDERATION

BY THE COMMISSION: On September 11, 1986, the Commission issued an Order in this docket entitled "Order Declaring Hotel Status." In this Order, the Commission found that the 148 condominium units at Fairfield Harbour owned under the Unit Ownership Act are a hotel and therefore within the exemption of G.S. 62-3(23)g; that the 139 units owned under the Time Share Act were not a hotel under the statute and that telephone service to these 139 units through

the PBX of Fairfield Harbour should be terminated within 45 days after the date of the Order. The Order further provided that Fairfield Harbour shall file for approval with the Commission, within 60 days, a copy of the agency agreement with the owners of the 148 condominium units showing an amendment to the agreement to the effect that if a unit available for rental was 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 Order denied the recommendation of the Public Staff that "appropriate limits" be placed in the agency agreement on the owners' use of their 148 condominium units.

On September 25, 1986, the Public Staff filed Motion for Reconsideration. In its Motion, the Public Staff requested the Commission to reconsider its Order and require the imposition of limits on the owners' use of their units in the agency agreement and also to consider the requirement of an annual report showing the number of units withdrawn from the hotel rental pool.

On October 10, 1986, Fairfield Harbour filed Motion for Extension of Time to File Notice of Appeal and Exceptions and also Motion for Stay of Order on Disconnect pending the determination of Fairfield Harbour's and the Public Staff's Motions for Reconsideration. Also, on October 10, 1986, Fairfield Harbour filed Motion for Reconsideration and a Response to the Public Staff's Motion for Reconsideration.

On October 13, 1986, the Commission issued an Order on the Motions to Stay and for Extension of Time. In its Order, the Commission stated that it would consider the Motions for Reconsideration filed by the Public Staff and by Fairfield Harbour. The Commission stated that it was of the opinion that the time for filing Notice of Appeal and Exceptions would run from the time that the Commission issues its final Order on the Motions for Reconsideration filed by the Public Staff and by Fairfield Harbour. The Commission's Order also noted that Fairfield Harbour filed a Motion requesting a stay of ordering paragraph 2 of the Commission's Order until 45 days after the Order on Reconsideration is issued by the Commission and through an appeal if taken. The Commission's Order stated that it was of the opinion that ordering paragraph 2 of its Order Granting Hotel Status was stayed pending the Commission's determination of the Motions for Reconsideration and the issuance of a final Order thereon. The Commission's Order provided, however, that ordering paragraph 2 of the Commission's Order Granting Hotel Status in this docket is stayed pending the issuance of a final Order on the Motions for Reconsideration.

On October 31, 1986, the Public Staff filed its Response to Fairfield Harbour's Motion for Reconsideration of the September 11, 1986, Order.

The Commission has carefully considered the Motions for Reconsideration filed by the parties and issues this Order thereon.

Restrictions on Owners' Use in the Agency Agreement

The Commission's Order Declaring Hotel Status declined to implement the recommendation of the Public Staff that "appropriate limits" of two weeks at a reduced rate be placed in the agency agreement on the owners' use of their 148 condominium units. In support of its decision the Commission noted that counsel for Fairfield Harbour at the March 24, 1986, oral argument in this

docket stated that it was the policy of Fairfield Harbour to place a limit of two weeks on the owners' use of their units at a reduced rate; after two weeks use, owners were required to pay the full hotel rate for additional use during the year. As Commissioner Tate further noted in her concurring opinion, counsel for Fairfield Harbour stated that the Company would place the restriction in the agency agreement "if it is a prerequisite to obtaining Commission approval." In its Motion for Reconsideration, the Public Staff contended as follows:

> "4. Restriction of the owner's use of their units is a critical factor in determining the status of an entity as a hotel. Such an important factor should not be left to the policy of the managing agent. Fairfield, as the agent, has little incentive to refuse to allow owners to occupy their units in excess of the two weeks, especially if the unit is not otherwise occupied, the owner pays enough for his occupancy to cover utilities and Fairfield's percentage of the usual rental rate and the owner applies pressure by threatening to remove his unit from the rental pool. By paying a rental fee, the restrictions on an owner's use in the tax laws could be circumvented and a situation where a significant percentage of the use of the PBX would be by owners rather than hotel guests would occur. The rules are already being bent somewhat by allowing owners to use the PBX during their two weeks use of their units. Further erosion should be guarded against very carefully, especially considering the time and effort that has gone into resolving the "condominium hotel" issue to date.
>
> "5. A further fact that must be considered is the fact that Fairfield's policy in this regard could change. The personnel managing Fairfield could change over time and different policies could be adopted. Including the restriction on owners' use in the agency agreement would prevent this from happening."

In its Response of October 10, 1986, Fairfiled Harbour contended that, since Fairfield Harbour was not a public utility, the Commission does not have authority to dictate the terms in the agency agreement between it and the unit owners. The Response of Fairfield Harbour also expressly disavowed the above-quoted representation by Fairfield Harbour's counsel to the effect that the Company would be willing to include restrictions on owners' use of their units in the agency agreement. The response of Fairfield Harbour states:

> "Unfortunately, this representation was made by a young associate, no longer with the firm, without authorization of the client. To set the record straight, Fairfield Harbour did not then and does not today willingly agree to make any changes in its agency agreement with the unit owners."

In its Response of October 31, 1986, the Public Staff took issue with the argument of Fairfield Harbour as to the jurisdiction of the Commission over the agency agreement. The Response of the Public Staff stated in part:

> "This argument overlooks the fact that it is solely by virtue of the existence of the agency agreements that the condominium units at Fairfield can be considered a hotel for purposes of the

> exemption from public utility status contained in G. S. 62-3(23)g. Without the agency agreements, the 148 units involved herein would be just condominium units with no possibility of being connected legally to a PBX. Without the agency agreements, the provision of telephone service to these condominiums would cause Fairfield to fall within the definition of a public utility in G.S. 62-3(23)a(6) and Fairfield would then be a public utility operating without a certificate of public convenience and necessity and would be competing with Carolina Telephone in its franchised territory in direct violation of North Carolina law."

The Public Staff emphasized its position that restrictions on the owners' use of their units "is absolutely critical to the status of the 148 condominium units involved herein as a hotel."

Upon careful consideration of the Motions and Responses of the parties, the Commission finds and concludes that it does not have the authority to order that limits on the owners' use of their condominium units at Fairfield Harbour be placed in the agency agreement between the hotel management and the 148 unit owners. Fairfield Harbour is not a public utility, and the Commission has no authority to order changes in the agency agreement between the hotel and the owners of the 148 units. Nonetheless, the Commission agrees with the Public Staff that appropriate restrictions on the owners' use of their units is a critical factor, among the other factors enumerated in the September 11, 1986, Order, in determining the status of the 148 units as a hotel. The absence or presence of such restrictions has a material impact on the hotel status issue. The Order of September 11, 1986, found that the appropriate standard in determining the status of an entity as a hotel was 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." (Finding of Fact No. 8) (Emphasis added) In deciding that the 148 condominium units constituted a hotel, the Commission noted that all of these units "were available to the public as transient lodging at least 50 weeks a year." On the other hand, in denying hotel status to the 139 time share units, the Commission found that these units were available to the public as transient lodging less than 50 percent of the time.

Availability of transient lodging to the public is an essential element of the definition of a hotel or motel. Under the present operating conditions of Fairfield Harbour, there are no restrictions on the owners' use of their condominium units at a reduced rate during the year. The agency agreement executed between the owners and the hotel management contains no such restrictions. In its Response of October 10, 1986, Fairfield Harbour has expressed its unwillingness to make changes in the agency agreement that would incorporate such restrictions. As pointed out by the Public Staff, such an important element of the hotel operation should not be left to the whims of the 148 unit owners and the hotel management. Fairfield Harbour, as the managing agents of the hotel, has little incentive to refuse to allow an owner to occupy his unit beyond two weeks a year at a reduced rate, especially if the unit is not otherwise occupied and the owner pays enough for his occupancy to cover utilities and Fairfield's percentage (commission) of the usual rental rate. Thus it may happen that a significant percentage of the use of the PBX would be by the owners rather than by hotel guests. The purpose of the exemption statute, G.S. 62-3(23)g, would thereby be circumvented.

The Commission is of the opinion, and so finds and concludes, that restrictions limiting owners' use of their units at a reduced rate to no more than two weeks a year would be appropriate for inclusion in the agency agreement between Fairfield Harbour and the owners. After two weeks the owners should be required to pay the full hotel rate applicable to members of the public.

As stated above, the Commission is of the opinion that it has no authority to compel Fairfield Harbour to amend its agency agreement with the condominium owners. The Commission will, however, afford Fairfield Harbour an opportunity to reconsider its unwillingness to place restrictions on owners' use at a reduced rate in the agency agreement, in light of the Commission's conclusions herein that such restrictions constitute a critical element in the determination of hotel status under the statute. If Fairfield Harbour remains unwilling to implement appropriate changes in the agency agreement, the Commission may review and reconsider its Order Declaring Hotel Status upon motion of any party.

Withdrawal of Unit from Rental Pool

The Commission's Order of September 11, 1986, required Fairfield Harbour to amend its agency 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 Commission has previously determined in this Order that it does not have the authority to compel Fairfield Harbour to modify the agency agreement between the Fairfield Harbour management and the owners. Accordingly, Ordering Paragraph 3 of the Commission's Order requiring that such provision be placed in the agency agreement will be deleted. The Commission is of the opinion, however, that good reason still exists for such a provision to be incorporated in the agency agreement. As pointed out in the Commission's Order of September 11, 1986: "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 Carolina Telephone and Telegraph Company which would fall on the general body of ratepayers." This Order shall provide Fairfield Harbour an opportunity to consider its willingness to place such a restriction in the agency agreement regarding withdrawal of a unit from the rental pool.

The Annual Report

Also, in its Motion for Reconsideration, the Public Staff requested that Fairfield Harbour be required to file an annual report on the number of units withdrawn from the hotel rental pool. The Commission is of the opinion that Fairfield Harbour should be required to file an annual report showing the number of condominium units withdrawn from the rental pool. As pointed out by the Public Staff, if a sufficient number of units were withdrawn from the hotel rental pool, it could eventually affect Fairfield Harbour's status as a hotel with respect to the 148 condominium units. The Commission has carefully considered Fairfield Harbour's objections to the requirement of an annual report and finds these objections to be without merit. Monitoring of the status of the rental pool each year is necessary to ensure that no entity other than the hotel is engaged in the resale of telephone service. The Commission finds a reporting requirement neither unreasonably discriminatory nor

burdensome on Fairfield Harbour. The Commission has also examined G.S. 47C-1-106, which was cited by Fairfield Harbour's counsel in support of its argument of discrimination, and finds that this statute is not applicable to the matter under consideration herein. The requirement of an annual report is essential to the Commission's authority to determine hotel status under G.S. 62-3(23)g.

The 139 Time Share Units

In its Motion for Reconsideration filed October 10, 1986, Fairfield Harbour requested the Commission to reconsider its Order of September 11, 1986, and recognize the 139 time share units at the resort as hotel units. The Commission's Order found that the 139 units owned under the Time Share Act were available to the public for occupancy as transient lodging less than 50% of the time. These units were occupied by their owners 29% of the time and by other time share owners through exchange programs 25% of the time. The Commission's Order of September 11, 1986, found that the offering of transient lodging to the public constituted an essential element of the definition of a hotel. In deciding that the 139 time share units did not constitute part of the hotel, the Commission found and concluded that the use of the time share units through the exchange program did not constitute use by the public. The Commission's Order stated:

> "While bonafide 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."

What is critical is the availability of transient lodging to the public. As pointed out in the Commission's Order, 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 bona fide transient guests. Their status is not that of members of the public, but derives from their ownership of time share units elsewhere and their right to participate in the exchange program through such ownership.

Upon consideration of the contentions of the parties on this issue, and the Commission's Order of September 11, 1986, the Commission is of the opinion that it should deny the Motion of Fairfield Harbour that the time share units be recognized as hotel units. The Commission's Order of September 11, 1986, on the 139 time share units is reaffirmed as the final Order of the Commission.

Motion for Stay with Respect to Time Share Units

On January 21, 1987, Fairfield Harbour filed Motion for Inclusion of Stay in Order on Reconsideration. In its Motion Fairfield Harbour requested the Commission to include a paragraph which stays the situation which existed prior to when the dispute arose and require Carolina Telephone to connect time share units to the Resort's PBX through the date of a decision on an appeal, if one is taken by any party. Fairfield alleged that "[w]ithout such a provision

Carolina Telephone will continue to refuse to connect time share units and time share unit owners currently connected would have to install new service."

Upon consideration of the Motion and the entire record in this docket, including the Order of September 11, 1986, and this Order, the Commission is of the opinion that the Motion should be denied. The Order of September 11, 1986, found and concluded that the 139 time share units were not a hotel under G.S. 62-3(23)g. The Order provided that telephone service to these 139 units through the PBX of Fairfield Harbour should be terminated within 45 days after the date of the Order. (Ordering Paragraph 2) This provision was stayed by the Order of October 13, 1986, pending the Commission's determination and the issuance of a final Order on the parties' Motions for Reconsideration. The instant Order has denied Fairfield Harbour's Motion that the 139 time share units be recognized as hotel units and has reaffirmed the September 11, 1986, Order on this issue. The Commission's determination of this issue in this Order constitutes a final determination of the status of the 139 units. The Commission is of the opinion, and so concludes, that this determination should become effective without further delay. The Motion for a stay should be denied. In the event that Fairfield Harbour appeals this Order, or any part thereof, it may ask for a stay pursuant to G.S. 62-95 at that time.

IT IS, THEREFORE, ORDERED as follows:

1. That the Motion of the Public Staff requesting the Commission to order that limits on the owners' use of their condominium units be placed in the agency agreement, be, and the same is hereby, denied. In view of the Commission's conclusions in this Order that appropriate restrictions in the agency agreement limiting owners' use of their units to two weeks at a reduced rate constitute a critical element in the determination of hotel status, the Commission will give Fairfield Harbour an opportunity to reconsider its willingness to place such restrictions in the agency agreement. Fairfield Harbour shall notify the Commission and the parties of its position on this issue on or before March 13, 1987; and, if Fairfield Harbour is willing to incorporate such restrictions in the agency agreement, it will also advise the Commission and the parties when such restrictions will be incorporated and the language of such restrictions. The Public Staff and Carolina Telephone may file any motion or response thereto within 15 days after receipt of the report. This docket shall remain open to receive the report of Fairfield Harbour and any further motions or responses of the parties.

2. That paragraph 3 of the Order of September 11, 1986, be deleted; provided, however, that in view of the Commission's conclusions in this Order that the agency agreements with the owners should 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 Commission will give Fairfield Harbour an opportunity to consider its willingness to place such restriction in the agency agreement. Fairfield Harbour shall notify the Commission and the parties of its position on this issue on or before March 13, 1987. The Public Staff and Carolina Telephone may file any motion or response thereto within 15 days after receipt of the report. This docket shall remain open to receive the report of Fairfield Harbour and any further motions or responses of the parties.

3. That the Motion of Fairfield Harbour requesting the Commission to recognize the 139 time share units as hotel units be, and the same is hereby, denied. The Commission's Order of September 11, 1986, on the 139 time share units is reaffirmed as the final Order of the Commission. Telephone service to these 139 time share units through the PBX of Fairfield Harbour shall be terminated within 60 days after the date of this Order.

4. That the stay granted in the Order of October 13, 1986, with respect to Ordering Paragraph 2 of the September 11, 1986, Order is hereby dissolved.

5. That beginning in January 1988 and for each succeeding year thereafter, Fairfield Harbour shall file an annual report with the Commission, on or before January 31 of each year, on the number of units that are in the hotel rental pool as of December 31 of the preceeding year and the number of units withdrawn during the preceeding year. Fairfield Harbour shall serve a copy of this annual report on the Public Staff and Carolina Telephone.

6. That except as modified in this Order, the Order of September 11, 1986, is hereby reaffirmed.

ISSUED BY ORDER OF THE COMMISSION.
This the 10th day of February 1987.

(SEAL)

NORTH CAROLINA UTILITIES COMMISSION
Sandra J. Webster, Chief Clerk

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 Telephone	)))	ORDER MODIFYING RATES AND CHARGES FOR PROVISION OF CUSTOMER-OWNED PAY TELEPHONES

HEARD IN: Commission Hearing Room 2115, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on July 14, 1987

BEFORE: Commissioner Edward B. Hipp, Presiding; Chairman Robert O. Wells, and Commissioner J. A. Wright

APPEARANCES:

For Southern Bell Telephone and Telegraph Company:

Edward L. Rankin III, Attorney at Law, Southern Bell Telephone and Telegraph Company, P. O. Box 30188, Charlotte, North Carolina 28230

and

Tom Rawls, Attorney at Law, Southern Bell Telephone and Telegraph Company, 4300 Southern Bell Center, Atlanta, Georgia 30375

For Carolina Telephone and Telegraph Company:

Robert C. Voigt, Senior Attorney, Carolina Telephone and Telegraph, 720 Western Boulevard, Tarboro, North Carolina 27886

For General Telephone Company of the South:

Mary U. Musacchia, Attorney at Law, General Telephone Company of the South, 4100 North Roxboro Road, Durham, North Carolina 27702

For Continental Telephone Company of North Carolina and ALLTEL Carolina, Inc.:

F. Kent Burns, Burns, Day & Presnell, P.A., Attorneys at Law, P.O. Box 2479, Raleigh, North Carolina 27602

For Central Telephone Company:

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

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

Mark Prak, Tharrington, Smith & Hargrove, Attorneys at Law, Raleigh, North Carolina 27602
and
Gene V. Coker, Attorney at Law, AT&T Communications of the Southern States, Inc., 1200 Peachtree Street, N. E., Atlanta, Georgia 30309

For North Carolina Payphone Association, Inc.:

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

For the North Carolina Attorney General:

Lorinzo L. Joyner, Associate Attorney General, 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, North Carolina Utilities Commission Public Staff, P. O. Box 29520, Raleigh, North Carolina 27626-0520
For: The Using and Consuming Public

BY THE COMMISSION: On March 28, 1986, the Commission issued its 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 (PTAS) in this docket. This

Order allowed for the competitive offering of coin telephone service by persons other than the local exchange companies (LECs) subject to the established rules and regulations of this Commission. Such persons are also known as customer-owned coin-operated telephone (COCOT) providers.

The Commission decided on its own motion to initiate an investigation and review of certain aspects of the March 28, 1986, Order. The basis for this decision was the informal requests for reconsideration and review received from numerous COCOT providers. The Commission established a hearing to receive such testimony. The Commission limited the scope of the proceeding to consideration of possible problem areas involving the approved PTAS tariffs, rules, and regulations. A listing of such issues is provided below.

1. Is it appropriate to limit the COCOT charges for a local call to 25 cents per call for those COCOTs paying measured local exchange company rates? Would a practice of charging 25 cents for a local call of limited duration and additional charges for additional minutes of use be an acceptable method of charging for local calls where the PTAS subscriber is on a measured rate? Would time limits on local calls be acceptable under a measured tariff arrangement?

2. Is it proper to prohibit the COCOTs from charging for directory assistance (DA) given the fact that COCOTs must pay DA charges to the LECs?

3. What alternatives are possible for these COCOT subscribers where the operator screening is not available?

4. Should the COCOT provider be required to provide access to all interexchange carriers?

5. Should the COCOT be allowed to charge for long distance calls made by dialing 0 and using a credit card?

6. Should the local exchange companies be required to provide information concerning the profitability of a specific LEC payphone to the competitor?

7. Is there a potential problem of duplicative North Carolina gross receipts or franchise tax for these COCOT subscribers and if so, how is this problem best remedied?

8. Any other issue of merit presented by an interested party.

A copy of the Order was served on all local exchange companies and long distance carriers and the certified COCOT providers, the Public Staff, the Attorney General, and by the North Carolina Payphone Association on behalf of its members. Testimony or comments were filed by a number of local exchange companies, the North Carolina Payphone Association, and the Public Staff.

On July 10, 1987, a Pre-Trial Order was entered by the Commission prescribing the order of receiving evidence in this case.

The hearing began on July 14, 1987, in the Commission Hearing Room. The first witness was a public witness, Mort Congleton of Raleigh, North Carolina. Another public witness, B. G. Hauser of Clemmons, North Carolina, also

presented testimony. Thereafter the following witnesses testified and presented their exhibits: Thomas Hiatt, owner and operator of Public Telephone Service, Thomasville North Carolina, for North Carolina Payphone Association; Michael Smart, President of Coin Telephone, Inc., of Charlotte, North Carolina, for North Carolina Payphone Association; J. Vincent Townsend, President of Pay Tel Communications, Inc., Greensboro, North Carolina, for North Carolina Payphone Association; Robert W. Fleming, Segment Manager-Pricing, BellSouth Services, Atlanta, Georgia, for Southern Bell Telephone and Telegraph Company; T. D. Tinker, Rates and Tariffs Analyst, for ALLTEL Service Corporation - Southern Region, Matthews, North Carolina, for ALLTEL Carolina, Inc.; Marcus H. Potter II, Customer Service Planning Manager, Carolina Telephone and Telegraph Company, Tarboro, North Carolina, for Carolina Telephone and Telegraph Company; Clayton E. Rawn, Government and Industry Relations Manager, North Carolina, Hickory, North Carolina, for Central Telephone Company; David D. Clark, Analyst, Contel Service Corporation, Merrifield, Virginia, for Continental Telephone Company; Robert L. Mitchell, Usage Sensitive Service Program Manager, General Telephone Company of the South, Durham, North Carolina, for General Telephone Company of the South; and William J. Willis, Jr., Communications Engineer, Communications Division, Public Staff, Raleigh, North Carolina, for the Public Staff.

Based on the foregoing, the application, 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

It is just and reasonable and in the public interest that:

1. Competitive offerings in pay telephones should be allowed and be compensatory pursuant to the provisions of G.S. 62-110(c).

2. The current measured and message rates should be modified.

3. The current method for charging COCOT providers for directory assistance charges should be modified.

4. The LECs should not be required to speed up the availability of operator-screening to COCOT providers.

5. The COCOT providers should be limited to charging a flat $.25 per call to the end-user for local calls.

6. The COCOT providers should be authorized to charge $.25 for 0+ or credit card calls, provided that notice of such charge is prominently displayed on the pay station instrument and the end-user also has free operator access.

7. COCOT providers should not be permitted to install and operate quarter-only payphones.

8. The LECs should not be required to provide information concerning the profitability of specific LEC payphones to competitors.

9. The issue of the duplication of North Carolina gross receipts taxation on COCOT providers should be settled through the use of a credit mechanism by the COCOTs for any amounts paid.

10. The policy that COCOT providers should offer equal access to interexchange providers on a nondiscriminatory basis should continue.

11. The LECs should not be required to pay commissions to COCOT providers.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 1

The decision that competitive offerings in pay telephone service are in the public interest has already been made by the General Assembly in 1985 amendments to G.S. 62-110. The General Assembly authorized the provision of COCOTS, subject to certain conditions but otherwise conferred generous authority on the Commission to fashion appropriate regulations consistent with the public interest.

In deciding on appropriate policies, the Commission must balance the interests of several distinct groups--the end-users of payphone services, the independent payphone providers, and the local exchange companies in their dual roles both as sellers of telephone services to COCOT Providers and as payphone providers themselves, and the interexchange carriers.

Evidence presented in this docket indicates that the COCOT market share is only about 1.7% and that the industry has a high attrition rate. This small market share is no doubt partially due to the infancy of the industry, but it is partially due to other terms and conditions limiting financial return. Since the law states that COCOT providers are to be charged a measured or message rate, the Commission's decision regarding the appropriate terms and conditions becomes crucial. This is especially true since the Commission has decided that it is in the public interest that the end-user should pay a flat rate to the COCOT provider. The public interest is served when public payphones are reasonably available at a variety of locations as a result of a competitive process.

The Commission therefore concludes that certain of the terms and conditions regarding the COCOT business should be adjusted in order that competitive offerings in pay telephones will be encouraged.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 2

Southern Bell witness Fleming, Public Staff witness Willis, and Payphone Association witness Townsend presented testimony concerning proposed rate structures.

The chart below summarizes the various final proposals as compared with the present rate structure:

	Current	Bell	Payphone	Public Staff
Flat rate charge	60% B1	80% B1	80% B1	80% B1
Measured rate	$.06+$.02	$.06+$.02	$.02+$.01	$.02+$.01
Time-of-day Discounts	No	50%	50%	50%
Message rate [1]	$.12	$.12	$.03	$.03

Southern Bell argued that increasing the access line rate from 60% to 80% would align the rate with what other business customers were paying, would better cover the non-traffic sensitive (NTS) costs of the line, and would be consistent with the requirement that rates for COCOT access lines be "fully compensatory." Southern Bell was willing to implement time-of-day discounts, arguing that this would be consistent with other business charges and would allow COCOT providers some monetary benefit. Southern Bell stated that its two tariff changes would result in a net revenue increase to it of $6,240.

Witness Townsend of the Payphone Association originally proposed an access line rate of 60% of the business-one party line rate, together with a cap of $.10 per message for measured rates. The Payphone Association noted that Southern Bell's cost for the NTS component for the local loop was $27.96, which is less than 80% of the business-one party line rate. However, in its proposed Order, the Payphone Association endorsed an 80% access line rate but coupled it with substantial measured rate decreases.

The Public Staff endorsed rate relief for COCOT providers. It cited its previous statements in Docket Nos. P-7, Sub 679, and P-55, Sub 806, that, based upon the limited information available, Bell and Carolina had from a cost standpoint substantially underpriced their NTS costs while substantially overpricing their traffic-sensitive (TS) rates. The Public Staff recommended an in-depth cost analysis to determine appropriate rate levels, but argued that, as an interim measure, its recommended rates would be more in accord with underlying costs.

The Public Staff also criticized a 1984 embedded cost analysis updated with 1985 costs which Southern Bell relied on to justify its rates in this docket. It noted that the study did not include digital central office equipment now serving 60% of the Company's access lines. Inclusion of digital equipment would have a significant impact on long-run usage-sensitive incremental cost. The Public Staff further noted that Southern Bell's witness Fleming admitted that long-run incremental costs, rather than embedded costs, were an appropriate standard to use in developing rates. If long-run incremental costs were used for ratemaking, this would tend to minimize the weight to be accorded cost approximations based upon embedded cost studies, such as Southern Bell's usage sensitive rates.

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1 Southern Bell proposed that the flat rate charge associated with message rate phones should remain at the 60¢ B1 rate, reflecting the unavailability of time-of-day discounts.

In setting appropriate measured rates, the Commission is, of course, mindful of the statutory requirement that such rates must be "fully compensatory." Coupled with the other language vesting the Commission with large discretionary authority, this language indicates a legislative intent to allow the Commission to set a standard that the monetary effect on the LECs of the rates should at least be approximately revenue-neutral.

Southern Bell witness Fleming reported that under present rates the net revenue gain to Southern Bell due to the COCOTs was $45,276. He further noted that the additional revenue increase that Southern Bell would experience if its proposals were adopted would be $6,240. He characterized this increase as still leaving Southern Bell in a basically revenue-neutral position.

The Commission concludes that a revenue-neutral effect is any amount which yields net revenues which are at or near the break-even point. Therefore, the Commission has considered alternative rate structures which yield net revenue gains, but which will also provide significant rate relief to the COCOT industry.

Such a rate structure is as follows: 60% of the B1 rate; $.03 for the first minute or fraction thereof; $.02 for each additional minute or fraction thereof; a time-of-day discount reflecting rates of $.02 for the first minute or fraction thereof and $.01 for each additional minute or fraction thereof; and a $.06 message rate. The Commission believes that these rates will leave the LECs in an approximately revenue-neutral position while allowing the COCOTS to compete more effectively. More specifically, the Commission concludes that these rates, in combination, will produce revenues for the LECs which are fully compensatory, while providing significant rate relief to the COCOTs and will serve to encourage competitive offerings in pay telephones.

The Commission agrees with the Public Staff that in-depth cost analyses and studies should be performed at some point to assist in determining appropriate measured rates. The Commission faces similar questions regarding measured rates in other pending dockets. It may be that measured rates should not differ according to the nature of the offering (e.g., local measured service, COCOT, or shared or resale service). Yet, the circumstances are such that the Commission must decide on rates in a given docket more or less independently and according to the best evidence presented at the time. In view of this fact, the Commission emphasizes that the measured rates set out in these various dockets are subject to revision in the light of better knowledge and theory.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 3

There was rare unanimity among the participants in this docket that COCOT providers should receive some relief from directory assistance (DA) charges.

The case for this relief has arisen because the LECs charge COCOT providers for directory assistance inquiries, but the COCOT providers are not permitted to charge the end-user for this service. The COCOT providers presented substantial evidence that some end-users are abusing this privilege by making excessive numbers of directory assistance calls at the expense of COCOT providers. Their best estimate was that directory assistance charges amounted to about $10.00 per month per instrument. Evidence was presented that

Southern Bell's actual cost for directory assistance was slightly less than $.25 per call, including a return component. Late-filed exhibits submitted by Carolina, Central, Continental, ALLTEL, Sandhill, Heins, and General indicate that those companies do not maintain records of the number of directory assistance calls placed from coin telephones.

The parties responded to the COCOT providers' dilemma by suggesting that COCOT providers should be authorized to charge some amount to the end-user for directory assistance. Some LECs, such as Southern Bell, argued that the time was ripe to extend this privilege to them as well.

The Commission is of the opinion that for the time being it is appropriate to continue the public policy which has been followed since the inception of directory assistance charges approximately 12 years ago that directory assistance inquiries from a pay telephone should be free to the end-user. Despite best efforts, phone books are not always available at payphones. Moreover, poor and illiterate citizens may well have a greater need for directory assistance from payphones, and such a charge would weigh more heavily on their slender means.

The Commission therefore concludes that the LECs should allow the COCOT providers a maximum of 25 free local directory assistance calls per instrument per month, but the PTAS subscriber should pay for directory assistance calls in excess of the 25 free calls in the same manner as business one-party access line subscribers. At a maximum of $.50 per directory assistance call, this would amount to a potential offset of up to $12.50 per month per instrument. There are several benefits to this approach. First, it will preserve the public policy of continuing to make directory assistance inquiries free to the end-user. Second, it will ameliorate the financial predicament of the COCOT provider without eliminating the incentive and affirmative obligation for him to provide a current telephone directory at the instrument or otherwise take measures to reduce the abuse of directory assistance calling. Furthermore, the Commission is of the opinion that the revenue impact of this approach on the LECs will, in all likelihood, be nominal and will not result in irreparable harm. For instance, evidence presented by Southern Bell indicates that the Company's local DA billing records for all COCOT lines in service in April 1987, showed an average billing of only $4.00 per instrument per month.

The only DA calls the Commission is dealing with in this Order are local DA calls. There may be a case for an offset for long-distance DA calls through the same or a different mechanism, but the Commission currently lacks sufficient information to make such a judgment. At some point, the Commission may be receptive to proposals to offset long-distance DA calls if it can be shown that there is a substantial need for such an offset and the proposed solution is legally acceptable.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 4

The evidence supporting this finding of fact is contained in the combined testimony of the parties of record.

The importance of operator-screening is that it prevents the fraudulent use of payphone facilities. Without operator-screening, a person can make a

long-distance call, charge it to the payphone, and the payphone provider must bear the cost of the illicit call.

Carolina testified that operator-screening is currently available on all interexchange messages originated within its operating territory and handled by AT&T operators. However, there would be a problem with operator screening if an alternative interexchange carrier operator were accessed through a COCOT. Carolina testified that it if were required to make other arrangements for operator screening, it should have fully compensatory tariffed rates to meet the extra expenses and investments.

Southern Bell illustrated in an exhibit the time schedule under which it will have the capability to offer operator screening services throughout its service area. The exhibit indicated that 60% of its access lines now have operator screening capability and by the year 1991, 100% of its access lines will be so equipped. Southern Bell testified that it is proceeding as rapidly as is prudent to convert or upgrade offices to provide operator screening and that any additional efforts would generate needless expense for the benefit of a limited number of coin telephone subscribers.

Continental stated that certain exchanges and situations exist where operator screening cannot be provided and thus the COCOT owner ought to assume the risk associated with the fraudulent use of his facilities where screening capabilities do not exist.

General Telephone Company stated that no alternatives are required for General's PTAS subscribers since it has the capability to provide operator screening in all of its North Carolina exchanges.

The remaining LECs generally agreed that where operator screening can be provided at an expense level that would be recovered through revenues charged to COCOT providers, it would be in the interest of both the COCOT provider and the basic ratepayer for such services to be offered.

During cross-examination, Mr. Smart, Treasurer and member of the Board of Directors of the North Carolina Payphone Association, was asked by Southern Bell's counsel if the reasonable alternative for operator screening was to let Southern Bell and the LECs proceed with their central office updates and conversions and provide a 100% operator screening by the end of 1991. Mr. Smart answered, "Yes, we wouldn't ask the LEC to speed up or to make any changes in their plans strictly for us."

In its prefiled testimony, the Public Staff remarked, "The PTAS subscriber is not obligated to place his stations in an area in which screening is not currently available. The decision on whether to place a COCOT station in such an area is a business decision of the PTAS subscriber which should take into account his increased liability at that location. No obligation should be imposed on the LECs to make operator screening available on an expedited basis."

The Commission concludes that PTAS subscribers have the opportunity to make a business decision related to the availability of operator screening prior to deciding on the placement of their equipment and the LECs should not

be required to alter central office cutover schedules to expedite availability of operator screening services.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 5

The North Carolina Payphone Association, Inc., LEC witnesses and the Public Staff all presented testimony regarding this finding of fact.

Witness Townsend for the North Carolina Payphone Association, Inc., testified that he did not believe it was in the public interest to charge the end-user of a payphone on a measured basis. He supported the continuation of the flat $.25 rate presently authorized for COCOTs and LECs to charge the end-user. Witness Townsend also supported a uniform charge to the end-user by all payphone providers.

Southern Bell, Carolina Telephone, and several of the other independent companies recommended through their witnesses that the Commission allow the competitive marketplace to set the rates. There was concern expressed by at least one LEC that the rates should be uniform for all payphone providers.

The Public Staff through its witness supported a flat rate method of charging at the $.25 per call level. This recommendation was based on its belief that this would cover all costs and not be confusing to the public.

The Commission concludes that the public will be better served by continuation of the flat rate method of charging the end-user for coin telephone service at the rate of $.25 per call. Usage based charging for coin telephone service is inappropriate at this time and would only tend to confuse the public. Under the rates approved herein, all parties will be allowed to recover their costs and a reasonable return.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 6

The evidence supporting this finding of fact is found throughout the prefiled testimony and the transcript.

The Public Staff, Southern Bell, Carolina, Central, ALLTEL, and General all agreed that it was appropriate to permit a COCOT provider to charge for the use of their phones for placing operator-assisted and credit card long-distance calls provided there was free operator access.

Witness Townsend of the Payphone Association was concerned about customer acceptance of such a charge and speculated that irate end-users may attempt to damage the machines. He said the charge would be a benefit only to a minority of end-users.

The Commission concludes, therefore, that COCOTs should have the option to charge $.25 for each "0+" and credit card call made over their equipment provided that notice of such charge is prominently displayed on the paystation instrument and there is coin-free access to an operator. No charge should be applied to the end-user for access to an operator or for 0- local or long distance calls.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 7

The evidence for this finding of fact is found in the testimony of Payphone Association witness Hiatt and Public Staff witness Willis.

The North Carolina Payphone Association stated that the industry is introducing various models of pay telephones which use only quarters in an effort to meet the demand for less expensive instruments. To allow the use of these payphones, they requested that the present Commission rule which requires coin-operated instruments to be equipped to accept nickels, dimes, and quarters be modified to read "coin-operated instruments that accept quarters only will be allowed when installed at inside locations where change in available."

The Public Staff testified that the allowance of quarter-only payphones would cause significant problems in applying tariff rates which are not multiples of a quarter such as toll charges, directory assistance charges, and possibly future local coin rates. Additionally, it alleged that the use of a quarter-only instrument would cause inconvenience to the end-user, necessitate rules for toll charge rounding, and produce an environment which is not conducive to potential future regulatory changes.

The Commission concludes that the characteristics of quarter-only instruments are too inflexible for use in a regulated environment and that the present rule which requires coin-operated instruments to be equipped to accept nickels, dimes, and quarters should not be modified.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 8

The LECs were unanimously opposed to providing this type of information to COCOT providers.

While one can easily appreciate why some COCOT providers may wish to have this information, it would require the LECs to disclose proprietary information that would unduly assist their competitors in displacing profitable LEC coin telephones. Moreover, such location-specific information would be costly to accumulate, summarize, and present.

Apparently, the Payphone Association, through its witness Mr. Townsend on cross-examination, realized that this request would be excessive. He stated that he did not think it would be proper to receive such information.

The Commission concludes that requiring LECs to develop competitive information concerning the profitability of specific payphone locations would create an unfair advantage favoring the competitor and disclosure of such information should not be required.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 9

Based upon the evidence given in this docket, there is a difference in the LECs' interpretation of how LECs and COCOTs should return gross receipts taxes. Mr. Robert Fleming with BellSouth testified that the present rates had embedded in them a component of cost equal to the gross receipts tax. He suggested that the COCOTs should be allowed to claim these paid taxes as a credit. Mr. Marcus

H. Potter III of Carolina Telephone Company testified that Carolina does not pay gross receipts tax on revenues received from COCOTs. Mr. William J. Willis, Jr., with the Public Staff, testified that it is not clear whether an increment for gross receipts taxes is included in the present rates and he recommended that all LECs should treat the tax issue in the same manner.

There are two different procedures for the administration of this tax by LECs. One procedure, widely practiced, is for the LEC to remit the gross receipt tax quarterly, and for the COCOT subscriber to receive a subsequent credit on his tax liability for the amount paid by the LEC. The other procedure involves payment by the COCOT subscriber of the COCOT rates and payment by the COCOT subscriber of full tax liability on all revenue it receives. Under the latter procedure, the LEC does not pay any gross receipts tax on payphone revenues.

Southern Bell stated that it believes that the credit mechanism has been used satisfactorily by WATS resellers who were confronted with the possibility of duplicative gross receipts taxes. Therefore, insofar as Southern Bell's COCOT subscribers are concerned, the net effect of this procedure is that gross receipts taxes are paid for with the revenues collected by the application of Southern Bell's COCOT rates. Payphone Association witness Smart stated he would be satisfied if the Department of Revenue allowed the credit mechanism to take place.

After weighing all the testimony and evidence, the Commission concludes that the present rates and prescribed rates for PTAS subscribers have embedded therein a component for the applicable gross receipts tax, and that it is therefore appropriate for all LECs to remit gross receipts taxes on PTAS revenues in their quarterly state tax returns. The credit mechanism which has been used by the Department of Revenue and Southern Bell will provide a tax credit to the PTAS subscriber equal to the amount paid by the LEC on the PTAS account. Since this procedure is in place for interexchange carriers, all LECs should be able to adopt this plan for the PTAS subscribers as well without major problems.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 10

The evidence concerning the appropriateness of continuing the equal access requirement is found throughout the testimony of the parties of record.

Equal access means that a COCOT provider must allow any interexchange carrier (IXC) who wants to do so to serve his payphone. However, the COCOT provider may designate a particular IXC as the "primary carrier"--i.e., if the end-user does not affirmatively choose otherwise, the designated primary carrier will carry the long distance call.

Carolina, North State, and Lexington Telephone Companies asserted that COCOTs should be required to provide access to all interexchange carriers. It was Carolina's reasoning that access is necessary for credit card calls because customers may not have credit arrangements with the COCOT interexchange carrier of choice. Southern Bell assumed no position on the question. Central and Continental took the position that this decision should be left up to the COCOT. General maintained that, with the exception of coinless phones owned by

the carrier, all COCOTs should be required to provide access to all interexchange carriers which service the exchange.

The Public Staff cited the Commission's last Order in this docket to the effect that in today's competitive environment all payphone providers--other than payphones provided by interexchange carriers--should be required to provide access to all other interexchange carriers on a nondiscriminatory basis. The Public Staff stated that it was not aware of any substantive reason for the Commission to modify its previous conclusion on this issue.

The Commission therefore concludes that COCOT providers should still provide equal access to IXCs on a nondiscriminatory basis.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 11

Though not discussed in prefiled testimony, Payphone Association witnesses Hiatt and Townsend both testified that LECs should pay a commission to COCOT providers based on the amount of toll revenue generated by a COCOT phone.

Under its current practice, Southern Bell pays a commission to an individual or business in return for the agent providing Southern Bell with space to place a payphone. The agent also provides Southern Bell with power to the location, coin-changing services for payphone customers, and cleaning service. Thus, Southern Bell pays the agent for both space and services, the commission being based on the amount of local and toll traffic generated by the phone.

The Commission concludes that it should not compel a LEC to pay a commission to a COCOT provider and to do so would be tantamount to having the LEC unreasonably subsidize a competitor. Furthermore, COCOT subscribers do not provide the LECs with space for telephones or with other services provided by premise owners. Paying commissions is a matter reasonably within the business discretion of the LECs.

IT IS, THEREFORE, ORDERED as follows:

1. That the local exchange operating companies be, and hereby are, required to file revised Public Telephone Access Service tariffs in compliance with the conclusions and findings of fact stated herein and in accordance with the revised tariff sheets included in Appendix A attached hereto. Said tariffs shall be filed not later than 15 days from the date of this Order. The effective date of these tariffs shall be December 1, 1987

2. That the Commission form identified as "Application for Special Certificate for Persons Offering Telephone Service to the Public by Means of Private Coin, Coinless, and Key-Operated Pay Telephone Instruments" shall be, and the same is hereby, amended in accordance with Appendix B attached hereto.

3. That Chapter 13 of the Commission's rules and regulations be, and the same is hereby, amended as set forth in Appendix C attached hereto.

4. That each PTAS subscriber shall at all times maintain a current and complete local telephone directory at each paystation instrument.

5. That a copy of this Order shall be mailed by the Chief Clerk to each certified PTAS subscriber. Service of this Order by the Chief Clerk shall serve as notice of the changes and amendments to the Commission rules and LEC tariffs adopted herein.

ISSUED BY ORDER OF THE COMMISSION.
This the 17th day of November 1987.

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

APPENDIX A

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-owned 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. 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" and completion of 0- local and long distance calls billed to a credit card, a third number or the called number (collect) 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.

D. 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.

E. 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.

F. 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.

G. The PTAS subscriber is responsible for abiding by all applicable telephone company tariffs. Failure to do so is grounds for immediate disconnection of service.

H. 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.

I. 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.

J. The PTAS subscriber must furnish directory assistance information at no charge.

K. Proof of certification must be furnished to the local telephone company by the subscriber of Public Telephone Access Service prior to the connection of PTAS.

L. The PTAS subscriber shall at all times maintain a current and complete local telephone directory at each paystation instrument.

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 send-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 send-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 arrangement 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	
(a) Per Line	$____[1]
(2) Option 2	
(a) Per Line	$ 2.00[2]
(3) Option 3	
(a) Per Line	$ 4.00[2]
(4) Option 4	
(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.

(1) Initial Minute or Fraction Thereof	Additional Minute, Each or Fraction Thereof
$.03	$.02

(2) For local calls placed in the following listed time periods, discounted usage charges of $.02 for the initial minute or fraction thereof and $.01 for each additional minute or fraction thereof will apply as follows:

a. 12:00 P.M. - 2:00 P.M.
b. 9:00 P.M. - 9:00 A.M.
c. Saturday and Sunday/All day

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 completed outgoing calls within the local calling area.

	Rate
(1) Local Message - Each	$.06

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 A18.2.1.H of this Tariff) plus the appropriate additive operator services charges (as provided in Section A18.2.1H 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) and (2) 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 its terminology and tariff references as appropriate for this section.

7.3.6 CHARGES TO PTAS END-USER

A. 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 rates applicable to the PTAS subscriber (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 applicable to the PTAS subscriber (including any applicable operator assist or person-to-person charges) plus 25 cents per call. The maximum rate applicable to the end-user by the PTAS subscriber when a 0+ local or long distance call is billed to a credit card, to a third number, or to the called number (collect) is 25 cents. For 0- calls, see 7.3.2.C.1 above.

B. The local exchange company providing service to the PTAS subscriber shall provide the subscriber with a maximum of 25 local directory assistance inquiries free of charge per month per pay station, but shall otherwise charge the subscriber for local directory assistance calls in excess of the 25 free calls in the same manner as it charges for such calls to business one-party access line subscribers.

APPENDIX B

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. SC-

NAME OF APPLICANT _____ DATE OF APPLICATION _____

ADDRESS OF PRINCIPAL PLACE OF BUSINESS

STREET _____

CITY _____

STATE _____

BUSINESS TELEPHONE

( ) _____

OTHER TELEPHONE WHERE APPLICANT CAN BE REACHED

( ) _____

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 rates applicable to the PTAS subscriber (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 applicable to the PTAS subscriber (including any applicable operator assist or person-to-person charges) plus 25 cents per call. The maximum rate applicable to the end-user by the PTAS subscriber when a 0+ local or long distance call is billed to a credit card, to a third number, or the called number (collect) is 25 cents. See 4.a below for 0- calls.

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" and completion of 0-local and long distance calls billed to a credit card, a third number, or the called number (collect) 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.

9. The PTAS subscriber shall at all times maintain a current and complete local telephone directory at each paystation instrument.

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 27626-0501

_____ _____
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 notarial seal, this _____ day of _____ 19__.

_____ My Commission expires_____
Notary Public

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 to Public Telephone Access Service (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 rates applicable to the PTAS subscriber (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 applicable to the PTAS subscriber (including any applicable operator assist or person-to-person charges) plus 25 cents per call. The maximum rate applicable to the end-user by the PTAS subscriber when a 0+ local or long distance call is billed to a credit card, to a third number, or to the called number (collect) is 25 cents. See (e)(1) below for 0- calls.

(d) The subscriber shall furnish directory assistance information at no charge.

(e) 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" and completion of 0- local and long distance calls billed to a credit card, a third number, or the called number (collect) 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.

(f) The following information is required to be posted at each customer-owned pay telephone installation;

(1) The appropriate emergency number (operator, 911);
(2) 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.

(g) 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.

(h) 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.

(i) The PTAS subscriber is responsible for abiding by all applicable telephone company tariffs. Failure to do so is grounds for immediate disconnection of service.

(j) The PTAS subscriber shall at all times maintain a current and complete local telephone directory at each paystation instrument.

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
Companies Under the Jurisdiction of the North)
Carolina Utilities Commission)

HEARD IN: Commission Hearing Room 217, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on March 5, 1987

BEFORE: Commissioner Edward B. Hipp, Presiding; and Chairman Robert O. Wells and Commissioners Sarah Lindsay Tate, Robert K. Koger, and Julius A. Wright

APPEARANCES:

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

Gene V. Coker, AT&T Communications of the Southern States, Inc., 1200 Peachtree Street, N.E., Atlanta, Georgia 30309

and

Wade H. Hargrove, Tharrington, Smith and Hargrove, Attorneys at Law, 209 Fayetteville Street Mall, Raleigh, North Carolina 27602

For Carolina Telephone and Telegraph Company

Dwight Allen, Carolina Telephone and Telegraph Company, 720 Western Boulevard, Tarboro, North Carolina 27886

For Continental Telephone Company of North Carolina and ALLTEL Carolina

F. Kent Burns, Burns, Day and Presnell, P.A., Attorneys at Law, Box 2479, Raleigh, North Carolina 27602

For General Telephone Company of the South

Mary U. Mascchia, General Telephone Company of the South, 1400 North Roxboro Road, Durham, North Carolina 27514

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 Carolina Utility Customers Association, Inc., and SouthernNet of N. C., Inc.

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

For MCI Telecommunications Corporation

Charles Meeker, Adams, McCullough and Beard, Attorneys at Law, P. O. Box 389, Raleigh, North Carolina 27603

and

David Baumann, MCI Telecommunications Corporation, 400 Perimeter Center, Suite 400, Atlanta, Georgia 30346

For North Carolina Long Distance Association

Linda Markus Daniel, Daniels and Daniels, P.A., 1000 Park Forty Plaza, Suite 200, Durham, North Carolina 27713

For US Sprint Communications Company

Nancy Essex, Poyner and Spruill, Attorneys at Law, P. O. Box 10096, Raleigh, North Carolina

and

Rita A. Barmann, Senior Regulatory Attorney, US Sprint Communications Company, 1850 M Street, N. W., Washington, D. C. 20036

For the Attorney General

Karen E. Long and Lorinzo L. Joyner, Assistant Attorneys General, North Carolina Attorney General's Office, Department of Justice, Utilities Division, P. O. Box 629, Raleigh, North Carolina 27602
For: The Using and Consuming Public

For the Public Staff

Antoinette R. Wike, Chief Counsel, North Carolina Utilities Commission, 430 North Salisbury Street, Raleigh, North Carolina 27602
For: The Using and Consuming Public

BY THE COMMISSION: On October 28, 1985, in Docket No. P-140, Sub 9, AT&T Communications of the Southern States, Inc. (AT&T), 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 annual intrastate revenue shortfall of $10,403,000. As part of the filing, AT&T requested emergency 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 interim rate relief in the form of an interim suspension of the $25.00 special access surcharge on WATS and 800 Service access lines. This decision was affirmed by Order dated December 18, 1985.

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 and Southern Bell, intraLATA and interLATA WATS and 800 Service would be tariffed and provided separately, rather than jointly provided under the uniform statewide tariffs heretofore in effect. By Order dated December 30, 1985, the Commission concluded that the request of AT&T 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 P-100, Sub 86, should be 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 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, the matter came on for hearing in the Commission Hearing Room, as scheduled. Numerous witnesses representing the various parties testified concerning WATS and 800 Service in North Carolina. On December 23, 1986, the Commission entered an Order which, among other things, approved separate WATS and 800 Service schedules for AT&T and the Local Exchange Companies (LECs); approved new WATS and 800 Service usage rates and AT&T and the LECs; found that it was in the public interest for the WATS and 800 Service access lines to be provided by the LECs directly to the subscribers; and required AT&T and Southern Bell (on behalf of all LECs) to file tariffs consistent with the Commission Order by January 12, 1987.

On January 30, 1987, AT&T filed a Petition for Reconsideration and/or Clarification requesting that the LECs be required to clarify their tariffs so as not to bill AT&T for DAL Extenders (DALEs) or DAL Extensions. Southern Bell, Carolina Telephone, and the Public Staff filed responses to AT&T's petition. On February 23, 1987, the Commission entered an Order setting an evidentiary hearing on the limited subject of Southern Bell's and the LECs' joint tariff filings for the DAL, DALE, and DAL Extensions.

On March 5, 1987, the matter came on for hearing in the Commission Hearing Room as scheduled. Robert A. Friedlander, AT&T, testified as to the history and use of DAL Extenders and Extensions and the Company's position regarding the use of DAL Extenders and Extensions; Joseph W. Wareham testified to Carolina Telephone's position on the access tariff issues relating to DALEs; David B. Denton, Southern Bell, addressed the appropriate billing of the DAL and DAL Extenders and Extensions; and John T. Garrison, Jr., explained the Public Staff's position with respect to when rates for DAL, DALEs, and DAL Extensions should be billed to interexchange carriers (IXCs).

FINDINGS OF FACT

1. This matter is properly before the Commission, and the Commission has jurisdiction over the parties and subject matter.

2. WATS or 800 Service Dedicated Access Lines (DALs) connect the customer's premises with the customer's serving central office. A DAL Extension is comprised of facilities and equipment used to connect a customer's premises, other than the customer's primary location, to the WATS/800 Service serving office (hereinafter WATS serving office). Dedicated Access Line Extenders (DALEs) are extensions of the DALs which are necessary in situations where the customer's serving central office does not also function as a WATS serving office. Dedicated Access Line Service includes both the DAL and DALE rate elements where necessary.

3. Historically, the cost of providing the DALE has been recovered in the rates charged for WATS or 800 Service access lines. However, based on AT&T's rate case data, the LECs charge AT&T $4.6 million annually for DALEs in addition to charges for DALs.

4. It is in the public interest to require the LECs to discontinue billing DALEs to interexchange carriers providing combined (Add-on) WATS/800 Service or WATS/800-like service.

5. The tariff proposed by Southern Bell would allow the LECs to bill both the end-user and the interexchange carrier for the same access line service, i.e., DALs, DALEs, and DAL Extensions.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 1

Finding of Fact No. 1 is based on the various findings 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 all four witnesses who presented evidence at the hearing. There is no controversy concerning the definition of DALs, DALEs, or DAL Extensions. However, there is considerable debate with regard to whether the DALE rate element should be included with the DAL rate element for purposes of complying with the intent of the Commission Order herein of December 23, 1986. In that Order, the Commission found that 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." (Docket No. P-100, Sub 86, Order Establishing WATS and 800 Service Rates and Charges, p. 4, Finding of Fact No. 6).

The dispute to be resolved concerns the differences in the rate structure for Dedicated Access Service in the Access Tariff (charged to interexchange carriers) and the WATS Access Line in the WATS Tariff (charged to end-user customers). Section E7.4.5C. of Southern Bell's Access Tariff describes Dedicated Access Service as having two rate elements:

> When Dedicated Access Line Service is provided, the only rate elements which apply are Special Access Lines (SAL) between the end-user premises and the end office (i.e., WATS or WATS like serving office) and, when the end office is not a WATS or WATS like serving office, Special Transport <u>to extend the SAL</u> to a WATS or WATS like serving office. (emphasis added)

Special Access Lines (SALs) are the DAL rate element and the Special Transport to "extend" the SALs is the DALE rate element.

Public Staff witness Garrison testified that the WATS Access Line in the WATS subscriber tariff has only one rate element which is the equivalent of both the DAL rate element and the DALE rate element in the Access Tariff. The distinction between the two rate structures is illustrated in Garrison Exhibit No. 1.

As defined by Southern Bell, the WATS Access Line is the "transmission path between a WATS termination and the point in the Company Central Office where access to the public switched network is obtained for purposes of completing WATS calls." According to witness Garrison this can only occur in the WATS serving office. Thus, the WATS Access Line in the WATS tariff has only one recurring charge, even when the customer's serving central office does <u>not</u> also function as a WATS serving office.

Southern Bell and Carolina Telephone contend that DALs and DALEs are separate and distinct facilities and should therefore be treated differently

for billing purposes. Notwithstanding the contentions of Southern Bell and Carolina, their witnesses describe DALEs in the following manner: as being required where "the DAL must be 'extended' to a WATS serving office" (Denton, Tr. Vol. 2, p. 58) and "In effect, all CT&T WATS lines had to be 'extended' to a Bell WATS switching office" (Wareham, Tr. Vol. 2, p. 43).

Based upon the testimony of all the witnesses as a whole and on the language contained in Southern Bell's Access Tariff and WATS Tariff, it is the Commission's conclusion that the DALE rate element is merely an extension of the DAL and thus constitutes an integral part of the access lines used in the provisions of WATS and 800 Service to subscribers.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 3 AND 4

The evidnece to support these findings of fact are found in the testimony of AT&T witness Friedlander, Public Staff witness Garrison, Southern Bell witness Denton, and throughout the record of this proceeding. Witness Friedlander testified that historically the cost of providing DALEs has been recovered in the rates charged for WATS and 800 Service access lines. AT&T's testimony in this regard is based upon a 1982-83 Southern Bell cost study. It is also supported by the Public Staff witness who testified that the cost recovered by the DALE is not a new cost of the LEC. This cost always existed, but was considered part of the overall cost of providing the access line. Southern Bell witness Denton confirmed this fact.

The Public Staff also points out that it was not until the implementation of access charges that the cost associated with extending the dedicated access line from the customer's end office to the WATS serving office was separated from the overall cost of the access line. When a separate rate element for the DALE was introduced, the rate for DALs was not lowered to reflect the corresponding cost reduction no longer carried by that rate element. In addition, no recognition of this unbundling was made in the WATS tariff. Thus, to the extent that DALs are priced to include the cost of DALEs, the interexchange carriers have been charged twice for the same costs.

Carolina and General Telephone argue that the cost study relied upon includes only Southern Bell's cost of providing DALEs and that Southern Bell's cost may be different than the other LECs' costs. The Commission agrees that other LECs may have costs that are higher or lower than Southern Bell's costs. However, the Commission is also aware that through the settlements process all LECS are able to recover their costs of providing DALEs from the settlement pool prior to calculation of the final settlement ratio. The recovery of costs for providing WATS and 800 Service is no different than that for providing any other uniform tariff service. Therefore, any differences in actual cost among the LECs is irrelevant.

AT&T testified that the MTS rate reduction it proposed in Docket No. P-140, Sub 9, was premised in part upon the elimination of DALE charges amounting to $4.6 million annually. More recent data indicates that the current level of DALE charges amounts to a minimum of $3.9 million annually. AT&T also asserts that the continuation of DALE charges to IXCs would diminish the average MTS reduction by more than 16% or about 3¢ per message. In addition, the WATS and 800 Service revenue/cost relationship would deteriorate to the point where WATS revenues would not recover its overall direct costs.

The Commission attempted to correct this revenue/cost relationship when it established the rates for these services and adjusted the level of access charges in its December 23, 1986, Orders. Requiring the continued billing of DALEs to interexchange carriers would defeat that purpose.

Southern Bell contends that elimination of DALE billing to IXCs will result in a revenue shortfall to the LECs of approximately $4.6 million and that the most transparent means by which to avoid such a shortfall is to continue charging interexchange carriers for DALEs and not give the subscribers of North Carolina as great a MTS reduction as planned by AT&T. However, neither Southern Bell nor any other LEC alleged that the loss of such revenues would significantly affect the earnings of any specific company. Public Staff witness Garrison testified that the access pool revenues were approximately $210 million.

The Commission takes judicial notice of filings made by Southern Bell with the Commission which show that as of November 1986 the access pool is earning at the level of 15.096% and the intraLATA toll pool settlement ratio is 13.342%. Moreover, with the delay in the effective date of the Commission Order reducing the level of the carrier common line charge and eliminating the surcharge on WATS and 800 Service access lines, the LECs will have the benefit of higher access charges for an additional thirty (30) days. In these circumstances it would be unfair to the ratepayers of North Carolina to deny them the benefits of the full MTS rate reduction proposed by AT&T. The Commission believes that the access revenue shortfall resulting from this decision should be considered in conjunction with the ongoing Docket No. M-100, Sub 113 which involves assessing the impact of the Tax Reform Act of 1986 on public utilities operating in North Carolina. The LECs are called upon to file updated information in this regard within 30 days from the date of this Order.

The Commission notes that despite the existence of identical tariff language in Georgia and South Carolina, Southern Bell does not presently impose DALE charges in those states. These inconsistencies in the application of Southern Bell's tariffs and the resulting impact on the reduction of MTS rates lead the Commission to seriously question the need to continue charging IXCs for Dedicated Access Line Extenders.

The introduction of competition in North Carolina has from the beginning held out the promise for new services and lower prices. The opportunity is now at hand to meaningfully demonstrate the benefits of a competitive marketplace to the consumers of this State. Therefore, the Commission concludes that it is in the public interest for the LECs to discontinue charging interexchange carriers providing combined WATS or 800 Service or WATS-like or 800-like services for Dedicated Access Line Extenders.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 5

The evidence for this finding of fact is found in the testimony and Exhibit of Public Staff witness Garrison and in the tariffs proposed by Southern Bell. Witness Garrison testified that Southern Bell has proposed no change in its Access Tariff to reflect LEC billing of the WATS access line and extensions to the end-user. Witness Garrison further asserted that if no change in the tariff is made, the LECs will be able to charge both the end-user and the interexchange carrier for the same access line and/or extension

services. Mr. Garrison recommended that the Southern Bell tariff be clarified to assure that Dedicated Access Line Service charges and extension charges do not apply to interexchange carriers when the LEC bills the end-user for the equivalent services from the WATS tariff. There was no opposition to the recommendation and the Commission concludes that it is fair and reasonable and should be approved.

The Public Staff has recommended that AT&T-C be required to provide interLATA DAL Extensions to customers since the LECs are prohibited from providing this interLATA service. AT&T-C counters that there is no demand for this service offering and that technical difficulties would be encountered in providing the service. Since there appears to be no demand at this time for this service, the Commission believes no action need be taken on this issue at this time. However, if AT&T does receive requests from customers for this service, tariffs should be filed with the Commission to provide the service.

IT IS, THEREFORE, ORDERED as follows:

1. That the Local Exchange Carriers shall not bill Dedicated Access Line Extenders to interexchange carriers providing combined (Add-on) WATS or WATS-like service and 800 Service or 800-like service.

2. That the Local Exchange Carriers shall not bill interexchange carriers providing combined (Add-on) WATS or WATS-like or 800 Service or 800-like service for intraLATA DAL Extensions.

3. That Southern Bell Telephone and Telegraph Company shall, on behalf of the LECs, file within five (5) working days from the date of this Order tariffs to assure that Dedicated Access Line Services and extensions will not be charged to interexchange carriers when the LECs bill the end-user for the equivalent services from the WATS tariff.

4. That the regulated local exchange companies shall file with the Commission the estimated financial impact on their operations of the decision rendered herein in conjunction with Docket No. M-100, Sub 113, within 30 days from the date of this Order.

ISSUED BY ORDER OF THE COMMISSION.
This the 25th day of March 1987.

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

DOCKET NO. P-140, SUB 9
DOCKET NO. P-100, SUB 86
DOCKET NO. P-100, SUB 65
DOCKET NO. P-100, SUB 87
DOCKET NO. P-100, SUB 72

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 and Charges Applicable to Intrastate Telephone Service in North Carolina

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

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

DOCKET NO. P-100, SUB 72

In the Matter of
Investigation to Consider Whether Competitive Intrastate Offerings of Long Distance Telephone Service Should be Allowed In North Carolina and What Rules and Regulations Should be Applicable to Such Competition If Authorized

DOCKET NO. P-100, SUB 87

In the Matter of
Investigation to Consider Whether to Authorize the Resale of IntraLATA Interexchange FX and Private Lines

ORDER RULING ON PETITIONS FOR RECONSIDERATION AND/OR CLARIFICATION AND COMMENTS ON TARIFF FILINGS

BY THE COMMISSION: On December 23, 1986, the Commission issued Orders in the preceding dockets. Southern Bell Telephone and Telegraph Company (Southern Bell), the local exchange companies (LECs), and AT&T-Communications, Inc. (AT&T-C), filed tariffs pursuant to these Orders on January 12, 1987.

Subsequent to the filing of tariffs, the North Carolina Long Distance Association (NCLDA), AT&T-C, Southern Bell, Carolina Telephone and Telegraph Company (CT&T), and the Public Staff have filed numerous comments on the tariff filings and reply comments on the comments of other parties. AT&T-C has filed several petitions for reconsideration and or clarification of various decisions rendered by the Commission in the December 23, 1986, Orders. Southern Bell, CT&T, and the Public Staff have filed comments on these petitions for reconsideration and clarification.

On February 23, 1987, the Commission issued an Order scheduling an oral argument on the motions for reconsideration and clarification filed by AT&T-C and an evidentiary hearing on Southern Bell and the LECs tariff filings dealing with the Dedicated Access Line, the Dedicated Access Line Extension, and the Access Line Extension. After the issuance of this Order, Petitions for Reconsideration and/or Clarification were filed with the Commission by MCI Telecommunications Corporation (MCI) and U.S. Sprint Communications Company (US Sprint). The Commission determined that the Petitions for Reconsideration and/or Clarification filed by MCI, U.S. Sprint, and SouthernNet Services, Inc. (SouthernNet) should be considered in the oral argument scheduled for Thursday, March 5, 1987.

The Oral argument was held as scheduled. Counsel for AT&T, MCI, US Sprint, NCLDA, SouthernNet, Southern Bell, Carolina Telephone and Telegraph Company (CT&T), Continental Telephone Company of North Carolina, Alltel Carolina, Inc., SouthernNet, the Attorney General, the Public Staff, and Carolina Utilities Customers Association appeared and presented oral argument on the Petitions for Reconsideration and or Clarification filed by AT&T, MCI, US Sprint, and SouthernNet.

The Commission has fully considered the evidence in the record and the arguments of the parties and reaches the following conclusions on each of the issues raised by the parties.

Docket No. P-100, Sub 65 and 72

1. IntraLATA Facilities Based Competition

In the December 23, 1986, Order issued in these dockets, the Commission determined that 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."

MCI, SouthernNet, US Sprint, and AT&T-C filed petitions for reconsideration of this ruling. MCI contends that it has expended $34 million on capital improvements on its network in North Carolina and has expended $3.5 million in projects under construction. It is MCI's contention that a key factor in MCI's strategic planning and allocation of assets since the February 22, 1985, Order has been the reliance on the Commission's authorization of full facilities-based competition on January 1, 1987. MCI asserts that its facilities currently in place will not be fully utilized unless facilities-based competition is authorized. Absent the Commission's stated target date for intraLATA facilities-based competition of January 1,

1987, MCI contends it may well have allocated its resources in an entirely different manner. While MCI concedes these facilities were also built and designed to handle interstate and interLATA telephone calls, MCI believes these facilities can only be fully used and useful if allowed to carry intraLATA traffic. The relief sought by MCI is first and foremost that full intraLATA facilities-based competition be allowed. Alternatively, facilities in place should be allowed to be used for completing intraLATA calls.

U.S. Sprint shares the views held by MCI on this issue. It is US Sprint's contention that the Commission should not alter its long stated policy objective without substantial and convincing evidence that such competition is not in the public interest. US Sprint also asserts that its network and financial planning has been conducted under the assumption that intraLATA facilities-based competition would be permitted in North Carolina. US Sprint requests the Commission to reconsider its decision to postpone the start of full intraLATA competition by interexchange carriers (IXCs). Alternatively, U.S. Sprint requests that the Commission Order be clarified to authorize intraLATA resale of Feature Group B (FGB) and Feature Group D (FGD) services and to establish an expeditious schedule for consideration of all unresolved transition issues relevant to a fully competitive long distance toll environment. In oral argument U.S. Sprint suggests a third alternative of abolishing the compensation plan currently in effect.

SouthernNet similarly requested reconsideration of this decision. SouthernNet also contends that it has constructed facilities in reliance on the Commission's plan to implement full, unfettered intraLATA competition January 1, 1987. It is SouthernNet's position that facilities built by the Company prior to January 1, 1987, in reliance on the Commission's prior Order should be allowed to be fully utilized.

AT&T-C filed comments which indicate that the Company does have facilities in its interLATA network in place that are capable of completing intraLATA calls placed over new nodal services such as Software Defined Network (SDN). Therefore AT&T-C contends any relief granted pursuant to carriers' requests should be granted to all IXCs in order to avoid unjust and unreasonable discrimination. AT&T contends basic fairness and equity require that the form of relief granted any IXC be allowed for all IXCs. AT&T-C supports U.S. Sprint's proposal to abolish the compensation plan.

The Public Staff disagrees with U.S. Sprint's rationale that the resale of intraLATA Feature Group A should apply equally to FGB and FGD. The Public Staff contends that the Commission approved only the resale of intraLATA private line-like and Foreign Exchange (FX) like services. The Public Staff had recommended that resale of these services only be allowed in conjunction with payment of the compensation plan to avoid jeopardizing reasonably affordable rates. The Public Staff states its belief that the Commission's intent is not to enhance the competitive telecommunications market in North Carolina by piecemeal elimination of substantial support for the local exchange rates which it sought in principle to protect through the compensation plan. The Public Staff contends to do so is outside the Commission's authority under North Carolina Statute G.S. § 62-110. The Public Staff contends the compensation plan should be revised as to the enforcement and amount of compensation. Since the Commission plans to reduce the access change level from 5.01 cents per access minute to 4.0 cents per access minute (originating

access) and 4.33 cents per minute (terminating access), the Public Staff recommends increasing the compensation amounts from 4.72 cents to 6.35 cents per conversation minute. The Public Staff further recommends amending the access tariff to provide that failure to report unauthorized traffic and pay compensation to the local exchange companies (LECs) is grounds for termination of service.

Southern Bell argues that the Commission's decision on intraLATA facilities-based competition is sound and that significant industry changes need to be made prior to authorization of full intraLATA competition. Southern Bell is opposed to grandfathering facilities and contends this represents a business risk these companies face. Southern Bell shares the Public Staff's view on resale of FGB and FGD services and contends these matters were not addressed in evidence in the hearings held. CT&T also contends resale of FGB and FGD services should be the subject of future evidentiary hearings since this matter has not been addressed in previous hearings.

The Commission has carefully weighed the evidence and arguments of all the parties on these issues. The Commission remains convinced that the decision rendered in the December 23, 1986, Order to postpone approval of full intraLATA facilities-based long distance competition was prudent and in the public interest.

North Carolina Statute G.S. § 62-110 vests with the Commission the authority to allow long distance competition provided it is deemed to be in the public interest and will not jeopardize reasonably affordable local service rates. Clearly authorizing full intraLATA competition prior to implementing the regulatory changes necessary to allow the local exchange companies to compete in a manner with regulatory constraints similar to other market participants is not in the public interest and could reasonably be anticipated to adversely impact reasonably affordable local service rates in North Carolina. Thus, the Commission has been forced to make the difficult decision of postponing the target January 1, 1987, date until such time as these important concerns and issues have been resolved.

The IXCs (MCI, U.S. Sprint, SouthernNet, and AT&T-C) have recommended that existing facilities be grandfathered and allowed to be used for completion of intraLATA traffic. The Commission concludes that this request, though not without some merit, must nevertheless be denied. The Commission reiterates that the decision rendered is merely a postponement of the earlier decision and that at some future date full intraLATA competition will be allowed. The Commission recognizes that the facilities now in place may be fully utilized in terms of call completion; however, the IXC will be required to compensate the LEC for intraLATA calls not routed over authorized LEC resale facilities. All facilities in place were designed to carry interLATA and interstate traffic. Since the interstate and interLATA toll markets are generally believed to be the more lucrative segments of the market, it is reasonable to conclude that facilities in place were positioned to predominantly tap these market areas.

The Commission believes that grandfathering facilities would create an unmanageable market structure in North Carolina and a regulatory nightmare. The compensation plan while currently difficult to administer would in all probability become impossible to administer under such a plan. Further, such authorization if not consistently applied could create inequities among

carriers or a case of haves (IXC with intraLATA facility authority) and have nots (IXC intraLATA facilities authority). Such a situation is clearly not in the public interest. Thus, the Commission believes that one can authorize intraLATA facilities-based competition or one can prohibit such competition but a market structure of a part of both options is unmanageable, inequitable, and not in the public interest. The decision to postpone intraLATA facilities-based competition is regretable in terms of changed expectations to the carriers but is necessary in the Commission's opinion and in the long run is in the best interest of the consumers of North Carolina.

U.S. Sprint requests that FGB and FGD services be authorized for resale. Since this matter was not an issue in the previous hearings process, the Commission does not have at its disposal the evidence to render a decision on this issue. The Commission therefore finds that resale of FGB and FGD facilities should be an issue in the upcoming hearings to be scheduled in these dockets. U.S. Sprint has suggested abolishing the compensation plan. The compensation plan was authorized in the initial Order issued February 22, 1985, in these dockets to act as a deterrent to unauthorized calling. Since full intraLATA competition has not yet been allowed, the time for abolishing the compensation plan is not yet at hand.

Alternatively, the Public Staff proposes that enforcements of the compensation plan be strengthened and that the compensation amount be modified from 4.72 cents per compensation minute to 6.35 cents per compensation minute. The Commission concurs that the compensation plan should be enforced more vigorously by the LECs. A review of the payment history of compensation by long distance carriers indicates that some carriers are not compensating the LECs for unauthorized intraLATA Calling. To the extent some carriers correctly pay compensation due and some carriers do not, inequity exists to the detriment of those carriers honestly reporting unauthorized traffic. The Commission therefore calls upon the LECs to more vigorously police the compensation plan and to report the results of actions taken in this regard within six months from the date of this Order.

With regard to the Public Staff's proposal to modify the per minute compensation amount, the Commission concludes this matter was not addressed in the evidence presented in the case. Although it is certainly clear that the compensation formula is predicated in part on access charges and access charges are scheduled to decrease May 1, 1987, it is not clear that the revenue amount in the formula continues to be valid. The Commission believes this matter should be considered in an evidentiary hearing prior to revision.

MCI requests the Commission to reevaluate its decision on LATAwide termination of FGA. The Commission has considered this issue thoroughly in several previous proceedings and finds that no new evidence has been presented to warrant a change in the Commission's decision on this matter.

2. Regulatory Flexibility

AT&T-C contends the Commission did not address the issue of further regulatory flexibility for the IXCs in the December 23, 1986, Order. AT&T-C believes that the competitive market has progressed in North Carolina to allow authorization of presumptively valid tariffs for new services and for rate increases above AT&T-C's ceiling rates. The Commission in its Order Modifying

Ceiling Rate Plan of July 22, 1986, established a policy of not requiring cost support for new service filings. New service tariffs must however be filed 30 days prior to implementation for review by interested parties. Absent a request to suspend the tariffs filed for new services, the tariffs may become effective 30 days subsequent to filing. Thus AT&T-C's request for presumptively valid tariffs on new services is already in place.

The Commission does not share AT&T-C's opinion that the competitive long distance market in North Carolina has progressed to the degree that all regulatory constraints on increases should be relaxed. The Commission believes the market currently existing does necessitate continued regulation of price increases above the established ceiling rates.

3. 1+ and 0+ IntraLATA traffic

AT&T-C and NCLDA object to the broad language used in the December 23, 1986, Order allowing the LECs to retain 1+ and 0+ intraLATA calling. AT&T-C suggests that this language should relate solely to Message Toll Services (MTS) or, alternatively, that carriers should be allowed to file requests for 1+ authority in conjunction with new service offerings. The Commission will consider requests by AT&T-C or any other carriers for 1+ authority in conjunction with a new service offering on a case by case basis in the future.

4. Miscellaneous Matters

AT&T-C wishes to participate in studies conducted by the LECs at the Commission's direction concerning a flat rate NTS cost recovery plan and an intrastate high cost fund. Southern Bell and CT&T object to this participation on the grounds that such participation will inhibit the process. The Commission denies AT&T-C's request to participate in these meetings; however, the LECs may invite parties other than the LECs to these meetings as deemed necessary. Upon finalization of these plans, the LECs should present the results to other affected parties and carriers. The Commission will not implement any related plans without full consideration of all parties' positions on the matter in a hearing.

AT&T-C objects to the designation service bypass in the December 23, 1986, Order. It is AT&T-C's opinion that since FX and private line services have been authorized for resale by the Commission, these service are not bypass. The Commission believes AT&T-C has raised a valid point on this matter. In lieu of the term service bypass, the Commission would utilize the synonymous term of tariff shopping.

AT&T-C objects to tariff language in Southern Bell's tariffs which states that the LEC will only provide switched access services for calls which are originated and terminated in the same LATA over LEC services approved for resale. AT&T-C contends this language should be revised since blocking has not been endorsed.

The Commission believes this objection has some merit and that the preceding language should be deleted from the tariffs. In lieu of such language the following language should be added. "If calls originated and terminated in the same LATA are completed over facilities not authorized for intraLATA resale, the compensation plan should apply.

Docket No. P-100, Sub 86

1. Miscellaneous Matters

AT&T-C objects to the following language contained on page 8 of the December 23, 1986, Order: "In addition, the Public Staff through cross-examination questioned the validity of AT&-C's cost figures, which AT&T-C largely maintained to be proprietary and which are therefore not fully in evidence." The Commission finds AT&T-C's objection somewhat merited and therefore will delete the portion of the sentence which follows from its Order" ..."and which are therefore not fully in evidence."

The Public Staff recommends that a more generic name be used by Southern Bell for its WATS interLATA add on service tariffs. The Public Staff also recommends that the term station be replaced with termination in the tariffs filed pursuant to this Order, where conflicts appear. Southern Bell has responded concurring with these recommendations and offering further refinements. Based on the agreement of the parties the Commission approves these tariff revisions.

Southern Bell and the Public Staff disagree on new tariff language included by Southern Bell regarding termination of a WATS line where telecommunications management functions are performed. The Public Staff contends the language is unclear and superflous and implies the unauthorized sharing of facilities. Southern Bell counters that the language is necessary for marketing purposes and no sharing of facilities is involved.

The Commission will allow the Public Staff's request to exclude this language from the tariffs at this time. The Commission would encourage Southern Bell and the Public Staff to work cooperatively together to find acceptable tariff language on this matter to be approved at a later time.

2. Dedicated Access Line (DAL), Dedicated Access Line Extension (DALE), and Access Line Extension (DALEX)

This matter has been fully addressed in an Order issued March 25, 1987 in Docket No. P-100, Sub 86.

3. Surcharge on Special Access Lines

NCLDA proposes that the $25 surcharge on special access line be eliminated in conjunction with the elimination of the surcharge on DALs. This matter was not an issue in the proceeding and therefore should be the subject of an evidentiary hearing prior to consideration.

Docket No. P-100, Sub 87

AT&T-C and NCLDA contend that the Commission's decision in the December 23, 1986, Order is unduly discriminatory because it establishes rates for resellers of intraLATA FX and private line services different from those paid by ordinary business customers. Alternatively, Southern Bell, CT&T, and the Public Staff contend the Commission's decision does not represent undue discrimination.

The Commission will not reiterate here the arguments of the parties on this matter since this is fully covered in the December 23, 1986, Order. The Commission hereby reaffirms the decisions reached in the December 23, 1986, Order and concludes that the decision rendered is just, reasonable, and not unduly discriminatory.

Southern Bell has suggested an alternative that resellers of intraLATA private line service could act as an agent for a customer of private line services and pay the business private line rates. The Commission concludes that this proposal has merit and should be approved.

Docket No. P-140, Sub 9

1. Resale of Private Line Services

AT&T-C objects to the Commission's decision on the resale of AT&T-C's private line services. Under the Commission's plan the reseller pays the access portion of the service directly to the LEC. The portion of the service actually provided by AT&T-C is to be rated at AT&T-C's proposed rates which are lower than present rates. AT&T-C contends that this rate structure is unduly discriminatory and puts AT&T-C at a competitive disadvantage. The Public Staff and NCLDA contends that the rate structure is reasonable.

The Commission has carefully considered this matter and concludes that the decision rendered should be affirmed. AT&T-C's charge of undue discrimination is directly analogous to the claim regarding the decision rendered in Docket No. P-100, Sub 87. The Commission believes the reasoning behind the decision rendered therein applies equally in this decision and that the decision is just and reasonable. The Commission finds the schedules filed as an Appendix to the Public Staff's February 12, 1987, Response to AT&T's Petition for Reconsideration compelling reasoning for approving lower interexchange channel component rates for resale of private line service.

2. Telpak

AT&T-C objects to the Commission's decision to continue the Telpak offering. AT&T-C asserts Telpak revenues do not cover costs, are no longer a valid service offering, and should be grandfathered with a 12-month period prior to obsoleting the service. AT&T-C vigorously objects to the resale of Telpak services.

The Public Staff contends that Telpak services should continue to be offered and the Telpak is a valid service offering. NCLDA and the Public Staff advocate resale of Telpak services.

This issue is one of much debate. The Commission takes note of the fact that only eight states have not taken action to grandfather and/or abolish this service offering. The service offering has also been abolished on an interstate basis. The Commission believes the decision previously rendered was in error. The evidence is compelling that the Telpak should not continue to be offered to new customers. The Commission therefore finds the AT&T-C Telpak services should be grandfathered. The resale of Telpak services would then become a moot point.

3. Night-Weekend Discount

AT&T-C takes issue with the Commission's decision to retain the 50% night-weekend discount. AT&T contends the assertion that access and billing charges are covered during this period is fallacious. The Public Staff counters that the evidence does support such a finding. The Commission believes the 50% night-weekend discount should be retained and that the evidence supporting this finding is valid.

4. MTS Rate Structure

a. MTS Revenue Reduction:

AT&T-C contends the appropriate MTS reduction is approximately $25.1 million. Alternatively the Public Staff proposes a reduction of approximately $25.4 million. The reasons for this difference are the inclusion of estimated verification and interrupt revenues by the Public Staff and the lack of consideration of any repression or stimulation. The Commission concludes that the difference is immaterial and will utilize a compromise revenue amount between the parties' proposals of approximately $25.26 million as suggested by AT&T-C.

b. Rate structure

AT&T-C has proposed a rate structure for MTS inclusive of its proposed rate reductions. NCLDA opposes the proposal on the basis that the rate decreases are not uniform. The Public Staff is in general agreement with AT&T-C's rate structure except for the underlying revenue difference involved and AT&T-C's proposed combination of the 31-40 and 41-55 mileage bands.

AT&T contends that, unless compelling reasoning is offered otherwise, the tariff structure of a competitive IXC should be left to the IXC's best judgment. It is AT&T's contention that the IXC has the best knowledge of market forces and the pricing of other related service, thus the IXC can best design its own rates.

The Commission believes AT&T-C's proposed general rate structure should be approved. However AT&T-C should refile with the Commission tariffs consistent with the MTS revenue decrease approved herein.

Numerous tariff revisions were proposed by the Public Staff in these dockets and not specifically addressed herein due to the concurrence by the companies involved. These tariff revisions are hereby approved. All other decisions of the Commission not herein modified remain in full force and effect.

IT IS, THEREFORE, ORDERED as follows:

1. That the December 23, 1986, Orders in Docket Nos. P-100, Sub 65, P-100, Sub 72; P-100, Sub 86; P-100, Sub 87; and P-140, Sub 9, be, and are hereby, affirmed except as modified herein.

2. That Southern Bell Telephone and Telegraph Company shall file revised tariffs consistent with the decisions rendered herein within five working days from the date of this Order to be concurred in by the LECs.

3. That AT&T Communications Inc., shall file revised tariffs consistent with the decisions rendered herein within five working days from the date of this Order.

4. That the December 23, 1986, Orders as modified herein shall become effective May 1, 1987.

ISSUED BY ORDER OF THE COMMISSION
This the 1st day of April 1987.

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

Commissioner Sarah Lindsay Tate, dissenting

DOCKET NO. P-100, Sub 72

COMMISSIONER TATE DISSENTING IN PART. I dissented in the original Order issued in this docket and must now dissent to this Order on Reconsideration. In February 1985, in Docket No. P-100, Sub 72, the Commission stated that facilities based intraLATA competition would begin on January 1, 1987. In our order in this case issued on December 23, 1986, the Commission reversed that decision and delayed intraLATA competition indefinitely. My concern, then and now, is that parties who had relied on the Commission's decision should not be prejudiced by the Commission changing its mind. A number of parties have stated that both the timing of their network planning and the construction of their facilities were made in reliance on the Commission's announced schedule. To me, it is inequitable that parties should suffer financial harm because they relied on the Commission to do what it said it would do. Those facilities constructed and in place on December 23, 1986, should be grandfathered and allowed to be used for completing intraLATA calls.

Commissioner Sarah Lindsay Tate

DOCKET NO. P-100, SUB 89

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Investigation of the Manner in Which Extended Area Service is Implemented in North Carolina	)	ORDER ESTABLISHING AND ADOPTING GENERAL RULES, PRACTICES AND PROCEDURES APPLICABLE TO REQUESTS FOR EXTENDED AREA SERVICE

BY THE COMMISSION: On September 25, 1986, the Commission entered an Order in this docket initiating a generic investigation in an effort to reach a consensus on the manner in which requests for extended area service (EAS) should be processed in North Carolina. The Commission stated that the primary purpose of this docket was to establish a set of rules and guidelines to be followed in future EAS matters, to ensure consistent treatment of each request

for EAS, and to enable the public to be fully aware of such rules. The Commission requested interested parties to comment on the following specific issues:

1. Should there be specific guidelines to determine a sufficient community of interest prior to processing an EAS request? Should there be general rules regarding the geographical location of an EAS arrangement; e.g., should an EAS arrangement cross county boundary lines?

2. Should a toll calling study be conducted to determine the calling characteristics and patterns involved in a proposed EAS arrangement? If so, what standards should be developed to evaluate the calling study results?

3. Are cost studies an appropriate manner of determining the cost involved in an EAS arrangement? What costs should be considered in such a cost study; i.e., embedded, incremental, etc.? Are foregone toll revenues appropriately considered as a cost in an EAS cost study?

4. Are matrix rating plans an appropriate method of costing EAS plans? What costs should be considered in such a rating scheme?

5. Should regrouping charges apply in an EAS arrangement? If so, when should the regrouping charges become effective; e.g., upon implementation of an EAS arrangement, in a general rate proceeding following implementation of EAS, etc.? Should the EAS charge be eliminated when the regrouping charge is implemented?

6. Should the EAS charge initially imposed upon implementation of an EAS arrangement be continued for a specified period of time?

7. How should the presence of mixed polling results such as those occurring between large and small communities be handled? Should one-way EAS plans or optional toll calling plans be considered in circumstances of mixed polling results?

8. In reviewing the polling results, should the percentage voting for or against the EAS be derived from the total affected subscribers or the total responding subscribers? Should a specific percentage of favorable responses be required for the EAS to be granted?

9. Will the further expansion of EAS jeopardize reasonably affordable local service rates by the diminution of toll service revenues?

The Order initiating investigation further provided as follows:

> All EAS matters which have been scheduled for public hearing, for the polling of affected subscribers, or for cost studies to be performed will be processed on an individual case by case basis by the Commission. Regarding future EAS proposals, all decisions requiring the polling of customers will be suspended pending resolution of this investigation.

By Order dated October 24, 1986, the Commission requested interested parties to comment on the following additional issue:

Is an EAS arrangement consisting of banded EAS rates suitable for large metropolitan areas? Such a plan would permit the optional purchase of EAS within the bands subscribed to by customers. If feasible, should the rates associated with such a plan be on a flat monthly basis or on a per call basis?

Comments were subsequently filed in response to the issues set forth above by the following parties: Central Telephone Company; General Telephone Company of the South; North State Telephone Company; Southern Bell Telephone and Telegraph Company; Carolina Utility Customers Association, Inc.; AT&T Communications of the Southern States, Inc.; ALLTEL Carolina, Inc.; Carolina Telephone and Telegraph Company; Lexington Telephone Company; Concord Telephone Company; Continental Telephone Company of North Carolina; Triangle J Council of Governments; the Public Staff; and the Attorney General.

On July 31, 1987, the Public Staff filed a motion in this docket whereby the Commission was requested to enter an Order lifting the moratorium with regard to future proposals and requests for EAS.

On August 18, 1987, General Telephone Company filed a response in opposition to the Public Staff's motion to lift moratorium. General's response also included a motion whereby the Commission was requested to schedule a public hearing in this docket and establish a schedule to address all matters related to EAS with a final Order being entered no later than December 31, 1987.

Based upon a careful consideration of the comments filed in this docket, the Commission reaches the following

FINDINGS AND CONCLUSIONS

In this proceeding, the Commission is seeking to establish a set of rules and guidelines which will generally ensure consistent treatment in processing each EAS request presented before the Commission. Through the years, the Commission has generally employed broad informal guidelines which have permitted the necessary flexibility in processing EAS requests on a case-by-case basis. Such flexibility has been essential for the Commission in deciding public interest questions which are inherent in and somewhat unique to each EAS request. The rules to be established herein attempt to define these informal guidelines.

The Commission will continue to try to attain more specific rules within these guidelines as developments in this area occur. The need of and demand by telephone subscribers for increased local calling areas in North Carolina is being driven by expanding communities of interest between exchanges and changes in economic and social factors which underlie general public interest considerations. Consequently, the Commission concludes that the broad informal guidelines heretofore used by the Commission (and which have been generally adequate in processing EAS requests) should be continued with some modifications to ensure that a significant degree of flexibility will be available to the Commission in fully addressing the public interest and need characteristics of each EAS request. For example, this degree of flexibility must be sufficient to address modified optional EAS plans, large exchange/small

exchange interactions, and public interest questions such as calling to county seats.

To this end, the Commission hereby adopts the following general rules, practices and procedures for application to all pending and future requests for EAS:

1. Community of Interest, Public Hearings, and Geographical Boundaries.

Any entity or group requesting the Commission to open a formal docket to investigate the need for EAS in a particular area shall be required to demonstrate to the initial satisfaction of the Public Staff and subsequently to the Commission that the subscribers in each affected exchange have demonstrated broad-based support for the requested EAS. Such support may be demonstrated by resolutions and letters from civic groups, institutions, local governments, elected officials and petitions signed by the affected subscribers. The Commission retains the flexibility to determine whether the demonstrated support is sufficient to justify further pursuit of the request for EAS.

The Commission may hold a public hearing, if necessary, to consider issues such as whether the public interest is sufficient to proceed, whether a poll should be conducted, and to determine the applicable rate increases for EAS at each exchange. The Commission may conduct an EAS poll of affected subscribers without first holding a public hearing where the particular facts and circumstances of a case do not necessitate a hearing prior to polling.

The Commission does not believe that it would be appropriate to adopt any rules which would limit EAS arrangements based solely on geographical location. So long as a significant community of interest and support for the EAS can be demonstrated, the Commission will consider each request for EAS on a case-by-case basis. A chief consideration in any request for EAS is the public interest and need for EAS, which is not necessarily constrained by geographical boundaries.

2. Toll Calling Studies.

The results of toll calling studies will be used as general indications of interest and not as rigid standards for evaluating the community of interest of a particular request for EAS. Such studies have value primarily as either a supplemental demonstration of support for EAS or to help initially to limit or narrow an EAS request, particularly when several exchanges are under consideration.

3. Cost Studies.

It is appropriate to utilize cost studies in order to establish the applicable local rate increases which should apply to requests for EAS if ultimately approved by the Commission. Except under unusual and extenuating circumstances, cost studies generally will not be required for those telephone companies who have had EAS matrix plans approved by the Commission; i.e., currently Carolina Telephone Company and Central Telephone Company. Past Commission practice in developing applicable rate increases has generally allowed consideration of only the incremental equipment costs necessary to provide the EAS in question. As a general rule, the Commission has not

authorized telephone companies to consider lost toll revenues in developing applicable EAS charges. The Commission will continue to follow this general policy in future EAS cases unless it can be clearly demonstrated in a particular case that a failure to consider lost toll revenues will in fact result in serious financial distress to the LEC and, in turn, to its remaining local customers. However, in all cases, the toll revenue losses may be computed and included in the analysis as information to be supplied to the Commission.

Any projected loss of toll revenue will generally not be considered as a proper cost in preparing an EAS cost study for the following reasons, among others:

(a) The inclusion of the net loss of toll revenue as a cost to be borne by the EAS subscribers has the effect of charging them for both the new EAS and the old toll service being discontinued. It is inappropriate for the EAS subscriber to be required to pay for something new he is receiving, the EAS, and also to be required to pay for something he is no longer receiving, the toll service.

(b) Generally, the toll revenue/cost imbalance occurring at the time EAS is initially established is a transitional condition. The toll trunking and toll switching equipment which was idled by elimination of the toll traffic between the EAS points continues to be available to carry toll traffic to other toll points. 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 without any additional capacity costs being incurred by the telephone company.

Therefore, in future EAS cases involving non-matrix telephone companies, the Commission will require the companies to conduct cost studies based upon incremental costs applicable to the EAS arrangement exclusive of toll losses. However, such incremental cost studies shall be deemed to include all additional incremental EAS equipment costs and those embedded costs supporting investments which have previously been used to provide toll services, but which will, upon approval of EAS, be utilized for EAS rather than toll service. Since the underlying toll support will cease upon implementation of EAS, the Commission believes that it is just and reasonable to recover such costs through EAS charges applicable to those customers who directly benefit from the service. The Commission recognizes that these latter specified facilities will have generally been included in a previously established test year period and that rates were likely set to produce revenues necessary to cover expenses and capital costs associated with these facilities. Therefore, to the extent that there would be a double recovery of expenses associated with these facilities, a deferred account shall be established to eliminate such recovery and the monies placed in the deferred account shall be returned to the general body of ratepayers, with interest, upon further Order of the Commission.

4. Matrix Rating Plans.

It appears that an EAS matrix system may not be appropriate for application to each local exchange company in North Carolina. For instance, it seems to be the case that matrix rating plans are probably not appropriate for

small LECs or for larger LECs with few exchanges and wide divergence in exchange size. Approval of EAS matrix plans must be considered on a company-by-company basis.

5. Regrouping Charges.

A cost study based on incremental costs as defined above will be the basis for any rate increases associated with implementation of EAS for non-matrix companies. At the time of the next general rate case following the implementation of EAS, the affected exchange(s) will be placed in the proper rate group(s) and a determination of whether the EAS differential(s) should be eliminated will be made at that time. If applicable, the customer notice used for EAS polling purposes shall state that a regrouping charge of the given amount will apply at the time of the company's next general rate case.

6. Polling Procedures.

When the Commission determines that the public interest and need for EAS involving two exchanges is dominant in one direction, which is generally the case when the EAS request involves a large exchange and a small exchange, the Commission will determine on a case-by-case basis whether to poll both exchanges. In cases where only one exchange is polled, the Commission will make a determination based on the results of the poll of that one exchange. As a general rule, the EAS will be approved if a simple majority of the ballots returned by subscribers vote in favor of the proposal. In cases where only minimal or de minimis rate increases would result to subscribers in the larger exchange, the Commission will impose those charges on customers in the larger exchange without a poll if the polling results of customers in the other exchange are favorable.

In cases where dominant interest does not exist at one exchange, both exchanges will generally be polled using rate increases based upon incremental costs as described previously, except where the increase in one of the exchanges is minimal or de minimis, in which case no poll will be conducted in that exchange but the EAS rate increase shall apply at the time the EAS, if approved, is implemented. When both exchanges are polled and mixed results occur, the approval or disapproval of the request will be based on the combined poll results as well as other factors that may be reflective of any unique circumstances affecting the request, including valid public policy considerations such as economic development and county-seat calling.

In proposals where EAS is being considered among several exchanges, the Commission will determine, in its discretion, whether or not all or only some of the affected exchanges will be polled and what rate increases shall apply at the time the EAS, if approved, is implemented.

The customer notice which is used in conjunction with an EAS poll shall specify that a failure to vote will be considered as a vote to agree to the outcome desired by a majority of those voting.

7. Polling Results.

All decisions regarding EAS poll results will be based on the valid ballots returned. Generally, a simple majority of those valid ballots returned

voting in favor of the EAS will constitute a basis for approving the EAS. However, in making a final decision the Commission will exercise its discretion in considering other relevant factors.

WHEREUPON, the Commission reaches the following

CONCLUSIONS

The Commission believes that adoption and clarification of the informal rules which the Commission has generally followed in the past will provide all parties with a better understanding of the procedures under which EAS proposals are to be considered. Upon review and consideration of the comments filed in this docket, the Commission conludes that definitive rules cannot be drawn at this time for each and every aspect of individual EAS proposals, because there are valid public interest questions which may arise that require a degree of flexibility by the Commission. For that reason, the Commission will not, in this docket, attempt to further define our EAS rules beyond the broad guidelines and general rules established herein. We do believe these general rules are sufficient to proceed with consideration of new requests for EAS and therefore conclude that the EAS moratorium should now be lifted.

The Commission further notes that Southern Bell filed proposed tariffs in Docket No. P-55, Sub 870, on May 23, 1986, to implement an EAS matrix plan. Those tariffs having been suspended pending completion of this generic investigation. By Order dated October 7, 1986, the Commission stated that upon resolution of Docket No. P-100, Sub 89, the Commission would establish a hearing date to consider Southern Bell's EAS matrix tariff. In view of the fact that this tariff has been pending since May 23, 1986, the Commission concludes that it is appropriate to request Southern Bell to review said tariff to see if any changes or updates thereto are appropriate and necessary and to advise the Commission in writing if the Company still desires to proceed with a hearing on its matrix tariff filing.

In its comments filed in this docket on October 24, 1986, Central Telephone Company made the following statements regarding the Company's EAS matrix plan:

> Central currently uses a matrix for determining EAS rates. This matrix is an easy method for determining and administering EAS rates, however, matrixes are built on average costs and do not address specific EAS routes. Central believes the fairest way to develop EAS rates is to base them on the costs associated with the specific EAS arrangement. Central would like to use the cost study approach for all future EAS requests.

After reviewing this Order, Central is hereby requested to advise the Commission in writing if the Company desires to use incremental cost studies, as defined herein, excluding lost toll revenues rather than its EAS matrix in conjunction with future requests for EAS.

IT IS, THEREFORE, ORDERED as follows:

1. That the Commission hereby adopts the general rules, practices, procedures, and guidelines set forth hereinabove and in Appendix A attached to

this Order for application to all pending and future requests for EAS in North Carolina.

2. That the EAS moratorium established pursuant to the Order entered in this docket on September 25, 1986, be, and the same is hereby, terminated and discontinued.

3. That Southern Bell shall advise the Commission by written pleading in Docket No. P-55, Sub 870, as to whether the Company desires to proceed with a hearing on its EAS matrix tariff filing. Such filing shall be made not later than Tuesday, December 1, 1987.

4. That Central Telephone Company shall advise the Commission by written pleading if the Company desires to use incremental cost studies excluding lost toll revenues rather than its EAS matrix in conjunction with future requests for EAS. Such filing shall be made not later than Tuesday, December 1, 1987.

ISSUED BY ORDER OF THE COMMISSION.
This the 28th day of October 1987.

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

APPENDIX A

RULE R9-7*. Procedures Regarding Requests for Extended Area Service

*Rule number corrected by Errata Order dated December 16, 1987.

(a) Purpose.

This rule is intended to further the public interest through the establishment of a set of consistent general guidelines, standards, practices, and procedures for the filing, acceptance, and processing of requests for extended area service (EAS) in North Carolina.

(b) Definitions.

For purposes of this rule, the following definitions shall apply:

(1) Extended Area Service - EAS is a switching and trunking arrangement which provides for nonoptional, unlimited, two-way, flat rate calling service between two or more telephone exchanges, provided at either the applicable local exchange rate or the applicable local exchange rate plus an EAS increment rather than at the toll message rate.

(2) Incremental EAS Cost Study - An incremental EAS cost study shall be deemed to include all additional incremental equipment costs applicable to the EAS arrangement plus those embedded costs supporting investments which have previously been used to provide toll services, but which will, upon approval of EAS, be utilized for EAS rather than toll service. Lost toll revenues will generally not be considered a proper cost to be included in an incremental EAS cost study.

(c) Community of Interest, Public Hearings, and Geographical Boundaries.

(1) Any entity or group requesting the Commission to open a formal docket to investigate the need for EAS in a particular area shall be required to demonstrate to the initial satisfaction of the Public Staff and subsequently to the Commission that the subscribers in each affected exchange have demonstrated broad-based support for the requested EAS. Such support may be demonstrated by resolutions and letters from civic groups, institutions, local goverments, elected officials and petitions signed by the affected subscribers. The Commission retains the flexibility to determine whether the demonstrated support is sufficient to justify further pursuit of the request for EAS.

(2) The Commission may hold a public hearing, if necessary, to consider issues such as whether the public interest is sufficient to proceed, whether a poll should be conducted, and to determine the applicable rate increases for EAS at each exchange. The Commission may decide to conduct an EAS poll of affected subscribers without first holding a public hearing where the particular facts and circumstances of a case do not necessitate a hearing prior to polling.

(3) It is not appropriate to adopt any rules which would limit EAS arrangements based solely on geographical location. So long as a significant community of interest and support for the EAS can be demonstrated, the Commission will consider each request for EAS on a case-by-case basis. A chief consideration in any request for EAS is the public interest and need for EAS, which is not necessarily constrained by geographical boundaries.

(d) Toll Calling Studies.

The results of toll calling studies will be used as general indications of interest and not as rigid standards for evaluating the community of interest of a particular request for EAS. Such studies have value primarily as either a supplemental demonstration of support for EAS or to help initially to limit or narrow an EAS request, particularly when several exchanges are under consideration.

(e) Cost Studies.

(1) It is appropriate to utilize cost studies in order to establish the applicable local rate increases which should apply to requests for EAS if ultimately approved by the Commission. Except under unusual and extenuating circumstances, cost studies generally will not be required for those telephone companies who have had EAS matrix plans approved by the Commission. Past Commission practice in developing applicable rate increases has generally allowed consideration of only the incremental equipment costs necessary to provide the EAS in question. As a general rule, the Commission has not authorized telephone companies to consider lost toll revenues in developing applicable EAS charges. The Commission will continue to follow this general policy in future EAS cases unless it can be clearly demonstrated in a particular case that a failure to consider lost

toll revenues will in fact result in serious financial distress to the LEC and, in turn, to its remaining local customers. However, in all cases, the toll revenue losses may be computed and included in the analysis as information to the Commission.

(2) In EAS cases involving non-matrix telephone companies, the affected company or companies will be required to conduct cost studies based upon incremental costs exclusive of toll losses. Such incremental cost studies shall be deemed to include all additional incremental equipment costs applicable to the EAS arrangement plus those embedded costs supporting investments which have previously been used to provide toll services, but which will, upon approval of EAS, be utilized for EAS rather than toll service. The Commission recognizes that these latter specified facilities will have generally been included in a previously established test year period and that rates were likely set to produce revenues necessary to cover expenses and capital costs associated with these facilities. Therefore, to the extent that there would be a double recovery of expenses associated with these facilities, a deferred account shall be established to eliminate such recovery and the monies placed in the deferred account shall be returned to the general body of ratepayers, with interest, upon further Order of the Commission.

(f) Matrix Rating Plans.

For telephone companies which have an approved EAS matrix plan in effect, the applicable customer charge(s) which shall be used for polling purposes will be determined by application of said matrix plan.

(g) Regrouping Charges.

A cost study based on incremental costs as defined above will be the basis for any rate increase(s) associated with implementation of EAS for non-matrix companies. At the time of the next general rate case following the implementation of EAS, the affected exchange(s) will be placed in the proper rate group(s) and a determination of whether the EAS differential(s) should be eliminated will be made at that time. If applicable, the customer notice used for EAS polling purposes shall state that a regrouping charge of the given amount will apply at the time of the company's next general rate case.

(h) Polling Procedures.

(1) When the Commission determines that the public interest and need for EAS involving two exchanges is dominant in one direction, which is generally the case when the EAS request involves a large exchange and a small exchange, the Commission will determine on a case-by-case basis whether to poll both exchanges. In cases where only one exchange is polled, the Commission will make a determination based on the results of the poll of that one exchange. As a general rule, the EAS will be approved if a simple majority of the ballots returned by subscribers vote in favor of the proposal. In cases where only minimal or de minimis rate increases would result to subscribers in the larger exchange, the Commission will impose those charges on

customers in the larger exchange without a poll if the polling results of customers in the other exchange are favorable.

(2) In cases where dominant interest does not exist at one exchange, both exchanges will generally be polled using rate increases based upon incremental costs as described in subparagraph (e) of this rule, except where the increase in one of the exchanges is minimal or de minimis, in which case no poll will be conducted in that exchange but the EAS rate increase shall apply at the time the EAS, if approved, is implemented. When both exchanges are polled and mixed results occur, the approval or disapproval of the request will be based on the combined poll results as well as other factors that may be reflective of any unique circumstances affecting the request, including valid public policy considerations such as economic development and county-seat calling.

(3) In proposals where EAS is being considered among several exchanges, the Commission will determine, in its discretion, whether or not all or only some of the affected exchanges will be polled and what rate increases shall apply at the time the EAS, if approved, is implemented.

(4) The customer notice which is used in conjunction with an EAS poll shall specify that a failure to vote will be considered as a vote to agree to the outcome desired by a majority of those voting.

(i) Polling Results.

All decisions regarding EAS poll results will be based on the valid ballots returned. Generally, a simple majority of those valid ballots returned voting in favor of the EAS will constitute a basis for approving the EAS. However, in making a final decision, the Commission will exercise its discretion in considering other relevant factors.

DOCKET NO. P-100, Sub 95

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
A Rule to Establish a Connection Fee	)	ORDER ADOPTING LINK-UP
Subsidy Program to Assist Low Income	)	CAROLINA PROGRAM AND
Households in Obtaining Telephone Service	)	PROMULGATING RULE R9-6

BY THE COMMISSION: On July 1, 1987, the Commission issued an Order proposing a rule in this matter and requesting comments from the local exchange companies (LECs), the Public Staff, the Attorney General, and other interested parties.

The Order requested that comments be filed by August 3, 1987, with any reply or supplemental comments to be filed by August 18, 1987.

The proposed rule closely tracked the Federal Communications Commission (FCC) recommendations regarding "Link-Up America" in CC Docket No. 78-72 and CC Docket No. 80-286 (adopted on April 16, 1987). Naming the program "Link-Up Carolina" (LUC), the Commission proposed that:

1. The LECs offer a reduction in connection fee charges to qualifying subscribers for a single phone line per household at a principal residence in an amount not to exceed 50% of the regular charge or $30.00, whichever is less, together with an interest-free deferred payment schedule to qualified subscribers.

2. In order to be eligible for assistance, a residential subscriber must (a) have lived at an address where there has not been phone service for the past three months [hereinafter the three-month requirement]; (b) not have received this type of assistance within the last two years [hereinafter the two-year requirement]; (c) not be a dependent for federal income tax purposes unless over 60 [hereinafter the dependency requirement]; and (d) meet the requirements of a state-established income test [hereinafter the means test requirement].

The LEC is to certify the three-month and two-year requirements, but the subscriber is to self-certify the dependency and income test requirements.

The Commission asked of the parties the following questions:

1. What means test should be established in North Carolina for program eligibility?

2. What changes, if any, should be made to the proposed rule?

The Commission also specifically asked the LECs whether they offered a deferred payment schedule for connection fees and, if so, on what terms was it available.

The following LECs submitted comments on the proposed rules: ALLTEL (ALLTEL Carolina, Heins Telephone Company, Sandhills Telephone Company), Barnardsville Telephone Company, Carolina Telephone and Telegraph Company, Central Telephone Company, Citizens Telephone Company, Concord Telephone Company, Continental Telephone Company of North Carolina, Inc., General Telephone Company of the South, Lexington Telephone Company, North State Telephone Company, Service Telephone Company, Skyline Telephone Membership Corporation, Southern Bell Telephone and Telegraph Company and Star Telephone Membership Corporation. In addition, the Public Staff, Legal Services, and the Attorney General also submitted comments.

The Commission has been gratified by the supportive and insightful comments parties have offered regarding the proposed rules. Responding to their concerns, the Commission has chosen to make certain changes to the rules. The text of the rule to be promulgated is set out in Appendix 1. The rule, however, remains very similar to that proposed by the FCC.

After careful consideration of the filings in this docket and the record as a whole, the Commission makes the following conclusions:

1. Enactment of this connection fee subsidy program is a desirable policy goal to promote universal service. In its July 1, 1987, Order, the Commission cited its agreement with the FCC's finding that "high, initial service installation and connection charges appear to be the primary barrier to subscribership among low income groups." The Commission noted that while the overall penetration rate for telephones has held steady or improved in recent years to just over 90%, there are nearly five million low income households nationwide that lack telephone service. Many of these live in North Carolina. Providing such persons with access to the telephone system will have substantial beneficial externalities. These would include rapid emergency communication, increased sense of community, more efficient resource allocation, and a general facilitation of choice and competition as well as expansion of the market place. Current subscribers benefit because increasing the size of the network increases the utility of phone service overall. The Commission possesses the authority to enact such a program under various provisions of Chapter 62, including G.S. 62-2, 62-30, and 62-31.

2. The provisions of this connection fee subsidy program do not violate G.S. 62-140(a). This provision reads in relevant part:

> (a) No public utility shall, as to rates or services, make or grant any unreasonable preference or advantage to any person or subject any person to any unreasonable prejudice or disadvantage. No public utility shall establish or maintain any unreasonable difference as to rates or services... as between classes of service. The Commission may determine any questions of fact arising under this section...

Many will recall that the applicability of this section was a substantial issue in Docket No. P-100, Sub 80, which instituted the Subscriber Line charge Waiver program. The Subscriber Line Waiver program mandated a materially lower rate for the qualifying low income subscriber. To resolve the discrimination question, the North Carolina General Assembly passed an amendment to G.S. 62-140(a) specifically authorizing the subscriber line charge waiver program.

The Commission was concerned that the same discrimination objection might be raised to the LUC program. Analytically, the LUC program consists of two parts--the connection fee subsidy portion and the deferred payment schedule portion. After intensive examination of relevant authority, the Commission concludes that the subsidy portion of the program does not violate G.S. 62-140(a).

Essentially, this is because the LUC program, being funded from an external and commingled source, creates no unreasonable or burdensome differential between classes of telephone subscribers. The ordinary LEC subscriber is not subsidizing the benefit to the qualified subscriber through increased intrastate of local telephone charges.

By contrast, the ordinary LEC subscriber arguably is relatively disadvantaged if he is offered a different deferred payment schedule from the qualified subscriber since he would not have the use of this money for the same length of time the qualified subscriber would. However, if the deferred payment schedule portion of the LUC program is structured in such a way that the same interest-free, deferred payment schedule is available to LUC

subscribers as is also available to all subscribes, discrimination challenges to this portion of the program can be avoided, while at the same time the FCC requirement that interest-free deferred payment plans be offered to program subscribers can be fulfilled.

Fortunately, all the LECs which responded already offer various interest-free, deferred payment plans to all credit-worthy subscribers who ask. Because of the discrimination question, the Commission does not wish to impose different deferred payment schedules for qualified subscribers as opposed to ordinary subscribers. Nor does the Commission feel it would be appropriate to impose a single, uniform deferred payment plan on all. The Commission by this Order mandates that LECs provide interest-free, deferred payment plans to all, but the Commission intends that the LECs should continue to have flexibility in setting their terms (e.g., threshold amounts, number of months to pay) as long as those plans are interest-free and uniform within their service areas. Since the FCC plan appears to give wide scope in fashioning interest-free deferred payment plans, it is the Commission's view that this Commission's mandate satisfies the FCC's requirements in this case. Availability to all necessarily includes availability to program-qualified subscribers.

3. The appropriate means test requirements for LUC are Supplemental Security Income (SSI), Aid for Families with Dependent Children (AFDC), and Food Stamps. Most of the LECs which responded recommended AFDC and SSI as the appropriate eligibility criteria. In this they were following the criteria already used in North Carolina for the Subscriber Line Charge Waiver program. Significantly, the two largest LECs, Carolina Telephone and Southern Bell, recommended the inclusion of food stamps as well. ALLTEL recommended using AFDC, SSI, food stamps, and the poverty line. The Public Staff recommended SSI, AFDC, and food stamps, as did the Attorney General and Legal Service, who also urged a 150% of the poverty line standard.

The Commission carefully considered all the comments and arguments regarding this issue. The Commission's chief concern was to what extent to expand eligibility beyond SSI and AFDC. The Commission took note of the fact that, unlike the Subscriber Line Charge Waiver program, this program does not require continuous eligibility but only eligibility at the time the assistance is applied for. The Commission also wished to have an administratively simple program eligibility standard. The Commission believed that using the poverty line or a variant based on it as a standard would introduce too many complications and that Food Stamps, which itself is based on an income standard, could serve as a useful proxy in that respect. Expanding eligibility to include Food Stamps would also increase significantly the reach of this program while at the same time simplifying certification.

The Commission has therefore concluded that SSI, AFDC, and food stamps are the appropriate eligibility criteria.

4. The efficiency and reliability of the verification and certification process should be ensured. The Commission is recommending that the LEC should verify the two-year and three-month requirements, the subscriber should self-certify the dependency requirement, and the social service agency should certify the means test requirement.

In their comments, several of the LECs expressed concern about being able to verify the two-year requirement if the subscriber moved in from out of their service area. Legal Services and some others suggested that it may be useful for the subscriber to show some type of proof if he self-certifies the means test requirements.

The Commission is concerned about the integrity and workability of the program and is of the opinion that the concerns expressed by parties are legitimate. The Commission feels those concerns can best be addressed by (a) authorizing the LECs to require that the subscriber fill out an application form containing information pertinent to the two-year, three-month dependency, and means test requirements and by (b) requiring that the social service agency certify the means test.

The Commission charges the committee of LECs constituted below to formulate a uniform application form and procedures which will simplify and expedite the process of verification and certification.

IT IS, THEREFORE, ORDERED as follows:

1. That the Rules set out in Appendix 1 as R9-6 (Link-Up Carolina Connection Fee Subsidy Program) are hereby promulgated.

2. That all LECs regulated by this Commission file interest-free deferred payment plans available to all credit-worthy subscribers if they have not already done so.

3. That this Order shall be filed with the Chief, Common Carrier Bureau of the FCC, 1919 M Street, N.W., Washington, D. C. 20554, for the purpose of securing certification for the "Link-Up Carolina" program and the consequent availability of program funds.

4. That this Order and the rules set out in Appendix 1 shall not become final until this Commission issues a further Order designating an implementation date and addressing such other matters as the Commission deems relevant.

5. That within 30 days of the issuance of this Order, the LECs regulated by this Commission shall form a committee to do the following:

a. Coordinate with appropriate social services agencies measures which should be taken to publicize the existence of the LUC program to telephone company and social service personnel and the availability of same to client or subscriber populations.

b. Coordinate, to the extent necessary, the submission of data to the National Exchange Carriers Association (NECA).

c. Coordinate procedures for the verification and certification of eligibility requirements, including the formulation of an appropriate application form and consideration of the desirability and feasibility of a statewide informational clearinghouse.

d. Consider such other matters as are relevant to the implementation of the LUC program.

ISSUED BY ORDER OF THE COMMISSION.
This the 30th day of September 1987.

NORTH CAROLINA UTILITIES COMMISSION
Sandra J. Webster, Chief Clerk

(SEAL)

Commissioner J. A. Wright dissents.

APPENDIX 1

R9-6. Link-Up Carolina Connection Fee Subsidy Program

(a) Name.--The name of this program is Link-Up Carolina (hereinafter LUC). LUC is designed to qualify for funds under the connection fee subsidy program know as Link-Up America, outlined in FCC 87-133 (CC Docket Nos. 78-72 and 80-286, adopted April 16, 1987).

(b) Obligations of local exchange companies.--All local exchange companies regulated by the Utilities Commission in this State shall provide LUC on such terms as are set out in subsection (c), (d), and (e), and in the Orders of the North Carolina Utilities Commission. All regulated local exchange companies shall submit such information to the North Carolina Utilities Commission, the Federal Communications Commission, and the National Exchange Carriers Association as is necessary to fully implement LUC.

(c) Description of program.--For the purpose of this Rule:

(1) LUC shall describe the following connection assistance program for eligible subscribers as defined in (c)(2):

a. a reduction in charges for commencing phone service assessed for a single telephone line per household at the principal place of residence of a qualified subscriber of 50% of the charges for commencement of the same service applicable to non-eligible customers or $30.00, whichever is less; and

b. a deferred schedule for payment of the charges assessed for commencing service, for which the local exchange company does not charge interest to a subscriber.

(2) In order to be eligible for assistance, a residential subscriber must:

a. Be living at an address where there has been no telephone service for at least three months immediately prior to the date that the assistance described in (c)(1)a. and (c)(1)b. is requested from the local exchange company;

b. Not have received such assistance anywhere within the last two years with receipt of such assistance to be measured from the date of initiation of the telephone service for which assistance was provided;

c. Not be a dependent for federal income tax purposes, as defined in 26 USC Sec. 152 (1986), unless the subscriber is more than 60 years of age; and

d. Be a current recipient of Aid for Families with Dependent Children, Supplemental Security Income, or Food Stamps.

(d) Verification.--The local exchange company shall verify that the subscriber meets the eligibility criteria set out in (c)(2)a. and (c)(2)b. but shall accept self-certification by the subscriber of the eligibility criteria set out in (c)(2)c. The appropriate social service agency shall verify the eligibility criteria set out in (c)(2)d. The local exchange company may require the subscriber to fill out an application form containing information pertinent to the requirements of (c)(2)a. through (c)(2)d. in order to assist in the verification process.

(e) Charges included.--Charges assessed for commencing telephone service include any state-tariffed charges levied for connecting a subscriber to the network. These charges do not include a security deposit requirement.

DOCKET NO. P-100, SUB 95

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
A Rule to Establish Connection Fee Subsidy Program to Assist Low Income Households in Obtaining Telephone Service	))))	ORDER FINALIZING RULES AND SETTING IMPLEMENTATION DATE FOR LINK-UP CAROLINA PROGRAM

BY THE COMMISSION: On September 30, 1987, the Commission issued an Order adopting the Link-Up Carolina (LUC) program and promulgating Rule R9-6 to effectuate it. By its terms, the Order directed the local exchange companies (LECs) to form a committee to coordinate among themselves and with the social service agencies in order to make recommendations regarding the implementation of the program. The LEC committee was required to submit to the Commission regarding those recommendations for implementation no later than 60 days from the issuance of the Order. The Order also provided that Rule R9-6 should not become final until the Commission issued an Order designating the implementation date and dealing with other relevant matters.

By letter dated October 19, 1987, the Federal Communications Commission (FCC) approved the LUC program as set out in the September 30, 1987, Order.

On November 30, 1987, Southern Bell Telephone and Telegraph Company, acting on behalf of the LEC committee, submitted a report to the Commission detailing the committee's recommendations concerning implementation procedures for the program. The report recommended an implementation date no later than March 1, 1988, in order to give the Department of Social Services sufficient time to gear up for the program. The substance of the report is in conformity with the requirements of R9-6 and the Commission's Orders in this docket. A copy of the report is attached to this Order as Appendix 1.

Based upon the filings, the Commission concludes that Rule R9-6 should become final as of March 1, 1988, and that the procedures set forth in the LEC committee report should become the basis for the implementation of the LUC program.

IT IS, THEREFORE, ORDERED as follows:

1. That Rule R9-6 as set forth in Appendix 1 of the September 30, 1987, Order shall become final and effective as of March 1, 1988; and

2. That the procedures set forth in the LEC committee report filed on November 30, 1987, in this docket shall be followed by the LECs in the implementation of the LUC program.

ISSUED BY ORDER OF THE COMMISSION.
This the 22nd day of December 1987.

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

Note: For Appendices See Official Copy of Order in Chief Clerk's Office.

DOCKET NO. P-100, SUB 96

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Investigation to Consider Whether a Universal WATS Access Line is in the Public Interest	)))	ORDER AUTHORIZING UNIVERSAL WATS ACCESS LINES AND SURCHARGE

HEARD IN: Commission Hearing Room 2115, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on October 5-6, 1987

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

APPEARANCES:

For Southern Bell Telephone and Telegraph Company:

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and

Len S. Anthony, Attorney, Southern Bell Telephone and Telegraph Company, 4300 Southern Bell Center, 675 West Peachtree Street, N.E., Atlanta, Georgia 30375

For Carolina Telephone and Telegraph Company:

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For General Telephone Company of the South:

Mary U. Musacchia, Attorney, General Telephone Company of the South, 4100 North Roxboro Road, Durham, North Carolina 27702

For Central Telephone Company:

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For Continental Telephone Company of North Carolina, Inc., and ALLTEL Carolina, Inc.:

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

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and

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For MCI Telecommunications Corporation:

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and

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and

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For SouthernNet Services, Inc.:

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For North Carolina Long Distance Association:

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For the Attorney General:

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

For: The Using and Consuming Public

For the Public Staff:

Antoinette R. Wike, Chief Counsel, Public Staff, North Carolina Utilities Commission, Post Office Box 29520, Raleigh, North Carolina 27626-0520

For: The Using and Consuming Public

BY THE COMMISSION: On April 29, 1987, the Commission entered an Order scheduling a hearing in Docket Nos. P-100, Subs 65 and 72, to consider issues relative to the progression of the long distance telecommunications market in North Carolina. Among the issues set forth for consideration during that

hearing was the issue of whether or not a universal WATS access line (UWAL) is in the public interest.

On June 15, 1987, SouthernNet Services, Inc., filed a motion requesting the Commission to schedule a separate hearing to consider the universal WATS access line issue. On June 30, 1987, Carolina Telephone and Telegraph Company filed a response supporting SouthernNet's desire for a separate hearing. By Order dated July 17, 1987, the Commission established a separate docket, P-100, Sub 96, to consider the UWAL issue. The UWAL hearing was initially scheduled to begin on October 6, 1987, but was subsequently rescheduled by the Commission to begin on October 5, 1987.

Interventions were filed in Docket No. P-100, Sub 96, by the Attorney General and the North Carolina Long Distance Association (NCLDA). Additionally, the Commission entered an Order on August 7, 1987, stating that all parties who had previously intervened and participated in Docket Nos. P-100, Subs 65 and 72, were recognized as parties in the universal WATS access line docket.

The hearing began as scheduled on October 5, 1987, in Commission Hearing Room 2115. The following witnesses testified: Joseph P. Cresse on behalf of US Sprint Communications Company; Oscie O. Brown III, on behalf of Telecommunications Systems, Inc.; David H. Jones on behalf of SouthernNet Services, Inc.; George E. Setzer on behalf of AT&T Communications of the Southern States, Inc.; Norman L. Farmer on behalf of General Telephone Company of the South; C. L. Payne of BellSouth Services, Inc., on behalf of Southern Bell; Joseph W. Wareham on behalf of Carolina Telephone and Telegraph Company; R. Chris Harris on behalf of Central Telephone Company; and Bill Beard on behalf of MCI Telecommunications Corporation. The Public Staff and the Attorney General presented no testimony.

Subsequent to the hearing, the Commission has been requested by Southern Bell to take judicial notice of Orders entered by the public service commissions in the states of Tennessee, Kentucky, and Mississippi. Southern Bell attached these Orders to the brief filed by the Company in this docket on November 5, 1987. MCI filed a response in opposition to Southern Bell's request for judicial notice on November 30, 1987. On December 11, 1987, Southern Bell filed a response in opposition to MCI's objection. The Commission has reviewed this matter and hereby grants Southern Bell's motion for judicial notice.

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

FINDINGS OF FACT

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 this proceeding.

2. The term "WATS" is a generic term used in the telecommunications industry to describe a service known as "Wide Area Telephone Service." Historically, WATS has been a discounted long distance service provided

primarily for and utilized primarily by larger toll users. A WATS access line (WAL) provides a telecommunications channel for voice grade frequency transmission and is the access line which connects the premises of a WATS customer to the WATS service central office of the local exchange company serving the customer. Absent screening or blocking, a multi-jurisdictional or universal WATS access line (UWAL) allows a WATS customer to complete calls nationwide, including intrastate calls, over a single WAL. The current regulatory policy in effect in North Carolina does not permit the use of UWALs in this State. Today, intrastate WATS service in North Carolina must be provided over a jurisdictionally separate WAL.

3. The current regulatory policy in North Carolina whereby the Commission requires that intrastate WATS access service must be provided over separate, jurisdictionally dedicated access lines is no longer in the public interest.

4. The provision of WATS access service over a single, bi-jurisdictional access line is in the public interest, subject to certain limitations and conditions designed to ensure that reasonably affordable rates for basic local exchange service in North Carolina are not adversely affected or jeopardized.

5. The public interest currently requires that all local and "1+" and "0" intraLATA toll traffic from UWALs in North Carolina shall be screened and automatically routed to and retained by the serving local exchange company (LEC) which shall complete such traffic using the facilities of such other LECs as are necessary. Unauthorized intraLATA calls completed through the use of UWALs are subject to the Commission's intraLATA compensation plan.

6. The net revenue impact of UWALS on the LECs cannot be accurately determined at this time.

7. The most equitable method of offsetting any negative revenue impact on the LECs resulting from the introduction of UWALs is through implementation of a monthly surcharge on each UWAL, which will tend to match costs and benefits.

WHEREUPON, the Commission reaches the following

CONCLUSIONS

No party challenged the jurisdiction of the Commission to hear or decide the issues involved in this proceeding. The Commission concludes that it does have the authority and jurisdiction to decide this case pursuant to Chapter 62 of the North Carolina General Statutes.

Up until the present time, the Commission has established and followed a regulatory policy in North Carolina which requires that access to intrastate WATS or WATS-like service must be obtained exclusively through an intrastate WATS access line. The Commission has been requested to review and change this regulatory policy and to find that the provision of WATS access service over a single, bi-jurisdictional access line is in the public interest.

A WATS access line is used to connect the premises of the WATS customer with the WATS serving office of the local exchange company. In the past, separate WATS access lines have been required for use with interstate and intrastate WATS service. Notwithstanding the valid historical rationale for

this jurisdictional separation of WATS access, proponents of the UWAL assert that this policy currently places arbitrary requirements on some customers; requirements that are unrelated to the calling characteristics, volumes, or needs of those customers.

The Federal Communications Commission (FCC) in recent decisions has removed previous restrictions on the WATS access line in the interstate tariffs of the LECs. Under these decisions, WATS access is available over a single access line for both interstate and intrastate WATS. Moreover, such access can be bi-directional; i.e., both outgoing (WATS service) and incoming (800 service) calls can be completed over the single access line. UWAL access is currently available in some 30 states. The FCC has refrained from giving preemptive effect to its orders, however, and state restrictions based on statutory or policy considerations may be retained. Therefore, the question in this docket is whether this Commission should preserve strict jurisdictional and directional separation of WATS access or whether it is in the public interest for the Commission to remove those restrictions.

The testimony offered in this docket indicated that there was near unanimity of opinion concerning the benefits of UWALs. Of the parties who presented testimony, only Southern Bell Telephone and Telegraph Company was completely opposed to the approval of UWALs in North Carolina at the present time. Southern Bell's opposition to approval of UWALs was premised primarily on the Company's prediction that UWALs would result in a substantial revenue loss to the LECs.

Although the parties other than Southern Bell did not necessarily agree on every detail, those parties did generally agree that the provision of UWAL service in North Carolina would result in efficiency gains that would make this service generally beneficial to telecommunications customers. Proponents of UWALs assert that the following benefits, as well as others, will result from the approval of UWALs in North Carolina.

(a) Universal WATS access lines are more convenient, efficient, and cost-effective to end-users of telecommunications services than requiring two separate access lines.

(b) Stimulation of usage will occur and the market will expand as demand increases for universal WATS access lines due to their improved service capability, convenience and lower cost.

(c) A more efficient use of the telephone network will result as customers are able to use a single access line to call anywhere rather than requiring two lines to achieve the same service capability. This more efficient use of the telephone network may also diminish the potential of uneconomic bypass.

(d) Smaller customers who today cannot afford separate WATS access lines will be able to justify a lower cost universal WATS access line, thereby bringing the benefits of WATS service to many smaller customers.

Despite the high level of support for UWALs, some concerns were nevertheless voiced by many parties, including the local exchange companies.

For instance, Carolina Telephone Company witness Wareham testified that the provision of UWALs could cause billing difficulties because "(t)he inability to recognize the jurisdictional nature of the traffic on these lines would make rate application and cost allocation difficult at best." Furthermore, witness Wareham was concerned that "(t)he lack of blocking and screening would also mean that intraLATA traffic could be originated or terminated to these lines by facility based carriers." In addition, Carolina asserts that the capability exists that message toll service (MTS) calls could be terminated on a UWAL, thereby depriving the LECs of potential support from carrier common line charges (CCLCs).

Carolina recommended that UWALs should be allowed subject to the following conditions:

1. IntraLATA toll traffic is screened from these lines until full intraLATA competition is allowed by the Commission.

2. Procedures are developed to properly recognize the jurisdictional nature of traffic and adequate cost allocation procedures are put in place.

There was substantial agreement on these conditions. None of the interexchange carriers (IXCs) objected to screening for intraLATA toll traffic at the present time and both of these conditions can be met.

General witness Farmer testified that UWALs should be allowed in North Carolina once the Commission approves a mechanism to recover any intrastate revenue shortfall as a result of modified WATS access. Witness Farmer recommended the following restrictions on UWALs in order to reduce the intrastate revenue risks associated with that service:

1. Access service for originating and two-way modified WATS, combined with Feature Group A (FGA), should be provided only in those offices where the line can be restricted to accessing the 7-digit number of FGA carriers. Until such time as the line can be restricted, terminating only WATS should be provided in conjunction with FGA.

2. The intrastate intraLATA "1+" usage should be carried by the LECs.

3. The individual special access line should be restricted to a single IXC for "1+" interLATA calling. Options exist to reach other IXC's from a SAL.

Central witness Harris also testified regarding certain technical and regulatory problems with UWALs which concern his Company. Notwithstanding these concerns, witness Harris testified that, as a general statement, Central believes that UWALs are in the public interest.

Southern Bell argued that the LECs will suffer large revenue losses if UWALs are allowed. Southern Bell projects an annual net revenue loss for its operations of $11.2 million. The Company asserts that if the Commission allows an interstate WATS access line to be used for both interstate and intrastate

traffic, most business customers will have an incentive to replace their intrastate outWATS and 800 service access lines with this new universal WAL. Presently, Southern Bell receives $35.95 per month for each intrastate outWATS access line and $33.00 per month for each intrastate 800 access line. The rate for the interstate WATS access line, however, is only $20.45 per month. Therefore, Southern Bell asserts that authorization of UWALs will encourage customers to "tariff shop" and replace intrastate WALs with the cheaper interstate universal WAL. Other LECs expressed concern that there might be some loss of revenues, but did not believe the threat of revenue loss to be as great as suggested by Southern Bell so long as certain conditions were put in place and approved by the Commission, such as screening for intraLATA toll traffic.

To eliminate or minimize any loss of LEC revenues if UWALs are allowed, witness Oscie O. Brown III, testifying on behalf of Telecommunications Systems, Inc., recommended the use of a surcharge. Mr. Brown testified that the Commission could:

> "Set a monthly surcharge of $10.00 to be assessed against each universal WAL sold to help offset revenue losses. The Commission could establish a tracking report to assess whether the $10.00 surcharge was over recovering or under recovering lost revenues from universal WAL service connections only and adjust the surcharge to minimize the impact on the LEC while still allowing the universal WAL to be a cost effective product."

Witness Brown's surcharge proposal was acceptable to Carolina Telephone Company and was said by AT&T witness Setzer to be an alternative the Commission could examine. In its proposed Order, the Public Staff took the position that "(t)he most equitable method of offsetting any negative revenue impact on the LECs that might result from the introduction of UWALs is through a monthly surcharge on each UWAL, which will tend to match costs and benefits."

Based on the foregoing, the Commission concludes that it is in the public interest to authorize UWALs in North Carolina subject to the implementation of a monthly surcharge in the amount of $10.00 to be assessed against each UWAL as a mechanism to prevent undue financial harm to the affected LECs in North Carolina. This surcharge will remain in effect for a period of one year from the date UWAL tariffs become effective in North Carolina. During that one-year period of time, the LECs will be required to track all revenue losses and expense savings which result from the availability of UWALS in North Carolina. The $10.00 UWAL surcharge shall automatically terminate one year from the date it becomes effective unless the affected LECs petition the Commission to continue the surcharge and can demonstrate that good cause exists to renew the surcharge for another one-year period. The Commission is of the opinion that this UWAL surcharge will effectively minimize any revenue deficiency which may result to the LECs as a result of this decision and that the surcharge will also ensure that reasonably affordable rates for basic local exchange service will not be adversely affected or jeopardized.

The Commission further concludes that it is in the public interest to establish the following additional conditions and restrictions in conjunction with the approval of UWALs in order to minimize as much as possible any loss of revenues by the LECs:

1. The LECs shall screen and retain all local and "1+" and "0" intraLATA toll traffic from UWALs and shall direct that traffic to LEC facilities for completion. Unauthorized intraLATA traffic completed over UWALs is subject to the Commission's compensation plan.

2. Acceptable procedures shall be developed to properly recognize the jurisdictional nature of the traffic on UWALs.

3. Access service for originating and bi-directional WATS shall not be made available in conjunction with originating FGA service.

4. No MTS traffic shall be terminated on a UWAL.

With regard to the first condition set forth above, the Commission hereby reaffirms the regulatory policy which the Commission has stated in Docket Nos. P-100, Subs 65 and 72, that it is in the public interest at this time that all "1+" and "0" intraLATA toll traffic shall be automatically routed to and retained by the serving LEC which shall complete such traffic using the facilities of such other LECs as are necessary. Furthermore, since UWALs are jurisdictionally interstate, any intraLATA calls which may be completed through the use of UWALs would be unauthorized and, therefore, subject to the Commission's compensation plan.

With respect to the second condition set forth above, the Commission hereby requests the LECs and IXCs to cooperate in developing acceptable procedures to properly recognize the jurisdictional nature of the traffic on UWALs in order to ensure that intrastate costs and revenues are properly allocated to this jurisdiction. If the LECs and IXCs are unable to agree on mutually acceptable cost and revenue allocation procedures for UWALs, the parties should report that fact to the Commission.

By the third restriction set forth above, the Commission intends to deny or prohibit the use of UWALs to originate local calls. This restriction was recommended by General Telephone Company witness Farmer as a measure designed to counter the risk that a migration of PBX trunks to special access lines could occur once UWALs are authorized, thereby diminishing local service revenues. AT&T witness Setzer testified on cross-examination that at the present time AT&T is not opposed to a restriction that would prohibit using UWALs to make local calls.

The fourth restriction set forth above was recommended by Carolina Telephone Company. AT&T witness Setzer testified on cross-examination that it would be possible, in the absence of screening or blocking, for MTS calls to be terminated over UWALs and that payment of applicable carrier common line access charges on those MTS calls could be avoided in that way. The Commission concludes that this restriction, as proposed by Carolina Telephone Company, is reasonable and should be approved at this time in order to protect and preserve CCLC revenues on MTS calls that might otherwise be terminated over unscreened or unblocked UWALs.

The restrictions set forth above will, in the opinion and intent of the Commission, minimize the revenue impact which UWALs may have on the LECs and will protect reasonably affordable local rates from being jeopardized.

With the above-referenced conditions in place, it is the ultimate finding and conclusion of the Commission that authorizing the implementation of universal WATS access lines in North Carolina is in the public interest, will allow for a more efficient use of the telephone network, will be more cost effective and convenient to customers, and will place the advantages of WATS services within the reach of many smaller customers who today may be unable to justify the cost of separate lines as required by current tariffs.

IT IS, THEREFORE, ORDERED as follows:

1. That universal WATS access lines are hereby approved for use in North Carolina effective February 15, 1988.

2. That a surcharge in the amount of $10.00 per UWAL is hereby approved for collection by the affected LECs effective February 15, 1988. This UWAL surcharge shall automatically terminate on February 15, 1989, unless the affected LECs petition to continue the surcharge and can demonstrate good cause in support of their petition. During the one-year period of time that the UWAL surcharge is in effect, the LECs shall track all revenue losses and expense savings which result from the availability of UWALs in North Carolina.

3. That UWALs shall be provided in North Carolina subject to the following additional conditions:

(a) The LECs shall screen and retain all local and "1+" and "0" intraLATA toll traffic from UWALs and shall direct that traffic to LEC facilities for completion. Unauthorized intraLATA traffic completed over UWALs shall be subject to the Commission's compensation plan.

(b) Acceptable procedures shall be developed to properly recognize the jurisdictional nature of the traffic on UWALs. The LECs and IXCs shall cooperate in developing appropriate procedures to properly recognize the jurisdictional nature of the traffic carried on UWALs and said parties shall advise the Commission if agreement on such allocation procedures cannot be reached.

(c) Access service for originating and bi-directional WATS shall not be made available in conjunction with originating FGA service.

(d) No MTS traffic shall be terminated on a UWAL.

4. That the LECs shall file any tariff revisions or new tariffs which may be necessary to implement the provisions of this Order not later than Monday, February 1, 1988, to become effective February 15, 1988.

5. That any motions not previously ruled upon or granted in this proceeding are hereby denied.

ISSUED BY ORDER OF THE COMMISSION.
This the 23rd day of December 1987.

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

Chairman Robert O. Wells and Commissioners Edward B. Hipp and William W. Redman, Jr., dissent in part and concur in part with respect to this Order. Chairman Wells and Commissioners Hipp and Redman dissent from that part of the Commission Order which authorizes the local exchange telephone companies to implement a monthly surcharge in the amount of $10.00 per universal WATS access line for a period of one year, but otherwise concur in the remainder of the Order.

DOCKET NO. P-100, SUB 98

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Proposed Revision of Rule R9-2 of the Commission's Rules and Regulations Relating to the Uniform System of Accounts Rewrite	))))	ORDER REVISING COMMISSION RULE R9-2

BY THE COMMISSION: On May 15, 1986, the Federal Communications Commission (FCC) adopted a new Uniform System of Accounts (USOA) for use by telephone companies. The new USOA is set forth in Part 32 of the Code of Federal Regulations and will become effective on January 1, 1988, on a flash cut basis.

By Commission Rule R9-2, the North Carolina Utilities Commission (Commission) adopted the Uniform System of Accounts for telephone companies effective January 1, 1966, as prescribed by the FCC.

The new USOA differs significantly from the present USOA adopted by the Commission. The rewrite of the USOA is more than a renumbering and retitling of the present USOA. Adoption of the new USOA will result in the disaggregation of plant, the shifting of costs from capital accounts to expense accounts, the shifting of costs between expense classifications, and the adoption of generally accepted accounting principles.

During the months of July and August 1987, the Commission received several requests from various North Carolina telephone companies and the North Carolina Telephone Association, Inc., urging the Commission to adopt the new USOA for intrastate operations.

On October 12, 1987, the Public Staff filed comments in this docket supporting the adoption by the Commission of the new USOA subject to certain exceptions and conditions. The Public Staff proposed that Commission Rule R9-2 be revised to recognize adoption of the new USOA and proposed that it be changed to read as follows:

> Effective January 1, 1988, the Uniform System of Accounts (USOA) for telephone companies as prescribed by the Federal Communications Commission on May 15, 1986, is adopted by this Commission for use by all telephone companies under its jurisdiction subject to the following exceptions and conditions:

(1) All references to federal statutes, federal regulations, and other federal documents are to be ignored or deleted because they are not applicable to the jurisdiction exercised by this Commission.

(2) Instead of telephone companies being divided into Class A and Class B categories, all companies shall be treated as Class A companies.

(3) All local exchange carriers with nonregulated operations shall file a cost allocation plan and procedures with the Commission.

(4) All local exchange carriers shall provide the Public Staff with a set of its detailed accounting procedures manual based on the new USOA. Subsequent updates and revisions to the manual shall be provided to the Public Staff in a timely manner.

(5) Subaccounts or subsidiary records shall be maintained in such a manner that transactions with affiliates can be readily identified.

(6) The Commission reserves the right to require telephone companies to account for transactions differently from the USOA-prescribed treatment as it finds appropriate.

(7) To facilitate the transition between the former USOA and the new USOA adopted by this rule, all telephone companies shall file 1987 financial statements using the old USOA and new USOA.

(8) Companies shall expense the cost of implementing this new USOA currently and shall allocate fifty percent (50%) of this cost to the interstate jurisdiction.

Responses to the comments of the Public Staff were filed in this docket by ALLTEL Carolina, Inc. (ALLTEL), Carolina Telephone and Telegraph Company (Carolina), Central Telephone Company (Central), The Concord Telephone Company (Concord), General Telephone Company of the South (General), Heins Telephone Company (Heins), Lexington Telephone Company (Lexington), North State Telephone Company (North State), Sandhill Telephone Company (Sandhill), and Southern Bell Telephone and Telegraph Company (Southern Bell). The comments filed reflect the telephone companies' agreement in part with the Public Staff's proposed Rule R9-2 and objection in part.

As indicated above, the Public Staff's proposed language for Rule R9-2 consists of an introductory statement followed by eight specific exceptions and conditions. The Public Staff's proposal, the companies' comments, and the Commission's conclusions are presented and discussed below.

Introductory Statement

The Public Staff proposed an introductory statement for Rule R9-2 as follows:

> Effective January 1, 1988, the Uniform Systems of Accounts (USOA) for telephone companies as prescribed by the Federal Communications Commission on May 15, 1986, is adopted by this Commission for use by all telephone companies under its jurisdiction subject to the following exceptions and conditions:

The parties to this proceeding did not object to this proposed language. The Commission is of the opinion that this language should be expanded so as to provide for the Commission's adoption of all future revisions in the USOA unless otherwise ordered by the Commission. Further, the Commission believes it would also be appropriate to reserve the right to require telephone companies to account for transactions differently from the USOA-prescribed treatment as it finds appropriate. Accordingly, the Commission concludes that the introductory statement of Rule R9-2 should be revised to read as follows:

> Effective January 1, 1988, the Uniform System of Accounts (USOA) for telephone companies as prescribed by the Federal Communications Commission (FCC) on May 15, 1986, and all subsequent revisions thereto, are adopted by this Commission and shall be used by all telephone companies under its jurisdiction subject to the following exceptions and conditions unless otherwise ordered by the Commission.

Exception and Condition No. 1

The first exception and condition proposed by the Public Staff is as follows:

> (1) All references to federal statutes, federal regulations, and other federal documents are to be ignored or deleted because they are not applicable to the jurisdiction exercised by this Commission.

None of the parties contested this proposed language and the Commission notes that this proposal is the same language that is currently set forth in Commission Rule R9-2. Therefore, the Commission concludes that this provision is appropriate and should be included in its revised Rule R9-2.

Exception and Condition No. 2

The second exception and condition proposed by the Public Staff is as follows:

> (2) Instead of telephone companies being divided into Class A and Class B categories, all companies shall be treated as Class A companies.

The new USOA adopted by the FCC divides companies into two classes for accounting purposes, Class A and Class B. Class A includes all companies having annual revenues from regulated telecommunications operations of $100 million or more, and Class B includes all companies with annual revenues from regulated telecommunications operations of less than $100 million. Class B companies that desire more detailed accounting may, however, adopt the accounts prescribed for Class A companies upon written notification to the FCC.

The Public Staff has proposed that the Commission require all North Carolina telephone companies to use the Class A system of accounts. In support thereof, the Public Staff asserted that the Class B system of accounts adopted by the FCC does not contain adequate detail for effectively monitoring the companies' financial data in that it aggregates many previously segregated plant and expense accounts into a single account. Based on the FCC's definition of Class A companies, only Southern Bell, Carolina, General, and Central would be required to use the Class A system of accounts.

No objections to this proposal were stated by the parties responding in this docket. Therefore, the Commission agrees with the Public Staff that the Class B system of accounts would not provide sufficient detail and concludes that the Class A system of accounts should be required in Rule R9-2 for all the telephone companies operating under the Commission's jurisdiction.

Exception and Condition No. 3

The third exception and condition proposed by the Public Staff is as follows:

(3) All local exchange carriers with nonregulated operations shall file a cost allocation plan and procedures with the Commission.

The FCC, by its Order of February 6, 1987, in CC Docket No. 86-111, required all local exchange carriers to use the cost allocation standards set forth in the Order for apportioning costs between regulated and nonregulated activities. Local exchange carriers with more than $100 million in operating revenues were required to file and obtain approval of their cost allocation manuals.

The Public Staff, in support of its proposal, stated that as the telecommunications industry moves towards deregulation, the apportionment of costs between regulated and nonregulated operations takes on added significance. The FCC in the issuance of its Order in CC Docket No. 86-111 recognized this added significance and set forth cost allocation standards to be used by all local exchange carriers in developing their cost allocation plans. Therefore, the Public Staff recommended that all the North Carolina local exchange carriers with nonregulated operations file a cost allocation plan and procedures with the Commission.

Southern Bell has replied that it is concerned that the language proposed by the Public Staff in this regard, specifically the term "procedures", may later be construed more broadly than originally intended and could include detailed accounting practices which are voluminous, and it would be unreasonable and burdensome to require such filings. Southern Bell stated that its present cost allocation plan filed with the FCC includes a description of how the plan works and how costs are assigned but does so without including the detailed procedures. Further, Southern Bell stated that its detailed procedures may be reviewed "on site" if needed, and personnel familiar with such material would be available to assist the Public Staff in a review of such procedures. Therefore, Southern Bell proposed that the term "procedures" be deleted from the Public Staff's proposed language.

Lexington and Concord stated in their responses that they do not currently maintain cost allocation manuals and feel that the cost and time necessary to produce such a manual could not be justified. Further, both companies stated that they have small staffs maintaining their accounting records which are closely supervised, thus eliminating the need for a procedures manual..

The Commission is of the opinion that it would be burdensome to require the filing of voluminous detailed cost allocation practices and procedures especially in view of the responses of Lexington and Concord that it would take considerable time and expense to develop and compile a cost allocation manual. The Commission is, however, of the opinion that it would not be unreasonably burdensome to require the filing of a definitive plan or statement of practices employed in apportioning costs between regulated and nonregulated activities. Accordingly, the Commission concludes that the proposal of the Public Staff in this regard be modified as follows:

> Each local exchange carrier with nonregulated operations shall provide to the Public Staff two copies of its cost allocation plan or cost allocation practices relating to the allocation of joint costs between regulated and nonregulated operations. Subsequent updates and revisions shall be provided within 30 days of implementation.

Exception and Condition No. 4

The fourth exception and condition proposed by the Public Staff is as follows:

> (4) All local exchange carriers shall provide the Public Staff with a set of its detailed accounting procedures manual based on the new USOA. Subsequent updates and revisions to the manual shall be provided to the Public Staff in a timely manner.

The new USOA will generate accounting information that will not be directly comparable to the present USOA. Therefore, the Public Staff requested that each telephone company provide the Public Staff with a set of its detailed accounting procedures manual based on the new USOA, as well as subsequent updates.

Concord, Lexington, and North State commented in their responses that they do not currently maintain such accounting manuals and that it is unnecessary to have such manuals due to having small closely supervised staffs which maintain their records in accordance with the USOA. It was the opinion of North State that the FCC prescribed USOA document setting forth the new accounting system in detail, would provide the basis for its operating procedures.

Southern Bell recommended that the Public Staff's proposal in this regard be changed to the following language:

> Each local exchange carrier shall provide the Public Staff a list of its accounts and subsidiary record codes by name and number together with a brief description of each. Subsequent updates and revisions shall be provided to the Public Staff in a timely manner.

The Commission is of the opinion that the requirement for the filing of a list of accounts and subsidiary record codes as proposed by Southern Bell rather than the detailed accounting procedures manual requested by the Public Staff is reasonable and appropriate. Accordingly, the Commission concludes that part 4 of the new Rule R9-2 should read as follows:

> Each local exchange carrier shall provide the Public Staff with two copies of its list of accounts and subsidiary record codes by name and number together with a brief description of each. Subsequent updates and revisions shall be provided within 30 days of implementation.

Exception and Condition No. 5

The fifth exception and condition proposed by the Public Staff is as follows:

> (5) Subaccounts or subsidiary records shall be maintained in such a manner that transactions with affiliates can be readily identified.

The Public Staff in its comments stated that the new USOA does not provide a separate account classification for the accumulation of revenues and expenses resulting from affiliated transactions and, therefore, recommends the maintenance of subaccounts or subsidiary records in such a manner that transactions with affiliates can be readily identified.

Carolina filed a response in objection to such a requirement and commented that the Company's affiliated transactions are presently subject to audit. Also, Carolina stated that contracts between Carolina and its affiliated companies are routinely filed with the Commission and the Public Staff and thus the expenses associated with those transactions are clearly traceable. Further, Carolina commented that the maintenance of separate accounts for affiliated transactions is not required by the new USOA and such a requirement would add an accounting burden with no demonstrable benefits.

In General's response, the Company stated that such a requirement would cause unnecessary record keeping and expense. General argued that the gross level of all affiliated transactions are available at the payable and receivable level which allows for the necessary tracking and monitoring to ensure that activity levels have not substantially changed. Therefore, General recommended that the Commission continue to require the same level of detail that it presently requires under the current USOA.

The Commission recognizes the necessity that the accounting records of the telephone companies be maintained in a manner which would accommodate the monitoring of affiliated transactions and ensure that such transactions are clearly traceable. However, the Commission is of the opinion that to require the maintenance of such subaccounts or subsidiary records as proposed by the Public Staff would be unduly burdensome and expensive. Therefore, the Commission concludes that part five of the Public Staff's proposed Rule R9-2 should be modified as follows:

Accounting records shall be maintained in a manner such that a reasonable audit trail exists with respect to all affiliated company transactions. It is noted with respect to all future general rate increase requests and such other investigations as may be undertaken concerning affiliated company transactions that the Commission will require the utilities to provide the information now required by the Commission in its minimum filing requirements, Form P-1, pertaining to affiliated company transactions.

Exception and Condition No. 6

The sixth exception and condition proposed by the Public Staff is as follows:

(6) The Commission reserves the right to require telephone companies to account for transactions differently from the USOA-prescribed treatment as it finds appropriate.

The parties filing responses in this proceeding stated no objections to this proposal. Therefore, the Commission agrees with the Public Staff and acknowledges that it will maintain the authority to modify the new USOA for use by North Carolina telephone companies as it deems necessary and appropriate. The Commission has effectuated such authority by the language adopted in the introductory statement of the new Rule R9-2 as previously discussed herein and, therefore, has eliminated the need for such authority to be stated separately in an additional exception and condition.

Exception and Condition No. 7

The seventh exception and condition proposed by the Public Staff is as follows:

(7) To facilitate the transition between the former USOA and the new USOA adopted by this rule, all telephone companies shall file 1987 financial statements using the old USOA and new USOA.

As previously discussed, the new USOA will generate accounting information that will not be directly comparable to the present USOA. Therefore, the Public Staff believes that the monitoring and evaluating of prospective accounting information will be difficult at best. Besides changes in expense account classifications for costs, other changes required by the new USOA will shift prior recorded cost items from capital accounts to expense accounts. In order to aid the Public Staff's efforts in this area, the Public Staff recommended that the companies be required to provide 1987 financial statements on both the present USOA and the new USOA.

Southern Bell recommended that the Public Staff's proposal in this regard not be included in a permanent rule since this would be a transitional provision but had no objection to the Public Staff's request for the companies to file 1987 financial statements using the old USOA and the new USOA.

Carolina asserted in its comments that the implementation of the new USOA involves a substantial undertaking and the dedication of extensive resources. Carolina stated that it is unreasonable to expect the Company to implement a

substantial change in the Company's accounting procedures for 1988 and, at the same time, recreate 1987 on the same basis as the costs of such an undertaking are substantial and its available resources are limited. Further, Carolina stated that it is not insensitive to the needs of the Public Staff to monitor and evaluate the impact on the Company's financial statements of the new USOA and is committed to working with the Public Staff in that regard. Carolina believes it can demonstrate the impact of the shift among expense categories on 1987 operations by April 1, 1988, and the 1987 impact of shifting certain costs from capital accounts to expense accounts by July 1, 1988. Carolina, as well as some other companies asked the Commission that they not be required to prepare separate books of account for 1987 at the same time that they are dedicating substantial resources to assure that the new USOA is implemented properly for 1988.

General stated that the transition from the traditional USOA to the new USOA is a "flash cut" change due to the fact that fundamental changes between the two systems are so significant that a step implementation is not feasible. This same factor in General's opinion makes accurate and reliable restatement of any prior year data impossible. General pointed out that it is their intention to provide the Commission in the future with the results of capital to expense shifts and other significant accounting changes for 1987 at a total operating expense level.

The other companies filing comments in this regard indicated that this proposal is impractical due to the time and effort required to recreate the twelve months of accounting records for 1987 as well as preparing for the conversion of their 1988 records to the new USOA. Further, they argued that this proposal would place an unmanageable burden on their staffs and may require the utilization of outside consultants resulting in an additional expense to the company.

The Commission certainly recognizes the needs of the Public Staff, as well as its own and that of each individual telephone company to effectively monitor and evaluate the impact of the prospective accounting information resulting from the adoption of the new USOA and to provide some mechanism for comparability between the companies' 1987 operating results under the old USOA and the new USOA and the companies' 1988 operating results under the new USOA. The Commission is, however, of the opinion that it would be both impractical and unduly burdensome to require all of the telephone companies to recreate and file 1987 financial statements utilizing the new USOA for comparative purposes. Therefore, the Commission concludes that the local exchange telephone companies shall file with the Commission calculations and statements setting forth the impact (dollar amount) that the adoption of FCC Part 32 would have on the annual operating results of the company based on the calendar year 1987. Such impact shall be presented on a total company and a North Carolina intrastate basis. Such calculations and statements shall be filed with the Commission no later than July 1, 1988. The Commission further concludes this requirement is a transitional provision and as such should not be included in the new Rule R9-2.

Exception and Condition No. 8

The eighth and final exception and condition proposed by the Public Staff is as follows:

(8) Companies shall expense the cost of implementing this new USOA currently and shall allocate fifty percent (50%) of this cost to the interstate jurisdiction.

All of the responding parties except Concord, Lexington, and North State filed comments in opposition to this proposal by the Public Staff.

The opposing parties stated that the Public Staff's proposal to allocate 50% of the costs of implementing the new USOA to the interstate jurisdiction does not conform with normal separations procedures under Part 67 of the FCC Rules and Regulations (Part 36 beginning next year). Therefore, the parties proposed that these implementation costs be separated in accordance with FCC prescribed treatment. Further, Carolina stated that the implementation costs, to the extent they can be separately identified, should not be a concern to the Commission unless and until these costs impact intrastate rates, i.e., those costs will not impact rates until they appear as part of test year expenses in a general rate case. Continental stated that it is in the process of designing a new computer integrated accounting system which will accommodate the new USOA and, therefore, it would not be possible to isolate the implementation costs.

Upon consideration of the comments of the parties, the Commission concludes that the implementation costs of the new USOA should be expensed currently and until such time as this matter can be reviewed by the Commission in the context of a general rate case proceeding the Commission believes that the cost of implementation should be allocated based on the FCC separations procedures under Part 67 of the FCC Rules and Regulations (Part 36 beginning next year). Further, the Commission concludes that this is a transitional provision and, being such, should not be included in the new Rule R9-2.

One further matter pointed out by the Public Staff was that the adoption of the new USOA by the Commission will require the reformatting of telephone company general rate case Minimum Filing Requirements (P-1) and Quarterly Surveillance Reports (TS-1). The Commission acknowledges that the reformatting of these items will need to be handled in an expeditious manner. Therefore, the Commission encourages the telephone companies, Public Staff, and other interested parties to work together to undertake the task of reformatting the P-1 requirements and TS-1 reports as soon as possible.

Upon consideration of all of the comments filed in this matter and the entire record in this proceeding, the Commission concludes that Rule R9-2 of the Commission's Rules and Regulations should be revised in accordance with Appendix A attached hereto.

IT IS, THEREFORE, ORDERED as follows:

1. That Rule R9-2 of the Commission's Rules and Regulations is hereby revised as set forth in Appendix A attached hereto and is hereby, as revised, incorporated into said rules and regulations.

2. That each local exchange telephone company subject to the jurisdiction of the Commission shall file with the Commission no later than July 1, 1988, calculations and statements setting forth the impact (dollar amount) that the adoption of FCC Part 32 would have on its annual operating results based on

calendar year 1987. Said impact shall be presented on a total company and a North Carolina intrastate basis.

3. That the costs of implementation of the new Uniform System of Accounts by each local exchange telephone company shall be expensed currently and shall be allocated between interstate and intrastate operations based on the FCC separations procedures under Part 67 of the FCC Rules and Regulations (Part 36 beginning next year) until such time as this matter is reviewed by the Commission in the context of a general rate case proceeding.

4. That the initial filing of the information required in Appendix A with the Public Staff shall be made no later than March 31, 1988.

5. That the Public Staff is hereby requested to maintain the Commission's official copies of the information required by Commission Rule R9-2, Item Nos. 3 and 4.

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

ISSUED BY ORDER OF THE COMMISSION.
This the 18th day of December 1987.

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

APPENDIX A

Docket No. P-100, Sub 98
Rule R9-2. Uniform System of Accounts

Effective January 1, 1988, the Uniform System of Accounts (USOA) for telephone companies as prescribed by the Federal Communications Commission (FCC) on May 15, 1986, and all subsequent revisions thereto, are adopted by this Commission and shall be used by all telephone companies under its jurisdiction subject to the following exceptions and conditions unless otherwise ordered by the Commission:

(1) All references to federal statutes, federal regulations, and other federal documents are to be ignored or deleted because they are not applicable to the jurisdiction exercised by this Commission.

(2) Instead of telephone companies being divided into Class A and Class B categories, all companies shall be treated as Class A companies.

(3) Each local exchange carrier with nonregulated operations shall provide to the Public Staff two copies of its cost allocation plan or cost allocation practices relating to the allocation of joint costs between regulated and nonregulated operations. Subsequent updates and revisions shall be provided within 30 days of implementation.

(4) Each local exchange carrier shall provide the Public Staff with two copies of its list of accounts and subsidiary record codes by name and number together with a brief description of each. Subsequent

updates and revisions shall be provided within 30 days of implementation.

(5) Accounting records shall be maintained in a manner such that a reasonable audit trail exists with respect to all affiliated company transactions. It is noted with respect to all future general rate increase requests and such other investigations as may be undertaken concerning affiliated company transactions that the Commission will require the utilities to provide the information now required by the Commission in its minimum filing requirements, Form P-1, pertaining to affiliated company transactions.

(6) The Public Staff shall maintain the Commission's official copies of the information required by Item Nos. 3 and 4 as set forth hereinabove.

(7) Filings made by the telephone companies pursuant to this rule shall be made with the North Carolina Utilities Commission addressed as follows: North Carolina Utilities Commission, Public Staff - Accounting Division, P.O. Box 29520, Raleigh, North Carolina 27626-0520.

DOCKET NO. W-100, SUB 5

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of G.S. 62-110.3: An Act to Require a Water or Sewer Utility Company to Post a Bond - Rulemaking Proceeding	)))	NOTICE OF NEW LEGISLATION AND RULEMAKING PROCEEDING

BY THE COMMISSION: On June 26, 1987, the General Assembly of North Carolina enacted legislation which provides that no franchise may be granted to any water or sewer utility company until the applicant for a franchise furnishes a bond, secured with sufficient surety as approved by the Commission, in an amount not less than $10,000 nor more than $200,000. The bond shall be conditioned upon providing adequate and sufficient service within all the applicant's service areas, including those for which franchises have previously been granted. Any interest earned on a bond shall be payable to the water or sewer company that posted the bond. The appointment of an emergency operator pursuant to G.S. 62-118(b) operates to forfeit the bond. The proceeds of the bond will become available to the Commission to alleviate the emergency in the water or sewer franchise.

The new legislation is effective on June 26, 1987, and applies to all of the franchises granted by the Utilities Commission on and after that date.

A copy of the new legislation is attached to this Order as Appendix A.

The Commission is of the opinion that it should immediately institute a rulemaking proceeding to implement rules governing the manner in which the new legislation will be administered. Among the matters which the Commission should consider is the form of the bond that should be required and the nature of the security for the bond. The Commission is initially of the opinion that the security should be in the form of a certificate of deposit. Other matters which should be considered in this rulemaking proceeding include the procedure for setting the amount of the bond in no-protest application proceedings as well as in proceedings which are protested and go to hearing.

All water and sewer companies regulated by the Commission are invited to file comments addressing the manner in which the new legislation should be administered by the Commission. Comments are also invited from other interested parties including the Public Staff, the Attorney General of North Carolina, prospective applicants for water and sewer franchises, and developers.

The time for filing comments and the date and place for the hearing for consideration of the comments are set forth hereinafter.

Pending the establishment of rules, G.S. 62-110.3 will be applied on a case-by-case basis to all applications for water and sewer franchises pending before the Commission.

IT IS, THEREFORE, ORDERED as follows:

1. That a copy of this Order, together with the text of the newly enacted G.S. 62-110.3, shall be served upon all water and sewer companies regulated by the Commission.

2. That a copy of this Order shall also be served upon the Public Staff, the Attorney General of North Carolina, and the North Carolina Homebuilders Association, Post Office Box 12166, Raleigh, North Carolina 27605.

3. That a rulemaking proceeding is instituted in this docket to consider the manner in which the new legislation, G. S. 62-110.3, shall be administered by the Commission.

4. That any person interested in this docket may file comments with the Commission addressing the manner in which the bond requirements of G.S. 62-110.3 shall be administered by the Commission. The comments shall be filed with the Commission on or before August 4, 1987. Copies of any comments filed with the Commission shall also be served upon the Public Staff and the Attorney General of North Carolina. Any persons filing comments in this proceeding will receive copies of any further orders in this docket and may request copies of comments filed by other parties in this docket.

5. That a hearing is scheduled at the following time and place to hear the testimony of any interested persons on the comments filed in this docket:

Tuesday, August 18, 1987, at 9:30 a.m., Commission Hearing Room, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina

After the hearing, the Commission will issue an Order promulgating rules for the administration of the new legislation. That Order will be served on all water and sewer companies regulated by the Commission, as well as all persons who have filed comments in this docket.

6. That the addresses of the Utilities Commission, the Public Staff, and the Attorney General are as follows:

Chief Clerk
North Carolina Utilities Commission
Post Office Box 29510
Raleigh, North Carolina 27626-0510

Public Staff-North Carolina Utilities Commission
Post Office Box 29520
Raleigh, North Carolina 27626-0520

The Attorney General of North Carolina
Utilities Division
Post Office Box 629
Raleigh, North Carolina 27602

ISSUED BY ORDER OF THE COMMISSION.
This the 13th day of July 1987.

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

Note: For Appendix A See Official Order in the Chief Clerk's Office.

DOCKET NO. W-100, SUB 5

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of G.S. 62-110.3: An Act to Require a Water or Sewer Utility Company to Post a Bond--Rulemaking Proceeding	))))	ORDER PROMULGATING RULES

BY THE COMMISSION: On June 26, 1987, the General Assembly of North Carolina enacted Chapter 490 of the 1987 Session Laws which provides that no franchise may be granted to any water or sewer utility company until the applicant for the franchise furnishes a bond, secured with sufficient surety as approved by the Commission, in an amount not less than $10,000 nor more than $200,000. The bond is to be conditioned upon applicant providing adequate and sufficient service within all its service areas, including those for which franchises have already been granted. Any interest earned on the bond is to be payable to the water or sewer company that posted the bond. The appointment of an emergency operator pursuant to G.S. 62-118(b) operates to forfeit the bond. The proceeds of the bond then become available to the Commission to alleviate the emergency in the water or sewer franchise.

On August 12, 1987, the General Assembly of North Carolina ratified Chapter 783 of the 1987 Session Laws, Section 9 of which reads:

> "Section 3 of Chapter 490, Session Laws of 1987, is rewritten to read: 'Sec. 3. This act applies to all applications for franchises filed on or after October 1, 1987.'"

Thus, the effective date of the bonding legislation has been delayed until October 1, 1987, and applies only to applications filed on or after that date.

Pursuant to the enactment of Chapter 490, the Commission initiated a rulemaking proceeding by Order on July 13, 1987. The Commission attached copies of the new legislation to the Order and sent these materials to all water and sewer companies regulated by the Commission, inviting comments from the companies and all other interested parties. The Commission scheduled a hearing for August 18, 1987, and stated its intent to promulgate rules after the hearing.

The Commission received written comments from several interested parties. Carolina Water Service, Inc., submitted comments on July 22, 1987, W. K. Mauney, Jr., submitted comments on July 29, 1987, Hasty Water Utility, Inc., submitted comments on August 4, 1987, and the Attorney General submitted comments on August 5, 1987.

On July 30, 1987, the Public Staff submitted the text of proposed rules (Rules R7-37 and R10-24) together with sample forms. These were served on all parties of record in the proceeding or their attorneys of record.

On August 18, 1987, a hearing was held on the rulemaking proceeding as scheduled. William Grantmeyer of Heater Utilities, Inc., and Carroll Weber of Mid-South Utilities, Inc., appeared as did representatives of the Public Staff and the Attorney General.

Based on the pleadings and testimony in this proceeding and on the record as a whole, the Commission concludes that it should promulgate the rules and sample forms herein attached as Appendix A in order to implement the provisions of Chapter 490 of the 1987 Session Laws and that such rules should become effective for all applications for water and sewer franchises filed on and after October 1, 1987.

IT IS, THEREFORE, ORDERED as follows:

1. That the rules and sample forms herein attached as Appendix A are hereby promulgated and shall be effective for all applications for water and sewer franchises filed on and after October 1, 1987.

2. That the attached rules and sample forms promulgated by this Order shall be made a part of the Rules and Regulations of the North Carolina Utilities Commission.

ISSUED BY ORDER OF THE COMMISSION.
This the 2nd day of September 1987.

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

APPENDIX A

RULE R7-37. BONDS.

(a) Except as provided in paragraphs (f) and (g), before a temporary operating authority or a certificate of convenience and necessity is granted to a water or sewer utility company, the company must furnish a bond to the Commission as required by G.S. 62-110.3. The company shall ensure that the bond is renewed as necessary to maintain it in continuous force in conformity to the rules herein.

(b) The form of the bond shall be as in the Appendix to this Chapter.

(c) The amount of the bond shall be set by the Commission on the basis of evidence presented during the application proceeding. In the case of a no-protest application proceeding, the amount of the bond shall be based

on information in the application. In the event that the parties cannot agree on the appropriate amount, the issue shall be referred to the Commission for final decision. The amount of the bond shall be at least ten thousand dollars ($10,000), or in an amount above ten thousand dollars ($10,000) but not more than two hundred thousand dollars ($200,000), sufficient to provide financial responsibility in a manner acceptable to the Commission.

(d) The bond may be secured by the joinder of a commercial bonding company or other surety acceptable to the Commission. An acceptable surety is an individual or corporation with a net worth, not including the value of the utility, of at least twenty (20) times the amount of the bond or five hundred thousand dollars ($500,000), whichever is less. The net worth of a proposed surety must be demonstrated by the annual filing with the Commission of an audited financial statement.

(e) The bond may also be secured by posting with the Commission cash or securities acceptable to the Commission at least equal in value to the amount of bond. If the aggregate value of the securities posted declines below the amount required to guarantee the full bond, the utility shall make any additional deposits necessary to guarantee the bond. If the aggregate value of the securities posted increases above the amount required to guarantee the bond, the utility may withdraw securities as long as the aggregate value remains at least equal to the amount required.

Acceptable securities are:

(1) Obligations of the United States of America
(2) Obligations of the State of North Carolina
(3) Certificates of deposit drawn on and accepted by commercial banks incorporated in the State of North Carolina
(4) Such other evidence of financial responsibility deemed acceptable to the Commission.

(f) After the initial grant of a franchise to a utility, the utility may be given a reasonable period of time, not to exceed sixty (60) days, in which to satisfy the bond requirement.

(g) If a utility subject to the Commission's jurisdiction is operating without a franchise and either

(1) it applies for a franchise, or
(2) the Commission asserts jurisdiction over it,

the utility shall satisfy the bonding requirement. If the Commission finds that such a utility cannot meet that requirement, it may grant the utility temporary operating authority for a reasonable period of time until it can transfer the system or post the bond. If after the expiration of the time period the company has neither posted the bond nor transferred the system, the Commission may seek fines and penalties under G.S. 62-310.

(h) The company shall attach a separate notarized statement to its annual report which is due on or before April 30th of each year stating the

amount of the bond, whether the bond is still in effect, and the date of next renewal.

RULE R10-24. BONDS.

(a) Except as provided in paragraphs (f) and (g), before a temporary operating authority or a certificate of convenience and necessity is granted to a water or sewer utility company, the company must furnish a bond to the Commission as required by G.S. 62-110.3. The company shall ensure that the bond is renewed as necessary to maintain it in continuous force in conformity to the rules herein.

(b) The form of the bond shall be as in the Appendix to this Chapter.

(c) The amount of the bond shall be set by the Commission on the basis of evidence presented during the application proceeding. In the case of a no-protest application proceeding, the amount of the bond shall be based on information in the application. In the event that the parties cannot agree on the appropriate amount, the issue shall be referred to the Commission for final decision. The amount of the bond shall be at least ten thousand dollars ($10,000), or in an amount above ten thousand dollars ($10,000) but not more than two hundred thousand dollars ($200,000), sufficient to provide financial responsibility in a manner acceptable to the Commission.

(d) The bond may be secured by the joinder of a commercial bonding company or other surety acceptable to the Commission. An acceptable surety is an individual or corporation with a net worth, not including the value of the utility, of at least twenty (20) times the amount of the bond or five hundred thousand dollars ($500,000), whichever is less. The net worth of a proposed surety must be demonstrated by the annual filing with the Commission of an audited financial statement.

(e) The bond may also be secured by posting with the Commission cash or securities acceptable to the Commission at least equal in value to the amount of bond. If the aggregate value of the securities posted declines below the amount required to guarantee the full bond, the utility shall make any additional deposits necessary to guarantee the bond. If the aggregate value of the securities posted increases above the amount required to guarantee the bond, the utility may withdraw securities as long as the aggregate value remains at least equal to the amount required.

Acceptable securities are:

(1) Obligations of the United States of America
(2) Obligations of the State of North Carolina
(3) Certificates of deposit drawn on and accepted by commercial banks incorporated in the State of North Carolina
(4) Such other evidence of financial responsibility deemed acceptable to the Commission.

(f) After the initial grant of a franchise to a utility, the utility may be given a reasonable period of time, not to exceed sixty (60) days, in which to satisfy the bond requirement.

(g) If a utility subject to the Commission's jurisdiction is operating without a franchise and either

(1) it applies for a franchise, or
(2) the Commission asserts jurisdiction over it,

the utility shall satisfy the bonding requirement. If the Commission finds that such a utility cannot meet that requirement, it may grant the utility temporary operating authority for a reasonable period of time until it can transfer the system or post the bond. If after the expiration of the time period the company has neither posted the bond nor transferred the system, the Commission may seek fines and penalties under G.S. 62-310.

(h) The company shall attach a separate notarized statement to its annual report which is due on or before April 30th of each year stating the amount of the bond, whether the bond is still in effect, and the date of next renewal.

(SAMPLE FORM OF WATER OR SEWER BOND ACCOMPANIED BY DEPOSIT OF CASH OR SECURITIES)

BOND

(Name of utility) of (City), (State), as Principal, is bound to the State of North Carolina in the sum of _____ Dollars ($_____) and for which payment to be made, the Principal by this bond binds (himself) (itself) and (his) (its) successors and assigns.

THE CONDITION OF THIS BOND IS:

WHEREAS, the Principal is or intends to become a public utility subject to the laws of the State of North Carolina and the rules and regulations of the North Carolina Utilities Commission, relating to the operation of a water or sewer utility (describe utility) _____ and,

WHEREAS, North Carolina General Statutes § 62-110.3 requires the holder of a franchise for water or sewer service to furnish a bond with sufficient surety, as approved by the Commission, conditioned as prescribed in § 62-110.3, and

WHEREAS, the Principal has delivered to the Commission (description of security) _____ with an endorsement as required by the Commission, and,

WHEREAS, the appointment of an emergency operator, either by the superior court in accordance with North Carolina General Statutes § 62-118(b) or by the Commission with the consent of the owner, shall operate to forfeit this bond, and

WHEREAS, this bond shall become effective on the date executed by the Principal, and shall continue from year to year unless the obligations of the Principal under this bond are expressly released by the Commission in writing.

NOW THEREFORE, the Principal consents to the conditions of this Bond and agrees to be bound by them.

This the _____ day of _____ 19__.

_____
(Name)

(SAMPLE FORM OF WATER OR SEWER BOND
WITH INDIVIDUAL SURETY)
BOND

(Name of Utility) of (City), (State), as Principal, and (Name of Surety) as Surety, (hereinafter called "Surety") are bound to the State of North Carolina in the sum of _____ Dollars ($_____) and for which payment to be made, the Principal and Surety by this bond bind themselves their successors and assigns.

THE CONDITION OF THIS BOND IS:

WHEREAS, the Principal is or intends to become a public utility subject to the laws of the State of North Carolina and the rules and regulations of the North Carolina Utilities Commission, relating to the operation of a water or sewer utility (describe utility) _____
_____ and,

WHEREAS, North Carolina General Statutes § 62-110.3 requires the holder of a franchise for water or sewer service to furnish a bond with sufficient surety, as approved by the Commission, conditioned as prescribed in § 62-110.3, and

WHEREAS, the appointment of an emergency operator, either by the superior court in accordance with North Carolina General Statutes § 62-118(b) or by the Commission with the consent of the owner, shall operate to forefeit this bond, and

WHEREAS, this bond shall become effective on the date executed by the Principal, and shall continue from year to year unless the obligations of the Principal under this bond are expressly released by the Commission in writing.

NOW THEREFORE, the Principal and Surety consent to the conditions of this Bond and agree to be bound by them.

This the _____ day of _____ 19__.

_____
(Principal)

_____
(Surety)

(SAMPLE FORM OF WATER OR SEWER BOND WITH CORPORATE SURETY)

BOND

(Name of Utility) of (City), (State), as Principal, and (Name of Surety), a corporation created and existing under the laws of (State), as Surety, (hereinafter called "Surety") are bound to the State of North Carolina in the sum of _____Dollars ($_____) and for which payment t be made, the Principal and Surety by this bond bind themselves their successors and assigns.

THE CONDITION OF THIS BOND IS:

WHEREAS, the Principal is or intends to become a public utility subject to the laws of the State of North Carolina and the rules and regulations of the North Carolina Utilities Commission, relating to the operation of a water or sewer utility (describe utility) _____ _____ and,

WHEREAS, North Carolina General Statute § 62-110.3 requires the holder of a franchise for water or sewer service to furnish a bond with sufficient surety, as approved by the Commission, conditioned as prescribed in § 62-110.3, and,

WHEREAS, the appointment of an emergency operator, either by the superior court in accordance with North Carolina General Statute § 62-118(b) or by the Commission with the consent of the owner, shall operate to forfeit this bond, and

WHEREAS, this bond shall become effective on the date executed by the Principal, and shall continue from year to year unless the obligations of the Principal under this bond are expressly released by the Commission in writing.

NOW THEREFORE, the Principal and Surety consent to the conditions of this bond and agree to be bound by them.

This the _____ day of _____ 19__.

_____
(Principal)

_____
(Surety)

By: _____

DOCKET NO. E-7, SUB 402

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of William G. Joines, Complainant v. Duke Power Company, Respondent	)))))	FINAL ORDER MODIFYING RECOMMENDED ORDER

HEARD: Monday, November 10, 1986, at 2:00 p.m., Commission Hearing Room, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina

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

APPEARANCES:

For the Respondent:

William Larry Porter, Associate General Counsel, 422 S. Church Street, Charlotte, North Carolina 28242
For: Duke Power Company

For the Public Staff:

David T. Drooz, Staff Attorney, Public Staff- North Carolina Utilities Commission, Post Office Box 29520, Raleigh, North Carolina 27626-0520
For: The Using and Consuming Public

BY THE COMMISSION: This docket was instituted on August 16, 1985, by the filing of a formal complaint by William G. Joines ("Complainant") against Duke Power Company ("Duke", "Company" or "Respondent"). By Order dated August 28, 1985, the Commission served the complaint upon Duke. On September 19, 1985, Duke filed its Answer and Motion to Dismiss the complaint, and by Order of September 23, 1985, the Answer was served upon the Complainant. On October 4, 1985, the Commission received a Response from Complainant stating that the Answer filed by Duke was not satisfactory and requesting a hearing. By Commission Order dated October 9, 1985, the complaint was scheduled for hearing on Friday, November 15, 1985.

The complaint came on for hearing as scheduled before Hearing Examiner Johnson.

On July 11, 1986, the Hearing Examiner issued her Recommended Order Granting the Complaint. The Examiner made the following findings of fact:

> "1. Complainant's electric bills for December 1984 and January 1985 were substantially higher than his usual bills before or after that time. Those bills are the subject of this proceeding.

"2. Complainant made a partial payment on the contested bills; the amount remaining at issue is $261.88.

"3. With the exception of Complainant's electric heat pump heating systems, all of Complainant's household appliances running at maximum capacity would not be sufficient to cause the energy usage reflected on the contested bills. Complainant's heat pump was inoperable during the months in question.

"4. Duke made reasonable attempts to determine if its equipment might have caused an erroneous bill to be rendered. Duke determined to the best of its ability that the Complainant's meter was functioning correctly and was read correctly.

"5. The cause of the abnormal meter readings for the contested months remains unknown.

"6. It is fair and appropriate that the contested amount be deleted from Complainant's balance due and that Complainant's credit rating be restored to its pre-December 1984 status."

The Examiner ordered as follows:

"1. That the amount of $261.88 shall be credited to Complainant's account by Duke Power Company; and

"2. That the Complainant's credit rating with Duke Power Company shall be restored to its pre-December 1984 status."

On July 28, 1986, Duke filed exceptions to the Recommended Order. Duke also requested oral argument before the Commission but further requested that oral argument not be scheduled in August or September due to the pending rate case of the Company. By Order of July 30, 1986, the Commission issued an Order scheduling the oral argument on November 10, 1986, before the full Commission.

On September 26, 1986, the Public Staff filed a Motion with the Commission requesting that the Commission specify the scope of review for oral argument on Duke's exceptions to be a whole record review, and that this review be limited to the extent set forth in G.S. 62-94(b). On October 8, 1986, Duke filed a response in opposition to the Motion. By Order issued October 15, 1986, the Commission set the Public Staff Motion for oral argument and advised the parties that evidence would not be taken at the oral argument.

The exceptions and the motion of the Public Staff came on for oral argument on November 10, 1986. The Public Staff and Duke Power Company were present and represented by counsel.

Upon consideration of the exceptions of Duke Power Company, the Motion of the Public Staff to specify review, Duke's response thereto, the Recommended Order of July 11, 1986, and the entire record in this docket, the Commission issues this Order.

Public Staff Motion to Specify Scope of Review

In its Motion of September 26, 1986, the Public Staff requested the Commission to specify that the scope of review for oral argument on exceptions in this case be the whole record review and that the review be limited to the extent set forth in G.S. 62-94(b). The Public Staff alleged in part as follows:

> "4. The Public Staff interprets 'whole record review' to mean a review limited to errors of law and whether the findings are supported by substantial evidence in view of the entire record. This is the scope of review used by appellate courts when they conduct a 'whole record review' under G.S. 62-94(b), and there is no reason to believe that the term has a different meaning for purposes of this hearing on Duke Power's exceptions."

In its Response Duke asked that the Motion of the Public Staff be denied and pointed out that G.S. 62-94(b) is applicable to appeals from the Commission to an appellate court.

After considering the Public Staff's Motion and the statutes in question, the Commission is of the opinion, and so concludes, that the request that review in this case "be limited to the extent set forth in G.S. 62-94(b)" should be denied. An examination of the applicable statute governing the consideration by the Commission of exceptions to a recommended order, G.S. 62-78(d), discloses that the "review upon the whole record" standard is required. The Commission is of the opinion, however, that the contentions of the Public Staff with respect to G.S. 62-94(b) should not be read into the plain language of G.S. 62-78(d). The import of the latter statute is broader in scope: The statute provides that "[w]hen exceptions are filed . . . it shall be the duty of the Commission to consider the same and if sufficient reason appears therefor, to grant such review or make such order or hold or authorize such further hearing or proceeding as may be necessary to carry out the purposes of this chapter. The Commission, after review, or as supplemented by a further hearing, shall decide the matter in controversy and make appropriate order on decision thereon." The Commission further notes that what is under consideration in this proceeding is a recommended order under review by the Commission, while G.S. 62-94(b) is applicable to final orders of the Commission on appeal to the appellate courts. The Commission concludes that, while the "review upon the whole record" standard is applicable to consideration of exceptions to a recommended order under G.S. 62-78(d), such review is not limited, as the Public Staff contends, to the extent set forth in G.S. 62-94(b).

The Exceptions of Duke to the Recommended Order

Duke filed exceptions to Findings of Fact Nos. 3, 5, and 6. Basically, Duke contends that the Complainant failed to carry the burden of proof required by G.S. 62-75 to offer sufficient evidence to support the findings excepted to.

Upon consideration of all of the evidence in this proceeding, the Commission is of the opinion that the Recommended Order under consideration

herein should be modified as hereinafter set forth and for the reasons set forth in the discussion under Evidence and Conclusions for Finding of Fact No. 6.

Finding of Fact No. 6 in the Recommended Order of July 11, 1986, should be modified to read as follows:

> 6. It is fair and reasonable to split the amount in dispute--$261.88--equally between the parties, and the Complainant is therefore liable to Duke for the amount of $130.94 in satisfaction of the said disputed amount. The Complainant's credit rating should be restored to its pre-December 1984 status.

Evidence and Conclusions for Finding of Fact No. 6 should also be modified as follows:

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 6

The Commission has carefully considered all of the evidence in this case. In summary, the evidence of the Complainant tended to show that he received an abnormally high electric bill from Duke in December 1984 of $225.48 and in January 1985 of $176.57, while his average bills before and after these two months had been between $40 to $50; that he could not have possibly used that much electricity in these two months since his heat pump was not yet connected and in operation; that he used a wood stove and a kerosene heater for heating; and that Duke's customer representative agreed that Complainant could not have used that much electricity if the heat pump were inoperable during this time. On cross examination by Duke, the Complainant gave fuller details of his electric usage, including the use of a hot water heater.

Duke's evidence was to the effect that the electric meter tested properly in January 1985 (99.9% accurate) and that the billings for December and January were correct based on the meter readings. Duke's witness agreed on cross examination that unless the heat pump system was operational, Complainant's load could not have caused the bills incurred in January and February. The witness further testified that he did not physically examine the heating system during his visit to the Complainant's home.

During oral argument the following electric bills of the Complainant were elicited without objection:

November 1984	$ 63.81
December 1984	225.48
January 1985	176.57
February 1985	66.80
March 1985	47.70
April 1985	39.94
May 1985	37.33
June 1985	37.27
July 1985	56.55
August 1985	45.90
September 1985	58.52
October 1985	47.70

(This billing history is also set forth in Duke's Exhibit No. 6.)

On the one hand there is the Complainant's evidence, which the Examiner found credible, that he could not have used the electricity billed for the two months in question and that the heat pump was not in operation during these months. On the other hand, there is Duke's evidence, which the Examiner also accepted, that the Complainant's electric meter tested 99.9% accurate and that the billings for December and January were correct based on the meter readings.

Upon consideration of all of the evidence in this case, the Commission is of the opinion, and so concludes, that it is fair and reasonable to split the amount in dispute--$261.88--equally between the parties. The Complainant is therefore liable to Duke for the amount of $130.94.

IT IS, THEREFORE, ORDERED as follows:

1. That the Motion of the Public Staff that the Commission's review of the exceptions in this proceeding be limited to the extent set forth in G.S. 62-94(b), be, and the same is hereby, denied, as hereinabove set forth.

2. That the Recommended Order of July 11, 1986, in this docket be modified as set forth hereinabove. Except as modified herein, the Recommended Order is affirmed as the Final Order of the Commission.

3. That within four weeks from the date of this Order the Complainant shall pay to Duke Power company the amount of $130.94 and that this payment shall represent satisfaction of the amount in dispute between Complainant and Duke for the months of December 1984 and January 1985.

4. That the Complainant's credit rating with Duke shall be restored to its pre-December 1984 status.

ISSUED BY ORDER OF THE COMMISSION.
This the 30th day of March 1987.

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

DOCKET NO. E-7, SUB 414

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Gwynn Valley, Inc., d/b/a Camp Gwynn Valley, Complainant v. Duke Power Company, Respondent	RECOMMENDED ORDER DISMISSING COMPLAINT

HEARD: March 10, 1987, Commission Hearing Room, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina

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

APPEARANCES:

For the Complainant:

George Daly, 101 N. McDowell Street, Charlotte, North Carolina 28204

For the Respondent:

Steve C. Griffith, Jr., and Ronald L. Gibson, Post Office Box 33189, Charlotte, North Carolina 28242

For the Using and Consuming Public:

Karen E. Long, North Carolina Department of Justice, Post Office Box 629, Raleigh, North Carolina 27602

Theodore C. Brown, Jr., Public Staff, North Carolina Utilities Commission, Post Office Box 29520, Raleigh, North Carolina 27626-0520

BY THE COMMISSION: On August 7, 1986, Gynn Valley, Inc., doing business as Camp Gwynn Valley (the "Camp" or "Gwynn Valley"), filed a letter complaint against Respondent, Duke Power Company ("Duke" or the "Company") urging the Commission to prevent Duke from constructing a transmission line across a portion of the Camp's property. The Complaint was served on Duke by Commission Order dated August 13, 1986.

On September 3, 1986, Duke answered, moved to dismiss for lack of jurisdiction, and moved to dismiss for failure to state a claim. On September 10, 1986, the Commission issued its Order serving this pleading on the Camp and scheduling oral argument on the Motion to Dismiss for lack of jurisdiction.

On September 24, 1986, Duke moved to amend its Answer to add a Further Response, which was attached to the Motion to Amend. In this Further Response Duke withdrew its objection to the Commission's jurisdiction and requested that the Commission determine whether the line should be placed underground, and if so, who should pay the additional cost. By Order of September 26, 1986, the Commission ordered this Amended Answer served and cancelled the oral argument on the Motion to Dismiss for lack of jurisdiction.

On October 21, 1986, the Camp filed an Amended Complaint and Reply to Answer, through counsel. This pleading alleged that the proposed transmission line would significantly damage the human environment of the Camp, and that there were safe, feasible and affordable alternatives to construction of the line across Camp property. The Camp requested the Commission that Duke be ordered not to construct the transmission line on the Camp's property, and alternatively that the line be placed underground for its traverse of the Camp's property. On October 23, 1986, the Commission ordered the Amended Complaint and Reply to Answer served on Duke.

On November 3, 1986, Duke filed a Motion to Strike and Answer to Amended Complaint. On November 14, 1986, the Commission ordered this pleading served.

On December 3, 1986, the Camp filed its Response to Answer. On December 5, 1986, the Camp filed its Response to Motion to Strike.

By Order of January 12, 1987, the Commission scheduled an evidentiary hearing at Raleigh for March 10, 1987. The Camp filed its proposed testimony on February 20, 1987. Duke filed its proposed testimony on March 3, 1987.

On February 20, 1987, the Commission issued an Order scheduling a Prehearing Conference at Raleigh for February 24, 1987. This conference was held as scheduled with counsel for the parties in attendance. On February 25, 1987, the Commission issued a Prehearing Order adopting the agreement of the parties.

On February 26, 1987, the Attorney General filed a Notice of Intervention.

At the hearing the Camp filed a Motion to Strike portions of Duke's proposed testimony. The Commission hereby denies the Motion to Strike.

During the course of the proceedings the Camp and Duke each engaged in discovery by written interrogatories.

At the beginning of the hearing Duke moved to dismiss the Amended Complaint for lack of subject matter jurisdiction. The parties were heard in oral argument and the Commission took the Motion under advisement. Evidence was then presented by both parties. The Camp presented the testimony of Dr. Howard Boyd, Lenore Kempfer, Nora Shepard, Dr. Robin Rose, Janet Freeman, John Huie, Elaine Craft, and Dale Robertson, together with exhibits. Duke presented the testimony of Shem Blackley, together with exhibits.

Based upon the testimony and exhibits presented at the hearing, and the entire record in this proceeding, the Commission makes the following:

FINDINGS OF FACT

1. Complainant Gwynn Valley, Inc., operates a camp for young children near Brevard, North Carolina.

2. The Camp filed this complaint in August 1986. The Camp seeks an Order of the Commission directing Duke to find an alternative route for a proposed transmission line that will cross the property of Camp Gwynn Valley.

3. Respondent Duke Power Company is a public utility with a public service obligation to provide electric service within designated areas and is subject to the jurisdiction of this Commission pursuant to the Public Utilities Act, G.S. 62-1, et seq.

4. Duke proposes to construct a new distribution substation in the Rich Mountain-Connestee Falls area of Transylvania County near Camp Gwynn Valley. The substation would be connected to the transmission system by a new 44 kilovolt (44 kv) line. The electric load in this area has grown over the years and the existing distribution facilities are near their capacity for providing service to the area. The Commission finds that these new facilities are needed to meet Duke's obligation to provide reliable electric service.

5. In 1980, Duke acquired a substation lot and proposed to route the connecting transmission line across Camp Gwynn Valley. The Camp refused to sell Duke the necessary right of way and offered to sell Duke a substation lot in the far northeast corner of the Camp, which would make it unnecessary for Duke to route the proposed transmission line across the Camp property at that time. Duke accepted this offer, purchased the substation lot from the Camp, and proceeded with plans to construct the line and to acquire other rights of way.

6. In July 1982, Duke sought to purchase the last necessary right of way leading to the substation lot from the owner of property adjoining the Camp, but was advised that the Camp had just recently purchased this property (the Glazener tract.) Duke approached the Camp in August 1982 to purchase the right of way across this recently acquired property, but was unable to reach agreement with the Camp. After two years of unsuccessful negotiations, Duke initiated condemnation proceedings in 1984 in the Transylvania County Superior Court.

7. The condemnation proceeding is currently pending before the Superior Court of Transylvania County. Duke and Camp Gwynn Valley are parties to this proceeding, and the property sought to be condemned in that proceeding is the site of the transmission line at issue in this complaint. The condemnation proceeding is at the point where Duke may pay the Clerk of Court the amount of the award and take possession of the right of way and construct the transmission line pending appeal.

8. There has been no flagrant abuse of discretion by Duke in planning for and locating the transmission line in question.

9. The Commission has not promulgated rules and regulations governing the planning, routing, or construction of electric transmission or distribution lines. Nor does the Commission require that an electric utility obtain a certificate from the Commission before the construction of a transmission line can commence.

CONCLUSION OF LAW

The Commission concludes that jurisdiction over this matter properly rests with the Superior Court of Transylvania County, before which a condemnation proceeding is pending involving the parties Duke and Camp Gwynn Valley and the property which is the subject of the complaint. Accordingly, the Commission will issue this Order dismissing the Complaint.

In its Motion to dismiss the complaint for lack of jurisdiction, Duke asserted that the authority vested in the Commission under the Public Utilities Act does not include jurisdiction over the need for transmission facilities and the routing of transmission lines. Duke also asserted that jurisdiction over the matter in dispute properly rests with the Transylvania County Superior Court, since there is pending before that Court a condemnation proceeding involving Duke and the Camp and the property in question in this complaint proceeding.

The Commission will first address the jurisdiction of the Commission over the routing and construction of electric transmission lines. All of the

parties in this proceeding cite and rely upon two Commission decisions arising out of complaints involving the routing of transmission lines across a landowner's property. The first case, McRae et al. vs. Carolina Power & Light Company, Docket No. E-2, Sub 207, was decided in 1972. (Reported in 62 Report of the North Carolina Utilities Commission, Orders and Decisions 92). In this case, the Commission dismissed the complaint of McRae and other landowners who opposed the location and construction of a transmission line across their properties. In so deciding, the Commission concluded that neither G.S. 62-110 as amplified in G.S. 62-110.1 nor the North Carolina Environmental Policy Act of 1971 (N.C.G.S. 113A-1 et seq.) served to vest jurisdiction in the Commission over the construction and location of electric transmission lines.

The second case cited to us is Kirkman v. Duke Power Company, 64 Report of the North Carolina Utilities Commission, Orders and Decisions 89 (1974) (Docket No. E-7, Sub 152) (hereinafter the "Kirkman case"). In this case, which also involved the construction of a transmission line across a Complainant's property, the Commission found that it had jurisdiction to hear the Complaint but dismissed the Complaint on the ground that Duke had not acted arbitrarily in locating the line. The Commission concluded, in part, as follows:

> "The public policy of the State of North Carolina as it pertains to the organization, existence, acts, and activities of public utilities is principally enunciated in Chapter 62 of the General Statutes. The public policy of the State as it relates to the environmental ethic is principally enunciated in Chapter 113-A of the General Statutes. Construed together, we conclude that the acts and activities of public utility firms operating in North Carolina are not free from considerations of environmental criteria and that this tribunal is charged with the judicial responsibility to determine whether or not public utility firms in this State are operating their various and respective enterprises in a manner compatible with the spirit of the Environmental Policy Act of 1971. . . . It is therefore basic law in this State that the grant of franchise to a public utility carries with it the requirement of reasonable conduct in the discharge of its business functions. No public utility may, under the cloak of franchise, act arbitrarily and unreasonably in the conduct of its business and in the providing of its service to the public without being answerable to the law or the jurisdiction. Assuming such arbitrary and unreasonable acts on the part of the public utility in the providing of its service to the public or to individual citizens, the proper forum for the consideration of such matters may be either this Commission or the General Court of Justice, depending upon the nature of the complaint and the relief sought in this matter. The nature of this complaint is that the Defendant, Duke Power Company, has acted or proposes 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 the consideration of such a complaint.

"Under the present laws and statutes of North Carolina and the Rules and Regulations of this Commission, we conclude that upon the evidence in this case and the facts found herein, the Defendant, Duke Power Company, has not acted arbitrarily in the location of the transmission line in question. It appears clear and uncontroverted from the record in this matter that the line in question is of such length and size that it would be expected to cross or traverse the property of many persons, including that of the Complainants, and the record is clear and uncontroverted that Complainant's property is the missing link; that is, all other property rights needed for the construction of the line of approximately 10 miles in length have been acquired by Duke. There is no showing that Duke singled out the property of Complainants for arbitrary routing of the line. The record here reflects an unyielding and intransigent attitude on the part of Duke's officials and agents, but their acts and activities herein considered do not reach the arbitrary level.

* * * * *

"We conclude that it is not necessary under the laws of North Carolina for a public utility to obtain from this Commission a Certificate of Public Convenience and Necessity for the construction of a high-voltage electric transmission line, nor is it necessary under the provisions of the Environmental Policy Act of 1971 for such a utility to file with any agency of the State of North Carolina an environmental impact statement before undertaking such construction. In so concluding, we enunciate the caveat that such construction is not in any sense to be undertaken at the whim or caprice of a public utility, but is, in the broad regulatory framework set forth in Chapter 62, subject in a proper case to the review and judgment of this Commission. High-voltage transmission lines are very expensive to build and maintain and therefore are first cousins to generating facilities, which facilities are subject to formal, prior certification. Such high-voltage transmission lines make critical demands upon the use of land resources and are therefore to be reasonably built and maintained in keeping with the broad public policy set forth in the Environmental Policy Act of 1971."

The Commission found that Duke had not acted arbitrarily in locating the transmission line across the Complainant's property and dismissed the complaint.

In the Kirkman case, the Commission further found as a fact:

"11. This Commission has not promulgated or established rules or regulations setting forth or dealing with design or construction criteria for use or guidance of public utilities in the planning or construction of electric transmission lines by said public utilities in North Carolina."

and concluded as follows:

"Until such time as this Commission properly promulgates and adopts appropriate rules and regulations for the design, construction

and location of high-voltage transmission lines by electric utilities in this State, it will be difficult for us to apply our judgment ex post facto to such design and construction so as to conclude in a particular instance that the utility has acted arbitrarily."

Attention is also called to the case of Kill Devil Hills v. Vepco, 73 Orders and Decisions, 102 (1984).

Duke further contends that because of the pendency of the condemnation proceeding in the Superior Court of Transylvania County, the Commission should not exercise jurisdiction over this case. Duke instituted its condemnation proceeding in the Superior Court of Transylvania County in 1984 pursuant to G.S. Chapter 40A, which grants to Duke the power to condemn rights of way for facilities such as transmission lines.[1] The Complainant and the Attorney General, on the other hand, urge the Commission to retain and exercise jurisdiction over the complaint, contending that the pendency of the condemnation proceeding does not prevent the Commission from deciding the matter at issue. In support of their contentions, all of the parties rely upon the Kirkman case. None of the parties have cited to us any case precisely on point on this issue.

The general rule controlling the respective jurisdictions of courts has been stated by our Supreme Court as follows: "Courts of concurrent jurisdiction are courts of equal dignity as to the matters concurrently cognizable, neither having supervisory power over process from the other, and . . . the one first exercising such jurisdiction acquires control to the exclusion of the other." In re Estate of Adamee, 291 N.C. 386, 398 (1976). See also, In re Greer, 26 N.C. App. 106 (Court of Appeals) (1975): "It is the general rule that where there are courts of concurrent jurisdiction, the court which first acquires jurisdiction retains it." This principle has also been held to apply to the relation between a court and an administrative agency. 20 Am. Jur 2d, "Courts" §128.

The priority principle, as the general rule has been called, is applicable when the cases involved are identical as to subject matter, parties, and the relief sought. "The identify as to subject matter, parties, and relief sought must be such that a final adjudication of the case by the court in which it first became pending would, as res judicata, be a bar to further proceeding in a court of concurrent jurisdiction." 20 Am. Jur 2d, "Courts" §131.

An exception to the general rule may exist where a second court (or administrative agency) can afford remedies not available in the first court. Petition of Pfenning, 385 A.2d 1070 (Vt. 1978). The assumption of jurisdiction by the second court "is permissible" and not mandatory, Younghaus v. Lakey, 559 SW 2d 30 (Mo. Court of Appeals 1977), and the second court may defer or decline to assume jurisdiction in a proper case. Stevens v. Stevens, 390 A.2d 1074 (Me. 1978). See also Lippman v. Kay, 415 A.2d 738 (R.I. 1980): ". . . when the two actions although related seek divergent types of relief . . . it

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1 The Complaint was filed with the Commission by Camp Gwynn on August 7, 1986.

may not be improper for the second court to assume jurisdiction and proceed with the case."

If the Commission and the Superior Court of Transylvania County are regarded as having concurrent jurisdiction over the matters at issue, then the Superior Court, having first acquired jurisdiction, retains it to the exclusion of the Commission. In re Estate of Adamee, supra. It appears that the parties and the subject matter before the Superior Court and the Commission are identical.

The Court and the Commission, however, can apparently afford different remedies to the parties. G.S. Chapter 40A; Kirman v. Duke, supra. The Commission concludes that, in the absence of concurrent jurisdiction, it has the discretion to accept or decline jurisdiction of the complaint.

The decision whether or not to exercise its discretion is a case of first impression before this Commission. The two major cases decided by us, McRae and Kirkman, were brought as complaint cases against electric utilities.[2] In neither case had condemnation proceedings been instituted nor had any condemnation decision been reached by the Superior Court; McRae and Kirkman are for that reason distinguishable from the case at hand. We must decide, therefore, what standards would cause the Commission to assume jurisdiction where there is already a proceeding pending in a court of equal jurisdiction. It seems reasonable that the Commission would accept jurisdiction of the complaint, notwithstanding the pendency of the Superior Court proceeding, if it should appear that there had been a flagrant abuse of discretion by Duke in planning for and locating the transmission line. The evidence in this proceeding discloses, however, that there was no flagrant abuse of discretion by Duke. Duke began planning for the substation and transmission line in question in the early 1970's when Duke was advised of plans for the addition of up to 3000 new residences in the Connestee Falls development in Transylvania County. (Tr. Vol. 1, p. 140). This new growth would exceed the existing capacity of the distribution line serving the area. In 1979 Duke began actively seeking a substation site and a suitable transmission line route. In March 1980 Duke acquired a substation lot from the developers of Connestee Falls located south of the Camp on Highway 276. The initially proposed transmission line route to this substation lot would have crossed Camp Gwynn Valley and four other properties. (Tr. Vol. 1, p. 140; Blackley Exhibit 1). The Camp strongly objected to this location and any routing across its property. (Tr. Vol. 1, pp. 29, 140).

Duke approached Camp Gwynn Valley about acquiring a right of way to construct the line and was advised by Dr. Boyd that the Camp would not sell the necessary right of way. During extensive negotiations, Dr. Boyd proposed to sell Duke a substation lot in the remote northeast corner of the Camp, which would make it unnecessary to route the transmission line across the Camp as originally proposed. (Tr. Vol. 1, pp. 29, 140). Although this substation lot

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2 The Commission notes that at any time between August 1982 and the institution of the condemnation proceeding in 1984, while it was negotiating with Duke over the price for the right of way, the Camp could have brought a complaint case against Duke to the Commission.

offered by Gwynn Valley moved the substation further away from the desired location near the electric load center, Duke nevertheless accepted the alternative since it would make the transmission line route acceptable to the Camp and would serve the load in a satisfactory manner. The 1.53 acre lot was acquired from Camp Gwynn Valley in August 1981 for $7,885. (Tr. Vol. 1, p. 140).

Duke proceeded with plans to construct the transmission line and began acquiring other necessary rights of way. The only unacquired right of way was across property owned by the H. B. Glazener family. (Tr. Vol. 1, p. 141; Blackley Exhibit 1). In July 1982, Duke contacted the Glazener family and was advised that Mr. Glazener had died and that Gwynn Valley had acquired the Glazener property from the owners only a few days earlier. Duke subsequently approached Dr. Boyd in August 1982 to acquire the right of way across the Glazener property now owned by Camp Gwynn Valley.

After further extensive negoitations, Duke and Gwynn Valley were unable to reach agreement on the price for the right of way. (Tr. Vol. 1, pp. 30, 64-67, 141). After two years of unsuccessful negotiations with the Camp, Duke initiated condemnation proceedings for the right of way in the Transylvania County Superior Court in 1984. (Tr. Vol. 1, p. 141).

Duke's witness, Mr. Blackley, who is Vice-President-Transmission of the Company, generally described the criteria used by Duke in planning and locating substations and routing transmission lines. He testified that Duke examines the available route alternatives, and then selects the most economical route which causes the least impact on local development and the environment and which limits the impact to the least possible number of property owners. (Tr. Vol. 1, p. 144). Duke also attempts to purchase rights of way without having to resort to condemnation proceedings. Witness Blackley described the application of its criteria to the selection of the route for the transmission line at issue in this case. For example, Duke rejected one route because the line would run across the top of Bill Raines Mountain, resulting in considerable additional costs as well as considerable impact on the environment. (Tr. Vol. 1, p. 146). Another route was also rejected when Duke discovered that it passed through an Indian site of potential archaeological significance. (Tr. Vol. 1, p. 145).

Mr. Blackley summarized Duke's efforts to locate the transmission line at issue in this case:

> "Each decision to locate a substation or transmission line involves a balancing of interests, including cost to our customers, impact on the local environment and reliability of service. In this instance, each alterantive route considered by Duke or proposed by Dr. Boyd either costs substantially more than the proposed route or impacts the local environemnt to a greater extent, or both. . . . . We sincerely believe that the route we have proposed properly balances all of the interests involved." (Tr. Vol 1., p. 147).

The Commission finds and concludes that there was no flagrant abuse of discretion by Duke in the planning and routing of the transmission line at issue in this proceeding.

G. S. Chapter 40A fully authorizes Duke, and any other electric utility, to institute a condemnation proceeding in the Superior Court, and this grant of authority is totally separate and apart from the statutory scheme for the regulation of utilities set forth in G.S. Chapter 62, the Public Utilities Act. An examination of G. S. Chapter 40A discloses that the eminent domain proceeding affords to the condemnor and to the condemnee a forum to adjudicate the respective rights and liabilities of the parties with respect to the property sought to be condemned, and the proceeding is subject to appeal to the appellate courts.

Complainant's assertion that the proposed transmission line would destroy the purpose of the camp may be properly litigated in the condemnation case. If the evidence in the condemnation proceeding showed that the Camp would be destroyed, then the measure of compensation, "the difference in the fair market value of the land immediately before the taking and the fair market value immediately after the taking of the easement," can reflect the impact of the taking. Duke Power Co. v. Ribet, 25 N.C. App. 87 (1975). Further, Complainant can defend the condemnation claim "upon the ground [that] his property does not qualify for the purpose intended." Redevelopment Commission of Greensboro v. Hagins, 258 N.C. 220 (1961).

Furthermore, the Complainant in this proceeding has alleged that Duke acted arbitrarily and capriciously in locating the transmission line across its property. This issue may also be litigated in the condemnation proceeding. Duke Power Company v. Ribet, supra; Redevelopment Commission v. Hagins, supra. The Supreme Court has considered the condemnor's exercise of discretion in route selection in Yadkin River Power Co, v. Wissler, 160 N.C. 269 (1912). The Court stated:

> "The power granted to this and other companies of like kind having been expressed in very general terms, they can only acquire by condemnation such 'rights, privileges, and easements' as may be reasonably necessary to carry on and effect the bona fide purposes of the enterprise, and . . . the extent and limit of the rights to be acquired are primarily and very largely referred to the companies or grantees of the power, and only becomes an issuable question, usually determinable by the court, on allegation of fact tending to show bad faith on the part of the companies or an oppressive or manifest abuse of their discretion . . ." (160 N.C., at 273, 274).

The condemnation proceeding had been pending in the Superior Court for two years when this complaint was filed, and the proceeding has progressed to the point where Duke may pay into the Clerk of Court the amount of the award and take possession of the right of way and construct the transmission line pending appeal. (Duke's Proposed Order, p. 15.)

The law of eminent domain in this State is well-developed so as to afford the Complainant and Duke an adequate forum to adjudicate the issues arising from the location of the proposed transmission line: the arbitrariness if any in the siting of the line, the question of public purpose, and the measure of damages to be paid the landowner for the taking. "It is a fundamental principle in this jurisdiction that the taking of private property for public use imposes upon the condemnor a correlative duty to make just compensation to

the owner of the property appropriated." Proctor v. Highway Commission, 230 N.C. 687, 691 (1949).

The evidence in this proceeding discloses, and the Commission takes judicial notice thereof, that Duke's service area in Transylvania County is largely of mountainous terrain and that the location of a transmission line may impact the use and enjoyment of property by any disaffected landowner, including the view enjoyed by the landowner of mountain scenery. In the absence of specific rules and regulations governing the planning, location, and construction of transmission lines, and in consideration of the pendency of the Superior Court proceeding, the Commission is hesitant to undertake an ad hoc, case-by-case review of the impact of the proposed transmission line upon a succession of landowners, all of whom may be as equally entitled as the Complainant to complain about the impact of the line upon the use and enjoyment of their property.

When the Commission balances the extent of the Superior Court's jurisdiction over the parties and the land in question, including the jurisdiction to award "just compensation" to the aggrieved landowner, with the Commission's lack of guidelines and standards to govern the planning, location, and construction of transmission lines on a consistent, statewide basis, the Commission is of the opinion that the Superior Court is the appropriate forum to adjudicate the matters in dispute between the Complainant and Duke. This is especially so when the evidence before the Commission discloses no flagrant abuse of discretion by Duke in planning for and locating the transmission line at issue.

The right of recourse to the eminent domain proceeding is available to Duke separate and apart from any grant of authority to this Commission under the Public Utilities Act. Duke has availed itself of the eminent domain proceeding in the Superior Court, as it has a right to do, and such proceeding has been pending before that Court since 1984. The proceeding has progressed to the point where Duke may pay the Clerk of Court the amount of the award and take possession of the right of way and construct the line pending appeal. The Superior Court having first acquired jurisdiction, and having the authority to enter a judgment the effect of which would bar further proceedings by this Commission, the Commission is of the opinion that it should defer to the Superior Court for the reasons set forth in this Order, and accordingly, it issues this Order dismissing the complaint.

In view of the decision reached in this Order, the Commission is further of the opinion that it is not necessary to address the motion of the Attorney General filed on July 16, 1987. Any damages resulting from the matters raised in the Attorney General's Motion would be appropriately a matter for consideration in the Superior Court proceeding.

IT IS, THEREFORE, ORDERED that the complaint in this docket be dismissed.

ISSUED BY ORDER OF THE COMMISSION.
This the 29th day of September 1987.

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

Commissioner Wright, dissenting.
Commissioner Koger, concurring.

Commissioner Julius A. Wright, dissenting.

I disagree and dissent from the majority decision in this case. In its decision the majority, for several reasons, has deferred to the Superior Court of Transylvania County and accordingly dismissed the complaint. I believe that we should not only rule on the complaint per se, but that our ruling should require Duke Power Company to

1. Abandon its current plans to route a transmission line across Camp Gwynn Valley's entrance and property and

2. Choose an alternate route not impacting the camp.

The reasons for these conclusions will be discussed later; first however, there is the question of whether the Commission has the authority to address this case at all. I agree with the majority on this point, referring both to the Kirkman case and the Environmental Policy Act of 1971, that this Commission not only has the authority, but more importantly the responsibility to examine, when controversy arises, the placement of transmission lines where there is a question of undue environmental damage from such placement. In this regard, it is the Commission's responsibility to protect the public interest and insure that adequate consideration has been given to alternative routings that may be less harmful to the environment.

Therefore, adhering to the findings set forth in the Kirkman case and the Environmental Policy Act of 1971, this Commission, to assume jurisdiction, must first have to find irreparable harm to the environment due to the placement of the transmission line and then find Duke's actions with regard to such placement arbitrary and unreasonable. I believe it is patently obvious that this transmission line meets this first criteria in that it does cause significant irreparable harm to the environment.

This transmission line, as now proposed by Duke, will pass directly over Camp Gwynn Valley's entrance and traverse part of its property. The intrusion of this transmission line literally destroys the back to nature environment of this camp. In this camp children grow and harvest their own food and feed newborn animals. Hot water for showers is provided by wood and the camp has an operating grist mill. This camp allows no TV's or radios. In this natural environmental setting, Duke Power Company would erect large transmission poles and lines directly across the camp's entrance. Even Duke's own evidence, as shown in Duke Cross Exhibit 4, concedes this damage where Duke's appraiser, Mr. James Edney, states: "It should also be noted that the proposed power lines will detract from the aesthetic quality of the present entrance."

To make matters worse, the placement of these lines intrudes upon the view of the camp's "Sound of Music Hill" and even crosses this beautiful hillside and meadows! This hillside and meadows is used by the camp for a play area, for camping, for horseback riding, nature walks, Sunday evening Vespers, etc. These Sunday evening Vespers and other early evening activities will most notably be affected because the transmission line and the poles will run

directly between the high end of the meadow and the setting sun in the distant hills. There is no other place on the camp property that offers such a panoramic view of the setting sun. Again, I refer to Duke's own evidence presented in Duke Cross Exhibit 4, where Duke's own appraiser states: "Considering that a primary attribute of the property is the view, and that construction of the proposed power lines would obstruct this view, the value of the adjoining acreage would be significantly diminished." (emphasis added)

Without question, the placement of this transmission line violates the pristine environmental setting of this camp, unalterably damaging those unique environmental qualities and characteristics which make this camp such a special place. This camp and its unique environment is worth preserving for future generations. To even suggest this is the best location for a transmission line is absurd!

Having determined that this line causes significant environmental damage, the question now becomes has Duke Power Company acted arbitrarily and unreasonably in choosing this route. It should be noted that the majority stated that a "flagrant abuse" standard on the part of Duke would be necessary for this Commission to assume jurisdiction in this case. I feel the majority has erred in that a "flagrant abuse" standard implies an action that is reckless, intentional or done with a complete disregard for the consequences. However, in the Kirkman case the standards applied stated the action must be arbitrary and unreasonable. The majority by substituting their "flagrant abuse" standard has required a higher burden of proof from the complainant. I disagree with using this new standard and I believe that Duke's actions should be reviewed in respect to whether they have been "arbitrary and unreasonable" as per the Kirkman decision.

To be arbitrary and unreasonable (or capricious, which is usually used interchangably with arbitrary), an action by Duke would have to be done lacking sound or unsupported reasoning and judgments. In re Housing Authority, 235 N.C. 463, 468, 70 S.E. 2d 50 (1952). Now consider the fact that Duke, by its own admission and without reason, did not use the "best route" for this transmission line. Furthermore, Duke by its own admission and with no explanation made the seemingly illogical statement that it "could not obtain the right of way" for this "best route" even though Duke has the power of eminent domain. Lastly, Duke said the development which necessitated the need for the transmission line in the first place, Connestee Falls, would not sell them the requisite property for this line and substation so now Duke is condemning property along a less desirable route from someone else who also doesn't want to sell. Consequently Duke, with no defense of its reasoning, abandoned the "best route", claimed it could not aquire the property for this "best route", and is now condemning property it also couldn't aquire for a new and less desirable route! The reasoning and logic behind these actions escapes this Commissioner.

There is also evidence that Duke did not consider fully alternate routes such as those suggested by the camp. One alternate in particular suggested by the camp, which is reputed to have cost only $60,000 more and did not run into anyone's residence, was never inspected by Duke officials. The failure to fully examine this and other alternatives and to hastily abandon without reason the "best route" leaves the impression that Duke acted arbitrarily in this transmission line placement. This does not mean there was any malicious intent

on Duke's part, it simply means their actions do not appear justified by sound reasoning.

In conclusion, the evidence demonstrates that the placement of this transmission line causes significant irreparable harm to the environment. There is also sufficient evidence to indicate the routing of the line was done in an arbitrary manner, lacking thorough investigation by Duke of alternate routes and lacking logical explanations of why heretofore more desirable routes were abandoned. In the face of these circumstances, I believe this Commission must intercede and order Duke to move this transmission line.

Julius A. Wright, Commissioner

KOGER, COMMISSIONER, CONCURRING. The necessity of this concurring opinion is brought about by the incompleteness in both the Majority Order and in Commissioner Wright's well-intentioned dissent regarding the matter of why Duke did not choose the "preferred" or "best route" in this case. Duke defined the "preferred" or "best route" to be that route which resulted in a substation being placed near the Connestee Falls development and the Caesar's Head area. On Duke's Exhibit No. 2, it is shown as either one of two lines going through points 1 through 5 with a substation at point 5.

Duke gave three reasons for not choosing the "best route" as opposed to the one crossing the edge of the camp's property. The reasons stated under sworn testimony by Duke's witness were as follows:

(1) A suitable lot could not be obtained. (Tr. Vol. 1, p. 145);
(2) The estimated cost was $550,000, or more than double the cost of the finally chosen route through the edge of the camp. (Tr. Vol. 1, p. 145); and
(3) It would impact the environment by creating a ridge line effect. (Tr. Vol. 2, pp. 47 and 48).

I am of the opinion that this evidence further supports Duke's testimony that "each alternative route considered by Duke or proposed by Dr. Boyd either costs substantially more than the proposed route or impacts the local environment to a greater extent, or both" (Tr. Vol. 1, p. 147), and in turn fully supports the Commission's findings and conclusions that there was no flagrant abuse of discretion by Duke in the planning and routing of the new transmission line at issue.

The dissenting opinion also took issue with the "flagrant abuse" standard adopted by the majority, contending that the substitution of this standard for the "abuse of discretion" standard in the Kirkman case requires a higher burden of proof from the Complainant. The majority opinion carefully pointed out, however, that this was a case of first impression before the Commission, since in neither the Kirkman nor the McRae cases had condemnation proceedings been instituted for the property at issue in those cases. In adopting the "flagrant abuse" standard, the Commission was addressing the issue of "what standards would cause the Commission to assume jurisdiction where there is already a proceeding pending in a court of equal jurisdiction". (Emphasis added.) The majority opinion, in deferring to the Superior Court, was careful to point out

that the Superior Court would have before it the issue of the Company's exercise of discretion in locating the transmission line.

Notwithstanding all of the above, I share Commissioner Wright's concern over the aesthetic damage to the camp. I do believe this to be a unique and well-run camp and one to which I would send my children. However, I can find no flagrant abuse by Duke of its discretion under the law in this case.

Robert K. Koger, Commissioner

DOCKET NO. E-2, SUB 526

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Application of Carolina Power & Light	)	NOTICE OF
Company for Authority to Adjust and	)	DECISION
Increase its Electric Rates and Charges	)	AND ORDER

HEARD IN: Wayne Center, Corner of George and Chestnut Streets, Goldsboro, North Carolina, on May 26, 1987

New Hanover County Judicial Building, Fourth and Princeton Streets, Wilmington, North Carolina, on May 27, 1987

Conference Room, County Health Department Building, 35 Woodfin Street, and Superior Courtroom, Buncombe County Courthouse; Asheville, North Carolina, on May 27, 1987

Commission Hearing Room 2115, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on June 8-12, 16-19, and 22-26, 1987

BEFORE: Commissioner Edward B. Hipp, Presiding; and Commissioners Julius A. Wright, and William W. Redman, Jr.

APPEARANCES:

For Carolina Power & Light Company:

Richard E. Jones, Vice President and General Counsel; Robert W. Kaylor, Associate General Counsel; Margaret S. Glass, Associate General Counsel; and Rosemary G. Kenyon, Associate General Counsel, Carolina Power & Light Company, Post Office Box 1551, Raleigh, North Carolina 27602

and

Edward S. Finley, Jr., Hunton and Williams, Attorneys at Law, One Hannover Square, Raleigh, North Carolina 27606

For the Public Staff:

Antoinette R. Wike, Chief Counsel; Paul L. Lassiter, Staff Attorney; and James D. Little, Staff Attorney, Public Staff - North Carolina Utilities Commission, Post Office Box 29520, Raleigh, North Carolina 27626-0520
For: The Using and Consuming Public

For the Attorney General:

Jo Anne Sanford, Special Deputy Attorney General; Karen E. Long, Assistant Attorney General; Lorinzo L. Joyner, Associate Attorney

General; and Lemuel W. Hinton, 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 Consumer Interest of the U. S. Department of Defense (DOD) and Other Affected Executive Agencies:

David A. McCormick, Regulatory Law Office, Office of the Judge Advocate General, U. S. Department of the Army (JALS-RL), 5611 Columbia Pike, Falls Church, Virginia 22041-5013

For the Carolina Industrial Group for Fair Utility Rates (CIGFUR II):

Ralph McDonald and Carson Carmichael, III, Bailey, Dixon, Wooten, McDonald, Fountain and Walker, Attorneys at Law, Post Office Box 12865, Raleigh, North Carolina 27605-2865

For the Conservation Council of North Carolina:

John Runkle, Attorney at Law, Post Office Box 4135, Chapel Hill, North Carolina 27515

For the Carolina Utilities Customers Association, Inc. (CUCA):

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

For Herself (As a customer of Carolina Power & Light Company):

Elizabeth Anne Cullington, Route 5, Box 440, Pittsboro, North Carolina 27312

BY THE COMMISSION: On January 6, 1987, Carolina Power & Light Company (Applicant, Company, or CP&L) filed an application with the North Carolina Utilities Commission (Commission) seeking authority to adjust and increase electric rates and charges for certain customers served by the Company in North Carolina. The application seeks rates that produce approximately $173.4 million of additional annual revenues from the Company's North Carolina retail operations when applied to a test period consisting of the 12 months ended March 31, 1986, for an approximate 13.07% 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 February 5, 1987.

The principal reasons set forth in the application necessitating the requested increase in rates were: (1) the need to include in rates a portion of the Harris Plant investment which when added to construction work in progress already in rate base represents approximately 50% of the total Harris Plant investment; and (2) the need to recover the costs associated with adding new transmission and distribution facilities, maintenance and modification work at generating facilities, the Robinson Nuclear Unit's steam generator replacement, and other increases in the Company's overall cost of providing service.

With its application, the Company filed an Undertaking to Refund the revenues applicable to 50% of the depreciation expense and associated taxes and 50% of the Harris Plant capital costs over and above the amount presently reflected in rates pursuant to N.C.G.S. 62-133(b)(1) if these amounts were found in the second case to have been imprudently incurred.

On February 3, 1987, the Commission entered an Order 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.

On March 11, 1987, the Commission entered an Order pursuant to G.S. 62-137 declaring the Company's application to be a general rate case, 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.

The Company's application included a motion whereby the Commission was requested to enter an order authorizing deferral accounting of costs related to the Harris Plant during the period between commercial operation and the date the Commission issued its final order in this docket. The Commission previously authorized similar deferral of operating costs and fuel savings for Duke's McGuire Unit 2 in Docket No. E-7, Sub 373, for Catawba Unit 1 in Docket No. E-7, Sub 391, and for Catawba Unit 2 in Docket No. E-7, Sub 408. On March 2, 1987, at the Commission's regularly scheduled staff conference, the Public Staff recommended that CP&L's motion for deferral accounting of costs related to Harris Unit 1 be allowed. The Attorney General's Office noted its objection to the motion. The Commission entered an Order on March 31, 1987, approving CP&L's Undertaking filed with its Application and allowing the motion for deferral accounting except that the proposal by CP&L to reflect precommercial and postcommercial fuel savings related to Harris Unit 1 in customers' bills through the EMF was not approved and instead such fuel savings would be netted against the costs included in the deferred account. The Commission further provided that all parties would be given the opportunity to present testimony in CP&L's next general rate case concerning the appropriate level of deferred operating expenses, capital costs, and fuel savings and the appropriate amortization period and ratemaking treatment of these items, and in the event that a portion of the Harris Plant is disallowed in that proceeding, the level of deferred costs would be adjusted to reflect the disallowance.

On January 12, 1987, the United States Department of Defense filed its Petition to Intervene, which was allowed by Commission Order dated January 14, 1987.

On January 14, 1987, the Carolina Industrial Group for Fair Utility Rates (CIGFUR II) filed its Petition to Intervene, which was allowed by Commission Order dated January 19, 1987.

On January 16, 1987, the Attorney General of North Carolina filed Notice of Intervention in this docket pursuant to G.S. 62-20 on behalf of the using and consuming public.

On January 21, 1987, the Conservation Council of North Carolina filed its Petition to Intervene, which was allowed by Commission Order dated January 23, 1987.

On February 2, 1987, the Carolina Utility Customers Association, Inc. (CUCA) filed its Petition to Intervene. In its Petition to Intervene, CUCA moved that the Commission dismiss the application of CP&L for reasons stated therein, without prejudice to CP&L's right to refile using a test year consisting of the twelve months ended December 31, 1986. Both the Public Staff and CP&L filed responses to CUCA's Motion to Dismiss CP&L's Application. On March 11, 1987, the Commission issued an Order that allowed CUCA's intervention but denied CUCA's Motion to Dismiss CP&L's Application.

On May 20, 1987, Elizabeth Anne Cullington filed a Petition to Intervene on behalf of herself, which was allowed by Order of the Commission dated June 3, 1987.

On May 1, 1987, CP&L filed an application in Docket No. E-2, Sub 533, for an annual fuel charge adjustment proceeding pursuant to G.S. 62-133.2 and NCUC Rule R8-55. By letter accompanying the application, CP&L asked the Commission to schedule a hearing on the application so as to allow for issuance of a final order coincident with the final order issued in this docket. On May 18, 1987, the Attorney General filed a Motion to Consolidate Docket No. E-2, Sub 533 with this docket, contending that holding separate hearings would be administratively wasteful. On May 21, 1987, CUCA joined in the Attorney General's Motion for Consolidation, but also renewed its Motion to Dismiss the general rate case application. On May 22, 1987, CP&L filed a Response in which it stated that it would not object to consolidation of the hearings on the two proceedings but that separate orders should be issued in the two dockets. By Order of May 26, 1987, the Commission denied CUCA's renewed Motion to Dismiss CP&L's Application, but allowed the Motions of the Attorney General and CUCA in so far as they sought to have the hearing on CP&L's fuel charge application held concurrently with this rate case hearing.

An Order scheduling a prehearing conference for Wednesday, June 3, 1987, was entered by the Commission on May 22, 1987. The prehearing conference was held as scheduled before Sammy R. Kirby, Commission Hearing Examiner. Based upon statements which were offered and made by counsel and Ms. Cullington during the prehearing conference, the Commission entered a Prehearing Order on June 4, 1987, for the purpose of establishing basic procedures for the hearing.

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 May 26 through June 9, 1987:

Goldsboro: Jimmy Braswell, Durwood Farmer, Larry Jinnette, Lloyd Massey, Rodney M. Tart, James A. Hodges, Jr., Jim Barnwell, Edwin H. Allen, Butler Holt, and Rachel Jefferson.

Asheville: Carol W. McCurry, J. B. Campbell, George Roberts, Jean Ritchie, Odessa Richardson, Bob Kendrick, Morris Fox, Horace Constance, Bruce Peterson, Dorothy Kirschbaum, Tom Wilson, Richard Patzfahl, Irmgard Gordos, James A. Barrett, Wilbur Eggleston, Rosal Lee Davidson, Janis Luther, Rae Gibbons, F. W. Woody, Fred

Sealy, June Collins, Carolyn Tingle, David Spicer, Kathy Rogers, Jay Cole, Charles Brookshire, Gordon Hinners, Bob Gessner, Betty Parker, E. C. Bradley, Albert Ward, Pete Post, Ben Robinson, Helen T. Reed, Kate Jayne, Robert Taylor, Garrett Alderfer, Walter Kleina, Claudine Cremer, Lou Zeller, and David Gettleman.

Wilmington: Sandra Barone, Bernard Efford, Dan Williams, Robert Toplin, Grace A. Everett, Annie Mae Southerland, John Terrell, John McCoy, Closenu Sharp, Ron Shackelford, Steve Bader, and Sister Joan Keller.

Raleigh: Martha Drake, Gene Kornegay, Margaret Keller, Portia Brandon, Wells Eddleman, Bill Delamar, Travis Jackson, Laird Staley, Mark Marcoplos, Jesse W. Dry, Jr., Ronney Watt, Jonathan Laurer, John K. Nelms, Gerald Folden, Gus Anderson, Mason Hawfield, Jeff Smith, Helen Wolfson, Debbie Cooper, Bernard Herzbach, W. W. Finlator, Bruce E. Lightner, Ernest Hanford, Jim Berry, Anna Hawkins, David Kirkpatrick, Bernadine Weddington, Jane Montgomery, Jim Barnwell, Jane Sharp, Christopher Scott, and William N. McCormick.

A substantial number of the public witnesses specifically praised the level of service provided by the Company, while a few criticized the level of service. Most of the public witnesses opposed the rate increase, including some who were not customers of the Company. Several of the public witnesses were specifically opposed to the Harris nuclear plant, including some who were not customers of the Company.

On June 1, 1987, CP&L filed supplemental testimony and exhibits in this case. Included was the loss associated with the cancellation of Mayo Unit 2 and a recommendation that the loss be amortized over five years. The Public Staff and the Attorney General filed a joint Motion on June 5, 1987, opposing consideration of ratemaking treatment associated with the cancellation of Mayo Unit 2 until CP&L's next general rate case. The Commission ordered that consideration of the abandonment of Mayo Unit 2 should be delayed until CP&L's next rate case by Order dated June 16, 1987.

The case in chief came on for hearing on June 9, 1987. At the beginning of the hearing, the Company and the Public Staff presented a signed stipulation that adopted as facts certain portions of Public Staff witness Linda P. Haywood's testimony. That stipulation was accepted by the Commission.

CP&L offered the testimony and exhibits of the following witnesses: Sherwood H. Smith, Jr., President, Chief Executive Officer and Chairman of the Board of Directors of Carolina Power & Light Company, testified generally as to the Company's need for the proposed rate increases, the commercial operation of Unit 1 of the Shearon Harris Nuclear Station, the Company's financial condition and capital requirements, and its operating efficiency; James H. Vander Weide, Professor of Finance and Economics at the Fuqua School of Business at Duke University, testified as to rate of return on equity capital required for CP&L; Paul S. Bradshaw, Vice President and Controller of Carolina Power & Light Company, testified as to the revenues, expenses, and rate base amounts from the Company's books and known changes in levels of expense, as well as to the Company's capital structure; David R. Nevil, Manager of Rate Development

Administration in the Rates and Services Practice Department of CP&L, testified to the actual operating results of the Company for the test year, including a cost of service study and certain pro forma adjustments used in the adjusted cost of service study; and Norris L. Edge, Vice President for the Rates and Service Practices Department of CP&L, testified with respect to the proposed revenue increase, the rate design objectives, and the Company's load management activities. Testifying about fuel charge adjustments to the base fuel calculation were Larry L. Yarger, Manager of Fossil Fuel, Ronnie M. Coats, Assistant to the Group Executive, Fossil Generation and Power Transmission Group of CP&L; and David R. Nevil.

The Attorney General offered the testimony and exhibits of the following witnesses: Jocelyn M. Perkerson, Accountant with the Energy and Utilities Division of the Department of Justice, testified with respect to some of the income tax issues under the Tax Reform Act of 1986; David A. Schlissel of Schlissel Engineering Associates, Belmont, Massachusetts, testified with respect to base fuel factor calculations and alternative methodologies for normalizing the capacity factors of CP&L's nuclear units; Caroline M. Smith of J. W. Wilson and Associates, Inc., Washington, D.C., testified with respect to the cost of capital and rate of return.

Intervenor CUCA offered the testimony of John W. Bowyer, Professor of Finance, Washington University, Kirkwood, Missouri, who testified about the cost of capital and rate of return.

The Conservation Council of North Carolina offered the testimony of Wells Eddleman of Durham, North Carolina, who testified regarding the efficient use of energy, improvements in energy efficiency, and the impact of energy efficiency in rate design and ratemaking on various issues. The Conservation council also presented Dr. Robert B. Williams and Dr. Allin Cottrell of Elon College, who presented a report entitled "Does Shearon Harris Make Economic Sense?"

The United States Department of Defense (DOD) and other affected federal executive agencies offered the testimony of Suhas P. Patwardhan, P. E., of Oklahoma City, Oklahoma, who testified concerning cost of service and rate design, particularly large general service rates and large general service time-of-use rates.

CIGFUR II presented Nicholas Phillips, Jr., of St. Louis, Missouri, who testified concerning cost allocation and rate design. Other CIGFUR II witnesses were: Edward P. Schrum, Utilities and Maintenance Supervisor at the Monsanto Agricultural Company Plant at Fayetteville; Carl W. West, Energy Manager of the Weyerhaeuser Company's New Bern Pulp Mill operation; Robert B. Patterson, III, Energy Engineer at Champion International Corporation's Canton Mill; Herman S. Sears, Plant Manager of LCP Chemicals' plant at Riegelwood; Warren R. Bailey, Vice President and General Manager for Huron Tech Corporation in Delco; and Paul W. Magnabosco, Energy Coordinator for Federal Paper Board's Riegelwood operation. These witnesses generally cited the need for equitable distribution of costs between rate classes, the disparity between N.C. industrial rates and those elsewhere in the Southeast, and their efforts to conserve energy.

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 CP&L's cost of fuel and fossil fuel inventory; Thomas S. Lam, Engineer with the Electric Division, testified on cost of service methodology; Benjamin R. Turner, Engineer with the Electric Division, testified on rate design and plant depreciation; Jane Rankin, Accountant with the Accounting Division, testified on the working capital allowance; Linda P. Haywood, Accountant with the Accounting Division, testified with respect to the impact of costs arising from CP&L's agreements with the North Carolina Eastern Municipal Power Agency (NCEMPA or Power Agency) upon the North Carolina retail revenue requirement; and Candace A. Paton, Accountant with the Accounting Division, presented written testimony with respect to the accounting and ratemaking adjustments made by the Public Staff. For purposes of cross-examination, William E. Carter, Jr., Director of the Accounting Division, adopted Ms. Paton's testimony.

The Company offered rebuttal testimony of David R. Nevil after the intervenors presented their evidence. Mr. Nevil's rebuttal testimony concerned the adjustments recommended by Public Staff witness Linda P. Haywood.

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.

The Commission has received various letters and petitions regarding this matter. These have been filed with the Chief Clerk; however, this case has been decided on the basis of the evidence presented at the hearings as hereinafter set forth.

All parties to the proceeding were provided an opportunity to file proposed orders and briefs with the Commission, which were required to be filed on or before July 15, 1987, and July 17, 1987, respectively.

Based on the foregoing, the verified application, the testimony and exhibits received into evidence at the hearings, the proposed orders and briefs submitted by the parties, and the entire record in this proceeding, the Commission now makes the following

FINDINGS OF FACT

1. CP&L is engaged in the business of developing, generating, transmitting, distributing, and selling electric power and energy to the general public within a broad area of North Carolina, with its principal office and place of business in Raleigh, North Carolina.

2. CP&L is a public utility corporation organized and existing under the laws of the State of North Carolina and is subject to the jurisdiction of this Commission. CP&L is lawfully before this Commission based upon its application for a general increase in its North Carolina retail rates and charges pursuant to the jurisdiction and authority conferred upon the Commission by the Public Utilities Act.

3. The test period for purposes of this proceeding is the 12-month period ended March 31, 1986, adjusted for certain known changes based upon events and circumstances occurring up to the time of the close of the hearings in this docket.

4. The overall quality of electric service provided by CP&L to its North Carolina retail customers is good.

5. By its application, CP&L initially sought an increase in its rates and charges to its North Carolina retail customers of approximately $173,351,000, which would produce jurisdictional revenues of $1,499,228,000, based upon a test year ending March 31, 1986. Annualized revenues under present rates, according to CP&L, were $1,325,877,000, thereby necessitating this increase. On June 1, 1987, the Company filed supplemental testimony which did not request additional revenues, but purported to justify additional revenues of $22,900,000 over and above the $173,351,000.

6. CP&L's contracts to sell 16.17% of Mayo Electric Generating Plant Unit 1 and Shearon Harris Nuclear Power Plant Unit 1, 12.94% of Roxboro Steam Electric Plant Unit 4 and 18.33% of Brunswick Steam Electric Plant Units 1 and 2 to the North Carolina Eastern Municipal Power Agency consisted of three agreements: the Purchase, Construction and Ownership Agreement (Sales Agreement), the Operating and Fuel Agreement, and the Power Coordination Agreement (PCA). These contracts collectively have resulted in the cost of electricity to CP&L's North Carolina retail customers being lower than that cost would have been had CP&L itself financed the plant. Therefore, these contracts are reasonable and prudent, as used in determining the revenue requirement in this particular proceeding. The reasonable application of the terms of these contracts in determining the North Carolina retail revenue requirement in this proceeding requires the utilization of current costs and buyback percentages; recognition of the effects of the Tax Reform Act of 1986; utilization of the cost of common equity approved in this Order in the calculation of purchased capacity capital costs; and levelization of purchased capacity capital costs and purchased demand-related expenses, in order to prevent the overcollection of these costs by the Company. The reasonable amount of levelized purchased capacity costs and non-fuel purchased energy costs for use in this proceeding is $23,562,000.

7. CP&L should be allowed to include 50% of the Harris Plant Unit 1 in rate base and 50% of the related depreciation expense and associated taxes in its operating revenue deductions and to continue to defer and accrue carrying costs on the remaining 50% of the Harris Plant and depreciation and associated taxes consistent with the final Commission Order in Docket No. E-2, Sub 511. The inclusion of operation and maintenance expenses, including fuel savings, property taxes, and other expenses is at a 100% level in this proceeding. The cost of Harris Unit 1, comprising both the Company's ownership interest and the Power Agency purchased capacity, is not otherwise an issue in this case with respect to the reasonableness of the construction costs. Pursuant to the Commission Order entered in Docket No. E-2, Sub 511, the reasonableness and prudence of the construction costs of the Harris Plant will be decided in CP&L's next general rate case.

8. The summer/winter peak and average method, including the minimum system technique, and with the allocation factors adjusted to reflect the Power

Agency buyback percentages utilized in the case, Power Agency Reserve Capacity, and normalization of Power Agency Actual Entitlement Energy, 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/winter peak and average cost allocation method as described herein.

9. A base fuel component of 1.242 cents per kWh excluding gross receipts tax and including nuclear fuel disposal cost is reasonable and appropriate for this proceeding, resulting in a reasonable total fuel cost of $270,641,000 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. A normalized system nuclear generation mix using the average of CP&L's lifetime nuclear capacity factors by unit through March 31, 1987, 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 is appropriate for this proceeding for the Brunswick Units 1 and 2 and Robinson Unit 2. This normalization is consistent with Commission Rule R8-55 and results in normalized capacity factors of 54.375% for Brunswick Unit 1, 51.61% for Brunswick Unit 2, and 63.46% for Robinson Unit 2. The Harris nuclear unit should be normalized based on a 70% capacity factor. These normalized capacity factors by unit result in a reasonable and representative normalized system nuclear capacity factor of 60.07% which is appropriate for use in this proceeding.

10. The appropriate working capital allowance for coal inventory for North Carolina retail service is $49,101,000.

11. The reasonable allowance for total working capital for CP&L's North Carolina retail operations is $104,749,000.

12. CP&L's reasonable original cost rate base used and useful in providing service to the public within the State of North Carolina is $2,882,526,000 consisting of electric plant in service of $3,923,646,000, net nuclear fuel investment of $123,424,000, and an allowance for working capital of $104,749,000, reduced by accumulated depreciation of $836,080,000 and accumulated deferred income taxes of $433,213,000.

13. The appropriate level of gross revenues for CP&L for the test year, under present rates and after accounting and pro forma adjustments, is $1,325,856,000.

14. The reasonable level of test year operating revenue deductions for CP&L after normalization and pro forma adjustments is $1,074,649,000.

15. CP&L's reasonable and appropriate level of federal income tax expense in this case should be based on the use of a 40% blended rate. During the approximate seven month period extending from January 1, 1987, through August 5, 1987, CP&L has overcollected its federal income tax expense by approximately $26,859,000, excluding interest. Such overcollection is the result of the Company's current rates including provisional components reflecting a 46% federal income tax rate when in fact the actual rate as

required by the Internal Revenue Code for calendar year taxpayers like CP&L is 40% for 1987.

16. CP&L's existing schedule of depreciation rates is appropriate for use in computing depreciation expenses in this case, but the Company should prepare a study supporting its depreciation rates for presentation in its next general rate case proceeding.

17. The capital structure for the Company which is reasonable and proper for use in this proceeding is as follows:

Item	Percent
Long-term debt	48.5%
Preferred stock	8.5%
Common equity	43.0%
Total	100.00%

18. The fair rate of return that CP&L should have the opportunity to earn on its North Carolina net investment for retail operations is 10.45%, which requires additional annual revenues from North Carolina retail customers of $92,467,000, based upon the Company's adjusted level of operations for the test year ended March 31, 1986. This rate of return on CP&L's total net investment yields a fair rate of return on CP&L's original cost common equity of approximately 12.63%. Such rate of return will enable CP&L, by sound management, to produce a fair return for its shareholders, to maintain its facilities and service in accordance with the reasonable requirements of its customers, and to compete in the market for capital 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 8.81% and 8.74%, respectively.

19. Based upon the foregoing, CP&L should be authorized to increase its annual level of gross revenues under present rates by $92,467,000. After giving effect to the approved increase, the annual revenue requirement approved herein is $1,418,323,000, which will allow CP&L a reasonable opportunity to earn the rate of return on its rate base which the Commission has found just and reasonable. The revenue requirement approved herein is based upon the original cost of CP&L's property used and useful in providing service to its North Carolina retail customers and its reasonable test year operating revenues and expenses as previously set forth in these findings of fact.

20. Lower than average increases should be applied to the large general service customer class while average increases should be applied to the residential and small general service classes in order to move toward equalizing class rates of return.

21. Demand charges in the large general service rate schedule should be increased to three billing blocks based on size of demand.

22. The Company should prepare a study of the differences in kWh usage attributable to the various traffic signal configurations for presentation with its next general rate case.

23. The Company should file a plan for monitoring the on-peak loads of customers served under new rate schedule SGS-TES in order to analyze the impact of such loads on the system.

24. The rate designs, rate schedules, and service rules proposed by the Company are appropriate and should be adopted, except as modified herein.

The following schedules summarize the gross revenues and rates of return which the Company should have a reasonable opportunity to achieve based upon the findings of fact set forth herein.

SCHEDULE I
CAROLINA POWER & LIGHT COMPANY
North Carolina Retail Operations
Docket No. E-2, Sub 526
STATEMENT OF OPERATING INCOME
Twelve Months Ended March 31, 1986
(000's Omitted)

Item	Present Rates	Approved Increase	Approved Rates
Operating revenues	$1,325,856	$92,467	$1,418,323
Operating revenue deductions			
Fuel and purchased power	270,641	-	270,641
Other operation and maintenance expenses	474,451	-	474,451
Depreciation	150,036	-	150,036
Taxes other than income	76,085	2,977	79,062
Income taxes	103,436	39,018	142,454
Total	1,074,649	41,995	1,116,644
Operating income before adjustments	251,207	50,472	301,679
Interest on customer deposits	(552)	-	(552)
Net operating income	$ 250,655	$50,472	$ 301,127

SCHEDULE II
CAROLINA POWER & LIGHT COMPANY
North Carolina Retail Operations
Docket No. E-2, Sub 526
STATEMENT OF RATE BASE AND RATE OF RETURN
Twelve Months Ended March 31, 1986
(000's Omitted)

Item	Amount
Investment in electric plant	
Electric plant in service	$3,923,646
Net nuclear fuel	123,424
Accumulated depreciation	(836,080)
Accumulated deferred income taxes	(433,213)
Net investment in electric plant	2,777,777
Allowance for working capital	
Materials and supplies	77,444
Other rate base additions and deductions	(5,476)
Investor funds advanced for operations	32,781
Total working capital allowance	104,749
Original cost rate base	$2,882,526
Rates of return	
Present Rates	8.70%
Approved Rates	10.45%

SCHEDULE III
CAROLINA POWER & LIGHT COMPANY
North Carolina Retail Operations
Docket No. E-2, Sub 526
STATEMENT OF CAPITALIZATION AND RELATED COSTS
Twelve Months Ended March 31, 1986
(000's Omitted)

Item	Capitalization Ratio (%)	Original Cost Rate Base	Embedded Cost (%)	Net Operating Income
	Present Rates - Original Cost Rate Base			
Long-term debt	48.50	$1,398,025	8.81	$123,166
Preferred stock	8.50	245,015	8.74	21,414
Common equity	43.00	1,239,486	8.56	106,075
Total	100.00	$2,882,526		$250,655
	Approved Rates - Original Cost Rate Base			
Long-term debt	48.50	$1,398,025	8.81	$123,166
Preferred stock	8.50	245,015	8.74	21,414
Common equity	43.00	1,239,486	12.63	156,547
Total	100.00	$2,882,526		$301,127

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 20 - 24

The evidence regarding these findings of fact concerning rate design is found in the testimony and exhibits of Company witness Edge, Public Staff witness Turner, CIGFUR witness Phillips and DOD witness Patwardhan.

Percentage Increases and Rates of Return

Company witness Edge testified that the Company's rate design objective is to move toward equalized rates of return for all customer classes, and that the Company seeks to design rates that result in a rate of return for each customer class that does not vary by more than 10 percent from the overall N.C. retail rate of return. The Company proposed in this proceeding to increase rates for the residential and small general service customer classes by approximately 14.21%; increase rates for the large general service class by approximately 11.07%; increase rates for the sports field lighting class by approximately 13.07%; and maintain the lighting class (other than sports field lighting) at current rates.

Public Staff witness Turner offered several rate design alternatives which would also move the rate classes toward equalized rates of return. He recommended increasing the residential, small general service and large general service customer classes by approximately 11.10%; increasing the sports field lighting class by approximately 11.92%; and maintaining at current rates or decreasing the lighting class (except sports field lighting) by certain amounts depending on the resutling rates of return.

CIGFUR witness Phillips recommended that each customer class be increased in such a way as to reduce the deviation between that class rate of return and the overall N.C. retail rate of return by 50%.

DOD witness Patwardhan recommended that each customer class be increased in such a way as to equalize class rates of return over time, and that the increase for the large general service (LGS) class should be reduced to ensure that the rate of return of the LGS class does not deviate from the overall N.C. retail rate of return by more than 10%.

The Commission notes that the increases proposed by either the Company or the Public Staff would result in class rates of return for the residential, small general service and large general service classes which are within approximately 5% of the overall N.C. retail rate of return based on the summer/winter peak and average cost allocation methodology. Furthermore, the increases proposed by either the Company or the Public Staff would result in class rates of return for the sports field lighting class which are still more than 20% below the overall N.C. retail rate of return based on the summer/winter peak and average allocation method, and the current rates or the decreases proposed by the Public Staff for the lighting class (except sports field lighting) would result in class rates of return which are still more than 30% above the overall N.C. retail rate of return.

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. 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 concludes that rates for the large general service class should be increased by 0.9 times the percentage increase applied to the residential and small general service classes herein; that rates for the sports field lighting class should be increased by 1.1 times the percentage increase applied to the residential and small general service classes herein; and that rates for the lighting classes (except sports field lighting) should be maintained at current levels.

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. Nevertheless, the Commission is of the opinion that the figures contained in the cost allocation studies in evidence are a reasonable basis for concluding that the rate designs adopted herein will not result in unreasonable discrimination between the rate classes for purposes of this proceeding. The cost allocation studies indicate that the rate designs approved herein are not discriminatory and will result in substantial movement toward equalized class rates of return in this proceeding.

Large General Service Demand Charges

The Company proposed to revise the demand charge in its large general service rate schedule from a single billing block to three billing blocks: 0-5,000 kW, 5;000 to 10,000 kW, and over 10,000 kW. The additional billing blocks are intended to recognize the different voltage levels at which large customers receive service. Company witness Edge explained that the smallest loads typically are served from the distribution system, the largest loads are typically served from the transmission system, and intermediate sized loads are typically served from either the transmission or distribution systems or substations in between. The Public Staff and CIGFUR II supported the Company's proposal.

DOD witness Patwardhan proposed that the large general service demand charge be revised from a single billing block to four billing blocks: transmission level, transmission/distribution substation, primary distribution level, and primary/secondary distribution substation. He contended that such blocking would more directly recognize the different voltage levels of service than would blocking based on size of load.

Witness Edge testified on cross-examination that demand charges based directly on voltage levels of service rather than on size of load might encourage customers to specify transmission level voltage requirements when

applying for service even when their actual needs could be supplied by distribution level voltage.

The Commission is of the opinion that the demand charge blocks proposed by the Company should be adopted.

Demand Ratchets

DOD witness Patwardhan testified that the demand ratchet currently incorporated in the general service rate schedules is counterproductive to the Company's load management objectives. The ratchet provides for a minimum monthly billing demand of at least 80 percent of the maximum summer demand or 60 percent of the maximum winter demand during the previous 12 months. The Company does not propose to change its demand ratchet.

The Commission has reviewed the demand ratchet in detail in previous dockets and concluded that time-of-use (TOU) rates should not include a billing demand ratchet although the Company's billing demand ratchet for non-TOU rates was acceptable. Such conclusion was based on testimony that demand ratchets are a poor second choice to TOU rates as a peak load pricing mechanism, and that TOU rates are available to all customers on a voluntary basis.

The Commission concludes that the demand ratchets proposed for non-TOU rate schedules should be accepted for purposes of this proceeding.

New Schedule SGS-TES

The Company proposes a new Small General Service Thermal Energy Storage (SGS-TES) rate schedule which offers thermal energy storage service on a voluntary basis to nonresidential customers with less than 1000 kW contract demand. The rate schedule incorporates fewer on-peak hours than the small general service TOU rates in order to better permit feasible operation of thermal storage equipment during on-peak periods.

The Public Staff supports the proposal, but expressed concerns that the reduced on-peak hours might have a great enough impact on the system peak to cause a shift in the timing of the system peak. The Public Staff recommended that the loads served under the new rate schedule SGS-TES be monitored and recorded, and that the information from the monitoring devices be analyzed periodically in order to determine what impact such loads might be having on the system peak.

The Commission is of the opinion that the Public Staff recommendation has merit, but desires to ensure that the expense of such a monitoring program is not out of proportion to the expected benefits of the SGS-TES rate schedule. Therefore, the Commission concludes that the Company should file a plan for monitoring the loads of new SGS-TES customers in such a way as to provide data in a cost-effective manner for making a valid analysis of the impact of such loads on the system.

Traffic Signal Service

Public Staff witness Turner testified that the Company is conducting a study to determine the kWh usage attributable to various traffic signal installations, and that thus far it has found a significant difference between the kWh usage assumed in the rate schedule and the kWh usage measured at specific installations. The preliminary findings raise questions about the validity of the charges for traffic signal service based on the usage assumed in the rate schedule. Continuing study will hopefully lead to an improvement in the estimates of kWh usage contained in the rate schedule, or will indicate the necessity for metering each traffic signal installation.

The Public Staff recommended that the Company be required to prepare a detailed study of the kWh usage attributable to the various traffic signal configurations for presentation with its next general rate case.

The Commission is of the opinion that the Company should continue its investigation and that the Public Staff recommendation should be adopted.

Line Extension Plan E-1 and Rider 19

The Company's general rate application included a proposal to replace its various line extension plans with a single Line Extension Plan E-1 in order to treat both new underground and new overhead line extensions as standard. By separate Order issued June 25, 1987, in this docket, the Line Extension Plan E-1 was approved. However, underground service Rider 19 was not withdrawn by the Order of June 25, 1987, because of the corresponding revenue effect. The Commission now concludes that Rider 19 should be discontinued as it is no longer needed.

Service Regulation's - New Section 15

The Company proposes to add a new service regulation specifying that when the company incurs costs in preparing to furnish service to a person who has advised the company that he intends to contract with the company for electric service, and the person thereafter fails to contract with the company within a reasonable period of time, then such person shall be liable for the costs incurred by the company in preparing to serve him. The proposal was uncontested by any party.

However, the Commission is of the opinion that the proposed regulation would be more appropriate if it contained the language "subject to review by the Utilities Commission" at the end of the paragraph, and concludes that such additional language should be adopted.

Miscellaneous

The following rate design changes were proposed by the Company and were uncontested by any party in this proceeding:

(A) Include the rate adjustments contained in the cost of fuel rider, the EMF rider, and the order correction rider in all basic rates instead of in separate riders in order to simplify customer bills.

(B) Increase the charges for three phase service in the residential and small general service rate schedules from $5.25 to $6.25.

(C) Include 9 holidays in the off-peak hours for all TOU rate schedules.

(D) Retain the basic customer charge for residential non-TOU rates at $6.65.

(E) Discontinue the higher charge for the first 800 kWh during the winter months (thereby charging the same price per kWh for all kWh during the winter months) in residential non-TOU rates. The rates are already the same price per kWh during the summer months. The kWh differential between summer and non-summer energy charges will be maintained at $0.01 per kWh.

(F) Delete the provisions in the residential rates governing multiple dwelling units. Master metering is no longer permitted so the provision is not needed.

(G) Eliminate the separate thermal requirements for manufactured housing in the residential rates. Both conventional housing and manufactured housing now must meet the same thermal requirements to qualify for a 5% conservation discount.

(H) Revise the name of residential schedule R-TOU to R-TOU-D in order to clarify its distinction from schedule R-TOU-E.

(I) Revise the applicability clause in residential schedule R-TOU-E in order to delete the 500 customers limitation and to delete the rate's "experimental" designation. Also revise the on-peak and off-peak hours for schedule R-TOU-E to match the other TOU schedules.

(J) Revise the contract period for residential TOU rates from 1 year to 1 month for customers not previously on such rates. The contract period for customers returning to TOU rates will still be 1 year.

(K) Reduce the current basic customer charge in residential TOU rates from $11.31 and $10.39 to $9.75 in recognition of the expected lower cost of metering such service.

(L) Delete residential schedules R-FEA-2 and R-FEA-3. They were experimental schedules and no customers are served under them any longer.

(M) Increase the rates for closed rate schedules AHS, CSG, CSE and RFS by approximately 10 percentage points more than the overall increase in order to merge the closed schedules closer to the active schedules. This is the same process followed in all of the Company's rate cases over the past 8 years.

(N) Reduce the demand charge for large general service customers owning their own step-down transformers in order to offset those Company owned transformation costs built into the demand charges for large general service.

(O) Add rates for 5 lamp traffic signal fixtures on schedule TSS.

(P) Delete requirement for a written contract when obtaining service under area lighting schedule ALS.

(Q) Delete the 6,000 lumen incandescent fixture from the street lighting schedule SLS.

(R) Add a provision to schedules ALS and SLS governing customer contributions for outdoor lighting service under the Line Extension Plan E-1.

(S) Revise Military Service Rider 28 to clarify that it is available to both LGS and LGS-TOU; and eliminate the requirement for a 5 year contract under the Rider.

(T) Increase the maximum kW available to the total system for curtailable load under Curtailable Load Rider 58 from 100,000 kW to 150,000 kW; and add provisions governing two types of curtailable periods (economy and capacity) under the Rider. The two types of curtailable periods will give customers additional options for curtailing load.

(U) Revise street lighting service regulations to provide for a pro rata reduction of charges during periods when lighting fixtures are inoperable.

(V) Revise general service regulations to: (1) increase service charges for new connections from $12.00 to $14.00; (2) increase service charges for reconnections from $12.00 to $14.00 during normal business hours and from $25.00 to $30.00 during nonbusiness hours; (3) increase returned check charges from $6.00 to $7.00; (4) increase the low power factor adjustment from $0.25 to $0.30 per kW; (5) include waiver of certain charges following a natural disaster; (6) clarify customer rights and responsibilities in selection of rate schedules and riders; and (7) clarify company right of access to a customer's property over the same general route as the customer uses.

Based on its review of the Company's proposals, the Commission concludes that the rate designs, rate schedules and service regulations proposed by the Company should be approved except as discussed herein.

Filing of Rate Schedules

The Commission's final Order in Docket No. E-2, Sub 533, requires the filing of rate schedules designed to implement the fuel charge adjustment adopted by the Commission in said Order. Since the final Order in Docket No. E-2, Sub 533, will be issued jointly with this Order in Docket No. E-2, Sub 526, and the rate schedules filed in response to the Order in Docket No. E-2, Sub 533 and this Order in Docket No. E-2, Sub 526 will all be effective for service rendered on and after the same date, then the rate schedules filed in response to the Commission's Order in Docket No. E-2, Sub 533 will supercede those comparable rate schedules filed in response to this Order in Docket No. E-2, Sub 526. Therefore, the Commission concludes

that any rate schedules filed in response to the Commission's Order in Docket No. E-2, Sub 533 may be substituted for the comparable rate schedules filed in response to this Order in Docket No. E-2, Sub 526, provided said rate schedules are accompanied by an appropriate list of rates (not rate schedules) designed in accordance with this Order in Docket No. E-2, Sub 526.

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 CP&L is hereby authorized to adjust its electric rates and charges so as to produce an increase in gross annual revenues from its North Carolina retail operations of $92.5 million, said increase to be effective for service rendered on and after the date of this Order. However, due to the effect of the refund ordered in Decretal Paragraph No. 9 of this Order and the effect of a companion Order entered by the Commission on this same date in Docket No. E-2, Sub 533, approving a fuel charge rate reduction for CP&L, the net revenue increase authorized for the coming year will be $5.4 million based upon the test year level of operations. The fuel charge rate reduction and the tax rate change refund will remain in effect for a period of one year from the date of the Orders entered today in Docket Nos. E-2, Sub 526, and Sub 533.

2. That within five (5) workings days after the date of this Order, CP&L shall file with the Commission five (5) copies of a list of rates, rate schedules and service regulations designed to produce the increase in revenues set forth in Decretal Paragraph No. 1 herein in accordance with the guidelines set forth in Appendix A attached hereto. Said list of rates and rate schedules shall be accompanied by computations showing the level of revenues which will be produced by the rates for each rate schedule.

3. That within ten (10) working days after the date of this Order, CP&L shall file with the Commission five (5) copies of computations showing the overall North Carolina retail rate of return and the rates of return for each rate schedule which will be produced by the revenues approved herein. Said computations shall be based on the cost allocation methodology adopted herein, including the treatment adopted herein for the minimum system technique, adjustment of allocation factors to reflect power agency buyback percentages, power agency reserve capacity, and normalization of power agency actual entitlement energy.

4. That CP&L shall give appropriate notice of the rate increase approved herein and the fuel charge adjustment Order issued this day in Docket No. E-2, Sub 533, 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 No. 2 above.

5. That CP&L shall prepare cost allocation studies for presentation with its next general rate case which allocate production and distribution plant based on the following methods: (a) summer/winter peak and average including minimum system technique; (b) summer/winter peak and average excluding minimum

system technique; (c) 12 month coincident peak including minimum system technique; and (d) 12 month coincident peak excluding minimum system technique. The studies shall be included in item 45 of Form E-1 of the minimum filing requirements for general rate applications.

6. That CP&L shall prepare a study supporting its depreciation rates for presentation with its next general rate case.

7. That CP&L shall prepare a detailed study of the differences in kWh usage attributable to the various traffic signal configurations for presentation with its next general rate case.

8. That CP&L shall file with the Commission within 90 days after the date of this Order a plan for monitoring the on-peak loads of customers served under new rate schedule SGS-TES in such a way as to provide data in a cost-effective manner of making a valid analysis of the impact of such loads on the system.

9. That effective January 1, 1988, the federal income tax and the related gross receipts tax components of the rates and charges approved in this proceeding for CP&L 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. CP&L shall establish a "second deferred account" as of January 1, 1988, in which shall be accrued the difference between revenues billed under approved rates reflecting a 40% federal income tax rate and revenues that would have been billed if rates had been determined based upon a 34% federal income tax rate. Interest at a rate of 10% per annum shall be applied to this account and to the "first deferred account" established in Docket No. M-100, Sub 113 which tracked the difference in revenues billed under current rates reflecting a 46% federal income tax rate and revenues that would have been collected if rates had been based upon a 40% federal income tax rate. The "first deferred account" reflects an overcollection by CP&L of federal income tax expense of approximately $26,859,000 from its North Carolina retail customers, for the period extending from January 1, 1987, through August 5, 1987. Such overcollection shall be refunded to the Company's customers during the 12 month period following the date of this Order. CP&L shall file an appropriate decrement rider(s) to base rates designed to refund such overcollection. A final accounting and true-up, if required, of amounts collected and refunded in this regard shall be reflected in the Company's next application for a general rate increase.

ISSUED BY ORDER OF THE COMMISSION.
This the 5th day of August 1987.

NORTH CAROLINA UTILTIES COMMISSION
(SEAL) Gail L. Mount, Deputy Clerk

APPENDIX A

CAROLINA POWER & LIGHT COMPANY
Docket No. E-2, Sub 526
Guidelines for Design of Rate Schedules

(A) Determine the amount of rate schedule revenues and other revenues, respectively, which are necessary to produce the overall revenue requirement established by the Commission in this proceeding.

(B) Increase the rate schedule revenues for each rate schedule by the same percentage in order to produce the total rate schedule revenues determined in step (A), except as follows:

(a) Increase the rate schedule revenues for the Large General Service rate schedules by 0.9 times the percentage increase used for the Residential and Small General Service rate schedules.

(b) Increase the rate schedule revenues for the Sports Field Lighting rate schedule by 1.1 times than the percentage increase used for the Residential and Small General Service rate schedules.

(c) Maintain the currently approved rates for the outdoor Lighting rate schedules (except the Sports Field Lighting rate schedule).

(C) Reduce the individual prices proposed by the Company for a given rate schedule by the same percentage in order to reflect the total revenue requirement for the rate schedule as determined in step (B), except as follows:

(a) Hold the basic customer charge for Residential rate schedule RES at $6.65 and for Residential rate schedules R-TOU-D and R-TOU-E at $9.75.

(b) Maintain the $0.01 per kWh differential between summer and nonsummer energy charges in Residential rate schedule RES.

(c) Hold the miscellaneous service charges and extra charges at the same level proposed by the Company.

(d) Maintain revenue neutrality between comparable TOU rate schedules and non-TOU rate schedules.

(D) Round off individual prices to the extent necessary for administrative efficiency, provided said rounded off prices do not produce revenues which exceed the overall revenue requirement established by the Commission in this proceeding.

APPENDIX B

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

Application of Carolina Power & Light Company	)	NOTICE
for Authority to Adjust and Increase Its	)	TO
Electric Rates and Charges	)	CUSTOMERS

On August 5, 1987, the North Carolina Utilities Commission, after several months of investigation and following four weeks of hearings held throughout the State, issued its decision regarding CP&L's request for a $173 million general rate increase and its decision regarding CP&L's request to decrease the level of fuel cost included in its general rate case application. The Commission also issued its decision regarding CP&L's past over-recovery of $65.8 million in fuel cost and its decision regarding the Company's past overcollection of $26.9 million in cost related to the change in the maximum corporate federal income tax rate from 46% to 40%. The net effect of these decisions is to allow CP&L an overall rate increase of $5.4 million or 0.4% (four tenths of one percent).

The $173 million general rate increase proposed by CP&L would have resulted in a 13.07% overall revenue increase had the Company's requested increase been approved.

CP&L in a separate fuel cost adjustment filing proposed a reduction in the level of fuel cost included in its general rate case application. In terms of general rate case revenue requirements, CP&L's proposed fuel cost reduction had the effect of reducing its requested increase of 13.07% to 11.49%.

The $65.8 million fuel cost over-recovery and the $26.9 million income tax expense overcollection will be returned to customers over a period of approximately one year. These rate reductions will generally be accomplished by means of a credit to monthly customer bills. At the end of this one year period, at which time return of the over-recoveries will have been completed, customer bills overall will be increased by approximately 6.99%.

Based upon the overall net rate increase which is effective for a period of approximately one year, the Commission estimates that the summer bill of a typical residential customer using 1,000 kWh per month and presently paying $75.72 per month will increase to $77.18 per month or in a range of 1.9%. The Commission estimates that the winter bill of a typical residential customer using 1,000 kWh per month and presently paying $69.72 per month will decrease to $67.18 per month. CP&L's residential rates were increased more than its industrial rates due to the Commission having determined that such a distribution was necessary in order to have each customer class pay its fair share of the cost incurred in providing service.

In allowing the 0.4% overall net rate increase, the Commission found that the approved rates would provide CP&L under efficient management an opportunity to earn an overall rate of return of 10.45% on its investment in electric plant and facilities. This reflects a reduction from the 11.87% overall rate of return authorized for CP&L at the time of its last general rate case. The Commission found the 0.4% overall net rate increase to be the minimum that could be granted and still allow CP&L to maintain good service and continue a

reasonable construction program in order to meet growth in customer demand for electric energy.

Among the more controversial issues addressed by the Commission in its Order were the appropriate ratemaking treatment to be accorded certain aspects of the agreement between CP&L and the North Carolina Eastern Municipal Power Agency (NCEMPA) pertaining to the sale of a portion of CP&L's Shearon Harris Nuclear Power Plant to the NCEMPA and the appropriate ratemaking treatment to be followed in order to give effect to the reduction in federal income tax expense arising from the Tax Reform Act of 1986. In ruling on these issues, the Commission reaffirmed its finding in an earlier general rate case proceeding that the sale of a portion of the Shearon Harris Nuclear Power Plant was proper, and the Commission concluded that the net economic benefit of the sale should be apportioned uniformly to customers over the life of the related agreement. In regard to tax reform, the Commission's decision insures that the maximum economic benefit arising from the Tax Reform Act of 1986 will flow to the customers of CP&L. Specifically, the Commission's decision as previously indicated requires CP&L to refund $26.9 million in overcollection of income tax expense which occurred during the first 7 months of 1987, plus interest calculated at an annual rate of 10%. This overcollection arises from a change in the maximum corporate federal income tax rate of 46% to a blended rate of 40% for calendar year 1987. Further, the Commission has placed CP&L on notice that it will be required to refund a similar overcollection of cost plus interest, once it has occurred and once the exact amount can be determined, which will arise as a result of the change in the corporate federal income tax rate from 40% to 34%. This tax rate change will become effective January 1, 1988.

The reasonableness of the cost incurred in the construction of the Shearon Harris Nuclear Power Plant is an issue which has been reserved for the second phase of hearings to be held by the Commission. Postponement of consideration of this issue was necessary so as to allow the Public Staff adequate time to complete its comprehensive investigation in this regard. This investigation was undertaken pursuant to the petition of the Public Staff and as ordered by the Commission.

The increase granted was due principally to cost associated with the addition of new transmission and distribution facilities, cost associated with steam generator replacement at the Company's Robinson Nuclear Power Plant, cost associated with Nuclear Regulatory Commission mandated modifications at the Company's Brunswick Nuclear Power Plant, the effect of general inflation on CP&L's costs since its last general rate increase which became effective on September 22, 1984, and certain costs associated with the commercial operation of the Shearon Harris Nuclear Power Plant. CP&L has filed documents with the Commission agreeing to refund revenues collected as a result of the inclusion of the aforementioned Shearon Harris Nuclear Power Plant costs in its rates currently should the Commission in its second phase of hearings to be held in this regard determine these costs to have been imprudently incurred. Approximately 50% of the impact of the Shearon Harris Nuclear Power Plant has now been incorporated into rates.

The rate increase became effective for service rendered on and after August 5, 1987.

The Company's application for a general rate increase was filed on January 6, 1987. Its application for a fuel cost adjustment was filed on May 1, 1987. CP&L's fuel cost adjustment filing is required by North Carolina Statute and Commission Rule.

ISSUED BY ORDER OF THE COMMISSION.
This the 5th day of August 1987.

NORTH CAROLINA UTILITIES COMMISSION
(SEAL) Gail L. Mount, Deputy Clerk

DOCKET NO. E-2, SUB 526

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Application of Carolina Power & Light Company for Authority to Adjust and Increase Its Electric Rates and Charges	)	ORDER GRANTING PARTIAL INCREASE IN RATES AND CHARGES

HEARD IN: Wayne Center, Corner of George and Chestnut Streets, Goldsboro, North Carolina, on May 26, 1987

New Hanover County Judicial Building, Fourth and Princeton Streets, Wilmington, North Carolina, on May 27, 1987

Conference Room, County Health Department Building, 35 Woodfin Street, and Superior Courtroom, Buncombe County Courthouse; Asheville, North Carolina, on May 27, 1987

Commission Hearing Room 2115, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on June 8-12, 16-19, and 22-26, 1987

BEFORE: Commissioner Edward B. Hipp, Presiding; and Commissioners Julius A. Wright, and William W. Redman, Jr.

APPEARANCES:

For Carolina Power & Light Company:

Richard E. Jones, Vice President and General Counsel; Robert W. Kaylor, Associate General Counsel; Margaret S. Glass, Associate General Counsel; and Rosemary G. Kenyon, Associate General Counsel, Carolina Power & Light Company, P.O. Box 1551, Raleigh, North Carolina 27602

and

Edward S. Finley, Jr., Hunton and Williams, Attorneys at Law, One Hannover Square, Raleigh, North Carolina 27606

For the Public Staff:

Antoinette R. Wike, Chief Counsel; Paul L. Lassiter, Staff Attorney; and 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

For the Attorney General:

Jo Anne Sanford, Special Deputy Attorney General; Karen E. Long, Assistant Attorney General; Lorinzo L. Joyner, Associate Attorney General; and Lemuel W. Hinton, Assistant Attorney General, North Carolina Department of Justice, P.O. Box 629, Raleigh, North Carolina 27602-0629
For: The Using and Consuming Public

For the Consumer Interest of the U. S. Department of Defense (DOD) and Other Affected Executive Agencies:

David A. McCormick, Regulatory Law Office, Office of the Judge Advocate General, U. S. Department of the Army (JALS-RL), 5611 Columbia Pike, Falls Church, Virginia 22041-5013

For the Carolina Industrial Group for Fair Utility Rates (CIGFUR II):

Ralph McDonald and Carson Carmichael, III, Bailey, Dixon, Wooten, McDonald, Fountain and Walker, Attorneys at Law, P.O. Box 12865, Raleigh, North Carolina 27605-2865

For the Conservation Council of North Carolina:

John Runkle, Attorney at Law, Post Office Box 4135, Chapel Hill, North Carolina 27515

For the Carolina Utility Customers Association, Inc. (CUCA):

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

For Herself (As a customer of Carolina Power & Light Company):

Elizabeth Anne Cullington, Route 5, Box 440, Pittsboro, North Carolina 27312

BY THE COMMISSION: On January 6, 1987, Carolina Power & Light Company (Applicant, Company, or CP&L) filed an application with the North Carolina Utilities Commission (Commission) seeking authority to adjust and increase electric rates and charges for certain customers served by the Company in North Carolina. The application seeks rates that produce approximately $173.4 million of additional annual revenues from the Company's North Carolina retail operations when applied to a test period consisting of the 12-months ended March 31, 1986, for an approximate 13.07% 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 February 5, 1987.

The principal reasons set forth in the application necessitating the requested increase in rates were: (1) the need to include in rates a portion of the Harris Plant investment which when added to construction work in progress already in rate base represents approximately 50% of the total Harris Plant investment; and (2) the need to recover the costs associated with adding new transmission and distribution facilities, maintenance and modification work at generating facilities, the Robinson Nuclear Unit's steam generator replacement, and other increases in the Company's overall cost of providing service.

With its application, the Company filed an Undertaking to Refund the revenues applicable to 50% of the depreciation expense and associated taxes and 50% of the Harris Plant capital costs over and above the amount presently reflected in rates pursuant to N.C.G.S. 62-133(b)(1), if these amounts were found in the second case to have been imprudently incurred.

On February 3, 1987, the Commission entered an Order 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.

On March 11, 1987, the Commission entered an Order pursuant to G.S. 62-137 declaring the Company's application to be a general rate case, 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.

The Company's application included a motion whereby the Commission was requested to enter an order authorizing deferral accounting of costs related to the Harris Plant during the period between commercial operation and the date the Commission issued its final order in this docket. The Commission previously authorized similar deferral of operating costs and fuel savings for Duke's McGuire Unit 2 in Docket No. E-7, Sub 373, for Catawba Unit 1 in Docket No. E-7, Sub 391, and for Catawba Unit 2 in Docket No. E-7, Sub 408. On March 2, 1987, at the Commission's regularly scheduled staff conference, the Public Staff recommended that CP&L's motion for deferral accounting of costs related to Harris Unit 1 be allowed. The Attorney General's Office noted its objection to the motion. The Commission entered an Order on March 31, 1987, approving CP&L's Undertaking filed with its application and allowing the motion for deferral accounting, except that the proposal by CP&L to reflect precommercial and postcommercial fuel savings related to Harris Unit 1 in customers' bills through the EMF was not approved, and instead such fuel savings would be netted against the costs included in the deferred account. The Commission further provided that all parties would be given the opportunity to present testimony in CP&L's next general rate case concerning the appropriate level of deferred operating expenses, capital costs, and fuel savings and the appropriate amortization period and ratemaking treatment of these items, and in the event that a portion of the Harris Plant is disallowed in that proceeding, the level of deferred costs would be adjusted to reflect the disallowance.

On January 12, 1987, the United States Department of Defense filed its Petition to Intervene, which was allowed by Commission Order dated January 14, 1987.

On January 14, 1987, the Carolina Industrial Group for Fair Utility Rates (CIGFUR II) filed its Petition to Intervene, which was allowed by Commission Order dated January 19, 1987.

On January 16, 1987, the Attorney General of North Carolina filed Notice of Intervention in this docket pursuant to G.S. 62-20 on behalf of the using and consuming public.

On January 21, 1987, the Conservation Council of North Carolina filed its Petition to Intervene, which was allowed by Commission Order dated January 23, 1987.

On February 2, 1987, the Carolina Utility Customers Association, Inc. (CUCA), filed its Petition to Intervene. In its Petition to Intervene, CUCA moved that the Commission dismiss the application of CP&L for reasons stated therein, without prejudice to CP&L's right to refile using a test year consisting of the twelve months ended December 31, 1986. Both the Public Staff and CP&L filed responses to CUCA's Motion to Dismiss CP&L's Application. On March 11, 1987, the Commission issued an Order that allowed CUCA's intervention but denied CUCA's Motion to Dismiss CP&L's Application.

On May 20, 1987, Elizabeth Anne Cullington filed a Petition to Intervene on behalf of herself, which was allowed by Order of the Commission dated June 3, 1987.

On May 1, 1987, CP&L filed an application in Docket No. E-2, Sub 533, for an annual fuel charge adjustment proceeding pursuant to G.S. 62-133.2 and NCUC Rule R8-55. By letter accompanying the application, CP&L asked the Commission to schedule a hearing on the application so as to allow for issuance of a final order coincident with the final order issued in this docket. On May 18, 1987, the Attorney General filed a Motion to Consolidate Docket No. E-2, Sub 533, with this docket, contending that holding separate hearings would be administratively wasteful. On May 21, 1987, CUCA joined in the Attorney General's Motion for Consolidation, but also renewed its Motion to Dismiss the general rate case application. On May 22, 1987, CP&L filed a Response in which it stated that it would not object to consolidation of the hearings on the two proceedings, but that separate orders should be issued in the two dockets. By Order of May 26, 1987, the Commission denied CUCA's renewed Motion to Dismiss CP&L's Application but allowed the Motions of the Attorney General and CUCA insofar as they sought to have the hearing on CP&L's fuel charge application held concurrently with this rate case hearing.

An Order scheduling a prehearing conference for Wednesday, June 3, 1987, was entered by the Commission on May 22, 1987. The prehearing conference was held as scheduled before Sammy R. Kirby, Commission Hearing Examiner. Based upon statements which were offered and made by counsel and Ms. Cullington during the prehearing conference, the Commission entered a Prehearing Order on June 4, 1987, for the purpose of establishing basic procedures for the hearing.

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 May 26, through June 9, 1987:

Goldsboro: Jimmy Braswell, Durwood Farmer, Larry Jinnette, Lloyd Massey, Rodney M. Tart, James A. Hodges, Jr., Jim Barnwell, Edwin H. Allen, Butler Holt, and Rachel Jefferson.

Asheville: Carol W. McCurry, J. B. Campbell, George Roberts, Jean Ritchie, Odessa Richardson, Bob Kendrick, Morris Fox, Horace Constance, Bruce Peterson, Dorothy Kirschbaum, Tom Wilson, Richard Patzfahl, Irmgard Gordos, James A. Barrett, Wilbur Eggleston, Rosal Lee Davidson, Janis Luther, Rae Gibbons, F. W. Woody, Fred Sealy, June Collins, Carolyn Tingle, David Spicer, Kathy Rogers, Jay Cole, Charles Brookshire, Gordon Hinners, Bob Gessner, Betty Parker, E. C. Bradley, Albert Ward, Pete Post, Ben Robinson, Helen T. Reed, Kate Jayne, Robert Taylor, Garrett Alderfer, Walter Kleina, Claudine Cremer, Lou Zeller, and David Gettleman.

Wilmington: Sandra Barone, Bernard Efford, Dan Williams, Robert Toplin, Grace A. Everett, Annie Mae Southerland, John Terrell, John McCoy, Closenu Sharp, Ron Shackelford, Steve Bader, and Sister Joan Keller.

Raleigh: Martha Drake, Gene Kornegay, Margaret Keller, Portia Brandon, Wells Eddleman, Bill Delamar, Travis Jackson, Laird Staley, Mark Marcoplos, Jesse W. Dry, Jr., Ronney Watt, Jonathan Laurer, John K. Nelms, Gerald Folden, Gus Anderson, Mason Hawfield, Jeff Smith, Helen Wolfson, Debbie Cooper, Bernard Herzbach, W. W. Finlator, Bruce E. Lightner, Ernest Hanford, Jim Berry, Anna Hawkins, David Kirkpatrick, Bernadine Weddington, Jane Montgomery, Jim Barnwell, Jane Sharp, Christopher Scott, and William N. McCormick.

A substantial number of the public witnesses specifically praised the level of service provided by the Company, while a few criticized the level of service. Most of the public witnesses opposed the rate increase, including some who were not customers of the Company. Several of the public witnesses were specifically opposed to the Harris nuclear plant, including some who were not customers of the Company.

On June 1, 1987, CP&L filed supplemental testimony and exhibits in this case. Included was the loss associated with the cancellation of Mayo Unit 2 and a recommendation that the loss be amortized over five years. The Public Staff and the Attorney General filed a joint Motion on June 5, 1987, opposing consideration of ratemaking treatment associated with the cancellation of Mayo Unit 2 until CP&L's next general rate case. The Commission ordered that consideration of the abandonment of Mayo Unit 2 should be delayed until CP&L's next rate case by Order dated June 16, 1987.

The case in chief came on for hearing on June 9, 1987. At the beginning of the hearing, the Company and the Public Staff presented a signed stipulation that adopted as facts certain portions of Public Staff witness Linda P. Haywood's testimony. That stipulation was accepted by the Commission.

CP&L offered the testimony and exhibits of the following witnesses: Sherwood H. Smith, Jr., President, Chief Executive Officer and Chairman of the Board of Directors of Carolina Power & Light Company, testified generally as to

the Company's need for the proposed rate increases, the commercial operation of Unit 1 of the Shearon Harris Nuclear Station, the Company's financial condition and capital requirements, and its operating efficiency; James H. Vander Weide, Professor of Finance and Economics at the Fuqua School of Business at Duke University, testified as to rate of return on equity capital required for CP&L; Paul S. Bradshaw, Vice President and Controller of CP&L, testified as to the revenues, expenses, and rate base amounts from the Company's books and known changes in levels of expense, as well as to the Company's capital structure; David R. Nevil, Manager of Rate Development Administration in the Rates and Services Practice Department of CP&L, testified to the actual operating results of the Company for the test year, including a cost of service study and certain pro forma adjustments used in the adjusted cost of service study; and Norris L. Edge, Vice President for the Rates and Service Practices Department of CP&L, testified with respect to the proposed revenue increase, the rate design objectives, and the Company's load management activities. Testifying about fuel charge adjustments to the base fuel calculation were Larry L. Yarger, Manager of Fossil Fuel; Ronnie M. Coats, Assistant to the Group Executive, Fossil Generation and Power Transmission Group of CP&L; and David R. Nevil.

The Attorney General offered the testimony and exhibits of the following witnesses: Jocelyn M. Perkerson, Accountant with the Energy and Utilities Division of the Department of Justice, testified with respect to some of the income tax issues under the Tax Reform Act of 1986; David A. Schlissel of Schlissel Engineering Associates, Belmont, Massachusetts, testified with respect to base fuel factor calculations and alternative methodologies for normalizing the capacity factors of CP&L's nuclear units; Caroline M. Smith of J. W. Wilson and Associates, Inc., Washington, D.C., testified with respect to the cost of capital and rate of return.

Intervenor CUCA offered the testimony of John W. Bowyer, Professor of Finance, Washington University, Kirkwood, Missouri, who testified about the cost of capital and rate of return.

The Conservation Council of North Carolina offered the testimony of Wells Eddleman of Durham, North Carolina, who testified regarding the efficient use of energy, improvements in energy efficiency, and the impact of energy efficiency in rate design and ratemaking on various issues. The Conservation Council also presented Dr. Robert B. Williams and Dr. Allin Cottrell of Elon College, who presented a report entitled "Does Shearon Harris Make Economic Sense?"

The United States Department of Defense (DOD) and other affected federal executive agencies offered the testimony of Suhas P. Patwardhan, P. E., of Oklahoma City, Oklahoma, who testified concerning cost of service and rate design, particularly large general service rates and large general service time-of-use rates.

CIGFUR II presented Nicholas Phillips, Jr., of St. Louis, Missouri, who testified concerning cost allocation and rate design. Other CIGFUR II witnesses were: Edward P. Schrum, Utilities and Maintenance Supervisor at the Monsanto Agricultural Company Plant at Fayetteville; Carl W. West, Energy Manager of the Weyerhaeuser Company's New Bern Pulp Mill operation; Robert B. Patterson, III, Energy Engineer at Champion International Corporation's Canton Mill; Herman S. Sears, Plant Manager of LCP Chemicals' plant at Riegelwood; Warren R. Bailey,

Vice President and General Manager for Huron Tech Corporation in Delco; and Paul W. Magnabosco, Energy Coordinator for Federal Paper Board's Riegelwood operation. These witnesses generally cited the need for equitable distribution of costs between rate classes, the disparity between N.C. industrial rates and those elsewhere in the Southeast, and their efforts to conserve energy.

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 CP&L's cost of fuel and fossil fuel inventory; Thomas S. Lam, Engineer with the Electric Division, testified on cost of service methodology; Benjamin R. Turner, Engineer with the Electric Division, testified on rate design and plant depreciation; Jane Rankin, Accountant with the Accounting Division, testified on the working capital allowance; Linda P. Haywood, Accountant with the Accounting Division, testified with respect to the impact of costs arising from CP&L's agreements with the North Carolina Eastern Municipal Power Agency (NCEMPA or Power Agency) upon the North Carolina retail revenue requirement; and Candace A. Paton, Accountant with the Accounting Division, presented written testimony with respect to the accounting and ratemaking adjustments made by the Public Staff. For purposes of cross-examination, William E. Carter, Jr., Director of the Accounting Division, adopted Ms. Paton's testimony.

The Company offered rebuttal testimony of David R. Nevil after the intervenors presented their evidence. Mr. Nevil's rebuttal testimony concerned the adjustments recommended by Public Staff witness Linda P. Haywood.

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.

On July 28 and 30, 1987, the Commission issued its Order Requiring Filing of Data and Supplemental Order Requiring Filing of Data requesting CP&L and the Public Staff to provide certain data as detailed therein in order to enable the Commission to set forth accurately and specifically the findings of fact in this Order. Other parties were given an opportunity to comment on the calculations. The data was filed as requested on July 31, 1987. On August 4, 1987 comments were filed by the Public Staff and the Attorney General.

The Commission has received various letters and petitions regarding this matter. These have been filed with the Chief Clerk; however, this case has been decided on the basis of the evidence presented at the hearings as hereinafter set forth.

All parties to the proceeding were provided an opportunity to file proposed orders and briefs with the Commission, which were required to be filed on or before July 15, 1987, and July 17, 1987, respectively.

On August 5, 1987, the Commission issued a Notice of Decision and Order in this docket which stated that CP&L should be allowed an opportunity to earn a

rate of return of 10.45% on its investment used and useful in providing electric utility service in North Carolina. In order to have the opportunity to earn a fair return, CP&L was authorized to adjust its electric rates and charges to produce an increase in gross revenues of $92,467,000 on an annual basis. CP&L was also required to file proposed rates and charges necessary to implement the allowed rate increase in accordance with rate design guidelines established by the Commission.

On August 10, 1987, CP&L filed its proposed rates and charges as required by the Commission. On August 21, 1987, the Commission issued an Order Approving Tariff Filing.

Based on the foregoing, the verified application, the testimony and exhibits received into evidence at the hearings, the proposed orders and briefs submitted by the parties, and the entire record in this proceeding, the Commission now makes the following

FINDINGS OF FACT

1. CP&L is engaged in the business of developing, generating, transmitting, distributing, and selling electric power and energy to the general public within a broad area of North Carolina, with its principal office and place of business in Raleigh, North Carolina.

2. CP&L is a public utility corporation organized and existing under the laws of the State of North Carolina and is subject to the jurisdiction of this Commission. CP&L is lawfully before this Commission based upon its application for a general increase in its North Carolina retail rates and charges pursuant to the jurisdiction and authority conferred upon the Commission by the Public Utilities Act.

3. The test period for purposes of this proceeding is the 12-month period ended March 31, 1986, adjusted for certain known changes based upon events and circumstances occurring up to the time of the close of the hearings in this docket.

4. The overall quality of electric service provided by CP&L to its North Carolina retail customers is good.

5. By its application, CP&L initially sought an increase in its rates and charges to its North Carolina retail customers of approximately $173,351,000, which would produce jurisdictional revenues of $1,499,228,000, based upon a test year ending March 31, 1986. Annualized revenues under present rates, according to CP&L, were $1,325,877,000, thereby necessitating this increase. On June 1, 1987, the Company filed supplemental testimony which did not request additional revenues but purported to justify additional revenues of $22,900,000 over and above the $173,351,000.

6. CP&L's contracts to sell 16.17% of Mayo Electric Generating Plant Unit 1 and Shearon Harris Nuclear Power Plant Unit 1, 12.94% of Roxboro Steam Electric Plant Unit 4, and 18.33% of Brunswick Steam Electric Plant Units 1 and 2 to the North Carolina Eastern Municipal Power Agency consisted of three agreements: the Purchase, Construction and Ownership Agreement (Sales Agreement), the Operating and Fuel Agreement, and the Power Coordination

Agreement (PCA). These contracts collectively have resulted in the cost of electricity to CP&L's North Carolina retail customers being lower than that cost would have been had CP&L itself financed the plant. Therefore, these contracts are reasonable and prudent, as used in determining the revenue requirement in this particular proceeding. The reasonable application of the terms of these contracts in determining the North Carolina retail revenue requirement in this proceeding requires the utilization of current costs and buyback percentages; recognition of the effects of the Tax Reform Act of 1986; utilization of the cost of common equity approved in this Order in the calculation of purchased capacity capital costs; and levelization of purchased capacity capital costs and purchased demand-related expenses, in order to prevent the overcollection of these costs by the Company. The reasonable amount of levelized purchased capacity costs and nonfuel purchased energy costs for use in this proceeding is $23,562,000.

7. CP&L should be allowed to include 50% of the Harris Plant Unit 1 in rate base and 50% of the related depreciation expense and associated taxes in its operating revenue deductions and to continue to defer and accrue carrying costs on the remaining 50% of the Harris Plant and depreciation and associated taxes consistent with the final Commission Order in Docket No. E-2, Sub 511. The inclusion of operation and maintenance expenses, including fuel savings, property taxes, and other expenses is at a 100% level in this proceeding. The cost of Harris Unit 1, comprising both the Company's ownership interest and the Power Agency purchased capacity, is not otherwise an issue in this case with respect to the reasonableness of the construction costs. Pursuant to the Commission Order entered in Docket No. E-2, Sub 511, the reasonableness and prudence of the construction costs of the Harris Plant will be decided in CP&L's next general rate case.

8. The summer/winter peak and average method, including the minimum system technique, and with the allocation factors adjusted to reflect the Power Agency buyback percentages utilized in the case, Power Agency Reserve Capacity, and normalization of Power Agency Actual Entitlement Energy, 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/winter peak and average cost allocation method as described herein.

9. A base fuel component of 1.242¢/kWh excluding gross receipts tax and including nuclear fuel disposal cost is reasonable and appropriate for this proceeding, resulting in a reasonable total fuel cost of $270,641,000 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. A normalized system nuclear generation mix using the average of CP&L's lifetime nuclear capacity factors by unit through March 31, 1987, 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 is appropriate for this proceeding for the Brunswick Units 1 and 2 and Robinson Unit 2. This normalization is consistent with Commission Rule R8-55 and results in normalized capacity factors of 54.375% for Brunswick Unit 1, 51.61% for Brunswick Unit 2, and 63.46% for Robinson Unit 2. The Harris nuclear unit should be normalized based on a 70%

capacity factor. These normalized capacity factors by unit result in a reasonable and representative normalized system nuclear capacity factor of 60.07% which is appropriate for use in this proceeding.

10. The appropriate working capital allowance for coal inventory for North Carolina retail service is $49,101,000.

11. The reasonable allowance for total working capital for CP&L's North Carolina retail operations is $104,749,000.

12. CP&L's reasonable original cost rate base used and useful in providing service to the public within the State of North Carolina is $2,882,526,000 consisting of electric plant in service of $3,923,646,000, net nuclear fuel investment of $123,424,000, and an allowance for working capital of $104,749,000, reduced by accumulated depreciation of $836,080,000 and accumulated deferred income taxes of $433,213,000.

13. The appropriate level of gross revenues for CP&L for the test year, under present rates and after accounting and pro forma adjustments, is $1,325,856,000.

14. The reasonable level of test year operating revenue deductions for CP&L after normalization and pro forma adjustments is $1,074,649,000.

15. CP&L's reasonable and appropriate level of federal income tax expense in this case should be based on the use of a 40% blended rate. During the approximate seven-month period extending from January 1, 1987, through August 5, 1987, CP&L has overcollected its federal income tax expense by approximately $26,859,000, excluding interest. Such overcollection is the result of the Company's current rates including provisional components reflecting a 46% federal income tax rate when in fact the actual rate as required by the Internal Revenue Code for calendar year taxpayers like CP&L is 40% for 1987.

16. CP&L's existing schedule of depreciation rates is appropriate for use in computing depreciation expenses in this case, but the Company should prepare a study supporting its depreciation rates for presentation in its next general rate case proceeding.

17. The capital structure for the Company which is reasonable and proper for use in this proceeding is as follows:

Item	Percent
Long-term debt	48.5%
Preferred stock	8.5%
Common equity	43.0%
Total	100.00%

18. The fair rate of return that CP&L should have the opportunity to earn on its North Carolina net investment for retail operations is 10.45%, which requires additional annual revenues from North Carolina retail customers of $92,467,000, based upon the Company's adjusted level of operations for the test year ended March 31, 1986. This rate of return on CP&L's total net investment

yields a fair rate of return on CP&L's original cost common equity of approximately 12.63%. Such rate of return will enable CP&L, by sound management, to produce a fair return for its shareholders, to maintain its facilities and service in accordance with the reasonable requirements of its customers, and to compete in the market for capital 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 8.81% and 8.74%, respectively.

19. Based upon the foregoing, CP&L should be authorized to increase its annual level of gross revenues under present rates by $92,467,000. After giving effect to the approved increase, the annual revenue requirement approved herein is $1,418,323,000, which will allow CP&L a reasonable opportunity to earn the rate of return on its rate base which the Commission has found just and reasonable. The revenue requirement approved herein is based upon the original cost of CP&L's property used and useful in providing service to its North Carolina retail customers and its reasonable test year operating revenues and expenses as previously set forth in these findings of fact.

20. Lower than average increases should be applied to the large general service customer class while average increases should be applied to the residential and small general service classes in order to move toward equalizing class rates of return.

21. Demand charges in the large general service rate schedule should be increased to three billing blocks based on size of demand.

22. The Company should prepare a study of the differences in kWh usage attributable to the various traffic signal configurations for presentation with its next general rate case.

23. The Company should file a plan for monitoring the on-peak loads of customers served under new rate schedule SGS-TES in order to analyze the impact of such loads on the system.

24. The rate designs, rate schedules, and service rules proposed by the Company are appropriate and should be adopted, except as modified herein.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 1, 2, AND 3

The evidence supporting these findings of fact is contained in the verified application, the Commission's files and records regarding this proceeding, the Commission Orders scheduling hearings, and the testimony of Company witnesses. These findings of fact are essentially informational, procedural, and jurisdictional in nature, and the matters which they involve are essentially uncontradicted.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 4

The evidence for this finding of fact concerning the quality of service is found in the testimony of Company witness Smith and the various public witnesses who appeared at the hearings in Asheville, Wilmington, Goldsboro, and Raleigh. The Commission notes that the record contained little, if any, evidence which would suggest any problems as to the adequacy of CP&L'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 CP&L to retail customers in North Carolina is good.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 5

The evidence supporting this finding of fact is contained in the Company's verified application, the Commission Order entered in this docket on March 11, 1987, and the testimony and exhibits of the Company's witnesses.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 6

The evidence supporting this finding of fact is found in the testimony and exhibits of Public Staff witness Haywood and Company witnesses Smith, Bradshaw, and Nevil. Public Staff witness Haywood testified that on July 30, 1981, CP&L and the North Carolina Eastern Municipal Power Agency (Power Agency or NCEMPA) became parties to agreements whereby certain portions of several of CP&L's generating plants were sold to Power Agency. Power Agency, a municipal corporation composed of thirty-two (32) cities and towns, operates and maintains electric distribution systems located in eastern North Carolina. CP&L and Power Agency executed three agreements. The first agreement, known as the Purchase, Construction and Ownership Agreement (also referred to as the Sales Agreement), established the maximum interests in generating capacity which CP&L agreed to convey to Power Agency. In the Sales Agreement, CP&L sold to Power Agency undivided interests in certain of its generating facilities and associated fuel. Power Agency's ownership in these joint facilities originally included as much as 18.33% of the Brunswick Steam Electric Plant, Unit Nos. 1 and 2, near Southport, North Carolina (nuclear-fueled; in service); 12.94% of Unit No. 4 at the Roxboro Steam Electric Plant located in Roxboro, North Carolina (coal-fired; in service); 16.17% of the Mayo Electric Generating Plant, Unit Nos. 1 and 2, in Person County, North Carolina (coal-fired; under construction at the time of the sale); and 16.17% of the Shearon Harris Nuclear Power Plant, Unit Nos. 1, 2, 3, and 4, near New Hill, North Carolina (nuclear-fueled; under construction at the time the Agreements were signed). Harris Unit Nos. 3 and 4, however, were cancelled prior to the First Closing, and Unit No. 2 was cancelled after the First Closing. Mayo Unit No. 2 has also been cancelled. After the cancellation of Harris Units 2, 3, and 4, and Mayo Unit 2, the Power Agency ownership percentage of these cancelled units was changed to 12.94%. The Power Agency's ownership interest in fuel is the same as its ownership interest in the Joint Unit to which the fuel relates.

In the second agreement, known as the Operating and Fuel Agreement, CP&L has agreed to be solely responsible for the operation and maintenance of the Joint Units. In addition, CP&L acts as operator and dispatcher of the Joint Facilities and serves as project manager of the construction of any capital additions to or modifications of the Joint Facilities. Power Agency reimburses CP&L for its ownership share of the construction and operating costs of the Joint Units.

The third agreement, the Power Coordination Agreement, provides for the interconnection of the CP&L system with the Joint Units and the Power Agency's participants' electric distribution systems. The terms pursuant to which CP&L furnishes to Power Agency the necessary supplemental power, transmission services, and backstand services are also found in this agreement. Moreover,

this agreement established an arrangement by which CP&L will buy back from Power Agency some of the capacity and energy from Power Agency's ownership interests in the Mayo and Harris Units in declining amounts over a 15-year period beginning at 50% in the first year of commercial operation and declining by 3.33%, each year down to 0% in the 16th year.

The Commission finds that the uncontroverted description of the agreements presented by Public Staff witness Haywood and stipulated to by CP&L as being factually correct is an accurate account of the provisions found in the terms of the contracts.

Public Staff witness Haywood testified that these contracts overall were beneficial to the North Carolina retail customers. Company witness Smith testified that because of the exempt-from-tax nature of Power Agency's debt, its long-term debt costs are three to five percentage points below that of the Company. Witness Smith also testified that Power Agency, being a nonprofit organization, pays no dividends to its stockholders. Witness Haywood and witness Smith both discussed the split savings concept, whereby CP&L and Power Agency developed a formula that enabled both parties to split the difference between their respective costs of capital. Under this theory, the Power Agency would realize a profit from the buyback, but the cost of the power to CP&L would be less than what it would have been had CP&L financed the entire plant itself.

Based upon all the evidence set forth hereinabove, the Commission concludes that the Power Agency agreements as presented in this proceeding are beneficial to the North Carolina retail customers. Therefore, the Commission finds that the costs associated with these contracts are prudent and reasonable, and should be appropriately reflected in the rates set in this proceeding. The Commission notes, however, that this finding is made on the basis of the agreements as they and their costs have been presented and explained to the Commission in this docket. 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 CP&L 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 present finding. Any such additional costs will be subject to the Commission's review and evaluation on a case-by-case basis.

The Company and the Public Staff disagree as to the appropriate treatment to be given various components of the cost of power bought back by CP&L from Power Agency. The following schedule sets forth the differences between the Company and the Public Staff as to the appropriate level of purchased capacity and nonfuel energy expense related to the Harris and Mayo Units:

Item	Harris and Mayo Purchased Capacity and Nonfuel Energy Costs (000's)
Amount per company using 12CP cost of service study	$ 40,304
Difference due to Public Staff adjustments to reflect change to adjusted SWPA cost of service study including witness Haywood's allocation factor adjustments	(760)
Company reallocated amount	39,544
Other Public Staff adjustments:	
Utilization of 1987 estimated Mayo costs	(98)
Weighting of buyback percentages and energy normalization	(2,082)
Weighting of federal income tax rates	(619)
Utilization of Public Staff recommended return on common equity	(3,911)
Levelization of purchased capacity costs	(11,907)
Total other Public Staff adjustments	(18,617)
Amount Per Public Staff	$ 20,927

The difference between the Company and the Public Staff due to the Public Staff's adjustments to the allocation study is discussed in conjunction with the Evidence and Conclusions for Finding of Fact No. 8. In accordance with that finding of fact, the Commission concludes that an adjustment of $819,000 to reduce the Company's recommended level of Harris and Mayo purchased capacity and nonfuel energy costs is appropriate rather than the Public Staff's $760,000 adjustment.

The first of the remaining differences between the Company and the Public Staff relates to the utilization of estimated 1987 costs for the Mayo buyback. Public Staff witness Haywood testified that the Company used 1987 estimated costs related to the Harris Plant, while using test-year costs for the Mayo Plant. Public Staff witness Haywood testified that since the amount deferred under the Public Staff's levelization recommendation will be based upon ongoing costs, it is appropriate to reflect the most current costs possible in the initial calculation of adjusted purchased capacity and nonfuel energy costs. Witness Haywood also stated that the usage of the 1987 Mayo estimated costs does not create a material difference from the Company's per books amount. In performing her calculations, witness Haywood also used Harris 1987 estimated costs just as the Company had done. The Company contended during its cross-examination of witness Haywood that it is inappropriate to match 1987 costs with buyback percentages based partly on 1987 and partly on 1988. Public Staff witness Haywood responded that this is the same methodology used by Duke Power Company and approved by the Commission in Docket No. E-7, Sub 408.

The evidence shows that the Mayo 1987 estimated costs are not materially different from the test year level of costs, and since Harris Unit 1 did not begin commercial operation until May 2, 1987, it is necessary to use Harris 1987 estimated costs. The Commission, therefore, concludes that the use of Mayo and Harris estimated 1987 costs are representative of the ongoing costs that the Company is actually experiencing. The Commission also agrees that using 1987 costs is appropriate to reflect the most current cost possible in the initial calculation of adjusted purchased capacity and nonfuel energy costs, since the amount deferred under the levelization plan approved herein will be based on ongoing costs.

The Commission recognizes that this is the same methodology approved in Duke Power Company's last general rate case (Docket No. E-7, Sub 408) with regard to the costs of Catawba Unit 1.

The Commission disagrees with the Company's contention that the combination of 1987 estimated costs with the weighted 1987/1988 buyback percentage is an inappropriate matching. In many instances, the Commission uses cost rates and levels that are not restricted by the bounds of the test year. Examples of such in this case include unit fuel costs and nonrevenue-producing plant investment. There are various reasons for adopting these costs; however, one unifying factor that they have in common is that they are independent of the measures of service which delineate the test year (number of customers, kWh sales, kW demand, etc.). Therefore, for example, one can adopt a unit fuel cost from a time period after the test year and apply it to test year generation without resulting in an inappropriate matching. Moreover, the unit fuel cost does not have to be taken from the same time period as the nonrevenue-producing plant amount, because they are independent of each other.

Public Staff witness Haywood has utilized Harris and Mayo estimated costs from 1987, a period beyond the end of the test year. The fact that these cost rates are from a period beyond the test year does not violate the test year matching concept, since purchased capacity and nonfuel energy cost rates are independent of and do not rely on the measures of test year service. More importantly, the combination of 1987 cost rates and 1987/1988 buyback percentages is not an inappropriate matching because these items are independent of each other. The unit cost rates will not change simply because of a change in the buyback percentages. Witness Haywood has utilized the most current annual cost she had available, and applied the ongoing buyback percentages to that. The Commission concludes in this proceeding that such a treatment does not result in an inappropriate matching of costs with buyback percentages.

The second difference of $2,082,000 between the Company and the Public Staff relates to the appropriate treatment of the buyback percentages and energy normalization associated with the Harris and Mayo Units. In regard to the energy normalization piece of this adjustment, the Public Staff reflected its recommended normalized generation associated with Harris and Mayo in calculating the level of purchased mWh to be used in its calculation of purchased nonfuel energy costs. Consistent with its decisions set forth in the Evidence and Conclusions for Finding of Fact No. 9 regarding normalized generation, the Commission concludes that the appropriate levels of purchased

mWh generation to be reflected in its calculation of purchased nonfuel energy costs are 428,838 mWh for Harris and 215,880 mWh for Mayo.

In support of the other part of the $2,082,000 difference, as it relates to the buyback percentages, Public Staff witness Haywood presented prefiled testimony stating that pursuant to Article 5.3(A) of the Power Coordination Agreement (PCA), the purchases (buyback) with respect to Harris begin when the unit goes into commercial operation and continue for 15 years in amounts declining from 50% of Power Agency's ownership interest in the first year to 0% in the 16th year. It is also stated in Article 5.3(B) of the PCA that:

> For each of the Units, Year 1 shall begin on the date of Commercial Operation of each unit. If such date of Commercial Operation occurs prior to July 1, Year 1 shall end on December 31 of that calendar year. If such date of Commercial Operation occurs on or after July 1, Year 1 shall end on December 31 of the next succeeding year.

Witness Haywood stated that the Company projected and reflected in its filing a 50% buyback for the entire 12-months of its pro forma test year, the expected first year of operation of the Harris Unit. Harris officially became commercial on May 2, 1987. As stated above, given the plant's actual commercial operation date, the PCA provides that 1987 be recognized as the first year of operation, coupled with a 50% buyback. The agreement also requires that the buyback percentage decrease to 46.667% on January 1, 1988, which would be the beginning of the second year of operation. Therefore, according to witness Haywood, in order to accurately recognize the effect of the contracts upon the current operations of the Company, the Public Staff utilized a weighted average of the first (1987) and second (1988) year buyback percentages to better reflect the ongoing costs associated with the buyback. The weighted-average percentage of the Public Staff is based upon the 50% buyback in effect for the five remaining months in 1987, under the assumption that the rates set in this proceeding go into effect on August 1, 1987; plus, seven months of 1988 at a 46.667% buyback. The resulting Harris buyback weighted-average percentage is 48.055%.

Witness Haywood testified that Mayo Unit 1 began commercial operation on March 1, 1983; consequently, the buyback percentage has been declining from 50% by 3.333% per year since that date. In its filing, the Company calculated the Mayo buyback percentage based on purchases for the first nine months of the test year (April 1985 through December 1985) at 43.333% plus the last three months of the test year (January 1986 through March 1986) at 40%. The average purchased capacity and energy percentage for the test year resulting from this weighting is approximately 42.4%. Witness Haywood testified that she determined the appropriate Mayo weighted buyback percentage the same way she did for Harris. The only distinguishing factor is the fact that the buyback percentages are different due to different commercial operation dates. Thus, witness Haywood testified, the appropriate Mayo weighted-average buyback percentage was 34.722% calculated by the weighting of the 36.667% buyback in effect for the five remaining months in 1987 and the 33.333% buyback in effect for the first seven months of 1988.

During cross-examination of witness Haywood, counsel for the Company implied that there were problems with using the 1987 and 1988 weighted-average percentages related to the buyback provision, because such an approach goes

beyond the test-year period and even beyond the time of the hearing. However, Public Staff witness Haywood testified that the change in the buyback percentages occurring on January 1, 1988, is a known change. She testified that this change is reflected in the terms of the existing Power Coordination Agreement. Company witness Nevil agreed that under the terms of the PCA, the buyback percentages change at the beginning of each calendar year. Witness Haywood further stated that the percentages which she used in the determination of purchased capacity and nonfuel energy costs are those which will be in effect for the year beginning August 1, 1987, the expected date of the Final Order in this proceeding.

The treatment of the buyback percentages recommended by the Public Staff has been accepted by the Commission in each of Duke Power Company's two most recent general rate cases (Docket No. E-7, Subs 391 and 408). The Commission is of the opinion that the costs of purchased capacity and energy should be included on an ongoing basis; that is, they should reflect the most current factors applicable and admissible per G.S. 62-133(c). The Commission concludes that the change in the buyback percentages occurring on January 1, 1988, is in fact a known change that reflects the actual and currently existing terms of the Power Coordination Agreement. The Commission is aware of the fact that the percentages used by witness Haywood, in this proceeding to determine the purchased capacity and energy costs reflect the percentages that the Company is presently using in its 1987 buyback calculation and will be using in the 1988 calculation as well. The Commission concludes that the weighting of the 1987 and 1988 buyback percentages, recommended by the Public Staff is appropriate and reasonable. This conclusion is also consistent with the treatment given Duke Power Company for similar situations. The Commission thus concludes that it is appropriate to weight purchased capacity and energy costs using the buyback percentages in effect for the final five months of 1987 and the first seven months of 1988. To adopt the Company's position would result in the overrecovery of these costs, before consideration of levelization.

The third difference between the Company and the Public Staff concerns the appropriate income tax components within the calculation of the purchased capacity capital costs for Harris and Mayo. Public Staff witness Haywood testified that there were several factors which necessitated this adjustment. The major factor was the Tax Reform Act of 1986, which changed the maximum corporate federal income tax rate from 46% to 34% on July 1, 1987. Calendar year corporate taxpayers, however, will utilize a blended rate during 1987 of approximately 40%. Further, purchased capacity capital costs paid each year are based upon the income tax rates in effect for the year. During 1987, the capital cost of purchased capacity is being calculated by CP&L using the 40% blended federal income tax rate. During 1988, however, the 34% federal income tax rate will be used. Thus, witness Haywood testified, purchased capacity capital costs will differ in 1987 and 1988 due to the known change in the utilized tax rate. Therefore, it is proper to weight the income tax components of purchased capacity capital costs in the same manner as recommended by the Public Staff for the buyback percentages (i.e., for 1987 a 40% tax rate is used and for 1988 a 34% tax rate is used).

Public Staff witness Haywood also testified that this adjustment is not in conflict with Public Staff witness Carter's recommendation that a 34% federal income tax rate should be used to calculate income tax expense in the cost of service, and that the two issues are entirely different. Witness Haywood

stated that witness Carter's income tax adjustment dealt with the Company's actual income tax expense liability, whereas her adjustment concerned the income tax rate that CP&L reflects in its actual purchased capacity cost calculation pursuant to the terms of the Power Agency agreements.

Witness Haywood stated that one area affected by her adjustment to the income tax components was the average earning base used in the purchased capacity capital cost calculation, due to the effects of the reduction in tax rates on average accumulated deferred income taxes. Other areas affected were the income tax component of return as well as income taxes due to the nonallowance of allowance for funds used during construction as a tax deduction.

Based on the foregoing, the Commission concludes that the treatment of the income tax components within the purchased capacity capital cost calculation as recommended by the Public Staff which incorporates tax rates of 40% for 1987 and 34% for 1988 is reflective of the terms in the contracts and the ongoing costs of purchased capacity under those terms. The Commission concludes that the Public Staff's treatment in this regard should be adopted for use in this proceeding.

During witness Haywood's cross-examination, she stated that Haywood Exhibit I, Schedules 3-1(b) and 3-2(b) "Revised," Line 5, may reflect incorrect amounts used for the investment tax credit (ITC) amortization. Witness Haywood stated that this had been brought to her attention shortly before her appearance before the Commission, and she would review the Company's contention as soon as possible, but pointed out that Company representatives acknowledged that the revenue impact of this error was slight.

In its proposed order the Public Staff presented adjustments which reflect the correction of this error. As previously presented, the Public Staff's adjustments relating to the calculation of purchased capacity capital costs totaled $6,710,000, and the levelization adjustments totaled $11,907,000. Upon correction of its treatment of the ITC amortization for 1988, the Public Staff presented adjustments totaling $6,668,000 and $11,906,000, respectively. Based upon these revised figures, the Public Staff recommended that the Harris and Mayo purchased capacity and nonfuel energy costs be included in the cost of service at a level of $20,970,000.

The Commission concludes that the ITC amortization within the purchased capacity capital cost calculation should be expressed on a pretax basis; therefore, the 1988 amounts should be based on a federal tax rate of 34% as corrected by the Public Staff, rather than 40% as initially proposed by the Public Staff. The purchased capacity capital cost approved herein by the Commission reflects the appropriate treatment of the ITC amortization component in this regard.

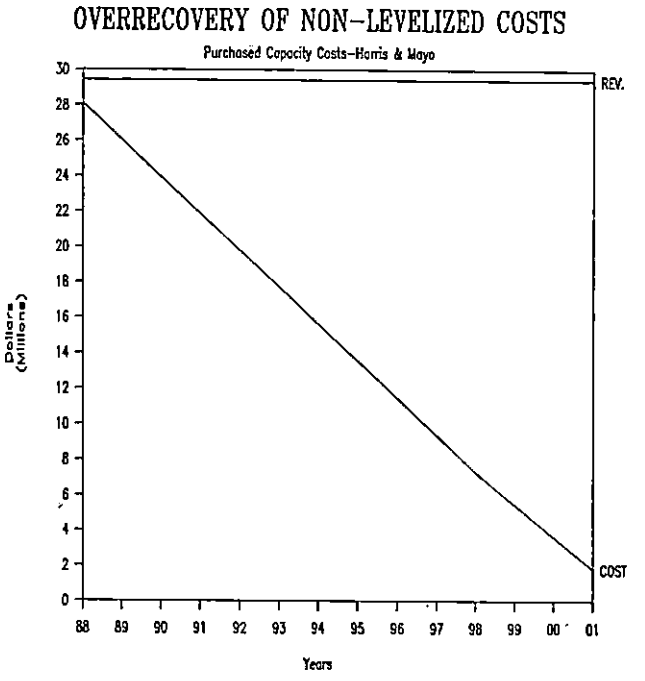
The fourth difference between the Company and the Public Staff relates to the appropriate rate of return to be used in the calculation of purchased capacity capital costs. In this calculation, the parties differ as to the appropriate rate of return on common equity to be used. Both the Company and the Public Staff agree that the rate allowed by the Commission in this proceeding will become the constraining return for the contractual calculation as soon as the Order is issued. The Company has utilized its current allowed

return on equity of 15.25% as the basis for its Harris purchased capacity capital costs and the return actually paid during the test year for Mayo. Public Staff witness Haywood has utilized the Public Staff's recommended return on common equity of 11.79% for both units.

The Commission concludes that the rate of return on common equity allowed in this proceeding is the appropriate rate to be used for ratemaking purposes in calculating the capital cost of purchased capacity related to the Harris and Mayo Units. Use of this rate of return fairly and reasonably reflects the ongoing return component of purchased capacity capital cost, since this rate will become the benchmark per the terms of the PCA upon the issuance of this Order. Therefore, based upon the Evidence and Conclusions for Finding of Fact No. 18, the Commission concludes that the use of 12.63% is appropriate for this proceeding.

The fifth difference between the Company and the Public Staff relates to the levelization of the reasonable level of purchased capacity costs associated with the Harris and Mayo Units. The Public Staff recommended a levelization plan that extends over the lives of the buybacks from Power Agency. The plan provides for the levelization of both purchased capacity capital costs and purchased demand-related expenses. The levelization as it relates to the Harris plant would extend to December 31, 2001; the levelization related to the Mayo plant would extend to December 31, 1997. The costs deferred due to levelization would accrue a return calculated at the overall net-of-tax rate of return. Public Staff witness Haywood testified that such a levelization would benefit the ratepayers of the Company. Witness Haywood stated 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 both the purchased capacity capital costs and the demand-related costs decline over time due to the continuing decline in the amounts of power bought back from Power Agency, and (2) the overcollection of these costs by the Company if no such rate proceedings take place due to the above-mentioned decline.

The chart below, presented at the hearing as Public Staff Smith Cross-Examination Exhibit No. 5, sets forth the position of the Public Staff as to the effect of not levelizing these costs using the Public Staff's initial cost recommendation in this proceeding.



This chart shows the Public Staff's contention that absent the effect of any subsequent rate proceedings, the Company will increasingly overrecover the purchased capacity costs unless levelization is adopted. Without levelization, rates would be set at the current buyback percentages, and the decline of the buyback percentages in future years would not be recognized by adjustments in rates, unless a rate case was held each year. Thus, revenues would continue to flow in at a fixed level, while these costs would decline by 3.33% per year. In response to this exhibit, Company witness Smith agreed that what it sets forth would occur if the Company did not come in each year for a rate hearing, unless increasing costs offset the overrecovery, and no mechanism was provided to adjust for changing costs.

Public Staff witness Haywood testified that levelization of purchased capacity costs would not impair the Company, because through the return accrued on the costs deferred under levelization the Company will be made whole for all of these costs. Witness Haywood testified that the Company should establish a

deferred account or accounts to track the difference between the costs of purchased capacity and the levelized recovery. Under her recommendation, the account would accrue a return equal to the overall rate of return approved in this case, and such return would be compounded at the end of each calendar year. The deferrals and the return would be maintained on a net-of-tax basis. Witness Haywood testified that under her 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.

Company witnesses Smith, Bradshaw, and Nevil testified that the Company objects to the levelization plan proposed by witness Haywood. Witness Bradshaw stated that the Company's major concern was that witness Haywood's levelization plan could constitute a phase-in under regulations presently proposed by the Financial Accounting Standards Board (FASB). He further stated that a phase-in not qualified under the FASB statement could cause the Company to suffer adverse financial conditions. The proposed Statement of Financial Accounting Standards (SFAS) is described in Public Staff Bradshaw Cross Examination Exhibit Nos. 1 and 2. According to the exhibits, a phase-in plan is defined as any method of ratemaking that meets the following criteria:

(a) It was adopted in connection with a major recently completed plant of the utility or one of its major suppliers or a plant scheduled for completion in the near future.

(b) It defers cost recognition compared to generally accepted accounting principles applicable to enterprises in general.

(c) It defers cost recognition compared to the methods routinely used for that utility by that regulator for similar costs prior to December 1982.

According to Public Staff Bradshaw Cross-Examination Exhibit No. 1, all of the following criteria must be met in order to capitalize deferred costs related to a phase-in plan in accordance with generally accepted accounting principles:

(a) The costs in question are deferred pursuant to a formal plan that has been agreed to by the regulator.

(b) The plan specifies the timing of recovery of all costs that will be deferred under the plan.

(c) Rate increases scheduled under the plan must not be backloaded (in terms of annual percentage increases in rates, they must be straight-line or decreasing).

(d) All costs deferred under the plan are scheduled for recovery within 10 years of the date when deferral begins.

Company witness Smith testified that the Company opposes the Public Staff's levelization plan, because it would not meet the 10-year recovery criterion. Witness Bradshaw stated that his concern was that the levelization plan and the Harris phase-in plan could be considered as one plan, and therefore the failure

of the levelization plan to meet the FASB criteria could affect the entire Harris plant phase-in.

During cross-examination, however, witness Bradshaw agreed that the proposed SFAS has been pending for three years, but stated that he was hopeful that the statement will be issued prior to year-end 1987. Witness Bradshaw also agreed that there is a difference of opinion as to whether or not the proposal will even include levelization as a phase-in in its final form. The Company contended that it was not against levelization in principle, as long as the Company was permitted to recover all of the levelized costs but would rather wait until the next case, and perhaps by then the "uncertainties" concerning what is simply the latest draft of this proposed FASB statement would no longer exist.

Public Staff witness Haywood testified that there are two basic uncertainties regarding this pending SFAS. First, it is not certain that a final statement will be issued in the near future. Second, it is not clear that the statement if eventually issued will even apply to the levelization plan that she is recommending. Witness Haywood further testified that given these uncertainties, she continues to recommend that the levelization period extend over the lives of the buybacks. She also added that if a SFAS is issued after her testimony in this case, if the Company presents evidence, including a statement from its auditors and/or other authoritative sources, showing that the provisions of the SFAS apply to the levelization plan, and if the Public Staff agrees with that evidence, the Public Staff would not oppose appropriate modification of the levelization plan at an appropriate time. Company witness Bradshaw testified under cross-examination and Public Staff witness Haywood agreed that the proposed FASB rule also provides transitional rules which provide an opportunity for modification of any plan not in compliance with the final statement prior to the statement becoming applicable to that particular plan.

Company witness Smith testified that the Company's proposal for handling the costs associated with the buyback of Harris plant capacity from the Power Agency is more appropriate than that of the Public Staff, because the Public Staff's proposal to levelize those costs would lead to a larger percentage rate increase in the Company's next rate case. Witness Smith further testified that if levelization is adopted in this case, then the Company would receive a lower percentage increase in this case, and that would therefore mean that the requested percentage increase in the next case would be higher. Witness Smith testified that this would defeat the Company's objective of a steady, level phase-in of the overall rate increase over two cases.

During witness Haywood's cross-examination by Company counsel Kenyon, witness Haywood was asked if her deferred account constituted retroactive ratemaking. Company witnesses Smith and Bradshaw also contended that the levelization plan proposed by witness Haywood was not developed in such a way that allows the Company an opportunity to recover all of its purchased capacity costs in the future. Witness Haywood stated that based upon the advice of her counsel her plan does not constitute retroactive ratemaking. Witness Haywood further testified that her levelization plan provides a vehicle that enables the Company to recover costs that she had estimated for some 15 years in the future in an attempt to ensure that ratepayers do not overpay in rates for costs that are declining each year. Witness Haywood testified that the

deferred account that she has recommended is a vehicle which the Company can utilize to keep track of the difference between the actual costs and levelized payments. Witness Haywood testified that for rate cases occurring during the levelization period, the amount in the deferred account would be flowed into the levelization calculation so that the Company would recover all its costs during the remainder of the levelization period. She further stated that in her opinion the Public Staff's plan is reasonable.

Company witness Nevil testified that the Public Staff did not "levelize" the North Carolina retail allocation factors in the same way it levelized the costs of the buyback. Witness Nevil testified that such a "levelization," which would involve the adjustment of the allocation factors to reflect the impact of the decreasing buyback in each year through the year 2001, was necessary to match the decline in system costs for the next 15 years with the increase in the allocation factors.

Based upon all the evidence presented in this proceeding, the Commission concludes that the levelization of purchased capacity costs provides significant benefits to the Company's ratepayers and should be adopted. Levelization will compensate for the known decreases in capacity purchases in the coming years and will protect ratepayers from overpaying while protecting and preventing the Company from undercollecting the costs being levelized. All of these benefits will be realized without the frequent proceedings which could otherwise be necessary to provide them.

Therefore, the Commission concludes that the Company's revenue requirement in this proceeding due to Harris and Mayo purchased capacity costs should be calculated by use of a levelization plan which includes the levelization of both the purchased capacity capital costs and the purchased demand-related expenses for the Harris and Mayo units. The difference between the levelized cost and the Company's actual Harris and Mayo purchased capacity payments should be placed in a deferred account and should accrue a return based upon the overall-net-of-tax rate of return approved by the Commission in this proceeding. Said return should be calculated utilizing a federal income tax rate of 40% in 1987 and 34% in 1988 and beyond, in accordance with the Commission's findings regarding income taxes. The return so calculated should be compounded at the end of each calendar year after the date of this Order. In rate cases occurring during the levelization period, the Commission instructs that the actual balance in the deferred account should be adjusted as necessary to reflect the estimated balance at the Order date in that case, and should be flowed into the levelization calculation so that it would be recovered during the remainder of the levelization period. The Commission of course retains discretion as to the determination of the appropriateness, accuracy, and reasonableness of the deferred balances proposed for flow-in in any future proceeding. The Commission concludes that maintenance of the deferred account in this manner will enable the Company to recover, but not overrecover, the actual costs subject to levelization.

The Commission concludes that the above-deferred account does not constitute retroactive ratemaking. The above accounting treatment is consistent with the Commission's treatment of Catawba Unit 1 levelized purchased capacity costs in Docket No. E-7, Sub 408, and the positions expressed by the Public Staff at the hearing in that proceeding. The Commission realizes that levelization is a vehicle that provides the Company

with a means of recovering the actual costs associated with purchased capacity incurred over the lives of the buybacks. At the same time, the ratepayers do not overpay for these declining costs. In the Commission's Final Order in each of the two Duke Power Company rate proceedings in which it has approved levelization of portions of purchased capacity costs (Docket No. E-7, Subs 391 and 408), the Commission has instructed that the deferred account should include the difference between the levelized payment and the actual amount of the cost being levelized. The Commission also finds the deferred account to be a reasonable method of allowing the Company the opportunity to recover its costs while not causing the ratepayers to overpay for these costs.

The Commission notes the fact that the deferred account is not necessary in order to levelize costs. The levelization plan could be implemented without providing a mechanism which allows the Company to recover its actual costs. Such a levelization would simply rely on estimates of ongoing costs, a normal ratemaking procedure. In an attempt to reflect fairness to all parties concerned, however, the Commission agrees with the Public Staff in its recommendation to allow the Company an opportunity to recover its actual costs through the deferred account and earn a return on deferred revenues. Therefore, the Commission concludes that the Public Staff's recommendation for use of a deferred account is both reasonable and appropriate in this proceeding.

The Commission is aware of the basic uncertainties surrounding the pending Statement of Financial Accounting Standards as to its effective date and its application to the levelization plan recommended by Public Staff witness Haywood. At this time, the Commission has no means of determining when the pending statement will be issued, whether the statement will apply to the levelization plan recommended by witness Haywood, or whether or not the pending statement will be retroactive. The Commission notes, however, that under the current FASB proposal, if the final statement applies to the levelization plan, CP&L certainly has the option to request a modification of the levelization. The Commission recognizes its obligation to set rates as low as reasonably possible without delay. Keeping this premise in mind, the Commission concludes that the Company's proposal to wait and perhaps levelize in the next general rate case after the issuance of the pending statement should be rejected. The Commission agrees, however, that if the final statement is issued in the near future, and if the statement applies to the levelization plan, and if the plan is not in compliance with the final statement (specifically, the 10-year recovery criterion), the Company should request a modification that will ensure compliance.

The Commission concludes that the assertions of witness Smith as to the effect of levelization upon the percentage rate increase allowed by the Commission in this and the Company's next rate proceeding are not adequate to justify a delay of levelization until the next proceeding. The Commission agrees with witness Haywood's testimony that levelization benefits the ratepayers without harming the Company; CP&L will be made whole regardless of the case in which levelization is adopted. The Commission has an obligation to set rates as low as reasonably possible. Levelization, in the opinion of the Commission, is reasonable and should be adopted in this case in order to provide the benefits of a lower revenue requirement to the ratepayers.

The Commission does not agree with the Company that the levelization it has approved herein and the phase-in of the Harris plant investment and capital costs adopted in Docket No. E-2, Sub 511, could be considered as only one phase-in plan for the entire facility. These plans are totally separate from each other and were adopted in response to different issues and different situations.

The Commission concludes that Company witness Nevil's contention that allocation factors should be "levelized" in the same way that the costs of purchased capacity are being levelized is incorrect and should not be adopted in this proceeding; nor does it provide justification for not levelizing purchased capacity costs. While it is true that allocation factors may change in the future, the impact of the buyback on the factors is only one of many potential changes. The Commission cannot predict what these changes will be, or whether they will act to increase or decrease North Carolina retail costs. Moreover, an allocation factor is not an independently existing entity outside of a Commission proceeding. It is a mechanism used by the Commission to set fair and reasonable rates. The Commission chooses to not predict what those factors will be 15-years in the future. The variability in the allocation factors as they apply to levelization is a risk no different from the variability in the factors as they apply to any other cost in this rate proceeding. The Company is already being afforded significant protection in the levelization plan by the establishment of the deferred account; the Commission finds that it would not be reasonable or practical to attempt to afford it additional protection by trying to predict allocation factors for 15-years into the future. Moreover, the Commission concludes that the allocation factors found reasonable in this proceeding should be used to determine the North Carolina retail deferral pursuant to levelization, until such factors are reviewed in the Company's next general rate case proceeding.

Based upon all of the conclusions stated hereinabove, the Commission finds that the level of Harris and Mayo purchased capacity and nonfuel energy expenses appropriate for use in this proceeding is $23,562,000 for purchased capacity and nonfuel energy costs. This amount reflects the following adjustments to decrease the Company's proposed amounts for purchased capacity and nonfuel energy costs:

Adjustment to reflect Commission adjusted SWPA	$ 819,000
Harris purchased capacity and energy	$4,505,000
Mayo purchased capacity and energy	$1,173,000
Levelization of Harris purchased capacity	$9,333,000
Levelization of Mayo purchased capacity	$ 912,000

These adjustments are consistent with the Commission's decisions on: the appropriate cost of service study, utilization of Harris and Mayo 1987 estimated costs, buyback percentages, energy normalization, weighting of federal income tax rate - 40% for 1987 and 34% for 1988 and beyond, and capital structure with related cost rates.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 7

The evidence for this finding of fact concerning Harris Plant rate base is contained in the testimony of Company witnesses Smith and Bradshaw, North

Carolina Conservation Council witness Eddleman, and Professors Williams and Cottrell of the Department of Economics at Elon College, and in the Commission Order entered in Docket No. E-2, Sub 511, on July 24, 1986. That Order established principles and procedures for the plant phase-in of the Shearon Harris Nuclear Station and deferral of certain costs associated with the phase-in. Among the procedures established in that Order was a requirement that the Company should include no more than 50% of the capital costs of the Harris Plant in rate base and depreciation expense of no more than 50% of the cost of the Harris Plant in operating expenses in any general rate case the Company filed prior to April 15, 1987. The aforementioned costs and expenses are subject to refund. Further, the Commission ordered that any issues pertaining to the reasonableness and prudence of the costs associated with the Harris Plant would be litigated in the first general rate case filed by the Company on or after April 15, 1987.

As Company witness Smith testified, CP&L has included in rate base in its filing 50% of the Harris Plant, which in the Company's original filing was approximately $858 million on a North Carolina retail basis. The Company updated this value to approximately $910 million to reflect the actual cost of Harris as of April 30, 1987. The Company has also included only 50% of depreciation expense and income taxes related to the Harris Plant. All other expenses are included at a 100% level. Witness Smith testified that in this way the Company was complying with the July 24, 1986, Order of the Commission in Docket No. E-2, Sub 511, regarding the phase-in of the Harris Plant. Additionally, witness Smith testified that in accordance with that Order, issues pertaining to the reasonableness or prudence of Harris costs will be reserved until the second rate case to be filed by the Company.

Witness Smith testified that the Harris Plant is needed to provide adequate and reasonable capacity and noted that the Commission recognized that fact in its Order in the Company's most recent load forecast hearing in Docket No. E-100, Sub 50. He further testified that without the Harris Plant the projected reserve margin would fall to 16.7%, well below the minimum reserve margin of 20.0% which the Commission has consistently found to be appropriate.

Witness Eddleman presented testimony that primarily focused on the impropriety of including Harris in rate base as construction work in progress (CWIP). However, since Harris was declared commercial on May 2, 1987, it can no longer be classified as CWIP but must be classified as plant in service. As such, the criteria under which CWIP can be included in rate base are not relevant.

Elon Professors Williams and Cottrell filed a report in this proceeding entitled "Does Shearon Harris Make Economic Sense?: An Evaluation of the Cost of Shearon Harris and its Alternatives." In this report, Professors Williams and Cottrell examined three alternatives to operating the Harris Plant. These alternatives were: first, the building of a new coal-fired generating unit; second, the purchase of power from other utilities; and, third, investment in conservation measures. Each of these three alternatives assumed the cancellation of the Harris Plant with a return of stockholders' capital over 15 years with no return on the unamortized investment during that period. The professors conclude that each of the three alternatives is less costly than the Harris Plant, although alternatives one and two are quite close to the cost of

the Harris Plant. The conservation alternative is presented as being considerably less costly but also more speculative.

On cross-examination by the Company, Professors Williams and Cottrell were unable to verify three key assumptions made in their analysis: (1) that 900 mW of firm power was available for purchase by the Company at 3.2¢/kWh until the year 2000; (2) that shares of ownership in unscrubbed coal-fired generating units were available for purchase by the Company at $1,000/kW and 3.0¢/kWh for the next 30 years; and (3) that reported purchases of power by the Company at 3.2¢/kWh were firm purchases instead of spot market purchases.

The economic model developed by Professors Williams and Cottrell for their study utilized a 9% discount rate for investments in power plants and a 3% discount rate for other investments, and it failed to consistently utilize end-of-year input values. The Company contended that consistent use of end-of-year input values and consistent use of a 3% discount rate for all investments would result in the economic model showing the Harris Plant to be lower cost than either the coal plant option or the purchased power option.

Cross-examination by the Company indicated that the conservation option was seriously flawed by the assumption made in their economic model that air conditioners, water heaters, and 40% of light bulbs would operate for all 8,760 hours of the year for 30 years. The Company contended that air conditioners operate approximately 1,000 hours per year, that light bulbs operate approximately 1,600 hours per year, and that the erroneous assumptions caused an eight-fold error in the results of the model for the conservation option.

Professors Williams and Cottrell contended in their report that repaying the $3.3 billion investment cost in the Harris Plant over a 15-year period and paying a zero percent real interest rate on the unreimbursed portion of the $3.3 billion investment for each year of the 15 years would not have significantly adverse effects on the ability of the Company to continue financing its operations. The Company contended that repaying the $3.3 billion over a 15-year period would result in repaying only $2.6 billion of the $3.3 billion (in present value terms).

Having carefully reviewed the report of Professors Williams and Cottrell, the Commission is not persuaded that the alternatives proposed in the report would be of lower cost than the Harris Plant. The Commission does recognize the effort given the project by the professors and is receptive to the focus on conservation measures which the professors presented. This Commission will continue to encourage conservation and load management as a means of reducing the need for costly new capacity.

In conclusion, the Commission reaffirms its decision in Docket No. E-2, Sub 511, regarding the reasonableness of phasing-in the Harris Plant over two cases. This decision allowed the Public Staff adequate time to conduct its audit of the Harris Plant and also mitigated rate shock for the ratepayers. As the Commission has concluded in its load forecast proceedings, the Harris Plant is needed to provide reasonable and reliable capacity. Because ratepayers are protected from inclusion of imprudent or unreasonable costs in rates due to the fact that the amount of the increase in this case associated with the increment in Harris cost above the amount already included in rates as CWIP is subject to refund, it is reasonable to include in this case the cost of 50% of the Harris

Plant on an interim basis, recognizing that the customer benefits from 100% of the plant output. The Harris Plant is needed; $663 million of CWIP related to the Harris Plant had been deemed reasonable for inclusion in rates in Docket No. E-2, Sub 481; and the phase-in of the Harris Plant is believed by this Commission to be in the best interest of the ratepayer. The Company is allowed to defer and accrue carrying costs on the remaining 50% of the Harris Plant and depreciation and associated taxes consistent with the final Commission Order in Docket No. E-2, Sub 511. It is also concluded that CP&L is entitled to recover the operating expenses associated with Harris from the date of commercial operation to the date of this Order. CP&L is also entitled to recover the capital costs for this same period associated with all of the Harris Plant which is determined in CP&L's next rate case to be prudent. The amounts of the operating and capital costs and the period over which they are recovered will be determined in CP&L's next general rate case.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 8

Company witness Nevil, Public Staff witnesses Haywood and Lam, CIGFUR witness Phillips, and Department of Defense witness Patwardhan presented testimony on cost allocation methodology or adjustments to the cost allocation studies.

Cost Allocation Methodology

Inasmuch as CP&L provides retail service in North Carolina and South Carolina as well as wholesale service to certain municipalities and electric membership cooperatives and supplemental service to the North Carolina Eastern Municipal Power Agency (NCEMPA), its total system costs must be allocated to the various jurisdictions in order to fix cost responsibility. The jurisdictional cost allocation study serves to fix the North Carolina retail jurisdiction cost responsibility in this rate proceeding. The fully distributed cost allocation study serves to fix cost responsibility among the various North Carolina retail customer classes. The Commission initially adopted the peak and average method for allocating production plant in the cost allocation studies in Docket No. E-2, Sub 391, using only the summer peak. In Docket No. E-2, Sub 444, the Commission modified the Company's peak and average method by using a combination of the summer and winter peaks. This was the method proposed by the Company and adopted by the Commission in Docket No. E-2, Subs 461, and 481.

Pursuant to Commission Order in Docket No. E-2, Sub 481, the Company filed cost allocation studies in this case based on the following methodologies: summer/winter peak and average (SWPA), 12-month coincident peaks (12CP), and summer coincident peak (SCP). The results of these studies show the effects of various methods of allocating production plant and other system costs. The SWPA method classifies some portion of production plant as demand-related and some portion as energy related. The demand-related component is then allocated based on kW contribution to both the summer and winter peaks. The energy-related portion is allocated based on generation level kWh. The 12CP method classifies all production plant as demand-related and allocates the plant based on kW contribution to each of the system's 12 monthly peaks. The SCP method classifies all production plant as demand-related and allocates the plant based on kW contribution to the system's summer peak demand. . ...

Company witness Nevil recommended using the 12CP method for allocating production plant, contending that: (1) it has been adopted by the Federal Energy Regulatory Commission; (2) it allocates less demand cost to off-peak time and thus supports time-of-use pricing concepts; and (3) it encourages improvement in the system load factor.

Public Staff witness Lam recommended that production plant be allocated using the SWPA method. In his recommended SWPA method, the portion of plant classified as demand-related and allocated by kW peak demand equals 1 minus CP&L's system load factor, and the portion of plant classified as energy-related and allocated by average demand or kWh equals the system load factor. Witness Lam explained that the 12CP method or any coincident peak method fails to recognize a most important factor in the selection of generating units, the energy requirement of the total system. He said that in the planning process, the size of additional capacity is governed by peak demand growth, but the type of unit required, i.e., peaking, intermediate, or baseload is determined by the energy requirement for the total system. He pointed out that if peak demand is the only consideration, as would seem to be the case in any coincident peak methodology, a system would consist solely of peaking units (because of their low initial capital cost), but that these peaking units would not be able to supply the energy requirements of the system.

CIGFUR witness Phillips recommended that the Commission adopt either the summer coincident peak method or the summer/winter coincident peak method for allocating production plant. He contended that capacity costs are fixed and therefore related to system demands, not kWh sold. Still, he supported the 12CP method as a better choice than the peak and average method.

DOD witness Patwardhan supported the Company's proposal to use the 12CP allocation methodology on grounds similar to those stated by witness Nevil.

The Commission is not convinced that now is the time to change cost allocation methodologies. Adoption of the 12CP methodology would allocate approximately $10 million additional revenue requirement to the North Carolina retail jurisdiction according to the studies in evidence. The Commission is reluctant to shift a greater portion of the cost of production facilities from industrial customers to nonindustrial customers and at the same time add a $10 million revenue requirement to all North Carolina retail customers.

Minimum System Technique

In this proceeding, the Company proposed to discontinue the use of its minimum system technique for allocating a portion of distribution plant between customer classes. The minimum system technique derives the cost of distribution plant as if all components of such plant are "minimum" size (i.e., the minimum size needed to connect each customer to the system regardless of the amount of kWh used). The cost of the "minimum" distribution plant is then allocated between customer classes on a per customer basis, while the remainder of the distribution plant cost is allocated between customers on the basis of distribution level kW demand. The Company contended that the allocation of a portion of distribution plant on a per customer basis should result in such distribution cost per customer being reflected in the basic customer charge in order to be consistent with the allocation methodology. However, such

reflection of minimum distribution plant costs in the basic customer charges would result in residential customer charges at least double the current $6.65 per month, and the Commission has never approved residential customer charges approaching the levels indicated by the minimum system technique. The Public Staff supported the Company's proposal.

The Commission is of the opinion that the minimum system technique should not be discontinued at this time. The minimum system technique allocates more of the distribution plant to residential customers and less to large industrial customers, and it is conceptually sound even if the results of such technique are not fully reflected in the basic customer charges. Furthermore, retention of the minimum system technique will modify somewhat the impact of the SWPA allocation methodology on the industrial class.

Based upon all of the evidence, the Commission concludes that the SWPA method, including the minimum system, is still the most appropriate method of allocating the cost of production plant in this case.

Adjustments to Allocation Inputs

Public Staff witness Haywood testified that she made three adjustments to the cost allocation study proposed by the Public Staff. The first adjustment was an adjustment to the demand and energy levels on which the allocation factors are based in order to reflect her adjustment to the buyback percentages governing the buyback of power from the Harris and Mayo Units by the Company from the Power Agency. The buyback percentages determine the split between the power used by Power Agency pursuant to its partial ownership of Harris and Mayo (i.e., Power Agency retained power) and the power used by Power Agency in excess of its retained power (i.e., Power Agency supplemental power). Since Power Agency supplemental power is included with power used by the other jurisdictions (including the North Carolina retail jurisdiction) in the cost allocation study, then the buyback percentages will affect not only the Power Agency supplemental power but also the demand and energy levels on which the allocation factors are based, including the North Carolina retail allocation factors. Witness Haywood testified that the demand and energy levels contained in the cost allocation study should be adjusted to reflect her recommended buyback percentages consisting of a weighted average of five months of 1987 buyback percentages and seven months of 1988 buyback percentages for Harris and Mayo.

In his rebuttal testimony, Company witness Nevil argued that traditional ratemaking practices included pro forma accounting adjustments in the cost allocation studies but did not include pro forma demand or energy levels or pro forma cost allocation factors. He contended that the adjustment to buyback percentages was not the only accounting adjustment which could affect demand and energy levels or cost allocation factors, and that any adjustment to cost allocation factors should reflect all proposed accounting adjustments and not just the adjustment to buyback percentages.

On cross-examination of his rebuttal testimony, Company witness Nevil stated that his use of a pro forma 1987 buyback percentage for Harris was appropriate, because there was no test year value. He further testified that the Company's use of a pro forma 1987 buyback percentage for Mayo was incorrect, since there was an actual test year percentage that could have been

used. After the close of the hearings, witness Nevil provided a late-filed exhibit reflecting the changes in his position by using the actual test year buyback percentage for Mayo. However, the changes reflected in his late-filed exhibit do not appear to be incorporated into the numbers set forth in the Company's proposed order as its final position in this proceeding.

The second adjustment witness Haywood made to the cost allocation study was to add to Power Agency supplemental load an amount representing the reserve capacity necessary to backstand the Power Agency retained load (i.e., Power Agency Reserve Capacity). She contended that costs associated with Power Agency Reserve Capacity have already been recovered by the Company from the Power Agency and should not be recovered again from the North Carolina retail ratepayers. She explained that the Company must provide a reserve margin capable of backing up the portion of generating capacity owned by Power Agency, just as it must provide a reserve margin capable of backing up the portion of generating capacity owned by CP&L, and that Power Agency pays CP&L for such Reserve Capacity. The monthly charge per kW is based upon the Company's average annual production cost per kW, and the amount of kW subject to the monthly charge is the Power Agency Retained Capacity for that month times the percentage reserve capacity available to the total system in the preceding calendar year. The revenue collected by CP&L for Power Agency Reserve Capacity is directly assigned to Power Agency in the jurisdictional cost allocation study. However, the cost associated with the Power Agency Reserve Capacity is included with all of the Company's other capacity costs in the jurisdictional cost allocation study and is allocated by the cost allocation study to all of the jurisdictions, including North Carolina retail. Witness Haywood contends that the North Carolina retail jurisdiction thus bears some of the cost associated with the Power Agency Reserve Capacity but does not receive credit for any of the revenues collected by CP&L from Power Agency.

Company witness Nevil disagreed in his rebuttal testimony with the Public Staff's adjustment to the Power Agency supplemental load in order to reflect Power Agency Reserve Capacity. He contended that when witness Haywood made an adjustment for Power Agency Reserve Capacity, she should have also made corresponding adjustments for other comparable situations such as for those retail customers on the system who subscribe to standby service. Witness Nevil stated that reserve capacity is provided for retail customers who subscribe to standby service, in a manner similar to the reserve capacity provided for Power Agency retained capacity. However, this standby situation addressed by witness Nevil was not quantified as an issue by the Company or any other party in this proceeding.

The third and final adjustment witness Haywood made to the cost allocation study was to adjust Power Agency supplemental energy in order to reflect the effect of the Public Staff's recommended normalized generation mix on Power Agency supplemental load. When the generation mix is normalized, the energy produced by that portion of the generation mix representing capacity owned by Power Agency is also normalized. The portion of the system generating capacity owned by Power Agency (i.e, Power Agency Retained Capacity) entitles Power Agency to a portion of the energy produced by that capacity (Power Agency Actual Entitlement Energy, or AEE). Since AEE depends not only on the installed generating capacity owned by Power Agency but also on the generating performance of that capacity, any change in the generating performance of such capacity will also change the AEE. Changes in the Power Agency AEE will affect

the amount of remaining energy to be allocated to the other jurisdictions, including the North Carolina retail jurisdiction. Therefore, witness Haywood adjusted the North Carolina retail energy allocation factor to reflect the normalized AEE which corresponds to the Public Staff's proposed normalized generation mix.

Company witness Nevil cited in his rebuttal testimony the Commission's decision in the Company's last general rate case in Docket No. E-2, Sub 481, to disallow a similar adjustment to allocation factors proposed by CUCA witness Wilson. He also argued that the sale of generating plant ownership to Power Agency was a package deal which was intended to provide advantages to all parties, and that it would be unfair to subsequently make adjustments in rate cases which take away those advantages to the Company of the negotiated sale. Witness Nevil suggested that if pro forma adjustments were permitted for allocation factors, many potential adjustments, such as for customer growth, weather, and the buyback levelizations, should also be considered.

Under cross-examination witness Nevil testified that the Company had failed to reflect in the allocation study the effect that adding Harris has on the generation of the Mayo and Roxboro coal plants. Witness Nevil agreed that once a nuclear plant is added on a pro forma basis to fuel expense, then the amount of coal used is reduced. The Company, however, had not reduced the generation of the Mayo and Roxboro units within the allocation study to reflect a reduction in coal generation, although it did reflect the increase in nuclear generation resulting from adding in Harris.

Based upon the foregoing evidence, the Commission is of the opinion that the adjustments proposed by the Public Staff are appropriate for purposes of this proceeding. While the Public Staff and the Company each attempted to cite flaws in the adjustments proposed by the other, the concept of adjusting demand and energy input levels in the cost allocation study in order to match adjustments to the Power Agency supplemental load is sound. The Commission's treatment of the adjustments to Power Agency supplemental load in this case is generally consistent with the Commission's treatment in the Duke Power Company rate cases in Docket No. E-7, Subs 391, and 408. The Commission has also benefitted from the additional discussions of the issue which have occurred since the last CP&L rate case in Docket No. E-2, Sub 481, and anticipates continuing discussion of the issue in future rate cases. The Commission adopts the allocation factors resulting from the calculations requested by the Commission in its July 28, 1987, Order in Appendix A items 1 and 2 as appropriate for use in this proceeding rather than those proposed by the Public Staff. These allocation factors are consistent with the Commission's findings as to the appropriate level of normalized generation mix discussed in the Evidence and Conclusions for Finding of Fact No. 9, the Commission level of cogeneration which results in a monthly average of 112,536 kW to be reflected in the calculation of the adjusted system capability used in the reserve capacity adjustment, and the Commission approved cost of service methodology.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 9

Company witness Nevil, Public Staff witness Durham, and Attorney General witness Schlissel testified regarding the fuel component to be included in base rates in this proceeding. The Company proposed a base fuel component of

1.430¢/kWh in updated testimony, whereas the Public Staff recommended 1.262¢/kWh, and the Attorney General recommended 1.227¢/kWh.

In his original prefiled testimony, Company witness Nevil proposed a base fuel component of 1.356¢/kWh using a March 31, 1986, test period. The basic assumptions included in this factor were as follows: (1) Brunswick Units 1 & 2 and Robinson Unit 2 operating at capacity factors equal to the average of each unit's lifetime average and the 10-year average of similar type units as reported by the North American Reliability Council (NERC) resulting in capacity factors of 53.125%, 49.87%, and 62.115% for Brunswick Units 1 and 2 and Robinson 2, respectively, and Shearon Harris Unit 1 operating at a 65% capacity factor; (2) exclusion of nuclear fuel disposal costs; (3) median conventional hydrogeneration; (4) pro forma cogeneration at zero fuel price; and (5) annualized coal expense of $19.29 per mWh and oil expense of $97.53 per mWh based on June 1986 burn prices. Witness Nevil updated his base fuel component to incorporate a fuel cost for cogeneration purchases and increased Harris 1 expected performance to a 70% capacity factor. No adjustments were made by the Company to reflect a more current burned cost of fuel in this proceeding. The result of the Company's update increased the proposed factor from 1.356¢/kWh to 1.430¢/kWh (excluding gross receipts tax). The system capacity factor for nuclear generation increased from 57.61% to 59.04% as a result of the update. CP&L further updated its base fuel component to 1.473¢/kWh in its proposed order which resulted from its inclusion of nuclear fuel disposal costs.

Public Staff witness Durham recommended a base fuel component of 1.262¢/kWh also using a March 31, 1986, test period. Witness Durham's basic generation and fuel cost assumptions were as follows: (1) normalization of nuclear generation to a system capacity factor of 60.16% based upon the 10-year average capacity factors of 62.13% for PWRs (including Harris 1) and 58.20% for BWRs as reported in the most recent NERC Equipment Availability Report 1976-1985; (2) inclusion of nuclear fuel disposal cost; (3) acceptance of the Company's median hydrogeneration; (4) acceptance of the proformed cogeneration calculated by the Company; and (5) price levels of fossil fuels burned in March 1987, with nuclear price levels reflecting the cost of present or scheduled refuelings. The Public Staff opposed the use of lifetime capacity factors to normalize CP&L's nuclear generation. Witness Durham testified that the use of lifetime averages for CP&L's units gives improper weight to periods of operation reflecting abnormally low generation or generally poor periods of operation. He used as an example, Docket No. E-2, Sub 481, where the Commission cited an abnormal extended outage on Brunswick Unit 1 and the abnormal impact of steam generator related problems on Robinson Unit 2 which led to an unacceptable system capacity factor.

Attorney General witness Schlissel recommended a fuel factor of 1.227¢/kWh based on a test period ended March 31, 1987. Witness Schlissel proposed an alternative method for normalizing nuclear generation which would reflect each unit's actual and expected performance resulting in a system capacity factor of 64.9%. For Brunswick Units 1 and 2, witness Schlissel selected the period April 1, 1986, through March 31, 1987, to obtain the units' actual capacity factors and averaged these with CP&L's expected capacity factor for each unit for the period April 1, 1987, through March 31, 1988. For Robinson Unit 2, witness Schlissel averaged the unit's lifetime performance with CP&L's expected capacity factor for that unit for the period April 1, 1987, through March 31,

1988. For Shearon Harris Unit 1, witness Schlissel used the Company's expected capacity factor of 70%. Witness Schlissel used March 1987 fuel prices and included nuclear fuel disposal costs in his fuel factor calculation.

Docket No. E-2, Sub 533, was consolidated with CP&L's general rate case for purposes of hearing. The Sub 533 case involves an application filed by CP&L on May 1, 1987, for a fuel charge adjustment pursuant to G.S. 62-133.2 and Commission Rule R8-55. The test period in the Sub 533 case consisted of the 12 months ended March 31, 1987. Testimony was offered in the fuel charge case by CP&L witness Nevil, Public Staff witness Durham, and Attorney General witness Schlissel. NCUC Rule R8-55(c)(1) provides that nuclear capacity factors will be normalized based generally on an equally weighted-average of each unit's actual lifetime operating experience and the national average reflected in the most recent NERC Equipment Availability Report, giving due consideration to plants two-years or less in age and to certain unusual events. Pursuant to this rule, CP&L witness Nevil recommended the following unit capacity factors: Brunswick 1, 54.38%; Brunswick 2, 51.61%; Robinson 2, 63.46%; and Harris 1, 70%. These normalized capacity factors result in a normalized total system capacity factor of 60.07%. Public Staff witness Durham recommended normalizing to the NERC averages for each unit as follows: Brunswick 1, 58.2%; Brunswick 2, 58.2%, Robinson 2, 62.13%; Harris 1, 62.13%. The result of his recommendation is a system average capacity factor of 60.16%. Attorney General witness Schlissel recommended a third approach as follows: averaging each unit's actual capacity factor for the period April 1, 1986, through March 31, 1987, and CP&L's expected capacity factor for that unit for the period April 1, 1987, through March 31, 1988, for Brunswick 1 and 2; averaging the unit's lifetime performance and CP&L's expected capacity factor for the unit for the period April 1, 1987, through March 31, 1988, for Robinson 2; and using CP&L's expected 70% capacity factor for Harris. The results of witness Schlissel's recommendations are unit capacity factors of 61.9% for Brunswick 1, 60.7% for Brunswick 2, 66.4% for Robinson 2, and 70% for Harris, and a system average capacity factor of 64.9%. Both CP&L and the Attorney General oppose the use of national averages in normalizing nuclear capacity factors; the Public Staff consistently supports this practice. Both CP&L and the Attorney General also favor recognition of historical experience but with differing results depending upon the historical period that is recognized.

The contested issues related to fuel in this general rate case are clearly identifiable and are as follows: (1) the selection of the 12-month test period; (2) normalization of nuclear generation; (3) cogeneration fuel cost; (4) nuclear fuel disposal cost; and (5) fossil fuel burn data.

Dealing first with the issue of the appropriate test period, the Commission rejects the Attorney General's recommendation to update the test period (using a March 31, 1987, test period) for the purpose of determining a base fuel component. The Commission, in Finding of Fact No. 3, has concluded that a March 31, 1986, test period is appropriate for purposes of setting rates in this proceeding. To select different test periods for different aspects of this general rate case would, in the opinion of the Commission, be inconsistent with the provisions of G.S. 62-133(c). The Commission will, however, make pro forma and normalization adjustments to the test period for certain changes through March 31, 1987.

The process of determining the reasonable cost of fuel for CP&L in this proceeding requires the Commission to determine whether it is appropriate to normalize the Company's test year level of nuclear generation for ratemaking purposes. The question regarding whether the actual test year level of nuclear generation should be normalized involves whether such nuclear generation is reasonably representative of the level of nuclear generation which it can be reasonably assumed will occur in the near future and particularly in the upcoming 12-month period. To the extent that the actual test year level of nuclear generation was "abnormal," or not reasonably representative of what should reasonably be expected, then a normalized level should be determined and used.

It is a well established fundamental principle of regulation that public utility rates should be established in a manner so 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. The normalization concept is one of the most basic precepts of ratemaking. It is a concept which arises out of the statutory requirements that a test year should be used as the basis for a reasonably accurate estimate of what may be anticipated in the near future. Obviously, to the extent that the test year experience reflects an abnormality, such as an abnormally low level of nuclear generation, then it will not result in a reasonably accurate estimate of what may be anticipated in the near future unless an appropriate adjustment is made to "normalize" the abnormality. The Supreme Court of this State has recognized and applied this proposition in numerous decisions. State ex rel. Utilities Commission v. City of Durham, 282 N.C. 308, 193 S.E. 2d 95 (1972); State ex rel. Utilities Commission v. Duke Power Company, 285 N.C. 377, 206 S.E. 2d 269 (1974); State ex rel. Utilities Commission v. Vepco, 285 N.C. 398, 206 S.E. 2d 283 (1974); State ex rel. Utilities Commission v. Edmisten, 291 N.C. 327, 230 S.E. 2d 651 (1976); State ex rel. Utilities Commission v. Duke Power Company, 305 N.C. 1, 287 S.E. 2d 786 (1982); and State ex rel. Utilities Commission v. Thornburg, 316 N.C. 238 (1986).

The Commission now turns to the question of whether the evidence in this record establishes that the test year level of nuclear generation is normal in the sense of whether it is reasonably representative of what is likely to occur in the near future, particularly during the period that the rates set in this case are likely to remain in effect.

The evidence establishes that during the test year ended March 31, 1986, the Company had an overall system nuclear capacity factor of only 54.6%. That overall system nuclear capacity factor is a composite of the actual test year capacity factors of the Company's three nuclear generating units appropriately weighted by generating capacity of each of those units. Those capacity factors included a 33.4% capacity factor for Brunswick Unit 1, a 52.0% capacity factor for Brunswick Unit 2, and an 83% capacity factor for Robinson Unit 2.

During the more recent 12-month period ended March 31, 1987, CP&L achieved a system nuclear capacity factor of 76.6%. During that period, Brunswick Unit 1, Brunswick Unit 2, and Robinson Unit 2 achieved nuclear capacity factors of 73.3%, 60.6%, and 99.5%, respectively. The Company expects to achieve a system nuclear capacity factor of 62.2% for the 12-month period ended March 31, 1988.

The Commission concludes that neither of the system nuclear capacity factors of 54.6% and 76.6% experienced by CP&L during the recent 12-month periods ended March 31, 1986, and March 31, 1987, respectively, were reasonably representative of the system nuclear capacity factor which the Company can reasonably be expected to experience in the near future, including in particular the period of time during which the rates set in this proceeding are likely to remain in effect. The 54.6% system capacity factor for the 12-months ended March 31, 1986, was unreasonably low, while the 76.6% system capacity factor for the 12-month period ended March 31, 1987, was abnormally high. The purpose of normalization is to remove test period abnormalities, either high or low, in setting rates for the future. Commission Rule R8-55(c)(1) generally provides for a method of normalization of nuclear capacity factors based 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. This treatment for ratemaking purposes gives equal weight to CP&L's actual operating experience and 10-year industry averages and provides a reasonable system capacity factor for nuclear normalization purposes. For the Harris Plant, the Commission concludes that CP&L's expected first fuel cycle capacity factor of 70% is reasonable and appropriate for use in this proceeding. Application of the normalization methodology generally specified in Commission Rule R8-55 based upon lifetime nuclear capacity factors calculated through March 31, 1987, results in normalized nuclear capacity factors as follows: Brunswick Unit 1, 54.375%; Brunswick Unit 2, 51.61%; and Robinson Unit 2, 63.46%. The resulting normalized system nuclear capacity factor calculated pursuant to Rule R8-55 is 60.07%. The Commission concludes that the reasonable and appropriate normalized total system nuclear capacity factor for use in this proceeding is 60.07%. The Commission further notes that this normalized system nuclear capacity factor is almost identical to the system factor of 60.16% proposed by the Public Staff based upon 10-year national averages. The Commission will also utilize this same system nuclear capacity factor in CP&L's pending fuel adjustment proceeding, Docket No. E-2, Sub 533.

The Company's position concerning cogeneration is that it should be included in the base fuel component and adjusted annually pursuant to G.S. 62-133.2. Prior to this general rate case, CP&L has considered cogeneration as a "zero fuel expense" that is recoverable through the Company's base rates. Witness Nevil testified that the cogeneration costs are escalating rapidly and are expected to increase from the $40 million being considered in the present fuel charge adjustment case in Docket No. E-2, Sub 533, to approximately $93 million on an annualized basis by the end of 1987. Witness Nevil also stated that including the costs of cogeneration in the base fuel factor will help avoid the need for frequent rate cases in the future. The Company estimates that the fuel component of its cogenerated purchased power is approximately 4¢/kWh. Witness Nevil's workpapers show that the portion of cogeneration purchases designated as fuel cost is the product of on-peak and off-peak mWh times the levelized avoided fuel cost component of the avoided cost rates presented by CP&L witness King and approved by the Commission in its Order of January 22, 1984, in Docket No. E-100, Sub 41A.

The Public Staff and the Attorney General opposed the inclusion of cogeneration costs in the fuel factor calculation as proposed by the Company based on their interpretation of G.S. 62-133.2. The Public Staff's position is

that the avoided cost rate of 4¢/kWh does not represent the actual cost of fuel burned by the cogeneration facility and, therefore, cannot be adjusted in the fuel factor pursuant to G.S. 62-133.2. Witness Durham testified that the Company had not accurately determined the actual cost of fuel burned by cogeneration.

The Commission is of the opinion that the recovery of the actual fuel cost component of cogeneration purchases is authorized by G.S. 62-133.2 and is, therefore, eligible for inclusion in the fuel factor analysis. It appears impossible in this case, however, to determine the fuel cost component of CP&L's cogeneration purchases in the same way the fuel cost component of the Company's other purchased power is determined. The Commission rejects the Company's proposal to shift the estimated fuel cost of cogeneration from base rates to the fuel component at this time. The evidence clearly shows that the fuel cost component of cogeneration purchases which CP&L seeks to include in the fuel factor is the estimated avoided fuel cost of the Company derived from its calculations of avoided costs in Docket No. E-100, Sub 41A, rather than an embedded or actual fuel cost of the cogenerator. In recognition of the fact that CP&L's cogeneration costs are escalating rapidly, the Commission has concluded that the level of operating and maintenance expense included in the cost of service should be increased to reflect the level of energy and capacity components of cogeneration costs as of the end of the 12-months period ended March 1987 as more particularly set forth in Evidence and Conclusions for Finding of Fact No. 14.

Both the Public Staff and the Attorney General have recognized the changing cost of fossil fuel and thus use March 1987 burn prices to reflect a more current fuel expense in this proceeding. The Commission concludes that the appropriate fossil fuel prices to be used are 1.779¢/kWh for coal and 8.170¢/kWh for oil, as recommended by the Public Staff.

The Company used unit fuel prices for the month of June 1986 applied uniformly to all units for its nuclear fuel prices, whereas the Public Staff used unit fuel prices based on the cost of the latest refueling for each nuclear unit. While the parties did not discuss at length this particular difference in their approaches to determining nuclear fuel prices, they do point out a potentially troublesome issue. Normalization of the unit fuel prices for nuclear fuel does appear to merit greater discussion in future proceedings.

The Company applied a systemwide unit fuel price to the normalized generation mix in order to determine total nuclear fuel costs, whereas the Public Staff applied a unit fuel price for each nuclear unit to the normalized generation mix in order to determine total nuclear fuel costs. The Public Staff contended that it would serve no useful purpose to establish an individual generating unit's normalized capacity factor and then apply a systemwide unit fuel price to said unit to obtain the total nuclear fuel cost for the unit, particularly when the unit fuel price for the individual generating unit is available.

The Commission concludes that nuclear fuel prices should be established in this proceeding based upon the Company's unit fuel price of 0.511¢/kWh for the month of March 1987 applied uniformly to the Brunswick units and to Robinson unit 2. The appropriate unit fuel price for the Harris unit is 0.595¢/kWh as

proposed by the Company and as supported by the Public Staff. The Commission observes again that greater discussion of normalizing unit fuel prices for nuclear fuel does seem to be called for in future proceedings.

The Company excluded nuclear fuel disposal costs from its calculation of the base fuel component in its testimony, but included it at 1 mill/kWh in its proposed order. The Public Staff and the Attorney General both included nuclear fuel disposal cost at 1 mill/kWh in their calculations of the base fuel component. Just as the Commission did in the Duke Power Company general rate case in Docket No. E-7, Sub 408, the Commission concludes that it is reasonable and appropriate to include in the base fuel component the 1 mill disposal cost related to net nuclear generation. CP&L is now required to pay the Department of Energy 1 mill/kWh of nuclear generation for disposal costs related to nuclear generation. The nuclear fuel disposal costs (NFDC) are readily identifiable and vary directly with nuclear generation levels. The resulting nuclear unit fuel costs, including NFDC, which is appropriate for determining the fuel factor, are .511¢/kWh for the Robinson Unit 2, and Brunswick Units 1 and 2, and 0.595¢/kWh for Harris Unit 1.

The fuel calculation incorporating the conclusions made hereinabove is shown in the following table:

UNIT	mW RATING	HRS	NORMALIZED CAPACITY FACTOR	mWh GENERATION	$/mWh	FUEL COST
ROBINSON 2	665	8760	63.460%	3,696,799	$5.11	$18,890,643
BRUNSWICK 1	790	8760	54.375%	3,762,968	$5.11	$19,228,766
BRUNSWICK 2	790	8760	51.610%	3,571,618	$5.11	$18,250,968
HARRIS 1	900	8760	70.000%	5,518,800	$5.95	$32,836,860
TOTAL NUCLEAR			60.07%	16,550,185		$89,207,237
PUR. - CO-GEN				985,805	-	-
PUR. - SEPA				120,457		
PURCHASES - OTHER				183,299	$20.00	$3,665,980
HYDRO				722,343	-	-
COAL				20,108,455	$17.79	$357,729,414
IC				1,659	$81.70	$135,540
SALES				(357,706)	$17.32	$(6,195,468)
TOTAL GENERATION/FUEL COST				38,314,497		$444,542,703
LESS:						
POWER AGENCY NUCLEAR						$12,179,759
POWER AGENCY COAL						$18,385,046
MAYO BUYBACK						$(3,915,810)
HARRIS BUYBACK						$(2,551,586)
FUEL DOLLARS FOR FACTOR						$420,445,294
TOTAL kWh SALES FOR FACTOR						33,850,755,334
FUEL FACTOR (CENTS/kWh)						1.242

The Commission notes that a portion of the difference between fuel expense as presented by the Company and as presented by the Public Staff is due to the

use of different methods for determining the North Carolina retail portion of total system adjusted fuel expense.

As can be seen from reviewing Carter Exhibit I, Schedules 3-1(a)(1) and 3-1(c)(1) Revised, the level of North Carolina retail fuel expense included in the cost of service by the Company of $307,487,000 excluding cogeneration is, for the most part, determined by allocating total system fuel expense by the E1 allocation factor. The E1 allocation factor reflects jurisdictional energy requirements at the generation level. Also, a portion of the Company's end-of-period level of North Carolina retail fuel expense is directly assigned. The Company's fuel annualization adjustment, which is found at TAB 7 of Item 10 of the E-1 Minimum Filing Requirements, directly assigns the adjustments to fuel expense associated with the Company's customer growth and weather normalization kWh sales adjustments.

The level of fuel expense proposed by the Public Staff in its testimony is determined by multiplying the Public Staff's proposed fuel factor by adjusted North Carolina retail kWh sales. This calculation is found in the testimony of Public Staff witness Durham and also in Carter Exhibit I, Schedule 3-1(c) Revised.

Although the issue of the appropriate method of determining North Carolina retail fuel expense was not explicitly raised by any of the parties to this proceeding, the Commission believes that the different methodologies used by the Company and the Public Staff should be addressed in this Order.

The Public Staff, in its proposed order in this docket, proposed a method of determining North Carolina retail fuel expense to be included in the cost of service by allocating total system adjusted fuel expense by the use of the E1 allocation factor resulting in fuel expense of $277,404,501.

The difference between the fuel expense calculated above and the North Carolina retail fuel expense presented by Public Staff witness Durham in his prefiled testimony of $274,999,463 is $2,405,038. This difference is due to the $277,404,501 being determined at the generation level and the $274,999,463 being determined at the meter level. For purposes of this proceeding the Public Staff has proposed that this $2,405,038 be treated as a "line loss differential" to be reflected in base rates rather than in the fuel factor.

As discussed previously, a portion of the Company's end-of-period level of fuel expense is directly assigned to the various jurisdictions. The Company directly assigned fuel cost associated with the customer growth and weather normalization kWh sales adjustments. The Commission has reviewed the Company's fuel annualization adjustment which incorporates these direct assignments of fuel cost. The Commission is not persuaded that the Company's adjustment is appropriate. The Company's adjustment assigns a higher level of fuel cost (1.578¢/kWh) to these adjustments than is actually reflected in the adjusted end-of-period level of fuel cost. The Commission finds cause not to accept the Company's direct assignment of certain fuel costs.

Consistent with prior Commission decisions, the Commission concludes that for the purposes of this proceeding, the appropriate level of North Carolina retail fuel expense to include in the cost of service is $270,641,000. This is

determined by multiplying the fuel factor found herein to be appropriate of 1.242¢/kWh by adjusted North Carolina retail kWh sales of 21,790,765,728.

The Commission further concludes that both the Company and the Public Staff should investigate this matter more fully in the Company's next general rate case.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 10

The evidence related to the appropriate level of coal inventory was presented by Company witness Nevil and Public Staff witness Durham. The Company included $48,219,000 for coal inventory in its working capital allowance. The Public Staff included in its working capital allowance $49,755,000 for coal inventory.

Both CP&L and the Public Staff recommended that coal inventory be established at an 80-day supply level, and both parties used similar methodologies in calculating their coal inventory values.

Witness Durham recommended a $76,436,633 investment allowance for coal on a systemwide basis, $49,754,531 for the North Carolina retail jurisdiction. His recommended 1,711,600-ton coal inventory level would provide an 80-day supply based on a 21,395-ton daily burn rate. Witness Durham calculated the 21,395-ton daily burn rate using the same methodology adopted by this Commission in the Company's last general rate case and in the previous three Duke Power Company general rate cases. This method is based on the normalized coal generation utilized by the Public Staff to calculate fuel costs in this proceeding, plus the 10-year weighted-average fossil heat rate, the March 1987 cost per ton of coal, and the actual heat value of coal used by the Company.

The Commission concludes that the procedure used by the Public Staff is appropriate and, therefore, consistent with the coal generation found to be just and reasonable by the Commission under the Evidence and Conclusions for Finding of Fact No. 9, and also consistent with the jurisdictional cost allocations approved elsewhere herein the Commission concludes that a working capital allowance of $49,101,000 for coal inventory is appropriate for use in this proceeding.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 11

The evidence supporting this finding of fact is included in the testimony and exhibits of Company witnesses Bradshaw and Nevil, and Public Staff witnesses Rankin and Durham. The amount of total working capital proposed by these witnesses as shown in their respective proposed orders is set forth in the following table:

(000's Omitted)

Item	Company	Public Staff	Difference
Materials and supplies:			
Fuel stock	$ 53,818	$ 55,365	$ 1,547
Other materials and supplies	22,830	22,747	(83)
Minimum bank balances	2,234	2,205	(29)
Prepayments	8,166	8,060	(106)
Investor funds advanced for operations	30,822	30,727	(95)
Unamortized projects	4,968	4,920	(48)
Other rate base deductions	(12,981)	(12,750)	231
Customer deposits	(7,911)	(7,911)	-
Total working capital allowance	$101,946	$103,363	$ 1,417

The Company and the Public Staff are in agreement as to the appropriate amount of customer deposits to be deducted from rate base. Therefore, the Commission concludes that the amount of customer deposits to be deducted from rate base is $7,911,000.

The Public Staff adjustments to decrease minimum bank balances by $29,000, prepayments by $106,000, unamortized projects by $48,000, and other rate base deductions by $231,000 relate solely to the use of the cost of service study recommended by the Public Staff in this proceeding. As discussed in the Evidence and Conclusions for Finding of Fact No. 8, the Commission has adopted the use of the summer/winter peak and average method, as adjusted, for making jurisdictional cost allocations.

Based upon the use of such jurisdictional cost allocation methodology, the Commission concludes that the appropriate levels for these items are as follows: minimum bank balances - $2,203,000; prepayments - $8,047,000; unamortized projects - $4,918,000; and other rate base deductions - ($12,733,000).

The next area of difference between the Company and the Public Staff with regard to working capital is the proper amount to be included in rate base for materials and supplies. The Company proposed a level of $76,648,000 for this item, while the Public Staff's recommendation would result in a level of $78,112,000. The difference of $1,464,000 results from the different proposed levels of coal inventory and also from the Public Staff's use of an adjusted summer/winter peak and average method for making jurisdictional cost allocations. The chart below illustrates the components and respective positions of the Company and the Public Staff with respect to materials and supplies.

(000's Omitted)

Item	Company	Public Staff	Difference
Fuel stock inventory:			
Coal	$48,219	$49,755	$1,536
Other liquid fuels	5,599	5,610	11
Other materials and supplies	22,830	22,747	(83)
Total materials and supplies	$76,648	$78,112	$1,464

Based on the Commission's determination in Finding of Fact No. 10, the appropriate working capital allowance for coal inventory for use in this proceeding is $49,101,000. As discussed in the Evidence and Conclusions for Finding of Fact No. 8, the Commission concluded that the summer/winter peak and average method, including the minimum system technique, as adjusted, is the appropriate method of making jurisdictional cost allocations. Therefore, the appropriate level of other fuel stock inventory is $5,596,000, and the appropriate level of plant materials and supplies is $22,747,000. The Commission concludes that the total level of materials and supplies of $77,444,000 is appropriate for use herein.

The next component of working capital on which the Company and the Public Staff disagree is in the area of cash working capital, represented by investor funds advanced for operations. CP&L determined in its proposed order that $30,822,000 should be included in working capital as investor funds advanced for operations, while the Public Staff included investor funds advanced for operations of $30,727,000.

Several adjustments proposed by the Public Staff were not contested by the Company and therefore require no discussion. Concerning investor funds advanced for operations, the three issues remaining among the parties relate to the proper allocation of cost of service to North Carolina retail operations, the proper federal income tax rate to be used in this calculation, and the appropriate lag for state income taxes.

Regarding the proper allocation factors to be used in this proceeding, the Commission in Finding of Fact No. 8, has adopted the summer/winter peak and average method, as adjusted, and it should therefore be incorporated in these calculations.

To determine its proper level of cash working capital, the Company used a per books lead-lag study based on the March 31, 1986, test year. Public Staff witness Rankin proposed adjusting the lead-lag study to reflect the changes related to the Tax Reform Act of 1986. Specifically, witness Rankin proposed adjusting the per books lead-lag study to reflect the use of a 34% federal income tax (FIT) rate. The per books lead-lag study proposed by the Company used the 46% FIT rate which was in effect during the test year.

Under cross-examination, witness Rankin testified that a per books lead-lag study adjusted for significant changes was appropriate for determining cash working capital. She agreed that the Harris Plant and Brunswick Cooling

Towers were also significant changes but argued that these would change the per books lead-lag study, and therefore she did not adjust for these items.

The Commission believes that it is inconsistent to adjust for one significant change such as the FIT rate and not for others such as Harris. Further, if the FIT rate change were adjusted for, the adjustment should be to a 40% rate rather than the 34% rate as discussed in Finding of Fact No. 15. The lead-lag study should be based either on an unadjusted per books lead-lag or a per books lead-lag adjusted for all significant changes. In this proceeding, the Commission finds that the per books lead-lag study as proposed by the Company is appropriate for calculating cash working capital.

The final area of difference between the Company and the Public Staff in this regard, concerns the appropriate lag for state income taxes. The Company assigned a lag of 124.80 days to state income taxes, while the Public Staff assigned an 80.90 day lag. Public Staff witness Rankin testified that she revised the state income tax lag to reflect the Company's 1987 state income tax payment practice. She further testified that this revision to the state income tax lag reflects the Company's actual payment practice beginning in 1987 and therefore is more representative of current state income tax payment requirements. The Company agreed that this adjustment is more reflective of its 1987 payment practice.

The Commission agrees that the lag on state income taxes should be based upon the Company's actual payment practice in 1987 and concludes that the lag of 80.90 days, as assigned by Public Staff witness Rankin, is the proper lag to use for state income taxes in this proceeding.

Based on all the foregoing, the Commission concludes that the appropriate level of investor funds advanced for operations to be included in rate base in this proceeding is $32,781,000.

In summary, the Commission concludes that the appropriate level of materials and supplies and working capital investment for use in this proceeding is $104,749,000, as shown in the following chart:

(000's Omitted)

Item	Amount
Materials and supplies inventory:	
Coal	$ 49,101
Other liquid fuels	5,596
Other	22,747
Total materials and supplies inventory	77,444
Other working capital investment:	
Minimum bank balances	2,203
Prepayments	8,047
Investor funds advanced for operations	32,781
Unamortized projects	4,918
Other rate base deductions	(12,733)
Customer deposits	(7,911)
Total other working capital investment	27,305
Total working capital investment	$104,749

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 12

Company witnesses Smith, Bradshaw, and Nevil and Public Staff witnesses Carter, Rankin, and Durham presented testimony regarding CP&L's reasonable original cost rate base. The following table summarizes the amounts which the Company and the Public Staff contended in their proposed orders are the proper levels of original cost rate base to be used in this proceeding.

(000's Omitted)

Item	Company	Public Staff	Difference
Electric plant in service	$3,988,473	$3,927,781	$(60,692)
Net nuclear fuel	123,483	123,741	258
Accumulated depreciation	(848,360)	(835,878)	12,482
Accumulated deferred income taxes	(391,173)	(432,695)	(41,522)
Allowance for working capital	101,946	103,363	1,417
Total original cost rate base	$2,974,369	$2,886,312	$(88,057)

The differences in electric plant in service, net nuclear fuel, and accumulated depreciation are all due to the Public Staff's use of an adjusted summer/winter peak and average method for jurisdictional cost allocation purposes.

As discussed in conjunction with the Evidence and Conclusions for Finding of Fact No. 8, Public Staff witness Lam proposed the use of the summer/winter peak and average method for making jurisdictional cost allocations. Use of this method accounts for $48,119,000 of the difference in electric plant in service between the Company and Public Staff. Additionally, Public Staff witness Haywood proposed certain adjustments to the summer/winter peak and average cost allocation study. These adjustments account for $12,573,000 of the remaining difference in electric plant in service. Similarly, use of the

summer/winter peak and average method accounts for $10,058,000 of the difference in accumulated depreciation. The cost allocation adjustments proposed by Public Staff witness Haywood account for $2,424,000 of the remaining difference in accumulated depreciation and $258,000 of the difference in net nuclear fuel. Use of the summer/winter peak and average method did not, in itself, result in a change in net nuclear fuel.

In the Evidence and Conclusions for Finding of Fact No. 8, the Commission has adopted witness Lam's proposed use of the summer/winter peak and average method for making jurisdictional cost allocations and has readjusted the allocation factors adjusted by witness Haywood in regard to Power Agency to reflect the Commission's normalized generation level. Based on these decisions, the Commission finds that the Company's level of electric plant in service and accumulated depreciation should be reduced by $48,119,000 and $10,058,000, respectively, to reflect the change in cost allocation methodology (12CP versus SWPA). Further, the Commission concludes that the Company's proposed amounts should be additionally adjusted to reflect the effect of the change in allocation factors associated with Power Agency. The effect of these adjustments would result in a decrease of $16,708,000 in the level of electric plant in service, a decrease of $59,000 in the level of net nuclear fuel, and a decrease of $3,289,000 in the level of accumulated depreciation. Additionally, as discussed in the Evidence and Conclusions for Finding of Fact No. 14, the Commission concludes that accumulated depreciation should be increased by $1,067,000 to properly reflect the level of accumulated decommissioning expense associated with the Company's nuclear power plant units. Based on these conclusions, the Commission finds that the appropriate level of electric plant in service for use in this proceeding is $3,923,646,000. The Commission further concludes that the appropriate levels of net nuclear fuel and accumulated depreciation are $123,424,000 and $836,080,000, respectively.

The $1,417,000 difference in the allowance for working capital between the Company and the Public Staff was discussed in the Evidence and Conclusions for Finding of Fact No. 11. As discussed therein, the Commission concludes that the appropriate allowance for working capital for use in this proceeding is $104,749,000.

The $41,522,000, difference in accumulated deferred income taxes (ADIT) is composed of the following adjustments proposed by the Public Staff:

(000's Omitted)

Item	Amount
Change in allocation method (12CP versus SWPA)	$ 3,467
Change for Power Agency adjusted allocation method	1,143
ADIT on sale to Power Agency	(42,342)
Reversal of Company ADIT adjustment	(5,148)
Adjustment to Harris ADIT	1,473
ADIT relating to nuclear decommissioning	(67)
ADIT relating to Harris nuclear decommissioning	(48)
Total ADIT adjustments	$(41,522)

As discussed in the Evidence and Conclusions for Finding of Fact No. 8, the Public Staff proposed two changes concerning the appropriate cost allocation method. The use of the summer/winter peak and average cost allocation method proposed by Public Staff witness Lam accounts for $3,467,000 of the difference in ADIT between the Company and the Public Staff. The adjustments to the cost allocation study proposed by Public Staff witness Haywood account for $1,143,000 of the difference in ADIT. Since the Commission has previously found that the Public Staff's cost of service study and the Commission readjusted cost of service study reflecting the effect of the Commission's normalized generation on witness Haywood's adjustments are appropriate for use herein, the Commission concludes that it is appropriate to adjust ADIT by $4,919,000 to reflect the Commission's position on the adjusted summer/winter peak and average cost allocation method.

The next adjustment to ADIT in the amount of $42,342,000 relates to deferred taxes associated with the Company's sale of assets to the Power Agency. As discussed in the testimony of Public Staff witness Carter, this adjustment is the same adjustment that was proposed by the Public Staff and accepted by the Commission in CP&L's last two general rate cases. These deferred taxes are funds which CP&L has received from the Power Agency for tax liabilities of the Company which will not be paid until sometime in the future. Public Staff witness Carter stated that he did not believe that the North Carolina retail ratepayers should be required to pay a return on funds which were cost-free to the Company. Company witness Bradshaw, upon cross-examination, agreed that the adjustment was consistent with that made by the Commission in CP&L's last two general rate cases but indicated that he still disagreed with it.

The Commission discussed this issue at length in the Final Order entered in Docket No. E-2, Sub 481. The Commission concluded in that docket and also in Docket No. E-2, Sub 461, that it is appropriate to deduct these Power Agency related ADIT from rate base. The Commission continues to believe that this adjustment is appropriate for ratemaking purposes. These deferred taxes represent cost-free funds to the Company since the funds have been provided to CP&L by the Power Agency rather than by the Company's investors. If these deferred income taxes are not deducted from rate base, rates will be set to pay capital costs to cover interest expense, preferred dividends, and provide a common equity return on this amount of capital, even though this capital has no cost to CP&L whatsoever. The Commission concludes, therefore, that these deferred taxes should be treated as other cost-free capital to the Company and deducted from rate base. Based upon the adjusted cost of service study approved for use in this proceeding, the Commission finds that the proper adjustment relating to the deferred taxes associated with the Company's sale of assets to the Power Agency is $42,279,000 rather than the $42,342,000 proposed by the Public Staff.

The next difference between the Company and the Public Staff is the adjustment in the amount of $5,148,000 which Public Staff witness Carter made to reverse the Company's adjustment to ADIT for the Tax Reform Act of 1986 (TRA). The Company adjusted the test year balance in ADIT to reflect the level of ADIT that would have been on the books at the end of the test year (March 31, 1986) if the tax rate during the test year had been 40% rather than 46%.

Public Staff witness Carter disagreed with this adjustment. In reference to this adjustment, Mr. Carter testified as follows:

> "While it is true that if the TRA had been in effect during the test year the ADIT balances would have been lower, the actual ADIT balance at the end of the test period will not change."

Mr. Carter further stated that:

> "A lowering of the tax rate simply means that, in the future, ADIT balances will not be as large as they would have been had the tax rate not changed. A reduction in the tax rate will not affect deferred taxes that have already been recorded on the books."

Witness Carter agreed during cross-examination that he had adjusted deferred income tax expense to reflect a 34% federal tax rate and had also left ADIT, to be deducted from rate base, at the 46% rate at which those taxes had actually been deferred. When asked by counsel for the Company whether these two treatments were inconsistent, witness Carter testified that they were not inconsistent.

The Company maintains that the Public Staff position violates tax normalization and the matching concept of accounting. The Company argues that since tax expense is changed from the actual test year rate of 46% to the rate that will be in effect when rates established in this case are charged, consistency requires a matching adjustment to the ADIT reserve.

The Commission agrees with the Public Staff's position that these ADIT represent monies which the ratepayers have already paid in to cover a normalized level of tax expense. If this balance were not deducted from rate base, the Company's ratepayers would be forced to pay a return on money they have already provided to the Company. The basis for setting rates in a general rate case is by use of a historical test period. One necessary component in the ratemaking process is to determine a Company's original cost rate base. As stated in G.S. 62-133(c):

> "The original cost of the public utility's property, including its construction work in progress, shall be determined as of the end of the test period used in the hearing and the probable future revenues and expenses shall be based on the plant and equipment in operation at that time."

Clearly, in the ratemaking process, rate base should reflect actual booked costs as of a certain point in time plus, if appropriate, adjustments for changes in rate base after that point in time. The inclusion of a portion of the Harris Plant in rate base in this proceeding is a perfect example of the types of departures from end-of-period rate base which are contemplated in G.S. 62-133(c) which states:

> "...the Commission shall consider such relevant, material, and competent evidence as may be offered by any party to the proceeding tending to show actual changes in costs, revenues, or the cost of the public utility's property used and useful, or to be used and useful within a reasonable time after the test period..."

If one were to accept the Company's position on this matter, an argument could also be made to adjust other items of rate base to reflect prospective changes in cost. An example would be changes in the cost of debt. If one assumed that during the test year, while the Harris Plant was under construction, the Company's cost of debt was 10% and that the Company's cost of debt has since dropped to 8%, then an argument could be made to reduce the cost of the Harris Plant to reflect what the cost on the books would have been if the allowance for funds used during construction had been calculated using the 8% debt rate rather than the 10% debt rate.

The Commission concludes that the proper level of ADIT for use in this proceeding, at this juncture, is the actual balance reflected on the Company's books at March 31, 1986. To accomplish this result, the Public Staff's adjustment in the amount of $5,148,000 should be changed to an adjustment of $5,145,000 to reflect the Commission's adjusted cost allocation study. As will be discussed subsequently, the Commission has rejected the Public Staff's position regarding use of the 34% corporate federal income tax rate.

Further, the Commission notes that its treatment in this regard is consistent with decisions entered in Docket No. P-118, Sub 39, and P-10, Sub 115, to deny increases in rate base for pro forma adjustments to reduce ADIT when the prospective change in deferred taxes would not result in a decrease in the balance of ADIT at the end of the test year.

The remaining three adjustments to ADIT totaling $1,358,000 proposed by the Public Staff are corollary adjustments to adjustments made to deferred income tax expense. In making its $1,473,000 adjustment, the Public Staff agrees with the Company that an adjustment should be made to ADIT to reflect the prospective ADIT associated with the difference between Harris book and tax depreciation since there were no per books ADIT accounting for this difference. The Public Staff's adjustment of $1,473,000 in this regard merely adjusts for the use of a 34% federal income tax rate rather than a 40% federal income tax rate. The Public Staff's last two adjustments consisting of $67,000 and $48,000 to increase the amount of ADIT for nuclear decommissioning are also corollary adjustments which recognize increased deferred income tax expense due to changes in decommissioning expense over the test year levels. The Public Staff again agrees in concept with the Company's adjustments that when nuclear decommissioning expense and the associated reserve are increased then deferred income taxes and ADIT should be decreased, but because the Public Staff recommends the use of a 34% federal income tax rate rather than a 40% federal income tax rate the Public Staff would not decrease the deferred income taxes and ADIT as much as the Company had proposed. Since the Commission found in the Evidence and Conclusions for Finding of Fact No. 14 that the 40% federal income tax rate is appropriate for use in this proceeding as proposed by the Company, the Commission concludes that these Public Staff proposed corollary adjustments to ADIT are inappropriate for use in this proceeding. Further, based upon its decisions set forth in the Evidence and Conclusions for Finding of Fact No. 14, the Commission concludes that the level of ADIT should be decreased by $465,000 to properly reflect the level of decommissioning expense associated with the Company's nuclear power plant units.

Based on the preceding discussion, the Commission concludes that the appropriate balance of accumulated deferred income taxes to deduct from rate base in this proceeding is $433,213,000.

Company witness Smith testified that the cost of production plant includes for the first time approximately $126 million for the steam generator replacement at Robinson nuclear unit 2 and approximately $170 million for other nuclear plant costs including over $90 million for regulatory modifications at the Brunswick nuclear plant. He indicated that replacement of the steam generators at Robinson has resulted in the unit's continued excellent performance. The Brunswick modifications were required by the Nuclear Regulatory Commission (NRC). No witness refuted the cost effectiveness of such modifications. The Company's nuclear plants are all used and useful, and the Commission concludes that the nuclear plant costs described herein should be included in rate base.

The Commission concludes, based upon the foregoing and the determinations made in the Evidence and Conclusions for Findings of Fact Nos. 10 and 11, that the appropriate original cost rate base for use in this proceeding is $2,882,526,000 calculated as follows:

(000's Omitted)

Item	Amount
Electric plant in service	$3,923,646
Net nuclear fuel	123,424
Accumulated depreciation	(836,080)
Accumulated deferred income taxes	(433,213)
Allowance for working capital	104,749
Total original cost rate base	$2,882,526

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 13

The evidence supporting this finding of fact is found in the testimony and exhibits of Company witness Nevil and Public Staff witness Carter.

The appropriate level of gross revenues under present rates and after accounting and pro forma adjustments proposed by the Company is $1,325,877,000. The Public Staff proposed a level of $1,325,856,000.

The $21,000 difference between the parties is due solely to the Public Staff's use of an adjusted summer/winter peak and average method for jurisdictional cost allocation purposes. Use of the summer/winter peak and average method proposed by Public Staff witness Lam accounts for $6,000 of the difference. The adjustments to the summer/winter peak and average method proposed by Public Staff witness Haywood accounts for the remaining $15,000 difference.

Based on the Commission's determination, in conjunction with the Evidence and Conclusions for Finding of Fact No. 8, that an adjusted summer/winter peak and average cost of service study is appropriate for use in this proceeding, the Commission concludes that the appropriate level of gross revenues for use in this proceeding is $1,325,856,000.

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

The evidence supporting these findings of fact is found in the testimony and exhibits of Company witnesses Bradshaw and Nevil, Public Staff witnesses Carter, Haywood, and Durham, and Attorney General witnesses Perkerson and Schlissel.

The following schedule sets forth the levels of operating revenue deductions as proposed by the Company and the Public Staff in their proposed orders:

(000's Omitted)

Item	Company	Public Staff	Difference
Fuel and purchased power	$ 307,487	$ 277,405	$(30,082)
Other O&M expenses	486,140	462,389	(23,751)
Depreciation	151,602	149,142	(2,460)
Taxes other than income	76,601	76,122	(479)
Income taxes	79,801	86,689	6,888
Total operating revenue deductions	$1,101,631	$1,051,747	$(49,884)

As the schedule indicates, the parties are in disagreement on all the items of operating revenue deductions.

The difference between the parties proposed levels of fuel and purchased power expense was discussed in the Evidence and Conclusions for Finding of Fact No. 9. As was discussed therein, the Commission concludes that the appropriate level of fuel and purchased power expense is $270,641,000.

As has been discussed in the Evidence and Conclusions for Finding of Fact No. 8, some of the differences in the positions of the Company and the Public Staff are due to the Public Staff's use of an adjusted summer/winter peak and average method for jurisdictional cost allocation purposes. The following schedule itemizes the differences for each category of operating revenue deductions that are due to the Public Staff's use of a cost allocation method which is different from that proposed by the Company:

(000's Omitted)

Item	Adjustment Due to Use of SWPA	Public Staff Adjustments to SWPA
Fuel and purchased power	$ -	$ 626
Other O&M expenses	(4,114)	(616)
Depreciation	(2,007)	(453)
Taxes other than income	(389)	(90)
Income taxes	3,397	371
Total adjustments	$(3,113)	$(162)

The Commission, having previously determined in the Evidence and Conclusions for Finding of Fact No. 8 that the summer/winter peak and average cost of service study including the Commission's adjustments to Power Agency is reasonable and appropriate for use herein, concludes that the following adjustments to operating revenue deductions are appropriate for use in this proceeding:

(000's Omitted)

Item	Adjustment Due to Use of SWPA	Commission Adjustments to SWPA
Fuel and purchased power	$ -	$ (143)
Other O&M expenses	(4,114)	(1,230)
Depreciation	(2,007)	(626)
Taxes other than income	(389)	(127)
Income taxes	3,397	1,128
Total adjustments	$(3,113)	$ (998)

The remaining difference in the level of other operation and maintenance (O&M) expenses is due to the following adjustments proposed by the Public Staff:

(000's Omitted)

Item	Amount
Harris purchased capacity and energy	$ (5,420)
Mayo purchased capacity and energy	(1,248)
Harris levelization	(10,863)
Mayo levelization	(1,043)
EEI dues	(85)
MCF payment	(52)
Officers' salaries	(310)
Total other adjustments	$(19,021)

The first four adjustments listed above were discussed in the Evidence and Conclusions for Finding of Fact No. 6. As discussed therein, the Commission concludes that other O&M expenses should be adjusted as follows:

Harris purchased capacity and energy	$ (4,505,000)
Mayo purchased capacity and energy	$ (1,173,000)
Harris levelization	$ (9,333,000)
Mayo levelization	$ (912,000)

The next adjustment to other O&M expenses is an adjustment proposed by Public Staff witness Carter to disallow 40% of the Company's Edison Electric Institute (EEI) dues. Witness Carter testified that:

> "It appears that many of the functions performed by EEI would fall into the category of lobbying if they were done by CP&L rather than EEI."

Witness Carter further testified that:

> "Since CP&L excludes all of its lobbying expenses from the cost of service for ratemaking purposes, I believe it is reasonable to disallow similar expenses incurred by someone else on behalf of CP&L."

The Commission in Docket No. E-2, Sub 481 (CP&L's last general rate case), concluded that it was:

> "...appropriate for the Company in its next general rate proceeding to present information which will show all direct and indirect contributions to and through EEI from all sources and all expenditures by program and by a system of accounts which will allow the Commission to specifically determine the appropriateness of the expenditures for ratemaking purposes."

The Commission finds that while the Company has provided additional information in this proceeding concerning EEI, the information provided is not sufficient to refute the position of the Public Staff. The Commission concludes, therefore, that the $85,000 reduction in other O&M expenses as proposed by the Public Staff is reasonable and appropriate for use herein.

The Commission notes also that in a Duke Power Company general rate case, Docket No. E-7, Sub 391, an adjustment to disallow 40% of EEI dues was also approved.

The next adjustment to other O&M expenses is an adjustment proposed by Public Staff witness Carter to disallow 50% of the Company's payment to EEI's Media Communications Fund (MCF). Witness Carter filed, as Appendix A to his testimony, copies of certain ads sponsored by EEI. Based on a review of these ads which encourage consumption of power, and also on the fact that the Company did not provide information regarding specific dollar amounts or present ads that would be appropriate for ratemaking purposes, the Commission concludes that the Public Staff's $52,000 adjustment to reduce the level of other O&M expenses is reasonable and appropriate for use herein.

The next adjustment to other O&M expenses proposed by the Public Staff is an adjustment to exclude from the cost of service 50% of the salaries and deferred compensation of the four Company officers who are members of the Executive Committee of the Board of Directors. As witness Carter pointed out in his testimony, similar adjustments have been proposed and approved in CP&L's last three general rate cases.

The Commission stated in the Final Order in CP&L's last general rate case, Docket No. E-2, Sub 481, that the issue of officers' salaries should be revisited in CP&L's next general rate proceeding for purposes of determining whether continuation of such an adjustment is appropriate. After careful consideration, the Commission concludes that an adjustment to exclude 50% of officers' salaries and deferred compensation continues to be appropriate. The Commission finds that it is reasonable for the Company's shareholders to bear 50% of the salary and deferred compensation expense of the Company officers whose function is most closely linked with meeting the demands of the common shareholders. The Commission notes that this adjustment is also consistent

with adjustments made in Duke Power Company's last two general rate cases, Docket No. E-7, Subs 391, and 408. Consistent with its findings on the appropriate cost of service study, the Commission concludes that an adjustment of $309,000 is appropriate rather than the $310,000 adjustment proposed by the Public Staff.

In making its determination of the appropriate level of other O&M expenses to be included in the Company's cost of service, the Commission finds that it is also appropriate to make one further adjustment resulting in an increase in the level of cogeneration expense proposed by the Company and the Public Staff to be included in base rates. As more particularly set forth in its Evidence and Conclusions for Finding of Fact No. 9, the Commission rejected the Company's proposal to shift the estimated fuel costs of cogeneration from base rates to the fuel factor at this time as the evidence in this proceeding shows that the fuel cost component of CP&L purchases from cogenerators which the Company proposed to include in the fuel factor is the estimated avoided fuel cost of the Company rather than an amount representing the embedded or actual fuel cost of the cogenerator.

The level of the energy and capacity components of CP&L's cogeneration costs for the test year in this proceeding, was $17,949,779 on a total system basis. CP&L made an adjustment of $29,240,653 on a total system basis to annualize to the end-of-period level the energy and capacity expenses related to cogeneration resulting in total system level of cogeneration costs of $47,190,432. CP&L's Fuel Report filed in Docket No. E-2, Sub 533, reflects a total system amount of $62,658,133 for the energy and capacity components of cogeneration costs for the 12 months ended March 1987.

In recognition of the fact that CP&L's cogeneration costs are escalating rapidly, the Commission believes that the level of the energy and capacity components of cogeneration costs for the 12-months ended March 1987 is a representative level of these costs and is the appropriate level to be included in the cost of service in this proceeding. Accordingly the North Carolina retail amount of O&M expense should be increased by $10,024,000 in this proceeding.

The Commission concludes, based upon the foregoing and the determinations made in Findings of Fact Nos. 6, 8, and 9, that the appropriate level of other O&M expenses for use herein, is $474,451,000.

As has been discussed previously in this Order, the differences between the levels of depreciation expense and taxes other than income proposed by the Company and the Public Staff are due to the Public Staff's use of an adjusted summer/winter peak and average method for jurisdictional cost allocations. Consistent with the Commission's determination of the appropriate cost of service study as discussed in the Evidence and Conclusions for Finding of Fact No. 8, the Commission concludes that the appropriate level of taxes other than income for use in this proceeding is $76,085,000. Further, the Commission finds that the level of depreciation expense proposed by the parties needs to be additionally adjusted to reflect the level of decommissioning expense associated with the Company's nuclear power plants calculated on the basis of the capital structure and cost rates approved by the Commission in this proceeding. In this regard, the Commission finds that the levels of decommissioning expense and the associated reserve level as proposed by the

Company should be increased by $1,067,000. In conjunction with this adjustment, the Commission finds that it is also appropriate to decrease the levels of deferred income tax expense and accumulated deferred income taxes by $465,000. Consistent with its determination of the appropriate cost of service study as discussed in the Evidence and Conclusions for Finding of Fact No. 8 and its findings on decommissioning expense, the Commission concludes that $150,036,000 is the appropriate level of depreciation expense to be used in this proceeding.

The final area of difference between the Company and the Public Staff in regard to the appropriate level of operating revenue deductions concerns the appropriate level of income tax expense to be used in this proceeding.

There are several reasons for the difference between the parties' proposed levels of income tax expense. Since the parties did not agree on the levels of the other items of operating revenue deductions, rate base, and revenues they, of course, would propose different levels of income tax expense. Additionally, the Public Staff's use of an adjusted summer/winter peak and average method for jurisdictional cost allocation purposes accounts for a portion of the difference in proposed income tax expense. The major difference between the parties' proposed levels of income tax expense, however, is due to the use of different federal income tax (FIT) rates.

Since the use of different federal income tax rates accounts for most of the difference in the parties' positions, the Commission will address this issue first.

Company witness Bradshaw testified that the appropriate federal income tax rate to use in this case is 40%, while Public Staff witness Carter and Attorney General witness Perkerson testified that the appropriate rate is 34%.

Company witness Bradshaw, who recommended the use of a 40% federal income tax rate, opposed the use of a 34% federal income tax rate for two reasons. He testified as follows:

> "First, there are certain mandatory normalization provisions that using the 34% tax rate could violate. Secondly, using the 34% tax rate in this case frustrates the Company's attempt to moderate the increase in customers' rates by phasing in the Harris Plant over two rate cases."

Witness Bradshaw further testified that if a 34% rate were used, it would clearly fall below the actual tax rate for calendar year 1987 of 40%, and that if tax expense in the cost of service were provided at any rate less than 40%, the deferred taxes applicable to accelerated depreciation may not be sufficient to establish compliance with the mandatory normalization rules of the Internal Revenue Code.

Witness Bradshaw testified that the use of a 34% federal income tax rate would also frustrate the Company's attempt to phase in the Harris Plant over two rates cases, and that the attempt to lessen the impact from Harris on customer bills may be easily frustrated if the Commission recognizes the reduction in tax expense caused by the Act in a manner that passes all of the benefits along to the customers as a reduction in rates in this case.

In order to preserve for customers the advantages of the phase-in scenario and at the same time recognize in rates the reduction in the federal income tax rate, witness Bradshaw submitted the following proposal: (1) Establish rates in this case based upon a federal income tax rate of 40%. (2) Establish a second reserve account beginning January 1, 1988, for revenues representing the difference between rates based on a 40% federal income tax rate and those based on a 34% federal income tax rate. (3) In the Company's 1988 rate case make an adjustment to flow through the funds maintained in both reserve accounts as a reduction in rates established in that case. Such adjustment should be established for a one-year period. Witness Bradshaw also testified that these reserve accounts should accrue interest at a rate set by the Commission. The Company stated that it is willing to voluntarily forego the revenues it legitimately collected between January 1, 1987, and August 5, 1987, only if the Commission accepts the other aspects of its proposal for recognizing the reduction in the FIT rate.

Witness Bradshaw stated that if the Company's proposal is followed, customers would receive the full benefit of the reduction in the tax rate, and the beneficial value of the Harris phase-in would be preserved. In addition, CP&L's proposal would avoid the potential loss of accelerated depreciation if rates are established in this case as though the federal income tax rate were only 34%.

Public Staff witness Carter testified that the federal income tax component of the cost of service in this proceeding should be based on a federal income tax rate of 34%, but that CP&L should continue to expense federal income taxes on its books for the remainder of 1987 using the blended rate of 40%. Witness Carter also testified that if the 34% federal income tax rate is used to determine the level of federal income tax expense in this proceeding, the deferred account required by the Commission's Order entered in Docket No. M-100, Sub 113, to record the difference between the 46% federal income tax rate and the 40% federal income tax rate should be reversed. He further stated that if the Commission agrees with his recommendation that the 34% rate is the appropriate rate to use in this proceeding, there will be no need for a second deferred account in 1988 to reflect the difference between the 40% and 34% federal income tax rates.

Witness Carter testified that the use of the 34% federal income tax rate, which became effective on July 1, 1987, would not violate the normalization requirements of the Internal Revenue Code. Witness Carter stated that as long as CP&L multiplied the difference between depreciation expense for income tax purposes and depreciation expense for book purposes by the blended federal income tax rate of 40% for 1987 and added that amount to the balance of accumulated deferred income taxes, there would be no chance whatsoever that CP&L would be in violation of the Internal Revenue Code normalization requirements.

On cross-examination, witness Carter was asked whether it would be inconsistent to use the 34% federal income tax rate for the purpose of determining net operating income for return in setting rates in this proceeding and at the same time to deduct the actual per books accumulated deferred income taxes at the end of the test period when amounts had been added to that reserve during the test period at the 46% federal income tax rate. Witness Carter testified that this would not be inconsistent, and that it is entirely

appropriate to do so. This issue was fully discussed in conjunction which the Evidence and Conclusions for Finding of Fact No. 12. As determined therein, the Commission agrees with witness Carter that his treatment of accumulated deferred income taxes is reasonable and proper.

Witness Carter strongly emphasized that he was recommending that the Commission use the federal income tax rate of 34% in determining the appropriate level of federal income tax expense in this proceeding. However, he testified that if the Commission is persuaded that the 40% rate is the appropriate rate to use in this proceeding, he would then make the following recommendations:

(1) The Commission should determine a revenue requirement using a 40% tax rate; this revenue requirement should be reflected in rates as soon as an Order is issued in this proceeding.

(2) The Commission should calculate a second revenue requirement using a 34% tax rate; rates should be reduced effective January 1, 1988 to reflect this revenue requirement.

(3) The Commission should require the Company to file two sets of tariffs; one reflecting the revenue requirement based on the 40% tax rate and one reflecting the revenue requirement based on the 34% tax rate.

(4) The Commission should require CP&L to file, within 30 days of the date an Order is issued in this proceeding, a plan to refund the amounts recorded in the deferred account from January 1, 1987, until the date that rates set in this proceeding go into effect. The Commission should require the Company to refund these excess tax collections, with interest, as soon as possible.

Attorney General witness Perkerson testified that the appropriate federal income tax rate to use in this proceeding is 34%, and that the use of the 34% federal income tax rate would not violate Internal Revenue Code normalization requirements. Witness Perkerson stated that the difference between the 46% federal income tax rate and the 34% federal income tax rate from July 1, 1987, through the date of the Order in this proceeding should be refunded to CP&L's customers in the form of a onetime credit to their monthly bills. It is the opinion of witness Perkerson that either the Company's argument with respect to normalization is correct and CP&L has already knowingly violated normalization requirements due to its charging of tariffs using a federal income tax expense of 46% while booking taxes at a blended effective rate of 40%, or the Company's argument is incorrect, and neither the Company's actions nor the Commission's actions in using a 34% statutory federal income tax rate for some other utilities violates normalization. Witness Perkerson is of the opinion that the Company's normalization argument is definitely incorrect.

CUCA, in its proposed order, supports the position taken by the Public Staff and the Attorney General that the cost of service in this proceeding should reflect a 34% federal income tax rate. Further, CUCA recommends that a onetime refund computed by the difference between the 46% FIT rate and the 40%

FIT for the first 8 months of 1987 be made in the Company's September 1987 bills including interest on the refund.

After careful consideration of the positions of all parties, the Commission makes the following findings in this regard:

(1) It is appropriate to fix rates in this proceeding based upon the use of a 40% FIT rate in the cost of service;

(2) It is appropriate to require a refund with interest of the January 1, 1987, through August 5, 1987, accumulated balance of the first deferred account established in Docket No. M-100, Sub 113, which tracked the difference in revenues billed under rates reflecting a 46% FIT rate and revenues that would have been collected if rates had been based upon a 40% FIT rate; and

(3) It is appropriate that CP&L establish a second deferred account as of January 1, 1988, in which to accrue the difference between revenues billed under approved rates reflecting a 40% FIT rate and revenues that would have been billed if rates had been determined based upon a 34% FIT rate.

The Commission agrees that the Company's tax rate proposal ensures that the customers will in fact receive the full benefit of the reduction in the federal income tax rate, while the Public Staff's proposal of a 34% FIT rate with no refund does not. The primary advantage of the CP&L proposal is that customers will receive the benefit of the reduction in the FIT rate from 46% to 40% for the first seven months of 1987 and also, as discussed below, that it can serve as a mechanism to help phase the Harris Plant into rates. Public Staff Bradshaw Cross-Examination Exhibit 2A illustrates the fact that under the CP&L proposal this benefit exceeds approximately $6 million. Under the Public Staff's proposal, the benefit to customers is significantly less. Since there would be a delay in customers receiving the full benefit in the FIT rate reduction under the CP&L proposal, CP&L has agreed to pay interest on the balance in the deferred account. Consequently, the customers' interests would be fully protected under CP&L's plan.

In addition to the Company's concern about the federal tax laws as they affect normalization, CP&L is motivated by a desire to foster a phase-in of the rate increases that will take place during 1987 and 1988. CP&L argues that its approach is more appropriate and more consistent with the Commission's Order in Docket No. E-2, Sub 511, rather than one smaller increase followed shortly by a substantially larger increase.

The Public Staff's alternative proposal, unlike its official or preferred proposal, also ensures customers the full advantage of the federal tax reduction. However, if adopted, in total, the effect of the Public Staff alternative FIT rate adjustment is to offset the increase in this case, cause a rate reduction on January 1, 1988, and tends to magnify the magnitude of the general rate increase expected later in 1988. The Commission concludes that rates should be set in this proceeding to reflect a 40% FIT rate which is the 1987 calendar year rate and that during the 12 months beginning August 5, 1987, the first deferred account balance for the difference between the 46% FIT rate and the 40% FIT rate should be refunded to CP&L's customers plus interest.

Further, the Commission notes in its Order issued in this docket on August 5, 1987, that CP&L is placed on notice that it will be required to refund income tax expense overcollection plus interest, once it has occurred and once the exact amount can be determined, which will arise as a result of the change in the federal income tax rate from 40% to 34%.

CP&L further argued that the proposals made by the Public Staff and Attorney General, if adopted, would risk loss to CP&L of the advantages of tax normalization which witness Bradshaw testified could result in an increase of approximately $100,000,000 in the Company's current tax liability in 1987.

Section 167(1)(3)(G) of the Internal Revenue Code states:

> "(G) NORMALIZATION METHOD OF ACCOUNTING.--In order to use a normalization method of accounting with respect to any public utility property--
>
> (i) the taxpayer must use the same method of depreciation to compute both its tax expense and its depreciation expense for purposes of establishing its cost of service for ratemaking purposes and for reflecting operating results in its regulated books of account, and
>
> (ii) if, to compute its allowance for depreciation under this section, it uses a method of depreciation other than the method it used for the purposes described in clause (i), the taxpayer must make adjustments to a reserve to reflect the deferral of taxes resulting from the use of such different method of depreciation."

CP&L computes depreciation expense for tax purposes through an accelerated method of depreciation and for book and ratemaking purposes through the straight line method of depreciation. Consequently, CP&L must establish a reserve to record the difference due to differences in depreciation methodology.

Under the proposals of the Public Staff and Attorney General, subsequent to August 5, 1987, CP&L would compute taxes at 40% for tax return and book purposes but at 34% for ratemaking purposes. As a result, CP&L argues that the deferred taxes added to the accumulated deferred income tax reserve will reflect less than "the deferral of taxes resulting from the use of different methods of depreciation" as Section 167(1)(3)(G)(ii) requires. The Attorney General and Public Staff argue that this section of the tax code deals primarily with differences in depreciation methods. CP&L asserts that the provisions of the tax code stress differences in tax expense flowing from differences in depreciation expense not differences in depreciation expense itself.

Both Public Staff witness Carter and Attorney General witness Perkerson recommend that CP&L should continue to accrue taxes on its books at 40% even though the tax rate the Commission should approve for ratemaking purposes will be 34%. The Public Staff argues that as long as the per books tax rate is 40% or the same as the effective tax rate, "there is no chance, whatsoever, that the Company will be in violation of the Internal Revenue Code normalization provisions."

In view of the fact that the Commission has hereinabove previously concluded that a 40% FIT rate is the appropriate tax rate for use in this proceeding, the Commission does not find it necessary to decide the Company's normalization argument. The Commission concludes that the Company should refund the funds collected in the first deferred account established in Docket No. M-100, Sub 113, which tracked the difference between revenues billed under rates reflecting a 46% FIT rate and revenues that would have been collected if rates had been based upon a 40% FIT rate. Such refund should be made during the 12-month period beginning August 5, 1987. The Commission hereby directs the Company to establish a second deferred account effective January 1, 1988, to record the difference between revenues billed under approved rates reflecting a 40% rate and revenues that would have been collected if rates had been determined based upon a 34% FIT rate. Interest shall accrue on both deferred accounts at the rate of 10% per annum.

The difference in income tax expense that is due to the use of the summer/winter peak and average allocation method advocated by Public Staff witness Lam is $3,397,000. The adjustments to the summer/winter peak and average allocation method proposed by Public Staff witness Haywood account for $371,000 of the difference in income tax expense. Having previously discussed the appropriate cost of service study for use herein, the Commission now concludes that it is appropriate to increase the Company's proposed level of income tax expense by $4,525,000. Further, in conjunction with its findings regarding decommissioning expense, the Commission finds that it also appropriate to decrease deferred income tax expense by $465,000.

Based upon the Commission's determinations regarding the appropriate jurisdictional allocation method, the appropriate federal income tax rate and the appropriate levels of rate base, revenues, and operating revenue deductions the Commission hereby concludes that the appropriate level of income tax expense for use in this proceeding is $103,436,000, including deferred investment tax credits and deferred income taxes.

One further operating revenue deduction issue concerning the appropriate ratemaking treatment of abandonment losses will now be addressed. The Attorney General challenged the Company's proposed ratemaking treatment of the abandonment losses relating to Harris Units 2, 3, and 4. Company witness Bradshaw testified that CP&L has abandoned several projects since 1979. He testified that two such abandonments, the South River project and the Brunswick Cooling Towers, have already been amortized pursuant to Commission Orders and are not included in the rates proposed for this case. Another abandonment, Mayo Unit 2, will be considered in CP&L's next general rate case pursuant to the Commission's Order of June 16, 1987. Witness Bradshaw testified that the Company's proposed cost of service in this case includes the amortization of losses relating to the abandonment of Harris Units 2, 3, and 4. Witness Bradshaw filed an exhibit reflecting $32,545,050 as the North Carolina retail revenue requirement for these Harris abandonment losses when calculated at CP&L's proposed 40% federal income tax rate.

The ratemaking treatment of the Harris abandonment losses has been considered by the Commission in previous general rate cases of CP&L. In Docket No. E-2, Sub 444, the Commission allowed a recovery of the cost associated with cancelled Harris Units 3 and 4 over a 10-year period with inclusion of the interest arising from the debt financing portion of the unamortized balance.

In Docket No. E-2, Sub 461, the Commission reexamined the ratemaking treatment of abandonment losses in order to develop a more consistent and equitable approach. The Commission determined that CP&L should be allowed to continue amortization of the Harris abandonment losses, but that no ratemaking treatment should be allowed which would have the effect of allowing CP&L to earn a return on the unamortized balance. The Commission concluded that this treatment provided the most equitable allocation of the loss between the utility and its ratepayers. In CP&L's last general rate case, Docket No. E-2, Sub 481, the Commission dealt with CP&L's decision to cancel the construction of Harris Unit 2. Consistent with its treatment of the earlier Harris cancellations, the Commission ruled that the abandonment losses of Harris Unit 2 should be amortized over ten years with no return allowed on or with respect to the unamortized balance. Consistent with these previous orders, CP&L proposes in this case to include in operating expenses the amortization of the three abandoned Harris units.

The Attorney General opposes any recovery of the abandonment losses through rates in this case. The Attorney General argues that the abandoned plant costs cannot be included in rate base since they do not relate to plant "used and useful" in providing service. The Commission has not included these costs in rate base. The Commission has instead allowed CP&L to recover the abandonment costs over time through amortization of these costs as operating expenses. The Attorney General argues that such ratemaking treatment is improper because abandonment losses do not constitute operating expenses and because operating expenses must have the same nexus with the test year and "used and useful" concepts as must rate base. The Attorney General cites a 1981 decision of the Ohio Supreme Court holding that the losses associated with certain cancelled nuclear plants in that state could not be amortized as expenses for ratemaking purposes under the Ohio statutes. Office of Consumer Council v. Public Utilities Commission, 423 N.E. 2nd 820 (1981).

Initially, the Commission notes that the majority of courts and commissions that have dealt with this issue have allowed ratemaking treatment of abandonment losses, usually as operating expenses. Each of these cases, including the case cited by the Attorney General, was decided on the basis of the statutes in the jurisdiction involved. The Commission cites them as an indication of the situation in other jurisdictions. This case must of course be decided on the basis of the North Carolina statutes. The Commission interprets these statutes as allowing the ratemaking treatment previously ordered for the Harris abandonments. When both the decision to build a generating plant and the subsequent decision to cancel it are prudent, the Commission believes that it is just and reasonable to allow amortization of the abandonment losses as operating expenses.

The Attorney General first argues that these abandonment losses represent capital expenditures, not operating expenses. Operating expenses, it is argued, are "the more ordinary, out-of-pocket expenditures which represent the utility's cost of providing service." Furthermore, the Attorney General cites G.S. 62-133(c) to argue that all operating expenses must be "based on the plant and equipment in operation at [the end of the test period]." It is argued that there must be a nexus between operating expenses and specific property in operation devoted to serving the public. The Commission declines to take such a strict view of the ratemaking treatment authorized for operating expenses.

Initially, the Commission notes that the term "operating expenses" is neither defined by our statutes nor subject to a generally accepted meaning as a term of art. Our Supreme Court has considered the scope of the term as used in our ratemaking statute. Utilities Commission v. Edmisten, 294 N.C. 598, 606 (1978), holds, "When a narrow construction of the operating expense element of a regulatory act would frustrate the purposes of the act, however, the term should be liberally interpreted and applied." In that case the Supreme Court, looking to the purposes behind the Public Utilities Act, upheld the Commission's treatment of the reasonable costs of approved gas exploration projects as operating expenses. The Court held, "if no new supply source were obtained, the utilities would be unable to supply adequate service to their customers and severe repercussions to the economy of the State would ensue. In such a situation, the costs of these projects, handled as outlined above, must be said to be operating expenses if practical effect is to be given the Act." Id. at 607.

The purposes of the Public Utilities Act, as set forth in G.S. 62-2, include the promotion of adequate, reliable, and economical utility service and assurance "that facilities necessary to meet future growth can be financed by the utilities operating in this State on terms which are reasonable and fair to both the customers and existing investors of such utilities." The Commission has previously determined that our treatment of these abandonment losses is necessary in order to promote an equitable sharing of the loss between the ratepayers and the utility stockholders. This was based upon a 1983 study by the U. S. Department of Energy entitled Nuclear Plant Cancellations: Causes, Costs and Consequences which was introduced in evidence in CP&L's last general rate case and which was cited in our order in that rate case. Thus, the Commission concludes that a liberal interpretation of the operating expense element of ratemaking so as to include the Harris abandonment losses is appropriate herein.

The Commission is not persuaded that G.S. 62-133(c) requires the strict nexus argued for by the Attorney General. Many reasonable operating expenses cannot be tied to specific utility property. Examples include load management, system planning, research and development, as well as the gas exploration costs involved in the Supreme Court case cited above.

Further support for the Commission's conclusion is provided by S. G.S. 62-133(d). This section of the statute provides that the Commission "shall consider all other material facts of record that will enable it to determine what are reasonable and just rates." All sections of G.S. 62-133 must be given weight in fixing rates. "By the adoption of this statute, the legislature intended to establish an overall scheme for fixing rates, and it must be interpreted in its entirety in order to comply with the legislative intent." State ex rel. Utilities Commission v. Duke Power Company, 305 N.C. 1, at 12 (1982). Taking the statute as a whole, and with a view to the purposes of the Public Utilities Act, the Commission finds its previous treatment of the Harris abandonment losses to be just and reasonable and reaffirms that treatment herein.

Based upon all of the foregoing, the Commission concludes that the appropriate level of total operating revenue deductions for use in this proceeding is $1,074,649,000, calculated as follows:

(000's Omitted)

Item	Amount
Fuel and purchased power	$ 270,641
Other O&M expenses	474,451
Depreciation	150,036
Taxes other than income	76,085
Income taxes	103,436
Total operating revenue deductions	$1,074,649

One final deduction in determining net operating income for return is interest on customer deposits. The Company and the Public Staff both agreed that the appropriate level is $552,000. The Commission concludes, therefore, that $552,000 of interest on customer deposits should be deducted from operating income before adjustments in order to determine net operating income.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 16

The evidence for this finding of fact regarding depreciation is found in the testimony of Company witness Bradshaw and Public Staff witness Turner.

Witness Bradshaw presented the Company's proposed level of depreciation expenses for nuclear production plant based on depreciation rates previously approved in Docket No. E-2, Sub 416, at 4.0144%.

Witness Turner discussed the basis for the 4.0144% nuclear depreciation rate, and contended that a rate of 3.2% might result if the net plant balance is recovered over the remaining life of the Robinson and Brunswick units (provided their remaining lives are governed by the expiration dates of their operating licenses issued by the Nuclear Regulatory Commission). However, witness Turner proposed no adjustment to the 4.0144% rate and pointed out that the Company currently has a study underway reviewing depreciation rates and expects to have its study completed in time for its next general rate case. He recommended that the Company be required to file a completed depreciation study with its next rate case.

The Commission is of the opinion that the Public Staff's recommendation should be adopted.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 17

The evidence relating to this finding of fact is presented in the testimony and exhibits of Company witnesses Bradshaw and Vander Weide, Public Staff witness Sessoms, CUCA witness Bowyer, and Attorney General witness Smith. The following chart summarizes the positions of the parties regarding the appropriate capital structure for use in this proceeding:

	CP&L	Public Staff	CUCA	Attorney General
Long-term debt	48.50%	48.84%	48.52%	48.50%
Preferred stock	8.50%	8.36%	10.27%	8.50%
Common equity	43.00%	42.80%	41.21%	43.00%
Total	100.00%	100.00%	100.00%	100.00%

In its application, as reflected in the prefiled testimony and exhibits of Company witnesses Bradshaw and Vander Weide, the Company utilized a pro forma or normalized capital structure estimated by adjusting the July 1986 actual capital structure for changes anticipated to occur through March 1987. This capital structure contained 43.00% common equity. In its application, the Company also utilized pro forma cost rates for debt of 8.90% and for preferred stock of 8.87%. Company witnesses Vander Weide and Bradshaw recommended that the Commission should approve a normalized capital structure in this case consistent with the Commission's practice in past CP&L cases. Company witness Bradshaw, under cross-examination, also indicated that CP&L's actual equity capitalization ranged from 42.8% to 44.14% during the January 1987 - May 1987 period.

In supplemental testimony filed on June 1, 1987, Company witness Bradshaw updated the Company's requested embedded cost rates for debt and preferred stock to equal 8.81% and 8.74%, respectively. He testified that these were the Company's actual embedded cost rates at April 30, 1987, adjusted for redemption premiums and the unamortized discount and issuance expenses. However, Mr. Bradshaw continued to recommend the pro forma capital structure requested in the Company's application.

Public Staff witness Sessoms recommended that the Commission should employ the latest known and actual quarter ending capital structure and embedded cost rates of CP&L. As of March 31, 1987, the actual capital structure of CP&L consisted of 48.84% long-term debt, 8.36% preferred stock, and 42.80% common equity. The embedded cost rates for long-term debt and preferred stock were 8.81% and 8.89%, respectively, as of that same date. Witness Sessoms testified that a pro forma capital structure should not be employed unless the actual capital structure is unreasonable. He also testified that the Company's requested pro forma capital structure and embedded cost rates at the end of April 1987 would result in an increased revenue requirement of $582,000 in this case greater than would the Company's actual capital structure and embedded cost rates as of March 31, 1987.

CUCA witness Bowyer recommended in his prefiled testimony that the pro forma capital structure and pro forma embedded cost rates originally requested by the Company should be employed for ratemaking purposes. However, in his summary, witness Bowyer changed his recommended capital structure and embedded cost rates. He testified that he had updated the costs of debt and preferred stock and had employed an actual capital structure provided by the Company. Therefore, he recommended a capital structure consisting of 48.52% long-term debt, 10.27% preferred stock, and 41.21% common equity. The embedded costs of debt and preferred stock which he employed were 8.81% and 8.74%, respectively.

On cross-examination, it was established that witness Bowyer's recommended capital structure was that of CP&L at March 31, 1986, the end of the test year, and the embedded costs were those as of April 30, 1987.

Attorney General witness Smith recommended the pro forma capital structure requested by the Company consisting of 48.5% long-term debt, 8.5% preferred stock, and 43.0% common equity. Dr. Smith also recommended that the pro forma embedded cost rates of debt and preferred stock originally requested by the Company, which were 8.90% and 8.87%, respectively, should be employed for ratemaking purposes.

The fact that CP&L's actual equity capitalization has recently fluctuated generally above the requested level of 43.0 percent supports the use of the Company's pro forma capital structure. The Commission also approved a normalized capital structure for CP&L in the Company's last general rate case, Docket No. E-2, Sub 481. The Commission believes that the normalized capital structure proposed by CP&L in this case which contains a 43.0% equity component is reasonable for ratemaking purposes, particularly when considered in combination with the rate of return on common equity allowed herein. Accordingly, the Commission finds and concludes that the reasonable and appropriate capital structure for CP&L in this proceeding is a normalized capital structure as follows:

Item	Percent
Long-term debt	48.5%
Preferred stock	8.5%
Common equity	43.0%
Total	100.0%

Regarding the cost rates for long-term debt and preferred stock, all parties, except the Public Staff, agree with the Company's update of such costs as of April 30, 1987, as follows:

	Company Filed	Company Amended	Public Staff
Long-term debt	8.90%	8.81%	8.81%
Preferred stock	8.87%	8.74%	8.89%

The Public Staff used cost rates for long-term debt and preferred stock that were the actual per book values as of March 31, 1987. In his proposed order, the Attorney General supports adoption of CP&L's updated cost rates as of April 30, 1987, for both long-term debt and preferred stock.

The Commission concludes that the reasonable and appropriate embedded cost rates for long-term debt and preferred stock to be used in this proceeding are the updated April 30, 1987, cost rates of 8.81 percent and 8.74 percent, respectively.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 18

The evidence supporting this finding of fact is found in the testimony and exhibits of Company witness Vander Weide, CUCA witness Bowyer, Attorney General witness Smith, and Public Staff witness Sessoms.

To determine his recommended cost of common equity, Dr. Vander Weide conducted a discounted cash flow (DCF) analysis and a risk premium analysis. The result of his DCF analysis was 12.4%. His risk premium result was 13.5% to 14.5%. Therefore, Dr. Vander Weide concluded that the cost of common equity for CP&L was in the range of 12.4% to 14.5%. He recommended a return on common equity in the upper end of this range of 14.0%. His decision to recommend a result at the upper end of his range was based on his belief that the Commission did not increase the allowed rate of return step for step with the rapid increase in actual capital costs which occurred during the 1970's and early 1980's and therefore should react only gradually to decreases in capital costs.

Dr. Vander Weide was questioned extensively concerning his concept of gradualism and specifically about how his cost of equity recommendation in this case compared to prior recommendations he has made before this Commission. He agreed that in previous cases he had used the risk premium method only as a check for his DCF results. Public Staff Cross Examination Exhibit No. 1 showed that in his last five appearances before this Commission as a cost of equity witness, Dr. Vander Weide's final recommendation was within 25 basis points of his DCF results in every one of those cases. In the present case, however, his final recommendation of 14.0% is 160 basis points above his prefiled DCF result of 12.4% and 240 basis points above an updated DCF result of 11.6%. When asked to explain this inconsistency, Dr. Vander Weide testified that he used judgment in all cases and that present circumstances differed from those in the past.

Dr. Vander Weide employed the quarterly version of the DCF Model with respect to CP&L alone and did not establish a group of comparable risk companies. The dividend yield was calculated by dividing the dividend in the S&P Stock Guide of September 1986 by the average of the high and low stock prices over the three month period August through September 1986. The price was adjusted by 5.0% to account for flotation costs and market pressure. The growth component was taken directly from the September 1986 edition of the Institutional Brokers Estimate System (IBES). The adjusted dividend yield was combined with the IBES growth rate, and the sum was then annualized to arrive at a cost of common equity equal to 12.4% for CP&L using this approach.

Dr. Vander Weide was asked several questions under cross-examination about his DCF analysis. He testified under cross-examination that his DCF result of 12.4% would equal 11.6% if updated. He also agreed that the 5.0% flotation cost and market pressure adjustment to the stock price of CP&L caused his DCF result to be .43% (or 43 basis points) higher than if the stock price had not been adjusted. Public Staff Cross Examination Exhibit No. 3 showed that a .43% increase in the allowed return on common equity would result in annual North Carolina retail revenue requirements being $9,954,000 higher. Public Staff Cross Examination Exhibit No. 2 showed that CP&L has incurred only $2,260,000 for flotation costs over the last six years. However, Dr. Vander Weide stated

that the $2,260,000 figure did not reflect costs such as market pressure, printing and legal expenses.

Dr. Vander Weide's risk premium result of 13.5% to 14.5% was derived by adding a 4.0% to 5.0% risk premium to the expected yield on long-term debt issues of CP&L of around 9.5%.

Concerning his risk premium approach, Dr. Vander Weide was cross-examined extensively on any change in risk premiums that may have occurred in recent years. He agreed that risk premiums have been lower recently than over the long term. In his opinion, this was due to higher return requirements demanded by bond investors as a result of the unexpected inflation that occurred during the late 1970's and early 1980's. Dr. Vander Weide also agreed that interest rates have fluctuated dramatically since 1979 and have remained relatively high compared to historical levels prior to 1979. As this higher return requirement suggests, Dr. Vander Weide concurred with counsel that investors now perceive long-term bonds as being riskier than prior to 1979. However, he disagreed that lower risk premiums were appropriate at the current time because stock returns have also fluctuated. When questioned about short-run fluctuations, Dr. Vander Weide agreed that the volatility of common stock returns since 1980 has been much like the long-run volatility of returns of common stocks. In his direct testimony, Dr. Vander Weide cites an article by Brigham, Shome, and Vinson published in the Spring, 1985 edition of Financial Management that states:

> "The effects of changing interest rates in risk premiums shifted dramatically in 1980, at least for the utilities. From 1965 through 1979, inflation generally had a more severe adverse effect on utility stocks than on bonds, and, as a result, an increase in inflationary expectations, as reflected in interest rates, caused an increase in equity risk premiums. However, in 1980 and thereafter, rising inflation and interest rates increased the perceived riskiness of bonds more than that of utility equities, so the relationship between interest rates and utility risk premium shifted from positive to negative."

The article concludes by noting the instability of risk premiums and questioning FERC and FCC proposals of using a risk premium method to determine a utility's cost of equity.

CUCA witness Bowyer recommended that CP&L should be allowed an 11.6% return on common equity. He relied upon the results of both a risk-premium method and a DCF analysis to derive his recommendation. His risk-premium study indicated a cost of common equity equal to 12.43%. The risk premium of 3.07% was calculated by taking the difference between the earnings/price ratios of CP&L and a group of companies comparable in risk to CP&L and the yields on U.S. Treasury bond yields from 1983-1986. He added the 3.07% risk premium to the yields currently on U.S. Treasury bond futures of 9.36% which equaled the 12.43% cost of common equity using this method. Dr. Bowyer's DCF analysis of CP&L and a group of comparable risk companies resulted in a 10.7% to 11.92% cost of common equity range. The dividend yield component of the DCF of 7.13% was the result of dividing a weighted average dividend by the weighted average

market price over the 15-month period ended March 31, 1987. To determine the expected growth rate in dividends, Dr. Bowyer employed an average historical retention growth rate equal to 3.75%, an average of the Value Line dividend growth rate estimates equal to 3.57%, and an average of Salomon Brothers five-year dividend growth rate forecast equal to 4.79%. Adding the 7.13% dividend yield to the 3.57% to 4.79% range in dividend growth rate estimates resulted in a cost of common equity equal to 10.7% to 11.92% for CP&L. Based on the results of these two studies, Dr. Bowyer recommended a return on common equity for CP&L of 11.6%.

As a check on the reasonableness of his return on equity recommendation, Dr. Bowyer compared the difference in the current level of interest rates and an 11.6% return on equity to the level of interest rates at the time CP&L was allowed a 15.25% return on equity by the Commission in Docket No. E-2, Sub 481. Dr. Bowyer testified that at September 30, 1983, the end of the test year in Docket No. E-2, Sub 481, yields on U.S. treasury bonds were 11.65%. The 15.25% return on CP&L's common equity allowed in that case was 363 basis points above the 11.65% level of interest rates. He cited that adding the 363 basis point difference to a current yield on U.S. treasury bonds of 8.02% produced a cost of common equity of 11.62%. In his opinion, this comparison confirmed the reasonableness of his 11.6% return on equity recommendation in this case.

Attorney General witness Smith relied upon a DCF analysis as the basis of her return on equity recommendation of 11.0%. Using market price data for the six-month period October 1986 through March 1987, and earnings, dividend, and book value data through year-end 1986, she estimated the cost of equity capital for CP&L to be 9.5% to 10.5%. The CP&L return estimate was the sum of CP&L's 6.9% dividend yield and a long-term dividend growth estimate for CP&L of 2.6% to 3.6%. She also estimated the cost of equity for the electric utility industry as a whole equal to 10.0% to 11.0% based upon a 7.0% dividend yield and a growth rate of 3.0% to 4.0%. However, Dr. Smith also testified that since her studies were completed, interest rates and dividend yields increased by 50 to 120 basis points. These circumstances indicated to her that the cost of equity to CP&L, and the industry as a whole, had increased since her DCF study was completed. Therefore, she recommended that the return on equity which CP&L should be allowed is 11.0%.

Dr. Smith's testimony also included a description of the historical earnings performance of electric utilities and industrial companies which showed that the earned returns of utilities has ranged from 13.0% to 15.0% over the last several years, while the earned returns of unregulated companies has ranged from 10.4% to 13.2% in the last four years.

Dr. Smith rebutted the testimony of Dr. Vander Weide on four different points. First, she testified that the quarterly compounding adjustment made by Dr. Vander Weide is unnecessary. She pointed out that investors may earn reinvestment profits available to them from a source other than CP&L. She also stated that if CP&L paid only an annual dividend, CP&L could earn the reinvestment profits required by investors without ratepayers paying any additional charges. Second, she testified that CP&L will not incur flotation costs and even if it did, flotation costs would be substantially less than Dr. Vander Weide's allowance. Third, she disagreed with the use of the analysts' forecasts by Dr. Vander Weide, citing that five-year earnings growth projections of analysts are not the long-term dividend growth expectations of

investors which are appropriate to employ in the DCF model. Fourth, Dr. Smith testified that Dr. Vander Weide's risk premium was based upon earned returns on stocks and long-term bonds and had no relation to equity and debt costs. It was also her opinion that if a risk premium approach was undertaken, the correct result would be a 10.5% cost of equity estimate employing data from the Ibbotson and Sinquefield study relied upon by Dr. Vander Weide.

Public Staff witness Sessoms recommended that the cost of common equity to CP&L is 11.79%. To determine his recommended return, Mr. Sessoms relied upon the results of a DCF study. His DCF study consisted of determining the proper dividend yields and growth rates for CP&L specifically and a group of companies which exhibited measures of investment risk similar to those exhibited by CP&L. The results of the DCF study for CP&L indicated an investor return requirement of 11.25% to 11.85%, based upon a dividend yield of 7.0% to 7.1% and an expected growth rate of 4.25% to 4.75%. The results of the DCF study of the comparable group indicated an investor return requirement of 11.35% to 12.20%, based upon an average dividend yield of 7.6% to 7.7% and an expected growth rate of 3.75% to 4.50%. From these ranges, he concluded the investor return requirement on CP&L's common equity is 11.75%.

Based on an examination of CP&L's known and actual financing costs attributable to the public issuances of common stock over the years 1977-1986, witness Sessoms calculated a factor of .04% which he testified would allow CP&L to recover the known and actual financing costs when added to the investor return requirement.

As a check on the reasonableness of his return recommendation, witness Sessoms stated that his recommendation would produce a pretax interest coverage calculation of approximately 3.2 times. His testimony also included a comparison which showed that if his return on equity recommendation of 11.79% were allowed by the Commission in this case, it would produce a higher spread over the current level of A-rated utility bond yields than did the Commission's decision in CP&L's last general rate case.

On cross-examination, witness Sessoms acknowledged that the use of a more current stock price in the dividend yield calculation would cause an increase in the dividend yield. However, he testified that his estimate of the required return for CP&L was appropriate under current conditions, because as Sessoms Late-Filed Exhibit No. 1 showed, he chose the upper end of the investor return requirement range for CP&L in recognition of lower stock prices at the end of his pricing period. Therefore, to increase the recommended return above 11.79% would effectively double count the effect of more recent stock prices which are lower. This exhibit also shows that if dividend yields were updated through June 8, 1987, the 11.75% investor return requirement which he recommended is in the very center of the range for CP&L as well as within the range of the comparable risk group. He was also asked several questions concerning the flotation costs incurred by CP&L and any market pressure incurred by CP&L. His testimony was that his .04% adjustment was proper and would allow CP&L to recover any known and actual financing costs. He testified that there was not even a theoretical basis for a market pressure adjustment, and even if market pressure was incurred, that was a shareholder risk reflected in the stock's price.

The determination of the appropriate fair rate of return for CP&L is of great importance and must be made with great care, because whatever return is allowed will have an immediate impact on CP&L, its stockholders, and its customers. In the final analysis, the determination of a fair rate of return must be made by this Commission, using its own impartial judgment and guided by the testimony of expert witnesses and other evidence of record. Whatever return is allowed must balance the interest of the ratepayers and investors and meet the test set forth in G.S. 62-133(b)(4):

> "...(to) enable the public utility by sound management to produce a fair return for its shareholders, considering changing economic conditions and other factors, as they then exist, to maintain its facilities and services in accordance with the reasonable requirements of its customers in the territory covered by its franchise, and to compete in the market for capital funds on terms which are 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 parties involved are treated fairly and equitably.

The rates of return on common equity recommended by the various parties in this case range from a low of 11.0% recommended by Dr. Smith to a high of 14% recommended by Dr. Vander Weide. It is generally agreed that the determination of a fair and reasonable rate of return is a matter of informed judgment and that the various methodologies used to make such a determination serve as no more than guides or channels to aid in exercising 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...").

Accordingly, the Commission finds that the reasonable rate of return for CP&L to be allowed in this case on its common equity is 12.63%. Combining this with the appropriate capital structure and the costs of debt and preferred stock heretofore determined yields an overall rate of return of 10.45% to be applied to the Company's original cost rate base. Such rates of return will enable CP&L by sound management to produce a fair rate of return for its stockholders, to maintain facilities and services in accordance with the reasonable requirements of its customers, and to compete in the capital market for 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 12.63% allowed CP&L in this case is consistent with competent, material, and substantial evidence offered in this proceeding. Such evidence clearly indicates that interest rates have declined by 400 to 500 basis points since the time of CP&L's last general rate increase hearing in mid-1984, when the Company was granted a rate of return on common equity of 15.25%. It also reflects the fact that the Company's market-to-book ratio has been above 1 for some time; that Harris Unit 1 is now in commercial operation; that CP&L has been allowed a normalized capital structure in this case consisting of 43.0% common equity which is 3% higher than the Company was allowed in its last general rate case; and that CP&L's construction and accrual earnings on construction will decrease dramatically. The Commission further concludes that CP&L's risk has also been significantly decreased since the Company's last general rate case as a result of the fuel true-up procedures implemented for the Company in September 1985 pursuant to G.S. 62-133.2. The allowed equity return of 12.63% includes an adjustment to allow for the known and actual flotation costs associated with the public issuance of common stock.

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 recommended by the Public Staff, CUCA and the Attorney General are 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 CP&L is 12.63%. 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 CP&L 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 efficiency. 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 reasonable return for its stockholders while providing adequate economical service to its ratepayers.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 19

The Commission has previously discussed its findings of fact and conclusions regarding the fair rates of return on rate base and common equity which CP&L should be afforded an opportunity to earn.

The following charts summarize the gross revenues and the rates of return which the Company should have a reasonable opportunity to achieve based upon the determinations made herein. Such schedules, illustrating the Company's gross revenue requirements, incorporate the findings and conclusions heretofore and herein made by the Commission.

SCHEDULE I
CAROLINA POWER & LIGHT COMPANY
North Carolina Retail Operations
Docket No. E-2, Sub 526
STATEMENT OF OPERATING INCOME
Twelve Months Ended March 31, 1986
(000's Omitted)

Item	Present Rates	Approved Increase	Approved Rates
Operating revenues	$1,325,856	$92,467	$1,418,323
Operating revenue deductions			
Fuel and purchased power	270,641	-	270,641
Other operation and maintenance expenses	474,451	-	474,451
Depreciation	150,036	-	150,036
Taxes other than income	76,085	2,977	79,062
Income taxes	103,436	39,018	142,454
Total	1,074,649	41,995	1,116,644
Operating income before adjustments	251,207	50,472	301,679
Interest on customer deposits	(552)	-	(552)
Net operating income	$ 250,655	$50,472	$ 301,127

SCHEDULE II
CAROLINA POWER & LIGHT COMPANY
North Carolina Retail Operations
Docket No. E-2, Sub 526
STATEMENT OF RATE BASE AND RATE OF RETURN
Twelve Months Ended March 31, 1986
(000's Omitted)

Item	Amount
Investment in electric plant	
Electric plant in service	$3,923,646
Net nuclear fuel	123,424
Accumulated depreciation	(836,080)
Accumulated deferred income taxes	(433,213)
Net investment in electric plant	2,777,777
Allowance for working capital	
Materials and supplies	77,444
Other rate base additions and deductions	(5,476)
Investor funds advanced for operations	32,781
Total working capital allowance	104,749
Original cost rate base	$2,882,526
Rates of return	
Present Rates	8.70%
Approved Rates	10.45%

SCHEDULE III
CAROLINA POWER & LIGHT COMPANY
North Carolina Retail Operations
Docket No. E-2, Sub 526
STATEMENT OF CAPITALIZATION AND RELATED COSTS
Twelve Months Ended March 31, 1986
(000's Omitted)

Item	Capitalization Ratio (%)	Original Cost Rate Base	Embedded Cost (%)	Net Operating Income
	Present Rates - Original Cost Rate Base			
Long-term debt	48.50	$1,398,025	8.81	$123,166
Preferred stock	8.50	245,015	8.74	21,414
Common equity	43.00	1,239,486	8.56	106,075
Total	100.00	$2,882,526		$250,655
	Approved Rates - Original Cost Rate Base			
Long-term debt	48.50	$1,398,025	8.81	$123,166
Preferred stock	8.50	245,015	8.74	21,414
Common equity	43.00	1,239,486	12.63	156,547
Total	100.00	$2,882,526		$301,127

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 20 - 24

The evidence regarding these findings of fact concerning rate design is found in the testimony and exhibits of Company witness Edge, Public Staff witness Turner, CIGFUR witness Phillips, and DOD witness Patwardhan.

Percentage Increases and Rates of Return

Company witness Edge testified that the Company's rate design objective is to move toward equalized rates of return for all customer classes, and that the Company seeks to design rates that result in a rate of return for each customer class that does not vary by more than 10% from the overall North Carolina retail rate of return. The Company proposed in this proceeding to increase rates for the residential and small general service customer classes by approximately 14.21%; increase rates for the large general service class by approximately 11.07%; increase rates for the sports field lighting class by approximately 13.07%; and maintain the lighting class (other than sports field lighting) at current rates.

Public Staff witness Turner offered several rate design alternatives which would also move the rate classes toward equalized rates of return. He recommended increasing the residential, small general service, and large general service customer classes by approximately 11.10%; increasing the sports field lighting class by approximately 11.92%; and maintaining at current rates or decreasing the lighting class (except sports field lighting) by certain amounts depending on the resulting rates of return.

CIGFUR witness Phillips recommended that each customer class be increased in such a way as to reduce the deviation between that class rate of return and the overall North Carolina retail rate of return by 50%.

DOD witness Patwardhan recommended that each customer class be increased in such a way as to equalize class rates of return over time, and that the increase for the large general service (LGS) class should be reduced to ensure that the rate of return of the LGS class does not deviate from the overall North Carolina retail rate of return by more than 10%.

The Commission notes that the increases proposed by either the Company or the Public Staff would result in class rates of return for the residential, small general service, and large general service classes which are within approximately 5% of the overall North Carolina retail rate of return based on the summer/winter peak and average cost allocation methodology. Furthermore, the increases proposed by either the Company or the Public Staff would result in class rates of return for the sports field lighting class which are still more than 20% below the overall North Carolina retail rate of return based on the summer/winter peak and average allocation method, and the current rates or the decreases proposed by the Public Staff for the lighting class (except sports field lighting) would result in class rates of return which are still more than 30% above the overall North Carolina retail rate of return.

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. 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 concludes that rates for the large general service class should be increased by 0.9 times the percentage increase applied to the residential and small general service classes herein; that rates for the sports field lighting class should be increased by 1.1 times the percentage increase applied to the residential and small general service classes herein; and that rates for the lighting classes (except sports field lighting) should be maintained at current levels.

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. Nevertheless, the Commission is of the opinion that the figures contained in the cost allocation studies in evidence are a reasonable basis for concluding that the rate designs adopted herein will not result in unreasonable discrimination between the rate classes for purposes of this proceeding. The cost allocation studies indicate that the rate designs approved herein are not discriminatory and will result in substantial movement toward equalized class rates of return in this proceeding.

Large General Service Demand Charges

The Company proposed to revise the demand charge in its large general service rate schedule from a single billing block to three billing blocks: 0-5,000 kW, 5,000 to 10,000 kW, and over 10,000 kW. The additional billing blocks are intended to recognize the different voltage levels at which large customers receive service. Company witness Edge explained that the smallest loads typically are served from the distribution system, the largest loads are typically served from the transmission system, and intermediate sized loads are typically served from either the transmission or distribution systems or substations in between. The Public Staff and CIGFUR II supported the Company's proposal.

DOD witness Patwardhan proposed that the large general service demand charge be revised from a single billing block to four billing blocks: transmission level, transmission/distribution substation, primary distribution level, and primary/secondary distribution substation. He contended that such blocking would more directly recognize the different voltage levels of service than would blocking based on size of load.

Witness Edge testified on cross-examination that demand charges based directly on voltage levels of service rather than on size of load might encourage customers to specify transmission level voltage requirements when

applying for service even when their actual needs could be supplied by distribution level voltage.

The Commission is of the opinion that the demand charge blocks proposed by the Company should be adopted.

Demand Ratchets

DOD witness Patwardhan testified that the demand ratchet currently incorporated in the general service rate schedules is counterproductive to the Company's load management objectives. The ratchet provides for a minimum monthly billing demand of at least 80 percent of the maximum summer demand or 60 percent of the maximum winter demand during the previous 12 months. The Company does not propose to change its demand ratchet.

The Commission has reviewed the demand ratchet in detail in previous dockets and concluded that time-of-use (TOU) rates should not include a billing demand ratchet although the Company's billing demand ratchet for non-TOU rates was acceptable. Such conclusion was based on testimony that demand ratchets are a poor second choice to TOU rates as a peak load pricing mechanism, and that TOU rates are available to all customers on a voluntary basis.

The Commission concludes that the demand ratchets proposed for non-TOU rate schedules should be accepted for purposes of this proceeding.

New Schedule SGS-TES

The Company proposes a new Small General Service Thermal Energy Storage (SGS-TES) rate schedule which offers thermal energy storage service on a voluntary basis to nonresidential customers with less than 1000 kW contract demand. The rate schedule incorporates fewer on-peak hours than the small general service TOU rates in order to better permit feasible operation of thermal storage equipment during on-peak periods.

The Public Staff supports the proposal, but expressed concerns that the reduced on-peak hours might have a great enough impact on the system peak to cause a shift in the timing of the system peak. The Public Staff recommended that the loads served under the new rate schedule SGS-TES be monitored and recorded, and that the information from the monitoring devices be analyzed periodically in order to determine what impact such loads might be having on the system peak.

The Commission is of the opinion that the Public Staff recommendation has merit but desires to ensure that the expense of such a monitoring program is not out of proportion to the expected benefits of the SGS-TES rate schedule. Therefore, the Commission concludes that the Company should file a plan for monitoring the loads of new SGS-TES customers in such a way as to provide data in a cost-effective manner for making a valid analysis of the impact of such loads on the system.

Traffic Signal Service

Public Staff witness Turner testified that the Company is conducting a study to determine the kWh usage attributable to various traffic signal installations, and that thus far it has found a significant difference between the kWh usage assumed in the rate schedule and the kWh usage measured at specific installations. The preliminary findings raise questions about the validity of the charges for traffic signal service based on the usage assumed in the rate schedule. Continuing study will hopefully lead to an improvement in the estimates of kWh usage contained in the rate schedule or will indicate the necessity for metering each traffic signal installation.

The Public Staff recommended that the Company be required to prepare a detailed study of the kWh usage attributable to the various traffic signal configurations for presentation with its next general rate case.

The Commission is of the opinion that the Company should continue its investigation and that the Public Staff recommendation should be adopted.

Line Extension Plan E-1 and Rider 19

The Company's general rate application included a proposal to replace its various line extension plans with a single Line Extension Plan E-1 in order to treat both new underground and new overhead line extensions as standard. By separate Order issued June 25, 1987, in this docket, the Line Extension Plan E-1 was approved. However, underground service Rider 19 was not withdrawn by the Order of June 25, 1987, because of the corresponding revenue effect. The Commission now concludes that Rider 19 should be discontinued as it is no longer needed.

Service Regulation's - New Section 15

The Company proposes to add a new service regulation specifying that when the company incurs costs in preparing to furnish service to a person who has advised the company that he intends to contract with the company for electric service, and the person thereafter fails to contract with the company within a reasonable period of time, then such person shall be liable for the costs incurred by the company in preparing to serve him. The proposal was uncontested by any party.

However, the Commission is of the opinion that the proposed regulation would be more appropriate if it contained the language "subject to review by the Utilities Commission" at the end of the paragraph and concludes that such additional language should be adopted.

Miscellaneous

The following rate design changes were proposed by the Company and were uncontested by any party in this proceeding:

(A) Include the rate adjustments contained in the cost of fuel rider, the EMF rider, and the order correction rider in all basic rates instead of in separate riders in order to simplify customer bills.

(B) Increase the charges for three-phase service in the residential and small general service rate schedules from $5.25 to $6.25.

(C) Include 9 holidays in the off-peak hours for all TOU rate schedules.

(D) Retain the basic customer charge for residential non-TOU rates at $6.65.

(E) Discontinue the higher charge for the first 800 kWh during the winter months (thereby charging the same price per kWh for all kWh during the winter months) in residential non-TOU rates. The rates are already the same price per kWh during the summer months. The kWh differential between summer and nonsummer energy charges will be maintained at $0.01 per kWh.

(F) Delete the provisions in the residential rates governing multiple dwelling units. Master metering is no longer permitted so the provision is not needed.

(G) Eliminate the separate thermal requirements for manufactured housing in the residential rates. Both conventional housing and manufactured housing now must meet the same thermal requirements to qualify for a 5% conservation discount.

(H) Revise the name of residential schedule R-TOU to R-TOU-D in order to clarify its distinction from schedule R-TOU-E.

(I) Revise the applicability clause in residential schedule R-TOU-E in order to delete the 500 customers limitation and to delete the rate's "experimental" designation. Also revise the on-peak and off-peak hours for schedule R-TOU-E to match the other TOU schedules.

(J) Revise the contract period for residential TOU rates from one-year to one-month for customers not previously on such rates. The contract period for customers returning to TOU rates will still be one-year.

(K) Reduce the current basic customer charge in residential TOU rates from $11.31 and $10.39 to $9.75 in recognition of the expected lower cost of metering such service.

(L) Delete residential schedules R-FEA-2 and R-FEA-3. They were experimental schedules, and no customers are served under them any longer.

(M) Increase the rates for closed rate schedules AHS, CSG, CSE, and RFS by approximately 10 percentage points more than the overall increase in order to merge the closed schedules closer to the active schedules. This is the same process followed in all of the Company's rate cases over the past 8 years.

(N) Reduce the demand charge for large general service customers owning their own step-down transformers in order to offset those Company owned transformation costs built into the demand charges for large general service.

(O) Add rates for 5 lamp traffic signal fixtures on schedule TSS.

(P) Delete requirement for a written contract when obtaining service under area lighting schedule ALS.

(Q) Delete the 6,000 lumen incandescent fixture from the street lighting schedule SLS.

(R) Add a provision to schedules ALS and SLS governing customer contributions for outdoor lighting service under the Line Extension Plan E-1.

(S) Revise Military Service Rider 28 to clarify that it is available to both LGS and LGS-TOU; and eliminate the requirement for a five-year contract under the Rider.

(T) Increase the maximum kW available to the total system for curtailable load under Curtailable Load Rider 58 from 100,000 kW to 150,000 kW; and add provisions governing two types of curtailable periods (economy and capacity) under the Rider. The two types of curtailable periods will give customers additional options for curtailing load.

(U) Revise street lighting service regulations to provide for a pro rata reduction of charges during periods when lighting fixtures are inoperable.

(V) Revise general service regulations to: (1) increase service charges for new connections from $12.00 to $14.00; (2) increase service charges for reconnections from $12.00 to $14.00 during normal business hours and from $25.00 to $30.00 during nonbusiness hours; (3) increase returned check charges from $6.00 to $7.00; (4) increase the low power factor adjustment from $0.25 to $0.30 per kW; (5) include waiver of certain charges following a natural disaster; (6) clarify customer rights and responsibilities in selection of rate schedules and riders; and (7) clarify company right of access to a customer's property over the same general route as the customer uses.

Based on its review of the Company's proposals, the Commission concludes that the rate designs, rate schedules, and service regulations proposed by the Company should be approved except as discussed herein.

IT IS, THEREFORE, ORDERED as follows:

1. That CP&L is hereby authorized to adjust its electric rates and charges so as to produce an increase in gross annual revenues from its North Carolina retail operations of $92.5 million, said increase to be effective for service rendered on and after August 5, 1987. However, due to the effect of the refund ordered in Decretal Paragraph No. 7 of this Order and the effect of a companion Order entered by the Commission on August 5, 1987, in Docket No. E-2, Sub 533, approving a fuel charge rate reduction for CP&L, the net revenue increase authorized for the coming year will be $5.4 million based upon the test year level of operations. The fuel charge rate reduction and the tax rate change refund will remain in effect for a period of one year beginning

August 5, 1987, the date the Commission issued its Notice of Decision and Order and Order Approving Fuel Charge Adjustment in Docket No. E-2, Subs 526 and 533.

2. That the Commission's Notice of Decision and Order dated August 5, 1987, and the Order Approving Tariff Filing dated August 21, 1987, be, and the same are hereby, reaffirmed.

3. That CP&L shall prepare cost allocation studies for presentation with its next general rate case which allocate production and distribution plant based on the following methods: (a) summer/winter peak and average including minimum system technique; (b) summer/winter peak and average excluding minimum system technique; (c) 12-month coincident peak including minimum system technique; and (d) 12-month coincident peak excluding minimum system technique. The studies shall be included in item 45 of Form E-1 of the minimum filing requirements for general rate applications.

4. That CP&L shall prepare a study supporting its depreciation rates for presentation with its next general rate case.

5. That CP&L shall prepare a detailed study of the differences in kWh usage attributable to the various traffic signal configurations for presentation with its next general rate case.

6. That CP&L shall file with the Commission within 90 days after August 5, 1987, a plan for monitoring the on-peak loads of customers served under new rate schedule SGS-TES in such a way as to provide data in a cost-effective manner of making a valid analysis of the impact of such loads on the system.

7. That effective January 1, 1988, the federal income tax and the related gross receipts tax components of the rates and charges approved in this proceeding for CP&L 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. CP&L shall establish a "second deferred account" as of January 1, 1988, in which shall be accrued the difference between revenues billed under approved rates reflecting a 40% federal income tax rate and revenues that would have been billed if rates had been determined based upon a 34% federal income tax rate. Interest at a rate of 10% per annum shall be applied to this account and to the "first deferred account" established in Docket No. M-100, Sub 113, which tracked the difference in revenues billed under current rates reflecting a 46% federal income tax rate and revenues that would have been collected if rates had been based upon a 40% federal income tax rate. The "first deferred account" reflects an overcollection by CP&L of federal income tax expense of approximately $26,859,000 from its North Carolina retail customers for the period extending from January 1, 1987, through August 5, 1987. Such overcollection shall be refunded to the Company's customers during the 12-month period beginning August 5, 1987.

8. That CP&L shall file concurrent with the filing of its next general rate case application a calculation of the total overcollection of income tax expense which occurred during the period January 1, 1987, through August 5, 1987, arising from the change in the maximum corporate income tax rate from 46% to a blended rate of 40% for calendar year 1987. Ten copies of all workpapers

developed in this regard shall also be filed with the Commission's Chief Clerk. Further, once refund of this income tax expense overcollection is complete, CP&L shall file with the Commission a final accounting of the total amount refunded in this regard including a statement setting forth any net over- or under-refund of said overcollections. The aforementioned final accounting shall be filed no later than September 30, 1988. This accounting and reporting requirement supersedes the accounting and reporting requirement relating to this matter as previously established by the Commission in its Order of August 5, 1987, issued in Docket No. E-2, Sub 526.

9. That within 10 working days after the date of this Order, CP&L shall file with the Commission five copies of computations showing the overall North Carolina retail rate of return and the rates of return for each rate schedule which will be produced by the revenues approved herein. Said computations shall be based on the cost allocation methodology adopted herein, including the treatment adopted herein for the minimum system technique, adjustment of allocation factors to reflect power agency buyback percentages, power agency reserve capacity, and normalization of power agency actual entitlement energy.

ISSUED BY ORDER OF THE COMMISSION.
This the 27th day of August 1987.

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

DOCKET NO. E-2, SUB 533

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Application of Carolina Power & Light Company for Authority to Adjust and Increase its Electric Rates and Charges	)	ORDER APPROVING FUEL CHARGE ADJUSTMENT

HEARD IN: Commission Hearing Room 2115, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on June 8-12, 16-19, and 22-26, 1987.

BEFORE: Commissioner Edward B. Hipp, Presiding; and Commissioners Julius A. Wright and William W. Redman, Jr.

APPEARANCES:

For Carolina Power & Light Company:

Richard E. Jones, Vice President and General Counsel; Robert W. Kaylor, Associate General Counsel; Margaret S. Glass, Associate General Counsel; and Rosemary G. Kenyon, Associate General Counsel, Carolina Power & Light Company, Post Office Box 1551, Raleigh, North Carolina 27609

and

Edward S. Finley, Jr., Hunton and Williams, Attorneys at Law, One Hannover Square, Raleigh, North Carolina 27601

For the Public Staff:

Antoinette R. Wike, Chief Counsel; Paul L. Lassiter, Staff Attorney; James D. Little, Staff Attorney, Public Staff - North Carolina Utilities Commission, Post Office Box 29520, Raleigh, North Carolina 27626-0520

For: The Using and Consuming Public

For the Attorney General:

Jo Anne Sanford, Special Deputy Attorney General; Karen E. Long, Assistant Attorney General; Lorinzo L. Joyner, Associate Attorney General; Lemuel W. Hinton, Assistant Attorney General, North Carolina Department of Justice, Post Office Box 629, Raleigh, North Carolina 27602-0629

For: The Using and Consuming Public

For Consumer Interest of the U. S. Department of Defense (DOD) and Other Affected Executive Agencies:

David A. McCormick, Regulatory Law Office, Office of the Judge Advocate General, U. S. Department of the Army (JALS-RL), 5611 Columbia Pike, Falls Church, Virginia 22041-5013

For Carolina Industrial Group for Fair Utility Rates (CIGFUR II):

Ralph McDonald and Carson Carmichael, III, Bailey, Dixon, Wooten, McDonald, Fountain and Walker, Attorneys at Law, Post Office Box 12865, Raleigh, North Carolina 27605-2865

For Conservation Council of North Carolina:

John Runkle, Attorney at Law, Post Office Box 4135, Chapel Hill, North Carolina 27515

For Carolina Utilities Customers Association, Inc. (CUCA):

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

For Herself (As a customer of Carolina Power & Light Company):

Elizabeth Anne Cullington, Route 5, Box 440, Pittsboro, North Carolina 27312

BY THE COMMISSION: This matter arose upon the filing of an application by Carolina Power & Light Company (CP&L or the Company) on May 1, 1987, pursuant to G.S. 62-133.2 and NCUC Rule R8-55 relating to fuel charge adjustments for electric utilities. By its application, CP&L contended that it was entitled to a 1.338¢/kWh fuel factor which is a decrement of .244¢/kWh to the base fuel factor established in its last general rate case, Docket No. E-2, Sub 481, and a decrement of .092¢/kWh to the base fuel factor requested by the Company in its pending general rate case, Docket No. E-2, Sub 526. As updated in its proposed Order in this docket, CP&L contended that it was entitled to a

1.380¢/kWh fuel factor which is a decrement of .202¢/kWh to the base fuel factor established in its last general rate case, Docket No. E-2, Sub 481, and a decrement of .093¢/kWh to the base fuel factor proposed by the Company in its pending general rate case, Docket No. E-2, Sub 526. The Company also proposed a decrement rider of .280¢/kWh to refund the over-recovery of fuel costs from July 1, 1986, through March 31, 1987, on a provisional basis pending a final determination as to the validity of the experience modification factor contained in NCUC Rule R8-55. Finally, the Company moved the Commission to issue an Order scheduling a hearing date that would allow, among other things, for the issuance of a final Order that would coincide with the final Order in Docket No. E-2, Sub 526.

On May 18, 1987, the Attorney General moved the Commission to consolidate the two dockets and to consider the filing in Docket No. E-2, Sub 533, as an update of the fuel expense contained in Docket No. E-2, Sub 526.

On May 21, 1987, Carolina Utility Customers Association, Inc., (CUCA) filed a petition to intervene and protest. The petition to intervene was granted by Order issued May 25, 1987. CUCA renewed its motion to dismiss the application in Docket No. E-2, Sub 526, and moved to consolidate Docket No. E-2, Sub 526, and Docket No. E-2, Sub 533, for all purposes related to fuel.

On May 22, 1987, CP&L filed a response in which it stated that it would not object to consolidation of the hearings on the two proceedings but that separate Orders should be issued in the two dockets. By Order dated May 26, 1987, the Commission scheduled a hearing on CP&L's fuel charge application concurrently with the hearing in the general rate case and required public notice.

A petition to intervene was filed on June 4, 1987, by Carolina Industrial Group for Fair Utility Rates (CIGFUR-II) and was granted by Commission Order of June 5, 1987.

The matter came on for hearing as scheduled. As to the fuel proceeding, CP&L presented the testimony and exhibits of the following witnesses: Larry L. Yarger, Manager of Fossil Fuel; Ronnie M. Coats, Assistant to the Group Executive, Fossil Generation and Power Transmission Group; and David R. Nevil, Manager-Rate Development and Administration in the Rates and Service Practices Department. The Attorney General presented the testimony and exhibits of David A. Schlissel, Director of Schlissel Engineering Associates, a consulting firm. The Public Staff presented the testimony and exhibits of Richard J. Durham, an Engineer in the Electric Division. Wells Eddleman, representing the Kudzu Alliance, testified as a public witness.

Other parties, as indicated above, intervened in the general rate case which was heard concurrently with the fuel proceeding.

Based upon the verified application, the evidence adduced at the hearing, the proposed orders submitted by the parties, and the entire record in this proceeding, the Commission 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 business of developing, generating, transmitting, and selling electric power to the public in North Carolina. CP&L is lawfully before this Commission based upon an application filed pursuant to G.S. 62-133.2.

2. The test period for purposes of this proceeding is the twelve months ended March 31, 1987.

3. CP&L's fuel procurement and power purchasing practices and its base load nuclear and fossil plant operations were reasonable and prudent during the test period.

4. CP&L's proposal to include the fuel cost portion of test period cogeneration expenses in this proceeding is inappropriate inasmuch as it does not represent fuel costs actually incurred by the cogenerators. The Commission has included these costs in base rates as a non-fuel expense in the Company's general rate case, Docket No. E-2, Sub 526, by Order also issued this date.

5. The adjustments proposed by the Company to normalize for weather and customer growth are reasonable and appropriate for use in this proceeding.

6. A normalized generation mix set forth in Rule R8-55 using the average of CP&L's lifetime nuclear capacity factors by unit 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 is appropriate for use in this proceeding for the Brunswick Units 1 and 2 and for Robinson Unit No. 2. The Harris nuclear unit should be normalized based on a 70% capacity factor. These normalized capacity factors by unit result in a reasonable and representative normalized system nuclear capacity factor of 60.07% which is appropriate for use in this proceeding.

7. The use of March 1987 burned fuel costs for fossil fuels and for nuclear fuel is reasonable and appropriate for inclusion in the fuel factor established in this proceeding.

8. The fuel factor which is reasonable and appropriate for use in this proceeding is 1.267¢/kWh (excluding gross receipts tax), which reflects a reasonable fuel cost of $288,505,601 for North Carolina retail service. The result is a fuel factor which is .025¢/kWh greater than the 1.242¢/kWh fuel factor approved in Docket No. E-2, Sub 526, CP&L's current general rate case, by Order also issued this date.

9. The fuel cost factor should be reduced by an experience modification factor (EMF) decrement of 0.280¢/kWh (excluding gross receipts tax) which reflects 100% of the difference between CP&L's actual 9-month (July 1986 through March 1987) 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 Orders in Docket Nos. E-2, Sub 503, and E-2, Sub 518. The 0.280¢/kWh rider decrement will remain in effect for 12 months from the date of this Order.

10. By Order entered in Docket No. E-2, Sub 518, on September 18, 1986, the Commission approved a 0.046¢/kWh experience modification factor decrement to be effective for 12 months from that date.

11. The primary fuel cost rider and the experience modification factor riders should be applied uniformly to the kWh prices in all North Carolina retail rate schedules.

DISCUSSIONS OF THE EVIDENCE AND CONCLUSIONS

1. This finding of fact is essentially informational, procedural, and jurisdictional in nature.

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 base 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 historical 12-month test period "in such form and detail as the Commission may require." In Rule R8-55, the Commission has prescribed the 12-month period ending March 31 as the test period for CP&L. The Company's application, testimony, and exhibits were based on the 12 months ended March 31, 1987. The Commission concludes that the test period which is appropriate for use in this proceeding is the 12 months ended March 31, 1987, adjusted for weather, customer growth and generation mix.

3. NCUC Rule R8-52(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. CP&L witness Yarger testified that the procedures relevant to the Company's procurement of fossil and nuclear fuels were filed in the Fuel Procurement Practices Report, dated February 1987, in Docket No. E-100, Sub 47. The Commission and the Public Staff also receive monthly reports pursuant to Rule R8-52(a) as to the Company's fuel costs under its present procurement practices.

Company witness Coats testified that the Company's nuclear units achieved an overall capacity factor of 76.6% during the test period, that the Roxboro fossil units achieved an 88% equivalent availability during the test period, and that the Mayo fossil unit achieved a 92% equivalent availability during the period. The Roxboro and Mayo units operate as base load units when needed, but are frequently subject to some degree of load following (or cycling) operation.

No evidence was offered in this proceeding in opposition to CP&L's fuel procurement and power purchasing practices or its base load nuclear and fossil plant operations, and there appears to be no controversy as to their reasonableness. The Commission, therefore, concludes that the Company's fuel procurement and power purchasing practices and its base load nuclear and fossil plant operations were reasonable and prudent during the test period.

4. For the first time, CP&L proposes to include in the fuel factor an amount related to the fuel cost component of cogeneration expense. CP&L witness Nevil testified that this cost had risen from the approximately $25,000 included in present rates to approximately $40,000,000 in the annualized test period and are expected to be approximately $93,000,000 by the end of 1987. He contended that these costs should be shifted from the base rate to the fuel factor to ensure their recovery in the future when general rate cases are anticipated to be less frequent.

Mr. Nevil was questioned about the derivation of the fuel cost portion of test year cogeneration expenses. Public Staff-Nevil Cross-Examination Exhibit Number 1, consisting of Mr. Nevil's workpapers, shows that the portion of cogeneration purchases denominated as fuel cost is the product of on-peak and off-peak MWh times the levelized avoided fuel cost component of the avoided cost rates presented by CP&L witness King and approved by the Commission in the Docket No. E-100, Sub 41A, Order dated January 22, 1984. This exhibit also shows a fuel cost component of power purchased from hydroelectric small power producers as well as from cogenerators, under both variable and fixed rate contracts, with by far the largest amounts being associated with purchases from Cogentrix, a coal-fired cogenerator. The Commission has taken judicial notice of three of CP&L's contracts with Cogentrix which were filed in Docket Nos. SP-16, SP-16, Sub 2, and SP-16, Sub 4, and involve facilities located at or near Lumberton, Elizabethtown, and Kenansville, respectively. All three are negotiated contracts, and none of them contain a fuel cost component separately stated.

The threshold issue presented by CP&L's proposal is whether or not G.S. 62-133.2 authorizes the recovery of the fuel cost component of cogeneration purchases in a fuel charge adjustment proceeding. The Commission is of the opinion that such costs may be recovered in a fuel proceeding along with the fuel cost component of other kinds of purchased power. It appears impossible in this case, however, to determine the fuel cost component of CP&L's cogeneration purchases in the same way the fuel cost component of the Company's other purchased power is determined. The evidence clearly shows that the fuel cost component of cogeneration purchases which CP&L seeks to include in the fuel factor is the estimated avoided fuel cost of the Company derived from its calculations of avoided costs in Docket No. E-100, Sub 41A, rather than an embedded or actual fuel cost of the cogenerator. The Commission recognizes that the Company is purchasing increasing amounts of electricity from cogenerators. Nevertheless, our reading of G.S. 62-133.2 and our consideration of the evidence in light of that statute leads us to the conclusion that the fuel cost component of cogeneration purchases as proposed by CP&L cannot legally be included in the fuel factor and must remain in the Company's base rates, in accordance with our decision in Docket No. E-2, Sub 526.

5. Witnesses Schlissel and Durham used the Company's proposed customer growth and weather normalization adjustments in computing their recommended fuel factors. There being no controversy as to these adjustments, the Commission concludes that they should be adopted for this proceeding.

6. NCUC Rule R8-55(c)(1) provides that nuclear capacity factors will be normalized based generally on an equally weighted average of each unit's actual lifetime operating experience and the national average reflected in the most recent North American Electric Reliability Council's (NERC) Equipment

Availability Report, giving due consideration to plants two years or less in age and to certain unusual events. Pursuant to this rule, CP&L witness Nevil recommended the following unit capacity factors: Brunswick 1, 54.38%; Brunswick 2, 51.61%; Robinson 2, 63.46%; and Harris 1, 70%. These result in a normalized nuclear capacity factor for the system of 60.07%. Public Staff witness Durham recommended normalizing to the NERC averages for each unit as follows: Brunswick 1, 58.2%; Brunswick 2, 58.2%; Robinson 2, 62.13%; Harris 1, 62.13%. The result of his recommendation is a system average capacity factor of 60.16%. Attorney General witness Schlissel recommended a third approach, as follows: averaging each unit's actual capacity factor for the period April 1, 1986, through March 31, 1987, and CP&L's expected capacity factor for that unit for the period April 1, 1987, through March 31, 1988, for Brunswick 1 and 2; averaging the unit's lifetime performance and CP&L's expected capacity factor for the unit for the period April 1, 1987, through March 31, 1988, for Robinson 2; and using CP&L's expected 70% capacity factor for Harris. The results of witness Schlissel's recommendations are unit capacity factors of 61.9% for Brunswick 1, 60.7% for Brunswick 2, 66.4% for Robinson 2, and 70% for Harris, and a system average nuclear capacity factor of 64.9%. Both CP&L and the Attorney General oppose the use of national averages in normalizing nuclear capacity factors; the Public Staff consistently supports this practice. Both CP&L and the Attorney General also favor recognition of historical experience, but with differing results depending upon the historical period that is recognized.

The evidence establishes that during the test year ending March 31, 1987, the Company achieved an overall system nuclear capacity factor of 76.6%. That overall system nuclear capacity factor is a composite of the actual test year capacity factors of the Company's three nuclear generating units appropriately weighted by generating capacity of each of those units. Those capacity factors included a 73.3% capacity factor for Brunswick Unit 1, a 60.6% capacity factor for Brunswick Unit 2, and a 99.5% capacity factor for Robinson Unit 2. The Company expects to achieve a system nuclear capacity factor of 62.2% for the 12 month period ended March 31, 1988.

The Commission concludes that the 76.6% system nuclear capacity factor experienced by CP&L during the recent 12 month period ending March 31, 1987, was not reasonably representative of the system nuclear capacity factor which the Company can reasonably be expected to experience in the near future, including in particular the period of time during which the rates set in this proceeding are likely to remain in effect. The 76.6% system capacity factor for the 12 month period ended March 31, 1987, was abnormally high. The purpose of normalization is to remove test period abnormalities, either high or low, in setting rates for the future. Commission Rule R8-55(c)(1) generally provides for a method of normalization of nuclear capacity factors based 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. This treatment for ratemaking purposes gives equal weight to CP&L's actual operating experience and 10-year industry averages and provides a reasonable system capacity factor for nuclear normalization purposes. For the Harris Plant, the Commission concludes that CP&L's expected first fuel cycle capacity factor of 70% is reasonable and appropriate for use in this proceeding. Application of the normalization methodology generally specified in Commission Rule R8-55 based upon lifetime nuclear capacity factors

calculated through March 31, 1987, results in normalized nuclear capacity factors as follows: Brunswick Unit 1 = 54.375%; Brunswick Unit 2 = 51.61%; and Robinson Unit 2 = 63.46%. The resulting normalized system nuclear capacity factor calculated pursuant to Rule R8-55 is 60.07%. The Commission concludes that the reasonable and appropriate normalized total system nuclear capacity factor for use in this proceeding is 60.07%.

7. NCUC Rule R8-55 does not prescribe the unit fuel prices to be used in the calculation of the fuel factor but does require the filing of the unit fuel prices used by the Commission in the last general rate case, unit fuel prices incurred during the test period, and unit fuel prices proposed by the utility. All parties in this proceeding used the burned cost of fossil fuel in March 1987, the last month of the test year.

CP&L and the Attorney General calculated its fossil fuel prices of $17.72 and $103.40 per MWh for coal and oil, respectively, based upon a ratio of the $/ton and $/gallon March 1987 burn price to the $/ton and $/gallon 1987 test year burn price times the $/MWh cost of coal and oil experienced during the 1987 test year. The Public Staff calculated its fossil fuel prices of $17.69 and $113.71 per MWh for coal and oil, respectively, based upon a ratio of the March 1987 burn price in ¢/MBTU to the 1987 test year burn price in ¢/MBTU times the $/MWh cost of coal and oil experienced during the 1987 test year.

The Commission, therefore, concludes that for purposes of this proceeding, the Company's fuel factor should incorporate the burned cost of fossil fuel in March 1987, as calculated by the Public Staff.

CP&L and the Attorney General use nuclear fuel prices based on burned fuel prices during the last month of the test year, March 1987, applied uniformly to all units. The Public Staff priced nuclear fuel based upon the cost in ¢/MBTU for each unit's latest refueling for purposes of this proceeding. Consistent with its decisions in the general rate Order issued this day in Docket No. E-2, Sub 526, the Commission concludes that the nuclear fuel prices, as calculated by the Company, should be used in this proceeding. Such nuclear unit fuel prices include a 1 mill/kWh allowance for nuclear fuel disposal cost as discussed in said Order in Docket No. E-2, Sub 526.

8. Based on the foregoing, the Commission concludes that a fuel factor of 1.267¢/kWh (excluding gross receipts tax) is just and reasonable and should be approved. This fuel factor is .025¢/kWh greater than the 1.242¢/kWh factor approved in Docket No. E-2, Sub 526. The calculation of the appropriate fuel factor of 1.267¢/kWh is shown in the following table:

Item	MWH Generation	$/MWH	Fuel Cost
Nuclear			
Robinson 2	3,696,799	$ 5.11	$ 18,890,643
Brunswick 1	3,762,968	5.11	19,228,766
Brunswick 2	3,571,618	5.11	18,250,968
Harris 1	5,518,800	5.95	32,836,860
Pur-Co-gen.	985,805	-	-
Pur-SEPA	133,236	-	-
Pur-Other	160,215	17.63	2,824,590
Hydro	716,812	-	-
Coal	22,785,304	17.69	403,072,028
IC	-0-	113.71	-
Sales	(1,084,948)	16.13	(17,500,211)
Total	40,246,609		$477,603,644
Less:			
Power Agency Nuclear			12,179,759
Power Agency Coal			21,880,477
Mayo Buyback			(4,558,889)
Harris Buyback			(2,551,586)
Fuel Dollars for Factor			$450,653,883
Total kWh Sales for Factor			35,565,086,331
Fuel Factor (¢/kWh)			1.267

In arriving at the ultimate decision in this case, the Commission has given careful consideration to all of the evidence required by G.S. 62-133.2(c) relating to changes in the cost of fuel and the fuel component of purchased power and has allowed a change based on adjusted and reasonable fuel expenses prudently incurred under efficient management and economical operations.

9. Company witness Nevil and Public Staff witness Durham provided testimony and evidence in this proceeding concerning the EMF. The Company proposed an EMF decrement rider of 0.280¢/kWh (excluding gross receipts tax) based upon the use of the 9-month period, July 1986 through March 1987. Commission Rule R8-55 provides for fuel charge adjustment proceedings to be based on uniform 12-month test periods. CP&L's test period ends March 31. In converting to uniform test periods, the Commission in its Order in CP&L's last fuel case, Docket No. E-2, Sub 518, recognized that establishing the EMF on a fixed period basis, ending March 31 each year, would have an initial and one-time effect of basing the EMF in the present proceeding on a 9-month rather than 12-month period. During the 9-month period, CP&L experienced an over-recovery of $63,711,199, ($65,830,956 including gross receipts tax) based on a comparison of revenues associated with both the preliminary fuel factors from CP&L's last two fuel proceedings (Docket Nos. E-2, Sub 503 and E-2, Sub 518) to actual fuel expenses for that period. The Public Staff simply determined that Mr. Nevil's calculation of the EMF was accurate but did not take a position on the disposition of it.

The Commission concludes that an EMF decrement rider independent of the preliminary fuel cost should be approved in this proceeding. On July 24, 1987, the General Assembly enacted Chapter 677, an act amending the fuel charge adjustments statute, G.S. 62-133.2. The act was effective upon ratification. The statute now provides that the Commission

> "shall incorporate in its fuel cost determination under this subsection the experienced over-recovery or under-recovery of reasonable fuel expenses presently incurred during the test period . . . in fixing an increment or decrement rider. The Commission shall use deferral accounting, and consecutive test periods, in complying with this subsection, and the over-recovery or under-recovery portion of the increment or decrement shall be reflected in rates for 12-months, notwithstanding any changes in the base fuel cost in a general rate case."

Although on March 3, 1987, the North Carolina Court of Appeals held in State ex rel Utilities Commission v. Thornburg, 84 N.C. App. 482 (1987), that G.S. 62-133.2 did not authorize the Commission to order true-ups for past over-recoveries or under-recoveries of fuel cost, the General Assembly in amending G.S. 62-133.2 on July 24, 1987, stated as follows:

> "The enactment of this act shall be construed as clarifying rather than changing the meaning of G.S. 62-133.2 as it was previously worded and as construed by the Utilities Commission in Commission Rule R8-55 so that electric utilities will recover only their reasonable fuel expenses presently incurred, including the fuel cost component of purchased power, with no over-recovery or under-recovery, in a manner that will serve the public interest."

The Commission therefore concludes that a true-up by means of an EMF rider is appropriate herein.

The present EMF decrement rider of 0.280¢/kWh, excluding gross receipts tax, or 0.289¢, including gross receipts tax, which will be identified as Rider 59.2, will have a fixed life of 12 months from the effective date of this Order. The implementation of this EMF rider makes final the preliminary fuel cost factors established in Docket Nos. E-2, Sub 503 and E-2, Sub 518 to the extent that the rates fixed in these dockets were in effect during the period from July 1986 through March 1987. We note that the EMF decrement rider of 0.046¢/kWh approved in CP&L's last fuel charge adjustment proceeding, Docket No. E-2, Sub 518, by Order of September 18, 1986, was made effective for 12 months from that date. In light of the action of the General Assembly, we order that that EMF decrement rider be continued until its scheduled termination. We also note that the Commission previously ordered Order Correction Rider 64A, an increment of 0.013¢/kWh, in effect until September 17, 1987.

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 .025¢/kWh increment (excluding gross receipts tax) from the base fuel component approved in Docket No. E-2, Sub 526, by Order issued simultaneously with this Order.

2. That the EMF decrement of 0.046¢/kWh approved in Docket No. E-2, Sub 518, and the Order Correction Rider 64A increment of 0.013¢/kWh previously approved by the Commission shall terminate on September 17, 1987. A new EMF

decrement of 0.280¢/kWH (excluding gross receipts tax) shall be in effect for 12 months from the date of this Order.

3. That CP&L shall file appropriate rate schedules and riders with the Commission designed to implement the fuel charge adjustment approved in this docket not later than 5 days after the date of this Order.

4. That CP&L shall notify its North Carolina retail customers of the fuel charge adjustment approved in this docket through the notice to customers required by the general rate Order issued this day in Docket No. E-2, Sub 526.

ISSUED BY ORDER OF THE COMMISSION.
This the 5th day of August 1987.

NORTH CAROLINA UTILITIES COMMISSION
(SEAL) Gail L. Mount, Deputy Clerk

DOCKET NO. E-7, SUB 417

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Application of Duke Power Company Pursuant to G.S. 62-133.2 Relating to Fuel Charge Adjustments for Electric Utilities	)))))	ORDER APPROVING FUEL CHARGE RATE REDUCTION

HEARD IN: Hearing Room 6168, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on Tuesday, May 5, 1987, at 9:30 a.m.

BEFORE: Commissioner Robert K. Koger, Presiding; Chairman Robert O. Wells and Commissioner Ruth E. Cook

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

For North Carolina Industrial Energy Consumers:

Thomas W. Steed, Jr., Moore & Van Allen, Attorneys at Law, Post Office Box 26597, Raleigh, North Carolina 27611
and
William A. Chestnutt, McNees, Wallace & Nurick, Attorneys at Law, Post Office Box 1166, 100 Pine Street, Harrisburg, Pennsylvania 17108-1166

For: Abitibi-Price Corporation, American Cyanamid Company, Ingersoll-Rand Corp., Owens-Illinois, Inc., and PPG Industries, Inc.

For the Public Staff:

Antoinette R. Wike, Chief Counsel, Public Staff - North Carolina Utilities Commission, Post Office Box 29520, Raleigh, North Carolina 27626-0520
For: The Using and Consuming Public

For the Attorney General:

Lemuel W. Hinton and Karen E. Long, Assistant Attorneys General, North Carolina Department of Justice, Post Office Box 629, Raleigh, North Carolina 27602-0629
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 March 6, 1987, pursuant to G.S. 62-133.2 and NCUC Rule R8-55 relating to fuel charge adjustments for electric utilities. In its application, Duke stated that the Company did not propose to change the net composite cost of fuel of 1.1619¢ per kWh (excluding gross receipts tax) currently in effect.

On March 12, 1987, the Commission issued an Order scheduling a hearing on the application and requiring public notice.

On April 10, 1987, the Attorney General filed Notice of Intervention in this docket on behalf of the using and consuming public pursuant to G.S. 62-20. On April 13, 1987, the North Carolina Industrial Energy Consumers (NCIEC) filed a Petition for Leave to Intervene. The petition was granted by Commission Order dated April 17, 1987. The intervention of the Public Staff was recognized pursuant to NCUC Rule R1-19(e).

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, Regulatory Affairs. The Public Staff presented the testimony and exhibits of Thomas S. Lam, Engineer, Electric Division. NCIEC presented the testimony and exhibits of Brian R. Barber, Senior Consultant, Kennedy and Associates. No public witnesses appeared at the hearing.

Based upon the verified application, the evidence adduced at the hearing, and the entire record in this proceeding, the Commission 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 an application filed pursuant to G.S. 62-133.2.

2. The test period for purposes of this proceeding is the twelve month period ended December 31, 1986, normalized and adjusted for certain changes through March 31, 1987.

3. Duke's fuel purchasing practices and power purchasing practices were reasonable and prudent during the test period.

4. The adjustments proposed by the Company to normalize for weather and customer growth are reasonable and appropriate for use in this proceeding.

5. A normalized generation mix is reasonable and appropriate for purposes of this proceeding.

6. The kWh generation from each of the Company's nuclear units should be normalized based on a 62% capacity factor.

7. The use of updated unit coal prices as proposed by the Public Staff is reasonable and appropriate for purposes of this proceeding.

8. By Order entered in Docket No. E-7, Sub 410, on July 29, 1986, the Commission approved a 0.0046¢ per kWh experience modification factor (EMF) decrement to be effective for 12 months from that date.

9. The final fuel factor which is reasonable and appropriate for use in this proceeding is 1.1358¢ per kWh (excluding gross receipts tax), which reflects a reasonable fuel cost of $393,195,185 for North Carolina retail service. The result is a fuel factor which is 0.0307¢ per kWh less than the fuel factor approved in Docket No. E-7, Sub 408, Duke's last general rate case. The EMF decrement of 0.0046¢ per kWh approved in Docket No. E-7, Sub 410 will terminate effective July 29, 1987.

10. The fuel charge adjustment approved in this proceeding will result in a reduction in charges to Duke Power Company's retail electric customers in North Carolina of approximately $10.98 million on an annual basis. Such reduction is just and reasonable and is based upon adjusted and reasonable fuel expenses prudently incurred by Duke under efficient management and economic operations.

DISCUSSION OF EVIDENCE AND CONCLUSIONS

1. 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 base 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 R8-55, the Commission has prescribed the use of a calendar year test period for Duke. Thus, Duke's filing, which was made on March 6, 1987, utilized the 12 months ended December 31, 1986, 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, 1986, as the test year for purposes of this proceeding.

The Public Staff and Attorney General recommend use of a 12-month test period normalized and updated for certain changes through March 31, 1987, for purposes of developing the appropriate fuel adjustment factor.

The Commission concludes that the test period which is appropriate for use in this proceeding is the 12 months ended December 31, 1986, adjusted for certain fuel price changes through March 31, 1987, a normalized generation mix, and normalized for customer growth, weather, and Article XI of the Catawba Agreement.

2. NCUC Rule R8-52(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 G.S. § 62-133.2 hearing in Docket No. E-7, Sub 410, R. H. Hall, Vice President for Fuel Purchases, Mill-Power Supply Company, testified regarding Duke's fuel procurement practices and the factors affecting fuel prices. Mill-Power Supply Company, which is a wholly owned subsidiary of Duke Power Company, acts as Duke's purchasing agent. 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, 1986. 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.

3. The parties to this proceeding all agree that the normalization adjustments which should be utilized with respect to customer growth and weather are those proposed by Duke.

4. Duke witness Stimart sponsored a summary exhibit showing a reconciliation of the positions of the Company, the Public Staff, and NCIEC. The difference between the system fuel costs recommended by the Company and the Public Staff is largely attributable to the differences between the nuclear capacity factors and fossil fuel costs used by the parties in their calculations. The Company used a 61.21% nuclear capacity factor for its nuclear units which was based on a 62% capacity factor for Catawba and for its other nuclear units an equally weighted average of the lifetime capacity factors and the ten-year industry average capacity factors for pressurized water reactors (PWRs) over 800 MW reflected in the North American Electric Reliability Council (NERC) Equipment Availability Report. The Company essentially followed the method prescribed by NCUC Rule R8-55(c)(1) for establishing the primary fuel cost factor. The Company also filed data based on a 62% nuclear capacity factor for all units. Mr. Stimart testified that Duke's system nuclear capacity factor was 61% for the test year. The Public Staff accepted the 62% capacity factor for Catawba and incorporated the 62%

capacity factor for all other units which was approved by the Commission in Duke's last general rate case, Docket No. E-7, Sub 408. NCIEC recommended the use of a 62.56% capacity factor, which was based on an average of the ten-year NERC average equivalent availability factors for PWRs over 800 MW and use of a 66% adjusted lifetime mature average capacity factor for all of Duke's nuclear units except for Catawba Units 1 and 2 which were rated at an immature capacity factor of 56.82% for each unit.

The Commission is of the opinion that Duke's nuclear generation should be normalized based upon the use of a 62% capacity factor for the purpose of setting rates in this proceeding. This is the capacity factor now proposed by the Company for normalizing its Catawba units, and it is the capacity factor proposed by the Company and adopted by the Commission for all other nuclear units in Duke's last general rate case. The only basis for averaging the Company's lifetime system average capacity factor and the NERC average is NCUC Rule R8-55(c)(1). The result, however, would be to normalize using a 61.21% capacity factor, which is below the Company's lifetime system average capacity factor of approximately 63.11% and only slightly above the test year average. The Commission concludes that Duke's nuclear performance during the test year was slightly low when compared to Duke's past performance and, therefore, should be normalized. Further, the Commission sees no reason to depart from the capacity factors used in the Company's last general rate case with the exception of Catawba, which Duke itself proposes to normalize at a capacity factor of 62%.

5. Pursuant to NCUC Rule R8-55(d)(4), Duke witness Stimart presented exhibits showing fossil fuel costs based on unit prices approved in Docket No. E-7, Sub 408, unit prices burned in the test year, and projected unit prices. The 1.1619¢ per kWh system fuel cost requested by the Company included a coal cost of 1.719¢ per kWh. Mr. Lam of the Public Staff recommended using the most recent fuel prices available and submitted a late-filed exhibit which incorporated a March 1987 burned price for coal of 1.678¢ per kWh. In its proposed Order, the Attorney General accepted the 1.678¢ per kWh cost of coal. NCIEC witness Barber used the test year burned price of 1.751¢ per kWh.

NCUC Rule R8-55 does not prescribe the fossil fuel cost which will be included in the fuel factor, but does specify the minimum information to be filed by a utility with its application. In Duke's last fuel charge adjustment proceeding, Docket No. E-7, Sub 410, the Company proposed, the Public Staff accepted, and the Commission adopted the most recent available unit price for coal. Subsequently, in Duke's last general rate case, Docket No. E-7, Sub 408, the Company also proposed, the Public Staff accepted, and the Commission adopted the latest available coal price data. In the instant case, the Public Staff has proposed using the most recent coal price data available at the time of the hearing. According to Mr. Stimart, Duke proposes a cost which reflects weighing into the contract price of coal an allowance for spot coal of approximately 14% of burn at a price of $38 per ton. He testified that from October through December 1986, spot purchases represented 39% of burn which was higher than would normally be expected in so short a time frame. Mr. Stimart testified that the reasons for the Company's increased spot purchases included the Company's attempt to work its coal inventory down to the level allowed by the Commission in the last general rate case and some nuclear refueling outages. Mr. Lam testified for the Public Staff that his examination of Duke's coal procurement activities showed that between September 1986 and February

1987 the Company had purchased 1,631,983 tons of coal on the spot market at an average savings of $14.36 per ton. He recommended that the Commission encourage Duke to use as much coal as possible from the spot market and to keep its contract purchases to a minimum. Mr. Lam also stated that his updated coal cost included spot at approximately 18% of total coal purchases.

The Commission is of the opinion that the Company's latest unit burned prices available at the time of the hearing should be used in determining the per kWh coal cost in this proceeding. It is a well-established practice in both general rate cases and fuel charge adjustment proceedings to update the test period fuel cost to reflect the latest price information available. Duke proposed such an update in the Company's last fuel proceeding, Docket No. E-7, Sub 410, and the Commission accepted it. A similar update was used and adopted in the Company's subsequent general rate case, Docket No. E-7, Sub 408. There is evidence in this proceeding that Duke purchased substantial amounts of coal on the spot market during the test year. While the October-to-December level of spot purchases may not necessarily be typical, the Commission believes that the Company should be encouraged to take advantage of spot market savings cited by Public Staff witness Lam to the fullest extent possible consistent with reliability of supply. The 18% spot-to-total-coal-purchase ratio for the month of March 1987 does not appear unreasonable given the continued availability of favorably priced coal on the market. Accordingly, the Commission concludes that the updated coal cost of 1.678¢ per kWh proposed by the Public Staff should be used in determining the fuel factor in this proceeding. Further, the Commission concludes that consistency dictates that the appropriate cost of oil and gas should be based on the burned price for March 1987.

6. Other than the use of a 62% capacity factor for all nuclear units and a 1.678¢ per kWh coal cost, the methods of the Company and the Public Staff to calculate the fuel factor in this proceeding differed in only minor respects. In regard to these remaining differences, the Commission finds that the Company's proposed treatment is consistent with past Commission practice and therefore should be adopted.

7. Based on the foregoing, the Commission concludes that a fuel factor of 1.1358¢ per kWh (excluding gross receipts tax) is just and reasonable and should be approved. This fuel factor is 0.0307¢ per kWh less than the 1.1665¢ per kWh approved in Docket No. E-7, Sub 408. The appropriate fuel factor of 1.1358¢ per kWh has been calculated as shown in the following table:

COMMISSION FUEL FACTOR

Item	Proforma MWH	Fuel Price $/MWH	Fuel Dollars (000's)
Coal	25,049,182	16.78	$420,325
Oil and Gas	13,593	115.94	1,576
Light Off			3,172
Nuclear	28,135,811	6.47	182,170
Hydro	1,865,600		
Pumped Storage	(299,564)		
Purchased Power			
Long-Term Contract	469,115	13.43	6,300
Short-Term Contract	103,624	16.77	1,738
Interchange In	489,620	21.71	10,630
Interchange Out	(693,760)	15.86	(11,003)
Catawba Purchases	9,505,190	7.93	75,348
Total Generation	64,638,411		690,256
Less:			
Intersystem Sales	817,564		(16,555)
Line Loss & Co. Use	4,505,752		
System Sales	59,315,095		673,701
Fuel Factor (¢ per kWh)			1.1358

8. The Commission takes judicial notice of State of North Carolina ex rel. Utilities Commission v. Thornburg, 84 N.C. App. 482, 353 S.E. 2d 413 (1987) in which the Court of Appeals invalidated the EMF provisions of our rules. A Petition for Discretionary Review of this case is now pending before the North Carolina Supreme Court, but it has not been acted upon. Bills are now also pending in the General Assembly which would make it clear that the Commission has authority to provide for past over/underrecovery of fuel costs under G.S. § 62-133.2. In addition, the Commission notes that no party to this proceeding has expressly requested an EMF rider and that one, NCIEC, has specifically recommended against the adoption of an EMF. The record in this docket shows that during the test year (12 months ended December 31, 1986), Duke underrecovered its fuel costs by $4,385,000. The Company did not seek to recoup this underrecovery and the Commission is unable at this time to make any provision for the underrecovery because of the decision of the Court of Appeals. For those reasons, the Commission concludes that use of an EMF is not reasonable or appropriate in this proceeding.

9. In arriving at the ultimate decision in this case, the Commission has given careful consideration to all of the evidence required by G.S. § 62-133.2(c) relating to changes in the cost of fuel and the fuel component of purchased power and has allowed a change based on 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 0.0307¢ per kWh decrement (excluding gross receipts tax) from the base fuel component approved in Docket No. E-7, Sub 408.

2. That the EMF decrement of 0.0046¢ per kWh approved in Docket No. E-7, Sub 410, shall terminate on July 29, 1987.

3. 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.

4. 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.

ISSUED BY ORDER OF THE COMMISSION.
This the 24th day of June 1987.

NORTH CAROLINA UTILITIES COMMISSION
(SEAL) Gail Lambert Mount, Deputy Clerk

Appendix A

DOCKET NO. E-7, SUB 417

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Application of Duke Power Company Pursuant to G.S. 62-133.2 Relating to Fuel Charge Adjustments for Electric Utilities	))))	NOTICE TO CUSTOMERS OF RATE REDUCTION

NOTICE IS HEREBY GIVEN that the North Carolina Utilities Commission entered an Order on June 24, 1987, after a public hearing, 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 became effective for service rendered on and after June 24, 1987, and will reduce Duke's retail rates by approximately $10.98 million on an annual basis. The rate decrease was ordered by the Commission after review of Duke's fuel expenses during the 12-month test period ended December 31, 1986, 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 31¢ for a typical residential customer using 1,000 kWh per month. However, effective July 29, 1987, the net rate reduction for a residential customer using 1,000 kWh per month will decrease by approximately 5¢ due to the fact

that a rate decrement of approximately 5¢ per 1,000 kWh which has been in effect since July 29, 1986, will cease to be effective.

ISSUED BY ORDER OF THE COMMISSION.
This the 24th day of June 1987.

NORTH CAROLINA UTILITIES COMMISSION
(SEAL) Gail Lambert Mount, Deputy Clerk

DOCKET NO. E-13, SUB 29
DOCKET NO. E-13, SUB 35

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Application of Nantahala Power and Light)
Company for Authority to Adjust and Increase) ORDER ON REMAND
Its Electric Rates and Charges)

HEARD IN: The Commission Hearing Room, 2nd Floor, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina on Monday, January 12, 1987

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

APPEARANCES:

For the Applicant:

Edward S. Finely, Jr. and Grady L. Shields, Hunton & Williams, Post Office Box 109, Raleigh, North Carolina 27602
For: Nantahala Power and Light Company

For the Respondents:

Ronald D. Jones and David R. Poe, LeBeouf, Lamb, Leiby & McRae, 520 Madison Avenue, New York, New York 10022
For: Aluminum Company of America and Tapoco, Inc.

For the Intervenors:

Richard L. Griffin, Assistant Attorney General, Suite 207, Hayes & Hobson Building, 20 South Spruce Street, Asheville, North Carolina 28801
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
For: The Using and Consuming Public

William T. Crisp and Robert F. Page, Crisp, Davis, Schwentker, Page & Currin, Post Office Drawer 30489, Raleigh, North Carolina 27622
For: The Counties of Cherokee, Graham, Jackson, Macon and Swain; the Towns of Andrews, Bryson City, Dillsboro, Robbinsville, and Sylva; the Tribal Council of the Eastern Band of Cherokee Indians; and Henry J. Truett et al.

BY THE COMMISSION: By Orders issued on August 20, 1986, the North Carolina Supreme Court remanded the captioned dockets to the Commission for further proceedings consistent with the North Carolina Supreme Court's opinion filed on July 3, 1985, in State ex rel. Utilities Commission v. Nantahala Power and Light Co., 313 N.C. 614 (1985), and not inconsistent with the opinion of the United States Supreme Court in Nantahala Power & Light Co v. Thornburg, 476 U.S. ____, 106 S. Ct. 2349 (1986).

HISTORY OF THE CASES

A. Docket No. E-13, Sub 29

This docket was first initiated by an application of Nantahala Power and Light Company ("Nantahala") filed November 3, 1976, for an increase in retail rates and for a revised purchase power adjustment clause. The Commission, on June 14, 1977, issued its Order approving the requested retail rate increase based upon a cost of service study using 1975 test year data and approving the purchase power adjustment clause. From entry of that Order the Intervenors appealed to the North Carolina Court of Appeals, which vacated the Commission's Order and remanded the matter to the Commission for further proceedings. Nantahala appealed to the North Carolina Supreme Court.

On March 5, 1980, the North Carolina Supreme Court rendered its decision in State ex rel. Utilities Commission v. Edmisten, 299 N.C. 432 (1980). In its opinion the North Carolina Supreme Court determined that a roll-in mechanism would identify any biases or inequities in the New Fontana and Apportionment Agreements and, for this reason, the Court directed the Commission to consider whether a rate schedule computed as if Nantahala Power and Light Company and Tapoco, Inc., were one utility would be in the best interest of Nantahala's customers.

Upon remand, the Commission, after preliminary hearing, determined that it had jurisdiction over Nantahala's parent corporation, Alcoa, and its affiliate, Tapoco, and joined them as parties. The Commission, in view of the evidence presented by all parties at the hearing upon remand, found that Nantahala and Tapoco were North Carolina public utilities subject to its ratemaking jurisdiction and that Alcoa was itself a statutory North Carolina public utility. The Commission also determined that detriments and inequities to Nantahala arose out of the New Fontana and 1971 Apportionment Agreements, which resulted in concealed benefits flowing to Alcoa from Nantahala's customers. As a result of these determinations relating to the New Fontana and Apportionment Agreements, the Commission concluded that (1) the Nantahala/Tapoco electric generation and distribution system constituted a single, integrated system; (2) use of a roll-in that would true up or eliminate the concealed benefits, based upon the generational needs of Nantahala, should be adopted for use in setting

Nantahala's retail rates, and that the New Fontana and Apportionment Agreements would not be used in determining Nantahala's demand and energy-related costs; and (3) Alcoa had so dominated Nantahala through the New Fontana and Apportionment Agreements that Alcoa would be responsible for such portions of any refund obligation that Nantahala itself was unable to make. Order of September 2, 1981.

All relevant Orders of the Commission were affirmed by the North Carolina Court of Appeals in State ex rel. Utilities Commission v. Nantahala Power and Light Company, 65 N.C. App. 198 (1983). The companies appealed the decision to the North Carolina Supreme Court.

In an opinion rendered on July 3, 1985, in State ex rel. Utilities Commission v. Nantahala Power and Light Company, 313 N.C. 614 (1985), the Supreme Court affirmed the decision below and found that the Commission properly determined that a roll-in for ratemaking purposes was mandated in the case because the New Fontana and Apportionment Agreements caused concealed benefits to flow to Alcoa to the detriment of Nantahala's customers and that the Commission properly ordered Nantahala to refund to its North Carolina retail customers all revenue collected under the rates approved by the Commission Order issued June 14, 1977, to the extent that such rates produced revenue in excess of the level of rates approved in the September 2, 1981, Order.

The Companies appealed the decision of the North Carolina Supreme Court to the Supreme Court of the United States. In an opinion issued June 17, 1986, in Nantahala Power and Light Co. v. Thornburg, 476 U.S. ___, 106 S.Ct. 2349 (1986), the United States Supreme Court reversed the North Carolina Supreme Court and remanded the case for further proceedings not inconsistent with its opinion. The United States Supreme Court found that for purposes of calculating the rates to be charged Nantahala's retail customers, the Commission chose an allocation of entitlements and purchase power between Tapoco and Nantahala that differed from the allocation of entitlement power between Tapoco and Nantahala adopted by FERC. The United States Supreme Court determined that the Commission's allocation of entitlement and purchase power in setting retail rates was preempted by Federal law and for those reasons reversed the North Carolina Supreme Court's affirmance of the Commission's Order. 106 S. Ct. at 2360.

By Order filed August 19, 1986, after receipt and consideration of the mandate of the United State Supreme Court, the North Carolina Supreme Court remanded the case to the Commission for further proceedings consistent with the North Carolina Supreme Court's opinion filed on July 3, 1985, but not inconsistent with the opinion of the United States Supreme Court of June 17, 1986.

B. Docket No. E-13, Sub 35

This docket was instituted on December 31, 1980, when Nantahala applied for authority to increase its rates and to revise its purchase power adjustment clause. On July 16, 1981, the Commission joined Alcoa and Tapoco as parties to the proceeding. After hearings, which began in September of 1981, the Commission on June 8, 1982, entered an Order similar in many respect to its Order in Docket No. E-13, Sub 29

(remanded). The Companies appealed to the North Carolina Court of Appeals, which affirmed the Commission's Order. In an opinion entered on August 13, 1985, State ex rel Utilities Commission v. Nantahala Power and Light Co., 314 N.C. 246 (1985), the North Carolina Supreme Court affirmed the decision of the North Carolina Court of Appeals. The Companies appealed this decision to the United States Supreme Court. By Order issued June 23, 1986, the United States Supreme Court, in view of its earlier decision in the Docket No. E-13, Sub 29, case, vacated and remanded the decision of the North Carolina Supreme Court. By Order of August 20, 1986, the North Carolina Supreme Court remanded the matter to the Commission for further proceedings consistent with the North Carolina Supreme Court's opinion but not inconsistent with the opinion of the Supreme Court of the United States in the Sub 29 case.

C. Proceedings After Remand

On September 5, 1986, Nantahala made a compliance filing in Docket No. E-13, Sub 29, in which it calculated refunds based on Nantahala's view of the case and moved for summary disposition. On September 19, 1986, Alcoa and Tapoco filed a response to Nantahala's compliance filing which supported Nantahala's position. On October 1, 1986, Nantahala made a compliance filing in Docket No. E-13, Sub 35, and motion for summary disposition. The Intervenors asked that Nantahala's compliance filings be denied and that the Commission convene at an early date a prehearing conference to discuss substantive and procedural matters arising from the remand of the cases. On November 7, 1986, Nantahala filed a reply in response to Intervenors' position.

On January 12, 1987, the Commission heard oral arguments on the remand of these cases from the United States Supreme Court and the North Carolina Supreme Court and on the compliance filings and motions for summary disposition. On January 21, 1987, the Intervenors filed a motion regarding the scheduling of hearings in the remanded cases. The Intervenors also filed a motion to compel immediate refunds. On January 30, 1987, Nantahala and Alcoa and Tapoco filed their responses objecting to the Intervenors' motion for an immediate refund.

By Order of February 25, 1987, the Commission requested proposed orders in these dockets setting forth in detail what the parties contend is appropriate action to be taken by the Commission to comply with the mandates of the United States and the North Carolina Supreme Courts.

On April 13, 1987, the parties filed their proposed orders in these dockets. By Order of April 23, 1987, the parties were given the opportunity to submit comments on the proposed Orders. These comments were filed on May 1 and 8, 1987.

FINDINGS OF FACT

1. Nantahala is a fully organized public utility company under the laws of North Carolina, subject to the jurisdiction of this Commission, and holds a franchise to furnish electric power in the western part of the State of North Carolina under rates and service regulated by this Commission as provided in Chapter 62 of the General Statutes.

2. Tapoco is a duly organized public utility and is domesticated as such under the laws of North Carolina. It is subject to the jurisdiction of this Commission with respect to its retail rates and electric service as provided in Chapter 62 of the General Statutes.

3. Both Nantahala and Tapoco are wholly owned subsidiaries of Alcoa. Alcoa is a public utility pursuant to G.S. 62-3(23)c and is subject to the jurisdiction of this Commission with respect to retail ratemaking.

4. The United States Supreme Court has decided that, for purposes of calculating the rates to be charged Nantahala's North Carolina retail customers, this Commission cannot choose a method of allocation of entitlements and purchased power between Tapoco and Nantahala that differs from the allocation of entitlements and purchased power adopted by the Federal Energy Regulatory Commission (FERC). Thus, the United States Supreme Court has determined that this Commission's jurisdictional authority in this regard is preempted by federal law.

5. The New Fontana Agreement and the 1971 Apportionment Agreement as modified by FERC have been found just and reasonable and must be accepted by this Commission in establishing retail rates for Nantahala. Specifically, the Commission finds that under these agreements Nantahala delivers to TVA the output of eight of its hydroelectric generating plants and receives in exchange 54.3MW of firm power and up to 404 million kWh of energy on an annual basis. Nantahala also purchases supplemental power and energy from TVA to meet its requirements. The quantity of energy reflects the 360 million kWh of firm energy provided in the Apportionment Agreement and the additional curtailable energy awarded Nantahala by FERC.

6. With the exception of Nantahala's three small hydroelectric plants not covered by the New Fontana Agreement, all of Nantahala's power supply costs derive from the FERC-regulated contracts. FERC refused to equalize the costs of entitlement power received by Nantahala and Tapoco, even though it gave full consideration to the North Carolina Intervenors' proposal to do so. Instead, FERC fixed the cost of the entitlements of each as stand-alone utilities, based upon the individual contribution of each. The Commission is required by law to accept this FERC determination of Nantahala's power supply costs in setting retail rates. Nantahala Power and Light Co. v. Thornburg, 476 U.S. ____, 106 S. Ct. 2349 (1986).

7. Intervenors' testimony in these dockets developed a proposal to roll-in all of the costs of Nantahala's North Carolina power supply with some but not all of the power supply costs for the Alcoa load in Tennessee. For the reasons set forth in the findings above, a roll-in of Nantahala and Tapoco under the circumstances of the record in these proceedings would be an unlawful effort to avoid the preemptive effect of federal regulation.

8. (a) Nor is a roll-in called for by the surviving portions of the North Carolina Supreme Court decisions. The roll-in as described in the 1980 North Carolina Supreme Court decision was to serve the purpose of eliminating any biases or inequities in the New Fontana and Apportionment Agreements or from Alcoa's control of the corporate structures. State ex rel. Utilities Commission v. Edmisten, 299 N.C. 432 (1980). FERC has reviewed these precise

questions and determined that the agreements, with the FERC modification, are just and reasonable.

(b) The United States Supreme Court has made it clear that the Commission does not have the authority to reform the New Fontana and 1971 Apportionment Agreement contracts, much less to ignore their impact. 106 S. Ct. at 2358. A roll-in that would indirectly achieve the same result is also forbidden.

(c) Any potential roll-in that established Nantahala's rates at a level that did not fully recover its actual power supply costs under the agreements as determined by FERC would result in "trapped costs." As the United States Supreme Court stated, "[s]uch a 'trapping' of costs is prohibited." 106 S. Ct. at 2359. Thus, in fixing Nantahala's retail rates, the Commission must reflect both the Company's actual costs associated with the New Fontana and 1971 Apportionment Agreement entitlements and Nantahala's actual costs of purchased TVA supplemental power.

9. FERC determined that Nantahala's wholesale power arrangements, as modified, are just and reasonable. Therefore the Commission cannot substitute its own findings as to these arrangements as a basis to find that Alcoa dominated Nantahala to its disadvantage, except to the extent that Nantahala was disadvantaged by the 1971 Apportionment Agreement prior to its modification by FERC. Thus, this Commission must pierce the corporate veil of separation between Alcoa and Nantahala solely in order to insure that refunds due Nantahala's North Carolina retail customers arising from the FERC's modification to the 1971 Apportionment Agreement remain lawfully recoverable from Alcoa to the extent, if any, Nantahala is financially unable to make said refunds.

10. As a result of the above findings, the Commission has determined that further hearings to consider other ratemaking concepts are neither timely nor appropriate and are not in the public interest. The public interest requires a final resolution of these proceedings.

11. Certain other of our previous findings, not set forth hereinabove, were not disturbed on appeal and are hereby reaffirmed. These findings are as follows:

A. Docket No. E-13, Sub 29, Order dated September 2, 1981:
(1) The fair rate of return that Nantahala should have the opportunity to earn on the fair value of its investment devoted to its North Carolina retail operations is 4.20%. (2) The purchased power adjustment clause is a just and reasonable rate and a reasonable method by which Nantahala can recover a part of its reasonable operating expense.

B. Docket No. E-13, Sub 35, Order dated June 8, 1982:
(1) The proper cost for debt and preferred stock is 8.46%. The reasonable rate of return Nantahala should be allowed to earn on common equity is 16.5%. Using a weighted average for the cost of debt and common equity, with reference to the reasonable capital structure heretofore determined, yields an overall fair rate of return of 12.54% to be applied to the Company's original cost rate base. Such rate of return will enable Nantahala, by sound

management, to produce a fair return for its shareholder, 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 its existing investor. (2) The Applicant should base all residential customer's billings on monthly meter readings. (3) Nantahala's proposed rate design and service rules are reasonable and appropriate as modified herein. [i.e., as modified by Commission Order of June 8, 1982, in Docket No. E-13, Sub 35].

12. As a result of the above findings, the Commission must determine the amount of refunds to be made to the customers of Nantahala. In regard to Docket No. E-13, Sub 29, the amount of refund due shall be determined consistent with the methodology employed by Nantahala in its compliance filing of September 5, 1986. In regard to Docket No. E-13, Sub 35, the amount of refund due shall be determined consistent with the methodology employed by Nantahala in its compliance filing of October 1, 1986. Refunds due shall include interest on excess collections calculated at the maximum statutory interest rate and shall accrue through such time as the refunding process is complete.

13. To facilitate the Commission's final resolution of these matters, Nantahala should be called upon to supplement the information contained in its compliance filings of September 5, 1986, and October 1, 1986. Nantahala shall file a restatement of the schedules presented on pages 23, 24, and 25 of the Commission Order issued on June 14, 1977, in Docket No. E-13, Sub 29. Such restatement shall be limited to the changes necessary to reflect the effect of the FERC-ordered allocation of entitlement energy under the 1971 Apportionment Agreement. Nantahala shall file a restatement of the schedules presented on pages 43, 44, and 45 of the Commission Order issued on June 8, 1982, in Docket No. E-13, Sub 35. Such schedules shall be modified as required to reflect the effect of utilization of the methodology employed by Nantahala in its compliance filing of October 1, 1986, for the purpose of establishing Nantahala's North Carolina retail test-year cost of service on a stand-alone basis. This restatement shall also include the effect of the FERC-ordered allocation of entitlement energy under the 1971 Apportionment Agreement. Nantahala shall also file an updated statement of all excess collections based upon the foregoing including those arising from operation of the Purchased Power Adjustment Clause plus interest. Interest shall be calculated at the maximum statutory rate and shall be compounded annually.

14. After the Commission and the parties to the proceeding have had an opportunity to examine the additional information and data required hereinabove, the Commission will issue a subsequent Order making further appropriate findings and conclusions and ordering refunds.

CONCLUSIONS

After having reviewed thoroughly the evidentiary record of these proceedings, the past Orders and decisions of this Commission, the North Carolina Supreme Court, and the United State Supreme Court, and after having reviewed the pleadings, filings, proposed orders, responses, and arguments of the parties, the Commission is of the opinion, and so concludes, that the preceding Findings of Fact should be adopted.

The Commission has been instructed by the North Carolina Supreme Court to enter an order consistent with that Court's opinion in these two cases but not inconsistent with the opinion of the United States Supreme Court in Thornburg. The North Carolina Supreme Court opinions affirmed, in every respect, our Orders that established Nantahala's rates through the roll-in ratemaking methodology. The United States Supreme Court decision in Thornburg reversed the Commission's Orders and the North Carolina Supreme Court's decision upholding our Orders. Therefore, to comply with the North Carolina Supreme Court's mandate, the Commission must determine the degree to which its earlier Orders may stand in light of the decision of the United States Supreme Court and the basis for that Court's actions. To make this determination the Commission must examine the extent to which FERC's regulation of the New Fontana and 1971 Apportionment Agreements has fixed Nantahala's power supply costs. The Commission should also examine the roll-in, how it originated, and whether it has any role in our determination of these proceedings.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 1, 2, 3, AND 10

The Commission reaffirms its Orders in these dockets to the extent that they contain findings and conclusions that FERC did not address and therefore that the FERC Orders do not preempt. The FERC was unconcerned with and did not address the Commission's findings that Nantahala, Tapoco, and Alcoa were North Carolina public utilities. The Commission can comply with the North Carolina Supreme Court's mandate and reaffirm those findings.

The Commission can also reaffirm its determination relating to certain other issues raised in Nantahala's retail rate cases, such as the rates of return to be applied to Nantahala's rate base, its approval of the purchase power adjustment clause, and its findings concerning rate design and service rules.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 4, 5, 6, 7, 8, 9, AND 10

As required by Thornburg, the Commission recognizes that the FERC has jurisdiction over the New Fontana Agreement and the 1971 Apportionment Agreement. The Commission also recognizes that FERC, in Opinion 139, Nantahala Power and Light Co., 19 FERC § 61.152 (1982), modified the 1971 Apportionment Agreement to give Nantahala additional kilowatt hours of energy in return for its actual contribution under the New Fontana Agreement. These agreements fix both the cost and quantity of Nantahala's New Fontana Agreement entitlements and, as the United States Supreme Court noted, thus also fix the quantity of Nantahala's purchases of supplemental power from TVA.

In 1980 the North Carolina Supreme Court ruled that the Commission had erred in failing to give more than minimal consideration to the evidence sponsored by Intervenors supporting the theory that Nantahala's rates should be established by a roll-in method of ratemaking involving Nantahala and Tapoco. Edmisten, 299 N.C. at 437. The roll-in concept advocated by the Intervenors was proffered as being a "device" to cancel or true-up concealed benefits which allegedly flowed to Alcoa from Nantahala by virtue of two power supply agreements, the New Fontana and 1971 Apportionment Agreements.

The North Carolina Supreme Court's opinion stated that "Nantahala may not be allowed to structure its economic affairs or physical operations in such a

way as to effect an unreasonable preference or advantage to anyone, including its parent Alcoa." Id. at 438. The Court concluded: "Suffice it to say that the assertion that Nantahala's public is fairly served by a contract requiring Nantahala to purchase additional power regardless of the adequacy of its own generation assaults the common sense of this Court. Nantahala's customers should not be denied the benefit of their utility's fairly regular harvests of abundant energy." Id. at 440-41

On remand from the North Carolina Supreme Court the Commission adopted a roll-in methodology for setting Nantahala's retail rates and set forth extensive findings and conclusions explaining its reasons for rolling together Nantahala and Tapoco and treating them as one entity. The Commission found that the New Fontana and 1971 Apportionment Agreements resulted in concealed benefits flowing to Alcoa. Order of September 2, 1981, in Docket No. E-13, Sub 29. The primary justification for the rate-setting method employed by the Commission to set Nantahala's retail rates was the perceived inequities of the New Fontana and 1971 Apportionment Agreements to the North Carolina retail customers:

> "Therefore, based upon the foregoing and upon careful consideration of the entire evidence of record, the Commission concludes that it should reject the companies' proposed allocation methodology in that said methodology in all material respects is based upon the New Fontana Agreement and the [1971] Tapoco-Nantahala Apportionment Agreement."

September 2, 1981, Order at 24 in Docket No. E-13, Sub 29.

> "With the terms of the NFA having been structured to meet Alcoa's industrial needs and not Nantahala's public service needs, it is improper to allocate demand and energy costs based upon the TVA return entitlements. Rather, demand and energy charges should be based upon the capabilities and the needs of Nantahala and Tapoco outside of the TVA return entitlements. That is the very purpose of the roll-in study."

Id. at 32. See also June 8, 1982, Order at 25, 30 in Docket No. E-13, Sub 35.

As the foregoing language indicates, the bases upon which the Commission adopted the roll-in methodology were the power supply arrangements and the conclusion that these arrangements were unfair to Nantahala and its retail customers. The Commission specifically ruled the agreements unfair in Finding of Fact No. 6 in its September 2, 1981, and June 8, 1982, Orders.

After determining that roll-in was an appropriate way to establish Nantahala's rates, the Commission in its Orders in these cases developed allocation factors with which to determine the costs of the rolled-together entity that would be assigned to Nantahala. The allocation factors used by the Commission to determine the percentage of investment and expenses assignable to Nantahala depended upon the Commission's decision to reject, for North Carolina retail rate-making purposes, the New Fontana and 1971 Apportionment Agreements power supply arrangements and replace those arrangements with what it determined to be more reasonably priced power supply arrangement. The bases for roll-in and the mechanics for roll-in, therefore, rested upon the

Commission's conclusion that the power supply arrangements under the New Fontana and the 1971 Apportionment Agreements resulted in substantial benefits to Alcoa to the significant detriment of Nantahala's customers.

Whatever the Commission's present view may be as to the validity of those prior findings, the United States Supreme Court's decision in Thornburg made it clear that the Commission does not have the authority to issue an Order resulting in an allocation of entitlement and purchase power that differs from the allocation ordered by FERC, or to achieve such a result by indirect means.

Finally, the Commission recognizes that it is not authorized to utilize a roll-in or any other methodology that would establish Nantahala's retail rates at a level that did not fully recover its actual FERC-regulated power supply costs. This would result in "trapped costs" and, as the United States Supreme Court stated, "[s]uch a trapping of costs is prohibited." 106 S. Ct. at 2359. Thus in fixing Nantahala's retail rates, the Commission must reflect the actual costs associated with its New Fontana and 1971 Apportionment Agreements entitlements, that is, Nantahala's actual costs of owning and operating the eight hydroelectric plants dedicated to TVA under the NFA. The Commission must also reflect Nantahala's actual costs of purchased TVA supplemental power.

Consequently, the Commission finds and concludes that the United States Supreme Court decision, to the extent that it reversed the North Carolina Supreme Court, is inconsistent with its earlier Orders and the North Carolina Supreme Court's decision affirming those Orders, so that the Commission cannot formulate or devise a new or different roll-in remedy. It is nevertheless possible to comply with the North Carolina Supreme Court's mandate that the Commission's Order be consistent in some respect with that Court's opinion, because we find that, in limited degree, there is common ground between the two opinions. To a degree the findings and conclusions that constitute the essence of the Commission's Orders were adopted by and concurred in by FERC. Based on evidence similar to that presented before the Commission, the FERC found that the 1971 Apportionment Agreement was unfair to the extent that Nantahala's share of the New Fontana Agreement entitlements fell below Nantahala's proportionate contribution of power to TVA. Based upon these findings and conclusions the FERC allocated to Nantahala up to 44 million kWh. Based on FERC's findings, the Commission can impose a refund based on the reduction in Nantahala's regulated power supply cost.

The Commission can reaffirm its Orders in these dockets to the extent that they contain findings and conclusions that FERC did not address and therefore that the FERC Orders do not preempt. The FERC was unconcerned with and did not address the Commission's findings that Tapoco and Alcoa were North Carolina public utilities. The Commission can comply with the North Carolina Supreme Court's mandate and reaffirm those findings.

Even if the Commission were to find that Nantahala and Tapoco should be treated as integrated for ratemaking purposes, that treatment would have to reflect the FERC's determinations with respect to the power supply contracts. The circumstances of these cases, however, present no need for the roll-in methodology. The North Carolina Supreme Court, in Edmisten, made it clear that the roll-in was a special ratemaking device that could be utilized to eliminate any biases or inequities in the New Fontana and Apportionment Agreements or from Alcoa's control of the corporate structures of Nantahala and Tapoco. The

FERC, in Opinions 139 and 139A (19 FERC § 61,152 and 20 FERC § 61,430), reviewed these precise questions and determined that the agreements, with the FERC modification, are just and reasonable. Because of this determination, utilization of the "roll-in device" would be neither appropriate nor lawful.

The Commission likewise finds that it is not free to allow the Intervenors to fashion a new roll-in with a different basis, different mechanics, and different results as though the eleven years of history in these cases had not transpired. Nor is the Commission free to approve a rate of return different from that initially approved in 1977 and again in 1981.

In the FERC proceedings, the North Carolina Attorney General and others sought to equalize Nantahala's cost of its New Fontana Agreement entitlements with those of Tapoco, Inc. Using a method similar to that which they advocated in the Sub 29 and Sub 35 proceedings, the North Carolina Intervenors essentially proposed to give Nantahala a power supply cost that would reflect a portion of Tapoco's entitlements. 19 FERC at p. 61,275. FERC rejected this proposal to set Nantahala's per unit entitlement costs equal with those of Tapoco, essentially finding no discrimination in the assignment of particular generating units to Nantahala.

The Commission determines that it cannot allow a new hearing in these cases in which the new theories now advocated by the Intervenors or any other new theories may be advanced. The only evidence upon the record in these cases is evidence supporting the establishment of Nantahala's rates in the traditional, stand-alone mode and the establishment of Nantahala's rates by the roll-in methodology. The Commission adopted the roll-in methodology. This methodology was upheld by the North Carolina Supreme Court but reversed by the United States Supreme Court. Intervenors presented no evidence supporting an alternative roll-in. Consequently, no issue was raised on appeal that an alternative roll-in should have been approved in the event the roll-in at issue was found unlawful. The scope of any proceedings on remand must be limited by the theories raised heretofore.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 11, 12, AND 13

Nantahala has submitted a compliance filing in Docket No. E-13, Sub 29, that showed the effect of FERC's change in Nantahala's FERC Rate Schedule No. 1 (New Fontana and Apportionment Agreements) on Nantahala's purchased power costs for the period June 14, 1977, through August 1, 1981. According to Nantahala, the refund, which amounts to $2,598,000, not counting interest, was calculated essentially on the basis of the difference between what Nantahala actually collected through the purchase power adjustment clause and what it would have collected if FERC Rate Schedule No. 1, as modified, had been in effect throughout the period rates were in effect.

Nantahala has also submitted a compliance filing in Docket No. E-13, Sub 35. In order to determine Nantahala's proper refund in this docket, Nantahala's stand-alone revenue requirement was examined. Although our Order in Sub 35 developed and would have implemented a rolled-in revenue requirement, the Order also made findings which relate to a stand-alone revenue requirement as well. Examination of the Commission's Order dated June 8, 1982, reveals that it adopted the cost-of-service analysis of Public Staff witness Toms in its entirety, accepting all of witness Toms' proposed adjustments. Witness

Toms' stand-alone analysis is contained in his Exhibit 2, Schedules 2 and 3. In addition, Mr. Toms in direct examination accepted all the updating adjustments to rate base and expenses proposed by Nantahala witness McDaniel. Nantahala adjusted rate base by 1/8th of the accepted changes in operating and maintenance expense and expenses specifically included in the cost of service by the Commission as stated on p. 38 of the Order. Thus, Nantahala's stand-alone revenue requirement was derived from Public Staff witness Toms' Exhibit 2, Schedules 2 and 3 (adjusted for changes noted above) coupled with the capital structure and rate of return determinations of the Commission in Findings of Fact Nos. 13 and 14 in the Order of June 8, 1982.

Calculations were also performed to determine the effect of FERC's change in Nantahala's Rate Schedule No. 1 on Nantahala's purchased power costs for the period from August 1, 1981, to January 1, 1983. Reductions in revenue requirements were calculated essentially on the basis of the difference between what Nantahala actually collected through operation of its purchase power adjustment clause and what would have been collected had FERC's Rate Schedule No. 1, as modified, been in effect throughout the period. According to Nantahala, this resulting refund amounts to $498,000, not counting interest.

Because the refunds are calculated according to factors previously approved by the Commission and a prescribed formula, they do not present issues of fact to resolve. However, as stated in Findings of Fact Nos. 12 and 13, the Commission is in need of additional information in order to make the essential findings of fact required by G.S. 62-133.

Finally, as stated in Finding of Fact No. 9, to the extent Nantahala is financially unable to make the refunds ultimately to be ordered by the Commission, Alcoa, as the dominant parent of Nantahala, should be required to make such refunds as Nantahala is financially unable to make.

IT IS, THEREFORE, ORDERED as follows:

1. That Nantahala shall file a restatement of the schedules presented on pages 23, 24, and 25 of the Commission's Order issued on June 14, 1977, in Docket No. E-13, Sub 29. Such restatement shall be limited to the changes necessary to reflect the effect of the FERC-ordered allocation of entitlement energy under the 1971 Apportionment Agreement.

2. That Nantahala shall file a restatement of the schedules presented on pages 43, 44, and 45 of the Commission Order issued on June 8, 1982, in Docket No. E-13, Sub 35. Such schedules shall be modified as required to reflect the effect of utilization of the methodology employed by Nantahala in its compliance filing of October 1, 1986, for the purpose of establishing Nantahala's North Carolina retail test-year cost of service on a stand-alone basis. This restatement shall also include the effect of the FERC-ordered allocation of entitlements under the 1971 Apportionment Agreement.

3. That Nantahala shall file an updated statement of all excess collections based upon the foregoing and including those arising from operation of the Purchased Power Adjustment clause plus interest. Interest shall be calculated at the maximum statutory interest rate and shall be compounded annually.

4. That Nantahala shall file with the Commission eight (8) copies of all workpapers developed in the formulation of the information and data as required herein, and shall serve a copy of said workpapers on the parties of record.

5. That after the Commission and the parties to the proceeding have had an opportunity to examine the additional information and data required hereinabove, the Commission will issue a subsequent Order making further appropriate findings and conclusions and ordering refunds.

6. That refunds ultimately to be required shall be calculated on an individual customer basis and shall be based upon actual individual customer usage during the periods in which the overrecoveries occurred.

7. That Nantahala shall file the information and data required hereinabove on or before December 7, 1987. Alcoa and Tapoco and the Intervenors shall have to and including January 15, 1988, in which to file comments thereon.

8. That to the extent Nantahala is financially unable to make the refunds ultimately to be ordered by the Commission in these dockets, Alcoa, as the dominant parent of Nantahala, shall be required to make such refunds as Nantahala is financially unable to make.

ISSUED BY ORDER OF THE COMMISSION.
This the 13th day of November 1987.

(SEAL)

NORTH CAROLINA UTILITIES COMMISSION
Sandra J. Webster, Chief Clerk

DOCKET NO. G-21, SUB 255

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of	
Application of North Carolina Natural Gas Corporation for an Adjustment of Its Rates and Charges	RECOMMENDED ORDER ON FURTHER HEARING

HEARD IN: Commission Hearing Room, Dobbs Building, Raleigh, North Carolina, on March 3, 1987

BEFORE: Commissioner Ruth E. Cook, Presiding; and Commissioners Edward B. Hipp and Sarah Lindsay Tate

APPEARANCES:

For North Carolina Natural Gas Corporation:

Donald W. McCoy and Jeffrey N. Surles, McCoy, Weaver, Wiggins, Cleveland & Raper, Attorneys at Law, Post Office Box 2129, Fayetteville, North Carolina 28302

For the Using and Consuming Public:

Gisele L. Rankin, Staff Attorney, 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, Attorney at Law, Post Office Box 12547, Raleigh, North Carolina 27605

BY THE COMMISSION: By the Final Order Granting Partial Increase in Rates and Charges issued in this proceeding on November 10, 1986, the Commission ordered North Carolina Natural Gas Corporation (NCNG or the Company) to terminate, as of the date of that Order, the 2% line loss and compressor fuel charge then being assessed customers for transportation service and negotiated sales. The Final Order further provided as follows:

> 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 CUCA 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.

By Order dated December 5, 1986, the Commission scheduled a further hearing to be held on February 10, 1987, for the purpose of determining the disposition of the proceeds collected pursuant to the 2% line loss and compressor fuel charge by NCNG. By Order dated January 7, 1987, the Commission rescheduled the further hearing for March 3, 1987.

NCNG prefiled the testimony of Gerald A. Teele, Senior Vice President of NCNG, on February 9, 1987. The Public Staff prefiled the testimony of Eugene H. Curtis, Jr., a utility engineer with the Public Staff's Natural Gas Division, on February 23, 1987.

The hearing was held as scheduled on March 3, 1987. NCNG presented the testimony of witness Teele, and the Public Staff presented the testimony of witness Curtis.

Following the hearing, on April 2, 1987, the Public Staff filed with the Commission and served on parties of record Curtis Late-Filed Exhibit setting forth the level of T-1 and T-2 sales at full margin and at less than full margin and the revenues and lost margins associated therewith. On April 7, 1987, the Carolina Utility Customers Association, Inc. (CUCA), filed a Motion to Strike this late-filed exhibit asserting that the exhibit contained further information obtained after the close of the hearing and that CUCA had not had an opportunity to cross-examine as to the information contained in the exhibit. The Public Staff subsequently filed a Response to CUCA's Motion denying that it had ever misrepresented the exhibit but asserting that, if the Commission's decision is such that the information contained in the exhibit is needed, the Commission should give CUCA an opportunity to cross-examine as to the exhibit.

Based on the evidence adduced at the hearing and the entire record in this proceeding, the Commission makes the following

FINDINGS OF FACT

1. North Carolina Natural Gas Corporation is a franchised public utility providing natural gas service to its customers in North Carolina. NCNG is properly before the Commission in this proceeding by virtue of the continuation of the issue from NCNG's 1986 general rate case as to the proper disposition of the monies collected pursuant to the 2% line loss and compressor fuel charge assessed by NCNG on its customers for transportation service and negotiated sales.

2. From October 1, 1984, through September 30, 1986, NCNG charged its transportation and negotiated sales customers $921,974 consisting of: $438,920, the value of gas-in-kind retained by NCNG representing 2% of each transportation customer's entitlement volumes, and $483,054, representing a 2% charge imputed into the IST on negotiated sales of spot market gas.

3. During the time period involved in this proceeding, transportation Rate Schedule T-1 contained the following sentence: "Customer's entitlement volume shall be the volume of gas received from Transco for customer's account, less line loss volumes," and transportation Rate Schedule T-2 contained the following sentence: "Customer's entitlement volume shall be the volume of gas received from Transco for customer's account less compressor fuel and line loss volumes." The availability paragraph of the transportation rate schedules

required that the customer enter into a service agreement with the Company. The service agreement specified that 2% of the volumes received by NCNG from Transco for the customer's account would be retained by the Company for compressor fuel and line loss volumes.

4. As a result of Federal Energy Regulatory Commission (FERC) Order 436, effective November 1, 1985, NCNG began purchasing gas and reselling it to its industrial customers as negotiated sales under Rate Schedules S-1 and SM-1. As to these sales, NCNG imputed the cost of the 2% allowance on such sales for calculating margins earned under the Industrial Sales Tracker (IST).

5. Rate Schedule T-1 was proposed by NCNG in September 1975 and was "allowed to become effective as filed" by Commission action on September 29, 1975. In June 1983 NCNG proposed certain changes to Rate Schedule T-1 and by Commission Order of January 6, 1984, the Commission found "that the T-1 rate proposed by the Company is just and reasonable." Rate Schedule T-1 was established as just and reasonable by the Commission and NCNG should be allowed to retain the funds received under its T-1 tariff.

6. Rate Schedule T-2 was proposed by NCNG in May 1985. By Order of May 30, 1985, the Commission provided that Rate Schedule T-2 "be accept[ed] for filing effective June 15, 1985." Rate Schedule T-2 was not established as just and reasonable and the 2% allowance retained as gas-in-kind by NCNG pursuant to transportation service under Rate Schedule T-2 was unjust and unreasonable. NCNG must refund the monies collected pursuant thereto. The value of gas-in-kind retained by NCNG under its T-2 tariff should be treated as transportation revenues and flowed through the IST to be refunded to the non-IST customers on the system during October 1, 1984, through April 30, 1986, and also during the month of September 1986, the time period during which these 2% retentions occurred.

7. Rate Schedules S-1 and SM-1 contain no language authorizing an allowance for lost and unaccounted for gas and compressor fuel on negotiated sales. The $483,054 cost imputed into the IST on sales of spot market gas should be flowed back through the IST and should be refunded to the non-IST customers on the system during November 1, 1985, through September 30, 1986, the time period during which these cost imputations occurred.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 1, 2, AND 3

The evidence for these findings of fact is contained in the Commission's records, the Commission Order of December 5, 1986, the testimony and exhibits of Company witness Teele, and the testimony of Public Staff witness Curtis. These findings are essentially jurisdictional or informational in nature and are generally uncontested. There was no dispute among the parties as to the amounts involved nor as to the classification of them with respect to gas-in-kind or cost imputed in the IST.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 4, 5, 6, AND 7

The evidence for these findings of fact is contained in the Commission's records and in the testimony of Company witness Teele and Public Staff witness Curtis.

Rate Schedule T-1 was originally proposed and allowed to become effective in September 1975 in Docket No. G-21, Sub 141. The T-1 rate schedule provides for transportation service at the Company's discretion to industrial boiler fuel customers meeting certain criteria. By Order dated January 6, 1984, the IST was approved in Docket No. G-21, Sub 235. The IST tariff approved by the Commission provided that all transportation T-1 revenues be included in the IST.

Rate Schedule T-2 was accepted for filing by Order dated May 30, 1985, in Docket No. G-21, Sub 252, so that NCNG could provide transportation service to its interruptible commercial and industrial customers with nonboiler uses in priorities 2.8, 3, 4, or 5. The Order further provided that, like the revenues received from transportation service under Rate Schedule T-1, revenues received from transportation service under Rate Schedule T-2 would be included in the IST.

The Company has taken the position that the words "less line loss volumes" in Rate Schedule T-1 and "less compressor fuel and line loss volumes" in Rate Schedule T-2 give it the authority to impose the 2% allowance on its transportation customers. The Company further asserts that even though after November 1, 1985, the form of the transactions was changed by the impact of FERC Order 436 from transportation to negotiated sales, the substance of the transactions was not changed. Based on this, the Company believes it is entitled to keep the $438,920 value of retained gas-in-kind and the $483,054 cost imputed into the IST on negotiated sales.

The Public Staff and CUCA generally take the position that the tariffs are insufficient as a matter of law to establish the 2% allowance as an approved just and reasonable rate because no amount was actually specified in the tariffs.

The Public Staff objects to any company setting a charge or rate independently of the Commission and without the Commission's or the Public Staff's knowledge. While NCNG testified that the charge had always been 2%, the Public Staff argued that there was nothing in the tariff to hinder NCNG from charging 3% or 10%, if it so desired, during its contract renegotiations with its transportation customers. According to the Public Staff, it is not logical to assume that the Commission intended to give NCNG the authority to set its own rates. The Public Staff's interpretation of the language at issue in the T-1 and T-2 tariffs is that it provides for the collection of excess costs over and above the allowance in the general rate case, after petitioning the Commission and documenting those costs.

Additionally, the Public Staff has taken the position that since an appropriate allowance for lost and unaccounted for gas and compressor fuel was included in the rates approved in NCNG's Docket No. G-21, Sub 235, general rate case proceeding and was being charged during the time period at issue, NCNG

cannot legally collect an additional charge. The evidence shows that 300,000 DTs were included for line losses and 75,000 DTs were included for compressor fuel in NCNG's Docket No. G-21, Sub 235, rate case, amounting to a 1.1% allowance. The expense level generated by this 1.1% allowance was included in the margin in the transportation rates, which was paid by either the transportation customers or by the non-IST customers on sales at less than full margin. In further support of its position, the Public Staff pointed out that the IST provides that NCNG may adjust the IST for compressor fuel costs only to the extent these costs exceed the amount included in the general rate case. On cross-examination witness Teele agreed that the IST allows NCNG to collect for excess compressor fuel charges. Witness Teele also testified that he could not show the Commission that NCNG's lost and unaccounted for volumes are substantially greater than 1.1%. The Public Staff, therefore, argues that NCNG has been fully compensated for its expenses and interpreting the T-1 and T-2 tariffs as requested by NCNG would allow NCNG to substantially over-recover these expenses.

The Public Staff has further pointed out that the S-1 and SM-1 tariffs have never contained any language on which authority to charge the 2% could be based. Therefore, in the Public Staff's opinion there is no possible justification for the $483,054 worth of IST imputed charges under Rate Schedules S-1 and SM-1.

Under the terms of the IST, as approved in 1984 and amended in 1985 when Rate Schedule T-2 was approved, it is the Public Staff's position that the revenues resulting from the reselling of the retained gas and from the imputed 2% charge should have been treated as transportation revenues, not cost of gas. These were dollars free and clear to NCNG, not a cost item.

CUCA generally agrees with the Public Staff's position, citing G.S. § 62-132 as authority for the Commission to require refunds. CUCA argues that NCNG's transportation customers had no choice but to sign the service agreements containing the 2% allowance. CUCA and the Public Staff differ only as to whom the refunds should be made as discussed hereinafter.

G.S. § 62-132 includes specific provisions for the Commission to order refunds of monies collected by a public utility under certain circumstances. The statute first provides that rates "established" by the Commission shall be deemed just and reasonable. It goes on to provide as follows:

> Provided, however, that upon petition filed by any interested person, and a hearing thereon, if the Commission shall find the rates or charges collected to be other than the rates established by the Commission, and to be unjust, unreasonable, discriminatory or preferential, the Commission may enter an order awarding such petitioner and all other persons in the same class a sum equal to the difference between such unjust, unreasonable, discriminatory or preferential rates or charges and the rates or charges found by the Commission to be just and reasonable, nondiscriminatory and nonpreferential, to the extent that such rates or charges were collected within two years prior to the filing of such petition.

Thus, the Commission may order refunds of the difference between unjust and unreasonable rates collected by a public utility and the level of just and

reasonable rates for two years in the past if the Commission finds that the rates collected (1) are other than rates established by the Commission and (2) are unjust, unreasonable, discriminatory, or preferential. The two-year limitation in the statute does not present a bar in this case since the issue of the 2% allowance on transportation service and negotiated sales was raised by pleadings filed in July 1986, and the transactions at issue took place within two years before that filing. Thus, the issues become whether the 2% allowance on transportation service and negotiated sales was a rate "established by the Commission" and, if not, whether the allowance represents an unjust and unreasonable charge. If so, a refund may be ordered pursuant to the statute.

In order to determine whether a rate has been "established" by the Commission, the Commission must look to the manner in which the rate was acted on by the Commission. Utilities Commission v. Edmisten, Attorney General, 291 N.C. 327 (1976), is instructive. It provides as follows:

> There is moreover in Article 7 a clear statutory dichotomy between rates which are made, fixed or established by the Commission on the one hand and those which are simply permitted or allowed to go into effect at the instance of the utility on the other. Rates which are established by the Commission, that is after full hearing, findings, conclusions, and a formal order (see G.S. 62-81 for the required procedure for general rate cases or proceedings for "an increase in rates") "shall be deemed just and reasonable, and any rate charged by any public utility different from those so established shall be deemed unjust and unreasonable." G.S. 62-132. Rates which the Commission simply allows to go into effect by any of the three methods described are subject to being challenged by interested parties or the Commission itself and after a "hearing thereon, if the Commission shall find the rates or charges collected to be other than the rates established by the Commission, and to be unjust, unreasonable, discriminatory or preferential, the Commission may order refund pursuant to the provisions of G.S. 62-132. (Emphasis supplied.)

Id. at 352.

Rate Schedule T-1 was proposed by NCNG on September 18, 1975, in Docket No. G-21, Sub 141. It included the language regarding line loss volumes that is at issue in this proceeding. On September 29, 1975, the Commission ordered that the rate schedule "be allowed to become effective as filed." There was no formal hearing, and thus Rate Schedule T-1 was not "established" by the Commission when first acted on in 1975. However, in June 1983, NCNG proposed certain changes to Rate Schedule T-1 in Docket No. G-21, Sub 237. That proposal was consolidated with NCNG's then pending general rate case in Docket No. G-21, Sub 235, for investigation and hearing. The proposed changes to Rate Schedule T-1 were considered as a part of that general rate case and, in the Commission's rate case Order of January 6, 1984, the Commission specifically found "that the T-1 rate proposed by the Company is just and reasonable and therefore should be implemented by the Company." Thus, as a result of that action by the Commission, Rate Schedule T-1, including the language at issue in this proceeding, was "established" as just and reasonable. That being the case, G.S. § 62-132 does not allow for refunds of monies collected pursuant to that rate schedule.

The Public Staff argues that, regardless of the Orders of the Commission, the language regarding line loss volumes was not established by the Commission since the language is too vague to establish anything. The Commission cannot agree. The language of the rate schedule clearly provided for line loss volumes to be retained from the transportation customer's entitlement volume. The rate schedule also provided for the customer to enter into a service agreement with NCNG. Each of these agreements provided for a 2% retention to cover line loss volumes. The Commission finds the language of the rate schedule, together with the service agreements, to be sufficiently specific and to provide adequate justification for NCNG to retain 2% of the volumes of gas transported pursuant to Rate Schedule T-1. Thus, the Commission concludes that NCNG should be allowed to retain the allowance under Rate Schedule T-1 since this schedule was established by the Commission.

A different conclusion follows as to Rate Schedule T-2. Rate Schedule T-2 was filed with the Commission by NCNG on May 17, 1985. The Commission acted on the filing by Order of May 30, 1985. By that Order, the Commission provided that Rate Schedule T-2 "be accept[ed] for filing effective June 15, 1985." It cannot be argued that the Commission "established" Rate Schedule T-2 by this language. Thus, Rate Schedule T-2 is "other than the rates established by the Commission" in the sense of G.S. § 62-132 and is subject to refund pursuant to that statute if the rates and charges collected pursuant thereto are found to be "unjust, unreasonable, discriminatory, or preferential." The Commission finds the 2% allowance retained pursuant to transportation service under Rate Schedule T-2 to be unjust and unreasonable. NCNG had in effect during the time at issue in this proceeding rates which reflected line losses and compressor fuel. In NCNG's Docket No. G-21, Sub 235, general rate case, an allowance for line losses and for compressor fuel was included, amounting to an average allowance of 1.1%. This allowance was taken into account in setting NCNG's rates. Thus, NCNG was already recouping through its rates an amount to cover line losses and compressor fuel, and it should not have been allowed to recover an additional allowance for these purposes in connection with its transportation volumes. This was the rationale used by the Commission in deleting the relevant language from Rate Schedules T-1 and T-2 in the Commission's rate case Order of November 10, 1986, in this docket. Upon reviewing the additional testimony presented in the further hearing on the 2% issue, the Commission finds that NCNG has still not substantiated that it had expenses associated with line losses and compressor fuel in excess of the 1.1% allowance included in its rates and concludes that the 1.1% allowance is a reasonable estimate of such costs for inclusion in the Company's cost of service. Company witness Teele testified that the IST allows NCNG to collect in the summer period for excess compressor fuel charges. Witness Teele also testified that he could not show the Commission that NCNG's lost and unaccounted for volumes are substantially greater than 1.1%. Furthermore, the Commission continues to believe that an average allowance of 1.1% is appropriate as this is the level of such costs approved for use in the Company's most recent cost of service determination in Docket No. G-21, Sub 255. Since the retention of the 2% allowance pursuant to Rate Schedule T-2 represents a recovery for items already recovered through rates, the Commission concludes that the allowance was unjust and unreasonable and since it was not an established rate, it should be refunded.

As to the negotiated sales pursuant to Rate Schedules S-1 and SM-1, even NCNG concedes that there was no language in the rate schedules authorizing a 2%

charge or any other charge for line losses or compressor fuel. The tariffs merely provide for sales "at negotiated rates. . . ." NCNG contends that although the form of the transactions was necessarily different as a result of FERC Order 436, the substance remained the same and, therefore, it was proper to make some recovery for line losses and compressor fuel pursuant to the authority of the transportation rate schedules. The Commission cannot agree. These negotiated sales were not made pursuant to Rate Schedules T-1 or T-2, and the language of those rate schedules may not be used to justify charges under Rate Schedules S-1 and SM-1. The 2% cost imputed to the IST on negotiated sales must be refunded by NCNG.

Having concluded that the 2% monies relating to transportation service under Rate Schedule T-2 and negotiated sales under Rate Schedules S-1 and SM-1 must be refunded, the Commission now turns to consideration of how the refunds should be made. Although there is some overlap, generally speaking, there are two time frames and associated dollar amounts involved in this proceeding. The first time frame is the 19-month period of October 1, 1984, through April 30, 1986, and also the month of September 1986, which involves the transportation of natural gas under Rate Schedules T-1 and T-2 resulting in the retention of gas-in-kind by NCNG with a dollar value of $438,920. By the issuance on October 9, 1985, of FERC Order 436, to become effective November 1, 1985, the Company's interrruptible transportation for end users was temporarily brought to an end. However, NCNG heard from Transco and FERC that one of its interruptible transportation contracts had been grandfathered and they could continue to acquire some spot market gas for its customers. Accordingly, during the month of October 1985, on behalf of its customers, NCNG purchased as much gas from TEMCO as it possibly could and then delivered the gas to its customers during the period November 1985 up through April 1986 when the gas was exhausted. For the months of May 1986 through August 1986, there were no transportation transactions on the NCNG system. On July 28, 1986, Transco announced its intention to become an "interim open access" transporter of natural gas under Natural Gas Policy Act (NGPA) Section 311. Thus NCNG resumed transportation transactions in September 1986. The second time frame involved in this proceeding is November 1, 1985, through September 30, 1986, which involves negotiated sales of natural gas under Rate Schedules S-1 and SM-1 and the imputation of a 2% line loss and compressor fuel charge amounting to $483,054 into the cost of gas for purposes of determining the margin earned from IST customers. Beginning November 1, 1985, NCNG began purchasing gas from TEMCO and reselling it to some of its industrial customers (S-1 tariff) and municipal customers (SM-1 tariff) who could demonstrate to the Company that they needed such gas at competitive prices or else would switch to alternate fuels. As reflected above, both time frames involved herein go through September 1986, the reason for such is that upon the issuance of the Commission Recommended Order on October 15, 1986, in Docket No. G-21, Sub 255, the Company terminated effective October 1, 1986, the 2% line loss and compressor fuel charge on transportation rates and on sales of spot market gas at negotiated rates.

In consideration of how the refunds should be made, the Commission will now discuss the varying positions of the parties with regard to the $438,920 value of gas-in-kind relating to the T-1 and T-2 tariffs and will follow with a discussion of the refund of the $483,054 relating to the imputed IST cost on negotiated S-1 and SM-1 sales.

The Company's position with regard to the $438,920 value of the gas-in-kind retained by NCNG, under its T-1 and T-2 tariffs, during the earlier time frame is quite clear: it should be allowed to retain these dollars. When pressed on cross-examination as to the proper disposition of these dollars if NCNG were not allowed to keep them, its position became less clear. Witness Teele testified on cross-examination that, if the Company could not keep the value of the gas-in-kind, then "you are talking about refunds to industrial customers in some cases." He elaborated on this by explaining that, if the customer paid the full tariff rate, then the customer should get it back. If the customer paid substantially less than full margin, then it could either go back to the customer who paid it or into the IST.

The Public Staff's position, as testified to by Public Staff witness Curtis, is that, to the extent the IST customers paid less than the full tariff rate, then they were entitled to no lower rate than the one negotiated with NCNG. The IST customers would have paid the same negotiated rates based on their individual alternative fuel prices whether or not the 2% had been added. Witness Curtis further testified that since the non-IST customers are bearing the risk that negotiated sales might be at less than full margin, as well as being assigned the highest cost gas, the full $438,920 value of retained gas-in-kind should be flowed back through the IST to the appropriate non-IST customers. As its secondary proposal, the Public Staff would require, at a minimum, that the 2% on the sales at less than full margin be flowed back through the IST since the non-IST customers made up this lost margin.

CUCA's position, according to its proposed order, is that these dollars should be refunded to the individual customers who paid them by means of a one-time refund check.

The specific breakdown of the $438,920 collected via the 2% charge imposed upon transportation customers into the Rate Schedule T-1 portion and the Rate Schedule T-2 portion was not presented into evidence and based upon the information contained in the records of this proceeding the Commission cannot properly calculate what the separate portions would be. This separation of the $438,920 into its separate portions will be required to be filed after the issuance of this Order. For ease in discussion herein, the Commission will refer to these separate portions as the T-1-2% dollars and the T-2-2% dollars. As discussed previously, the Commission found that the Company should be allowed to keep the T-1-2% dollars since the tariff was established as just and reasonable and should be required to refund the T-2-2% dollars since the tariff was not established and it was unjust and unreasonable. Consistent with its finding to refund the T-2-2% dollars, the Commission finds it appropriate to treat the T-2-2% dollars of gas-in-kind retained by NCNG on transportation transactions as transportation volumes and flow these refund dollars through the IST.

The Commission is of the opinion that, at a minimum, the 2% charge added on to the cost of gas sold at T-2 negotiated, less than full margin rates, should be flowed back through the IST. The evidence adduced at the March 1987 hearing, as well as the evidence adduced at the August 1986 general rate case hearing, shows that, when NCNG sold natural gas at less than full margin, the 2% charge resulted in more lost margin being flowed through the IST and picked up by the non-IST customers than would have been flowed through if the 2% charge had not been added on to the cost of gas.

The Commission is further of the opinion that, since each IST customer paid a negotiated rate competitive with its alternative fuel price, rather than the full tariff rate approved as reasonable by the Commission, the IST customers are entitled to no lower rate. If NCNG had not included the 2% charge, the IST customers would have paid the same rate, since the negotiated rate was set equal to the alternative fuel price. The alternative fuel price would not have been affected one way or the other by the 2% charge. Considering that NCNG's non-IST customers are bearing the risk of loss of margin, as well as being assigned the highest cost gas, the T-2-2% dollars, plus interest, should be flowed back through the IST to the benefit of the non-IST customers on the system during October 1, 1984, through April 30, 1986, and also during the month of September 1986.

With regard to the refund of the $483,054 IST imputed cost on negotiated S-1 and SM-1 sales, the Company took the position that it should not be required to refund these monies. Company witness Teele testified that the Company sold the gas at the alternate fuel price and then imputed the 2% charge into the IST by increasing the actual cost of the gas by 2%, which in effect decreased the margin going to the IST. The IST customer, therefore, never paid the 2% and any refund of these dollars would appropriately flow back through the IST. The Public Staff took the position that these dollars should flow back through the IST since the non-IST customers unquestionably paid them. Although CUCA initially took the position that these dollars should be refunded to individual IST customers, CUCA stated in its proposed order that it agreed with the Public Staff's position based upon the evidence adduced at the hearing on this particular issue.

The Commission concludes that since the $483,054 imputed cost on negotiated sales was never charged to the IST customers but was factored into the IST as an artificial increase in the cost of gas, for which NCNG had no authority, the $483,054, plus interest, must be flowed back through the IST and refunded to the non-IST customers on the system during the November 1, 1985, through September 30, 1986, time frame. Since the effect of the 2% charge imputed into the IST was to decrease the margin going to the IST and therefore increase the amount the non-IST customers paid, the logical course of action is to refund these dollars through the IST.

Finally, the Commission turns to CUCA's motion to strike the Public Staff's late-filed exhibit. The Commission's decision as set forth above does not require a breakdown of the transportation sales at full margin and at less than full margin and, thus, the Commission finds it appropriate to strike the exhibit.

IT IS, THEREFORE, ORDERED as follows:

1. That NCNG is hereby required to refund the $483,054 plus the T-2-2% dollars collected pursuant to the 2% line loss and compressor fuel charge it assessed its customers on Rate Schedule T-2 during the October 1, 1984, through September 30, 1986, time period, plus interest, by flowing this amount through the IST to the non-IST customers, as set forth more specifically herein.

2. That NCNG is hereby required to file (1) a schedule and attendant workpapers showing the breakdown of the $438,920 into its two separate parts: the T-1-2% dollars and the T-2-2% dollars and (2) a detailed description of the

method by which it proposes to flow the refunds through the IST to its non-IST customers within 30 days of the effective date of this Order. Comments on the Company's filing may be filed within 10 days thereafter.

3. That CUCA's Motion to Strike filed on April 7, 1987, is hereby allowed.

ISSUED BY ORDER OF THE COMMISSION.
This the 19th day of May 1987.

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

COMMISSIONER COOK, DISSENTING IN PART AND CONCURRING IN PART.

I strongly dissent from the decision of the Majority in this case because the Majority has allowed NCNG to overcharge its customers with respect to costs incurred relating to line loss and compressor fuel under Rate Schedule T-1. This overcharge equates to an over-recovery of these costs by more than 180 percent. This over-recovery arises as a result of the Majority's willingness to allow NCNG to interpret its T-1 tariff to a degree that, in my opinion, far exceeds the bounds of reasonableness. The Majority further allows NCNG to totally disregard the provisions of NCNG's Industrial Sales Tracker (IST) rider. Specifically, this issue centers on the additional charge of 2% gas-in-kind NCNG imposed upon its customers receiving service under its Rate Schedule T-1. I believe that the 2% additional allowance retained by NCNG under Rate Schedule T-1 should be refunded. I concur with as much of the Majority order as requires NCNG to refund the 2% allowance collected by it for transportation service under Rate Schedule T-2 and negotiated sales under Rate Schedules S-1 and SM-1.

In ruling on an identical issue with respect to NCNG's Rate Schedule T-2, the Majority reasons that the 2% gas-in-kind retained by NCNG under Rate Schedule T-2 was unjust and unreasonable because an allowance for line losses was already built into NCNG's rates. The same reasoning applies to the 2% gas-in-kind retained under Rate Schedule T-1. Presumably the Majority would have refunded the overcharge under Rate Schedule T-1 as well had it not found that the language in Rate Schedule T-1 authorizing a retention for line losses had been "established" by the Commission as just and reasonable in the Commission's general rate case Order of January 6, 1984, in Docket No. G-21, Sub 235. I do not agree with such a finding.

The Public Staff argues that, regardless of the Orders of the Commission, the language regarding line loss volumes was not established by the Commission since the language is too vague to establish anything. I wholeheartedly agree. I do not believe that the language regarding line loss in Rate Schedule T-1 can be reasonably interpreted to support the 2% retention by NCNG. The relevant language in the rate schedule simply provides that the transportation customer's entitlement volume "shall be the volume of gas received from Transco for customers' account less line loss volumes." That is all it says. The rate schedule does not state that NCNG shall retain 2% gas-in-kind from the customer's entitlement volume to cover line losses. Indeed, it does not specify any amount or method. NCNG, acting on its own and without the knowledge of the Commission or the Public Staff, invoked this language in its

service agreements in order to provide for the 2% gas-in-kind retention. The language in the rate schedule does not provide for what NCNG did. Even were I to concede that the language of the tariff was "established" by the Commission, it does not follow that the 2% gas-in-kind retention was established as just and reasonable since the tariff says nothing about the retention of 2% gas-in-kind. The retention of 2% gas-in-kind was never presented to the Commission by NCNG, was never made a part of the transportation rate schedules, was never justified by any testimony or reviewed in any formal hearing before the Commission, and was never found to be just and reasonable by any Order of the Commission. Under these circumstances, I cannot vote to allow NCNG to keep the 2% gas-in-kind retained under Rate Schedule T-1.

The Majority has allowed NCNG to keep revenues realized from the sale of gas volumes in part payment for transportation. In my opinion, that is improper. Such action is clearly in contravention of NCNG's IST rider which is an integral part of NCNG's lawfully established rates (Tariff Sheets 34, 35, 35A, and 35B). I can find no plausible reason based upon economics or equity that would tend to justify the Majority's decision in this regard.

The IST rider is a mechanism which allows NCNG the continuing flexibility to shift the recovery of certain costs from primarily large industrial customers who can economically avoid the purchase of natural gas, to residential and commercial customers who are unable to avoid its purchase. The costs which may be shifted under the IST rider are collectively referred to as "margin." This base period margin is composed of the Commission-approved test-year level of depreciation expense, operation and maintenance expense, taxes, interest expense to service debt capital, and earnings for common equity investors. NCNG has no preferred equity capital outstanding. Full recovery of this base period margin is initially provided for through the rate structure approved for use by NCNG, exclusive of the IST rider, based upon test-year sales volumes.

In essence the IST rider insulates NCNG from virtually all market related business risks associated with changing economic conditions. It was the company who proposed and continues to support the IST mechanism, and the mechanism itself is structured in substance in accordance with the Company's wishes. Thus, one can reasonably conclude that the IST continues to provide a net economic benefit to the shareholders of NCNG.

Throughout the various hearings held in this regard, Public Staff witness Curtis repeatedly testified that payments received by NCNG for the sale of transportation services should be flowed through the IST. During the hearings held in March 1987, witness Curtis testified that

> Gas-in-kind calculated at 2% of the volumes purchased for the transportation customers was retained by NCNG during the first period. Gas-in-kind is gas which NCNG keeps in lieu of money as a percent of volumes purchased. Generally speaking, volumes of gas-in-kind are those volumes necessary to run a compressor which moves the gas through the pipeline. NCNG was allowed in its general rate case to recoup the full cost-of-service, including compressor fuel costs and a percent for line loss, from its customers through rates approved by the Commission. At the time involved in this proceeding, transportation revenues collected from the transportation

> customers flowed through the IST to benefit all non-IST customers. Even though this gas-in-kind is calculated on a percent of volume, the percent of volumes retained by NCNG is eventually sold and dollars are received by the Company. These dollars should be treated as transported volumes and flowed through the IST. (emphasis added).

During the hearings held in August 1986, witness Curtis testified that

> ...The volumes retained by NCNG were supposedly to cover the costs of acquiring cheaper gas for the customers of NCNG. NCNG, through witness Teele, has provided no basis on which this 2% factor can be justified in terms of cost. As far as the Public Staff is concerned, there is no reason to add this cost to the transportation customers' bills because the transportation rate itself includes the cost of providing service to these customers. Any additional recoveries of dollars or gas-in-kind should flow to the customers of NCNG through its Industrial Sales Tracker (IST). (emphasis added).

I could not agree more. By Order dated January 6, 1984, the IST was approved in Docket No. G-21, Sub 235. The IST tariff approved by the Commission provided that all transportation T-1 revenues be included in the IST. The Commission further provided by Order dated May 30, 1985, in Docket No. G-21, Sub 252, that, like the revenues received from transportation service under Rate Schedule T-1, revenues received from transportation service under Rate Schedule T-2 would be included in the IST.

In developing the test-year cost of service in Docket No. G-21, Subs 235 and 237, the Commission, based upon the evidence presented, included a reasonable and representative allowance for compressor fuel and lost and unaccounted for gas volumes. Rates were designed to allow the Company to recover such costs. The IST rider is an integral part of NCNG's rate structure. It was established by the Commission as a just and reasonable rate, and it should be permitted to function as such. In this instance the Majority has disregarded the provisions of the IST in order to allow the Company to forgo refund of cost over-recovery which rightfully should be redistributed to the ratepayers of NCNG through operation of the IST rider.

In all candor, I must acknowledge that I am somewhat perplexed by the Majority's reasoning. The Majority, in its own Order, virtually concedes that there has been an over-recovery of costs. The Majority further concedes that all payments received for services rendered under Rate Schedule T-1 should be flowed through the IST; yet, somehow the Majority reasons that NCNG should be permitted to forgo refund of the amounts in question. As nearly as I can tell, because the Majority considers the T-1 rate an "established" rate, it will not order refunds to NCNG's ratepayers. I disagree.

In summary, I believe that the Majority decision with regard to Rate Schedule T-1 is unsupported by the evidence, that it is inconsistent with the regulatory practices of this Commission, that it is inconsistent with NCNG's

lawfully established tariffs, and that it is unfair to NCNG's customers. I, therefore, respectfully dissent from the Majority decision in this regard. I concur in and support the remaining findings and conclusions of the Majority Order.

May 19, 1987 Ruth E. Cook, Commissioner

DOCKET NO. G-21, SUB 255

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of	
Application of North Carolina Natural Gas Corporation for an Adjustment of Its Rates and Charges	FINAL ORDER ON FURTHER HEARING

HEARD IN: Commission Hearing Room, Dobbs Building, Raleigh, North Carolina, on Monday, July 27, 1987, at 2:00 p.m.

BEFORE: Chairman Robert O. Wells, Presiding; and Commissioners Robert K. Koger, Sarah Lindsay Tate, Edward B. Hipp, Ruth E. Cook, J. A. "Chip" Wright, and William W. Redman, Jr.

APPEARANCES:

For North Carolina Natural Gas Corporation:

Donald W. McCoy and Jeffrey N. Surles, McCoy, Weaver, Wiggins, Cleveland & Raper, Attorneys at Law, Post Office Box 2129, Fayetteville, North Carolina 28302

For the Using and Consuming Public:

Gisele L. Rankin, Staff Attorney, 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, Attorney at Law, Post Office Box 12547, Raleigh, North Carolina 27605

BY THE COMMISSION: By the Final Order Granting Partial Increase in Rates and Charges issued in this proceeding on November 10, 1986, the Commission ordered North Carolina Natural Gas Corporation (NCNG or the Company) to terminate, as of the date of that Order, the 2% line loss and compressor fuel charge then being assessed customers for transportation service and negotiated sales. The Final Order further provided as follows:

> 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 CUCA 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.

By Order dated December 5, 1986, the Commission scheduled a further hearing to be held on February 10, 1987, for the purpose of determining the disposition of the proceeds collected pursuant to the 2% line loss and compressor fuel charge by NCNG. By Order dated January 7, 1987, the Commission rescheduled the further hearing for March 3, 1987.

NCNG prefiled the testimony of Gerald A. Teele, Senior Vice President of NCNG, on February 9, 1987. The Public Staff prefiled the testimony of Eugene H. Curtis, Jr., a utility engineer with the Public Staff's Natural Gas Division, on February 23, 1987.

The hearing was held as scheduled on March 3, 1987, before the panel of Commissioner Cook, Presiding, and Commissioners Hipp and Tate. NCNG presented the testimony of witness Teele, and the Public Staff presented the testimony of witness Curtis.

On May 19, 1987, the Commission panel issued its Recommended Order on Further Hearing. The panel ordered that NCNG refund the 2% monies collected on negotiated sales and on transportation service under Rate Schedule T-2. The majority ruled that NCNG should be allowed to retain the 2% monies collected pursuant to transportation service under Rate Schedule T-1. Commissioner Cook dissented in part and concurred in part. Commissioner Cook concurred as to the refunds ordered by the panel but felt that the 2% monies collected pursuant to Rate Schedule T-1 should be refunded also.

Within the time allowed for the filing of exceptions, CUCA filed exceptions to the Recommended Order on June 1, 1987, and the Public Staff filed exceptions on June 3, 1987. NCNG filed exceptions to the Recommended Order on June 10, 1987.

Oral argument on the exceptions was heard before the Commission at the time and place indicated above.

On the basis of the oral argument and the entire record in this proceeding, the Commission makes the following

FINDINGS OF FACT

1. North Carolina Natural Gas Corporation is a franchised public utility providing natural gas service to its customers in North Carolina. NCNG is properly before the Commission in this proceeding by virtue of the continuation of the issue from NCNG's 1986 general rate case as to the proper disposition of the monies collected pursuant to the 2% line loss and compressor fuel charge assessed by NCNG on its customers for transportation service and negotiated sales.

2. From October 1, 1984, through September 30, 1986, NCNG charged its transportation and negotiated sales customers $921,974 consisting of: $438,920, the value of gas-in-kind retained by NCNG representing 2% of each transportation customer's entitlement volumes, and $483,054, representing a 2% charge imputed into the IST on negotiated sales of spot market gas.

3. During the time period involved in this proceeding, transportation Rate Schedule T-1 contained the following sentence: "Customer's entitlement volume shall be the volume of gas received from Transco for customer's account, less line loss volumes," and transportation Rate Schedule T-2 contained the following sentence: "Customer's entitlement volume shall be the volume of gas received from Transco for customer's account less compressor fuel and line loss volumes." The availability paragraph of the transportation rate schedules required that the customer enter into a service agreement with the Company. The service agreement specified that 2% of the volumes received by NCNG from Transco for the customer's account would be retained by the Company for compressor fuel and line loss volumes.

4. As a result of Federal Energy Regulatory Commission (FERC) Order 436, effective November 1, 1985, NCNG began purchasing gas and reselling it to its industrial customers as negotiated sales under Rate Schedules S-1 and SM-1. As to these sales, NCNG imputed the cost of the 2% allowance on such sales for calculating margins earned under the Industrial Sales Tracker (IST).

5. Rate Schedules S-1 and SM-1 contain no language authorizing an allowance for lost and unaccounted for gas and compressor fuel on negotiated sales. The $483,054 cost imputed into the IST on sales of spot market gas should be flowed back through the IST and should be refunded to the non-IST customers on the system during November 1, 1985, through September 30, 1986, the time period during which these cost imputations occurred.

6. Rate Schedule T-1 was proposed by NCNG in September 1975 and was "allowed to become effective as filed" by Commission action on September 29, 1975. In June 1983 NCNG proposed certain changes to Rate Schedule T-1 and by Commission Order of January 6, 1984, the Commission found "that the T-1 rate proposed by the Company is just and reasonable."

7. Rate Schedule T-2 was proposed by NCNG in May 1985. By Order of May 30, 1985, the Commission provided that Rate Schedule T-2 "be accept[ed] for filing effective June 15, 1985." Rate Schedule T-2 was not established as just and reasonable and the 2% allowance retained as gas-in-kind by NCNG pursuant to transportation service under Rate Schedule T-2 was unjust and unreasonable. NCNG must refund the monies collected pursuant thereto.

8. NCNG's IST rider was approved by Commission Order effective December 12, 1983. This original IST provided that "The transportation revenues collected pursuant to Rate Schedule No. T-1 . . . will be refunded in the IST true-up." The IST was revised effective May 1, 1986. The revised IST provided in pertinent part, "All revenues less gross receipts tax received by the Company for transportation service to customers . . . will be included in the IST deferred account." By Order of May 30, 1985, accepting Rate Schedule T-2 effective June 15, 1985, the Commission provided "[t]hat revenues received under Rate Schedule No. T-2 shall be included in the IST, pursuant to the treatment offered Rate Schedule No. T-1 in the Commission's Order of January 6,

1984." The value of gas-in-kind retained by NCNG under its T-1 and T-2 tariffs in the amount of $438,920 should be treated as transportation revenues and flowed through the IST to be refunded to the non-IST customers on the system during the time period during which these 2% retentions occurred.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 1, 2, 3, 4, AND 5

The evidence for these findings of fact is as set forth in the corresponding discussion in the Recommended Order on Further Hearing issued in this docket on May 19, 1987. These findings were not effectively challenged by the exceptions filed by the parties.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 6, 7, AND 8

The evidence for these findings of fact is contained in the Commission's records, the Commission Order issued in this docket on May 19, 1987, and the statements of the parties participating in the oral argument on the exceptions filed in this docket. These findings, which deal with the proper interpretation of Rate Schedules T-1 and T-2, and the IST Rider and the manner of refund, were the subject of the exceptions filed by the parties in this proceeding.

The majority of the panel that heard the further hearing on March 3, 1987, ruled that Rate Schedule T-1 had been "established" by the Commission and that NCNG should therefore be allowed to retain the 2% monies collected under that tariff. The Public Staff takes exception to this finding. The Public Staff argues that the relevant language of Rate Schedule T-1 should not be regarded as "established" since it is "vague language on which no evidence was ever presented, which the Company independently decided allowed a 2% charge, about which neither the Public Staff nor the Commission ever knew or could have known from the face of the tariff." The Public Staff further argues that even if T-1 is regarded as "established," NCNG still should not be allowed to retain the 2% monies since these monies represent transportation revenues and the IST provides for transportation revenues to be refunded in the IST true-up. It is the opinion of the Public Staff that the T-1 2% dollars in the amount of $314,942 should be flowed back through the IST to NCNG's non-IST customers. CUCA also excepts to the Commission's finding to allow NCNG to retain the T-1 2% monies. CUCA argues, "The rate itself was found just and reasonable on January 6, 1984, but not the present interpretation." CUCA argues that the tariff is insufficent as a matter of law to establish the 2% retained by NCNG since the 2% figure is not specified in the tariff. Further, CUCA objects to the refund being made through the IST; it argues that any refund should be made to the specific customers who were overcharged.

The panel ruled that Rate Schedule T-2 had not been established as just and reasonable by the Commission and accordingly required the refund of these 2% monies. NCNG filed an exception in this proceeding to the effect that T-2 had been established as just and reasonable by the Commission's Order on Remand of January 31, 1986; however, NCNG did not argue this exception at the oral argument. The Public Staff responded to this exception by pointing out that the Order on Remand resulted from a hearing that was limited in scope and that did not address the language at issue in this proceeding. The Commission agrees with the Public Staff and finds its conclusions regarding the T-2 2% monies set forth in its Recommended Order of May 19, 1987, to be appropriate.

The exceptions expressed by the parties suggest two alternative approaches to the issues in this proceeding: (1) whether the 2% monies collected by NCNG should be refunded pursuant to G.S. 62-132 as a rate (a) other than established and (b) unjust and unreasonable? and (2) whether the 2% monies collected by NCNG should be refunded through the IST as transportation revenues?

The majority decision of the panel hearing the March 3, 1987, proceeding dealt with the 2% monies collected pursuant to T-1 in terms of the first approach previously noted. The majority concluded that Rate Schedule T-1 had been "established" as just and reasonable by the Commission and that no refund could be ordered pursuant to G.S. 62-132. The majority in its Recommended Order issued on May 19, 1987, reasoned as follows:

> The language of the rate schedule clearly provided for line loss volumes to be retained from the transportation customer's entitlement volume. The rate schedule also provided for the customer to enter into a service agreement with NCNG. Each of these agreements provided for a 2% retention to cover line loss volumes. The Commission finds the language of the rate schedule, together with the service agreements, to be sufficiently specific and to provide adequate justification for NCNG to retain 2% of the volumes of gas transported pursuant to Rate Schedule T-1.

This approach concentrates on Rate Schedule T-1. The Commission agrees with the reasoning and the conclusion of the majority as to this approach. However, this conclusion does not foreclose a refund of the T-1 2% monies pursuant to the second approach outlined above.

The second approach looks at the language of the IST tariff and asks whether NCNG correctly applied that language. During the hearings held in March 1987, for the express purpose of the resolution of the 2% issues, Public Staff witness Curtis testified that

> . . . At the time involved in this proceeding, transportation revenues collected from the transportation customers flowed through the IST to benefit all non-IST customers. Even though this gas-in-kind is calculated on a percent of volume, the percent of volumes retained by NCNG is eventually sold and dollars are received by the Company. These dollars should be treated as transported volumes and flowed through the IST.

Further, during the hearings in August 1986, involving the Company's overall general rate increase application, witness Curtis testified in regard to the issue in the present proceeding that

> . . . The volumes retained by NCNG were supposedly to cover the costs of acquiring cheaper gas for the customers of NCNG. NCNG, through witness Teele, has provided no basis on which this 2% factor can be justified in terms of cost. As far as the Public Staff is concerned, there is no reason to add this cost to the transportation customers' bills because the transportation rate itself includes the cost of providing service to these customers. Any additional recoveries of dollars or gas-in-kind should flow to the customers of NCNG through its Industrial Sales Tracker (IST).

Revenues received for transportation service under both Rate Schedules T-1 and T-2 are to be included in the IST. The original IST provided, "The transportation revenues collected pursuant to Rate Schedule No. T-1 and the revenues collected from emergency gas sales made in the future under Rate Schedule E-1 in excess of the customer's normal rate will be refunded in the IST true-up."[1] The Order of May 30, 1985, accepting Rate Schedule T-2 for filing provided, "That revenues received under Rate Schedule T-2 shall be included in the IST, pursuant to the treatment offered Rate Schedule T-1 in the Commission's Order of January 6, 1984." In Docket No. G-21, Sub 235, the Commission established the base rates which were in effect during the time period at issue in this present proceeding. In that docket, the Commission included a reasonable and representative allowance for compressor fuel and lost and unaccounted for gas volumes and the approved rates were designed to allow the Company to recover these costs. The IST rider was a part of NCNG's rate structure approved at that time. Based upon the foregoing, the Commission concludes that in accordance with the Company's IST mechanism it is proper to flow the revenues at issue into the IST. The Commission believes that the 2% monies collected pursuant to Rate Schedule T-1 constitute "transportation revenues" and therefore must be included in the IST true-up. The term "revenues" is very comprehensive; it generally includes all monies received from whatever source and in whatever manner. See generally, 37A Words and Phrases, "Revenue"; Black's Law Dictionary 1185 (5th ed. 1979). NCNG's failure to include the 2% monies in the IST was at odds with the language of the IST, and a refund through the IST must be ordered. See Utilities Commission v. R.R., 249 NC 477 (1959).

Finally, the Commission notes that the panel dealt with the 2% monies collected pursuant to Rate Schedule T-2 by concluding that the T-2 tariff had been allowed to go into effect but had not been "established" as just and reasonable and that retention of the 2% monies was unjust and unreasonable since NCNG's rates already reflected the recovery of line losses and compressor fuel. A refund pursuant to G.S. 62-132 was ordered. The Commission agrees with the reasoning and the conclusion of the panel as to this approach. However, the Commission notes that the same result, a refund of the T-2 2% monies through the IST, follows from the interpretation of the IST which the Commission adopted as to the T-1 2% monies. This is because the Commission's Order of May 30, 1985, provided for revenues received under T-2 to be included in the IST. The T-2 2% monies in the amount of $123,978 must be refunded under either alternative rationale.

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1 The limiting phrase "in excess of the customer's normal rate" applies only to revenues collected from emergency gas sales, not from transportation revenues collected pursuant to Rate Schedule T-1. This is clear from the manner in which the IST was revised effective May 1, 1986. The revised version of the IST broke the above-quoted sentence into two sections, one dealing with transportation revenues and one dealing with emergency gas sales revenues. The "in excess . . ." phrase appears in the section dealing with emergency gas sales revenues; it does not appear in the section dealing with transportation revenues. The revised IST continued the requirement that transportation revenues be refunded in the IST true-up.

IT IS, THEREFORE, ORDERED as follows:

1. That NCNG is hereby required to refund the entire $921,974 at issue in this proceeding collected pursuant to the 2% line loss and compressor fuel charge it assessed its customers on Rate Schedules T-1, T-2, S-1, and SM-1 during the period of October 1, 1984 through September 30, 1986, plus interest, by flowing this amount through the IST to the non-IST customers, as set forth more specifically herein.

2. That NCNG is hereby required to file a detailed description of the method by which it proposes to flow the refunds through the IST to the appropriate non-IST customers within 30 days of the date of this Order. Comments on NCNG's proposed refund plan may be filed within 10 days thereafter.

ISSUED BY ORDER OF THE COMMISSION.
This the 25th day of September 1987.

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

Commissioner Cook, concurring in part and dissenting in part. Commissioner Hipp, dissenting.

Commissioner Cook, concurring in part and dissenting in part.

I concur in the decision of the Commission to refund the 2% monies collected pursuant to Rate Schedule T-1 through operation of the IST. I further agree with the Commission's interpretation of the IST that results in this refund. However, I cannot agree with the majority's failure to recognize the validity of the Public Staff's argument that the language in Rate Schedule T-1 is too vague to establish the 2% retention of gas-in-kind by NCNG. Because of this vagueness, these monies should be refunded pursuant to G.S. 62-132. I realize that the refund is the same under either rationale. However, I see the majority's rejection of the Public Staff's argument under G.S. 62-132 as a very serious misinterpretation of that statute. I fear that this decision, if not challenged, may be cited in the future and may influence other decisions of the Commission. I therefore feel obligated to dissent to this aspect of the Order.

The majority of the Commission, like the majority of the panel that conducted the earlier hearing, regards the 2% gas-in-kind retained by NCNG pursuant to Rate Schedule T-1 as revenues collected pursuant to an "established" tariff provision. I cannot agree. The relevant provision of T-1 reads, "Customer's entitlement volume shall be the volume of gas received from Transco for customer's account less line loss volumes." That is all it says. The rate schedule does not say that NCNG shall retain 2% gas-in-kind from the customer's entitlement volume to cover line losses. It does not specify any amount or method. NCNG, acting on its own and without the knowledge of the Commission or the Public Staff, invoked this language in order to provide for a 2% gas-in-kind retention in its service agreements with transportation customers. As I stated in my previous dissent, I do not believe that the general language of this tariff provision can reasonably be interpreted as supporting the 2% retention of gas-in-kind by NCNG. The retention of 2% gas-in-kind was never presented to the Commission by NCNG, was never made a part of the transportation rate schedules, was never reviewed at any formal

hearing before the Commission, and was never found to be just and reasonable by the Commission. Under these circumstances, I cannot understand why the majority is willing to give this 2% retention the status of an "established" tariff provision.

I would remind my fellow Commissioners of the effect of regarding this 2% retention as an "established" tariff provision. Rates that are established by Commission order following a full hearing have an elevated status. They are deemed just and reasonable by G.S. 62-132. I would not grant such an elevated status lightly.

In every general rate case, numerous tariffs are proposed by the utility. Some tariff provisions, but not all, will be specifically addressed by the testimony of the utility and intervenors. Other tariff provisions will go uncontested. I am sure that we would all agree that contested tariff provisions that are found to be just and reasonable by the Commission should be regarded as "established." I can also understand that provisions that are not contested by the evidence in a general rate case but are nonetheless found just and reasonable by the Commission's Order should be regarded as "established." However, what the Commission has done in the present case goes far beyond this. The crucial difference is that the 2% gas-in-kind retention was never presented in NCNG's proposed tariffs. Thus, the majority is granting the elevated status of an established rate to what is nothing more than a practice undertaken by the Company without the knowledge of the Commission or the Public Staff. In my view this decision allows the utility, rather than the Commission, to decide what is a just and reasonable tariff provision. This decision allows the utility to write its own ticket in whatever amount it wishes. That runs counter to Commission procedure and authority, and it is for that reason that I cannot allow such a decision to stand without registering my dissent.

September 25, 1987 Ruth E. Cook, Commissioner

HIPP, COMMISSIONER, DISSENTING. I dissent because I believe the majority Order interferes with contracts lawfully entered into between the gas company as a transportation carrier of gas and its shippers under tariffs approved by the Commission, and therefore deprives the company of property without due process of law.

$314,942 of the refund ordered by the majority consists of the proceeds of the 2% line loss volumes retained by the gas company under Rate Schedule T-1, which had been found to be just and reasonable by the Commission and the decision affirmed in the courts. If such line loss volumes constitute revenues as held by the majority, they are thus rates lawfully collected and are not subject to refund. More accurately, in my opinion, they represent retention of line losses in the transportation of gas for shippers under lawful contracts, and should not be construed to be revenue under the industrial sales tracker (IST) true-up. Admittedly, tracking the revenue adjustment of the IST and the transportation rates is complex, but, in my view, it does not allow a redistribution of the gas company's lawfully acquired line loss allowances by attempting to identify them as transportation revenue. Line losses are, in fact, just the opposite. They are compensation in kind to allow for gas that has leaked or evaporated during transit and is thus not transported. The lawful parties have agreed to the 2% allowance. It replaces the gas company's

gas which had to be used as make-up for line losses in delivering the full transportation contract. If the gas company is now required to refund this replacement of lost gas, it will be divested of the gas intended to make-up gas taken from its own inventory. Revenue is compensation from property or an investment or service. It is not the replacement of lost gas. In ordering a retrospective refund, the majority has created an uncertainty over the reliance upon approved rates and revenues or line loss allowances provided in such rates.

For the reasons stated above, together with the reasons set forth in the Recommended Order below, I would refund only the $483,054 from the 2% charge on sales of spot market gas and the $123,978 of line loss under Rate Schedule T-2. The remaining $314,942 derived from the 2% line loss allowance under Rate Schedule T-1 was lawfully collected by the gas company and, in my opinion, should not be subject to the order for refund.

September 18, 1987 Edward B. Hipp, Commissioner

MOTOR TRUCKS - COMMON CARRIER - AUTHORITY

DOCKET NO. T-2759

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Tidewater Fuels, Inc., Post Office Box 447, Wilmington, North Carolina 28042 - Application for Authority to Transport Group 3, Petroleum and Petroleum Products and Group 21, Asphalt, Statewide	)	RECOMMENDED ORDER GRANTING APPLICATION

HEARD IN: Commission Hearing Room, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on February 13, 1987, at 9:30 a.m.

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

APPEARANCES:

For the Applicant:

Ralph McDonald, Bailey, Dixon, Wooten, McDonald, Fountain & Walker, Attorneys at Law, Post Office Box 12865, Raleigh, North Carolina 27605-2865

and

Robert W. Kaylor, Attorney at Law, Post Office Box 1384, Raleigh, North Carolina 27602
For: Tidewater Fuels, Inc.

For the Protestants:

Thomas W. Steed, Jr., Moore & Van Allen, Attorneys at Law, Post Office Box 26507, Raleigh, North Carolina 27611
For: Kenan Transport Company; Fleet Transport Company; Eagle Transport Corporation; East Carolina Oil Transport, Inc.; Merritt Trucking Company, Inc.; A.C. Widenhouse, Inc.; and J. B. Honeycutt, Inc.

PARTIN, HEARING EXAMINER: By application filed on December 8, 1986, Tidewater Fuels, Inc., (Applicant) seeks authority to transport:

> "Group 3, petroleum and petroleum products, liquid, in bulk, in tank vehicles; and Group 21, asphalt, in bulk, statewide."

The application was listed in the Commission's Calendar of Hearings dated January 16, 1987, and thereby scheduled for hearing on February 13, 1987.

A Protest and Motion for Intervention was filed on January 30, 1987, by Kenan Transport Company (hereinafter "Kenan"), Fleet Transport Company, Inc. ("Fleet"), Eagle Transport Corporation ("Eagle"), East Carolina Oil Transport, Inc., ("East Carolina"), Merritt Trucking Company, Inc. ("Merritt"), and A. C. Widenhouse, Inc. ("Widenhouse"). On February 3, 1987, J. B. Honeycutt Company,

Inc. ("Honeycutt") also filed a Protest and Motion for Intervention. By Order dated February 6, 1987, these Motions for Intervention were allowed.

On February 5, 1987, the Protestants filed a Motion requesting that the Commission continue the hearing for at least forty-five days or, alternatively, require Applicant to produce certain documents and designate agents for depositions to be conducted on short notice on February 12, 1987, in Wake County. On February 9, 1987, Applicant filed its reply in opposition to the Protestants' Motion to continue, or in the alternative, conduct discovery on shortened notice.

On February 12, 1987, the Commission issued an Order Granting Motion to Conduct Discovery on Shortened Notice and Denying Motion to Continue Hearing.

On February 12, 1987, pursuant to the Commission's Order, the deposition of Lloyd F. Kaylor, President of Tidewater, was conducted by consent of the parties, and the records requested were produced and made available to Protestants.

Upon call of the matter for hearing, Applicant and Protestants were present and represented by counsel. Prior to presenting evidence, Applicant moved for temporary authority corresponding to the permanent authority sought herein. The motion was taken under advisement and was opposed by Protestants. Applicant then offered in support of its application the testimony of Lloyd F. Kaylor, Applicant's President; E. Keith Hill, Vice President for the Southeast for Steuart Petroleum; Kenneth R. Bolduz, Plant Manager for Royal State Construction Company ("Royal State"); Bobby H. Brown, Asphalt Superintendent for Dickerson Carolina; Larry Oldham, General Manager of Lee Paving Company ("Lee Paving"); Anthony J. Bruno, Southern Regional Manager of Seaview Asphalt Company ("Seaview"); Jo Fowler, Marketing Representative for Apex Oil Company ("Apex Oil"); Jack Cole, Fleet Superintendent for Thompson Arthur Paving Company ("Thompson Arthur"); Raymond C. Pfaff, Corporate Secretary and Treasurer for Cumberland Paving Company ("Cumberland Paving"); and John Burris White, Asphalt Plant Foreman for Crowell Constructors.

Protestants then offered in opposition to the application the testimony of James R. Edwards, Traffic Manager for Widenhouse; John M. Bowen, General Manager of East Carolina; John Bray, Director of Marketing for Merritt; Gray John Knutsen, Vice President of Pricing for Kenan; and Barbara J. Duke, Traffic Manager for Eagle. Representatives of Fleet and Honeycutt did not testify.

By Order dated February 10, 1987, Applicant's Motion for temporary authority was denied.

Based upon a careful consideration of the testimony and evidence presented at the hearing, the documents and exhibits received in evidence and judicially noticed, and the entire record in this proceeding, the Hearing Examiner makes the following:

FINDINGS OF FACT

1. Applicant does not presently hold any common carrier authority from either this Commission or the Interstate Commerce Commission. Applicant is an exempt carrier which leases its equipment to an authorized carrier.

2. By this Application, the Applicant seeks common carrier operating authority to transport Group 3, petroleum and petroleum products, liquid, in bulk, and Group 21, asphalt, in bulk, statewide.

3. Lloyd F. Kaylor, President of the Applicant, has approximately forty years' experience in the transportation and marketing of petroleum and asphalt products.

4. Mr. Kaylor's business was incorporated in 1980. It is a small family-owned corporation operated out of offices located at 100 Export Lane in Wilmington. Applicant is a small business concern under federal government contracting requirements.

5. Initially Applicant was operated as a marketing company. Now marketing is only five percent of its business. Applicant is primarily engaged in the transportation of petroleum products and asphalt under lease to Honeycutt. The lease agreement will terminate on or about March 28, 1987.

6. Honeycutt holds common carrier rights to transport asphalt and petroleum products in North Carolina. Beginning in January 1982, Applicant entered into a lease arrangement with Honeycutt whereby Applicant leases its equipment to Honeycutt for $50.00 per week per unit, to be paid on a weekly basis. Applicant also provides secretarial support to Honeycutt in the processing of all invoices and bills as a result of the lease arrangement. From 1982 through the date of this hearing, Applicant has continued with this lease arrangement, paying Honeycutt $50.00 per week per unit and billing Honeycutt $100.00 to $125.00 per week for secretarial support. Applicant is responsible for the payment of license tags, insurance, maintenance, and operating expenses on all of its vehicles operating under the Honeycutt lease.

7. The economic benefit to Honeycutt as a result of the lease arrangement is approximately $20,000 per year.

8. Applicant has never received a complaint from the Commission and has never had a lawsuit against it as a result of its trucking operations. Applicant currently has under lease to Honeycutt nine tractors and sixteen tank trailers.

9. Applicant filed with its application a fiscal year-end balance sheet dated March 31, 1986. There has not been any material change in the company's financial position since March 31, 1986. Applicant has substantial assets which exceed its liabilities and the resources with which to acquire additional equipment as necessary to provide adequate and continuing service to the public.

10. Applicant owns nine tractors and sixteen tank trailers suitable for the transportation of asphalt and petroleum products. Recently, Applicant has purchased four new tractors at a price of $20,000 each which will be used to replace existing older tractors.

11. Applicant employs seven full-time drivers living within a twenty-five mile radius of Wilmington with salaries ranging from $17,000 to $24,000 per year. All of Applicant's drivers have been with Applicant since it commenced doing business in 1981. Applicant also employs one full-time mechanic and two

secretaries and has physical facilities which include a three-bay garage for the complete overhaul and maintenance of its vehicles.

12. Steuart Petroleum markets fuel oils, gasoline, and residual fuels. In North Carolina, it has need for motor transportation from Charlotte, Greensboro, and Selma to points in the State. Steuart Petroleum does not have the capability to haul its own products and employs Applicant under lease to Honeycutt to do so.

13. At times, primarily during the winter months, when volume is high, all shippers must compete for the same trucks; Steuart Petroleum has found other carriers to be unavailable at such times. Applicant has given exceptionally good service to Steuart Petroleum.

14. Royal State uses Applicant for transportation of asphalt in the Wilmington area. Mr. Bolduz, the Plant Manager of Royal State, was not particularly aware that Applicant's trucks were leased to Honeycutt, and he has never had any contact with J. B. Honeycutt or the Honeycutt Company.

15. Previously, Royal State used Widenhouse and East Carolina but experienced problems because these carriers could not deliver when requested. Consequently, Royal State's liquid asphalt supply would run out. Royal State usually orders liquid asphalt for delivery within two hours.

16. Applicant has been able to meet Royal State's schedule and has provided very good service.

17. Dickerson Carolina receives liquid asphalt and No. 2 fuel oil in a three-county area--Brunswick, New Hanover, and Pender. Dickerson Carolina has discontinued using East Carolina because of service problems. East Carolina would not make deliveries when requested, causing Dickerson Carolina to run out of asphalt. This adversely affected Dickerson Carolina's ability to do business.

18. Mr. Brown's dealings have been exclusively with Lloyd F. Kaylor and not with Honeycutt. Dickerson Carolina's business would be adversely affected if it were not served by the Applicant. Other carriers in the Wilmington area do not provide service comparable to Applicant's.

19. Lee Paving operates an asphalt paving business out of Lee, Moore, and Chatham Counties. During peak periods, Lee Paving's plants average approximately twenty truckloads of asphalt per week with deliveries coming from Wilmington and Morehead City.

20. Mr. Oldham, the General Manager of Lee Paving, tries to apportion his company's outside carrier business between Widenhouse and Applicant on a fifty-fifty basis. In 1986 Applicant handled seventy-five percent despite Mr. Oldham's instructions to his superintendents at each of his three plants. The superintendents prefer to use Applicant because of promptness. Lee Paving's business would be adversely affected if it were to lose Applicant's services.

21. Seaview Asphalt is a refiner and marketer of asphalt products. The company is new to North Carolina and will be marketing asphalt products from two terminals, one in Norfolk, Virginia, and one in Wilmington, North Carolina.

In the process of starting up business in North Carolina, Mr. Bruno, Regional Manager, made a study of the carriers hauling products throughout the State and canvassed fifty-four customers that would be serviced from the Wilmington area. As a result of this customer survey, Applicant was selected as the preferred carrier.

22. Apex Oil is a marketer of residual fuels and is totally dependent on common carriers to carry its products. During the cold season, Apex Oil has particular difficulty obtaining the services of a carrier because all shippers are bargaining for the same trucks at the same time. Apex Oil supports the application because of Applicant's good service to it.

23. Apex Oil has had contracts to supply products to governmental entities. It is important for these government contracts that Apex Oil has available the services of small business carriers such as the Applicant.

24. ATC Petroleum is a marketer of residual fuels. Depending on the season, as much as seventy-five percent of ATC Petroleum's business may be with the federal government. ATC Petroleum recently signed a subcontracting letter with the federal government agreeing to give at least ten percent of its business, when available, to small business concerns. ATC Petroleum uses the services of numerous carriers, but as far as Mr. Klutz is aware, Applicant is the only qualifying small business concern.

25. In 1975, ATC Petroleum shipped approximately 750,000 barrels or 4,500 truckloads of residual fuels out of the Wilmington terminal to points in North and South Carolina. Its North Carolina marketing area includes the entire State.

26. Applicant has provided all of ATC Petroleum's transportation for government accounts and some transportation for other accounts.

27. Thompson Arthur has asphalt plants in Alamance, Rockingham, Guilford, Richmond, and Forsyth Counties. It receives its asphalt shipments from Wilmington and Morehead City, North Carolina, and Norfolk, Virginia. During peak seasons, Thompson Arthur receives 12 to 20 loads per day.

28. Thompson Arthur uses the services of Widenhouse, Applicant, East Carolina, and others. During the busy season, there are times when there are not enough trucks available when needed. The loss of availability of Applicant's services would be a detriment to Thompson Arthur because there are not enough available carriers at present to provide the service needed.

29. Cumberland Paving has asphalt plants in Cumberland, Harnett, Sampson, Duplin, and Johnston Counties. Ninety to ninety-five percent of Cumberland Paving's work is related to state and federal highway contracts. Cumberland Paving also needs to use the small business type of carrier.

30. Cumberland Paving normally operates two asphalt plants at a time. Each plant can require from three to six truckloads per day per plant. During the busy season (the middle of March through December), all asphalt contractors are busy, and it takes most available carriers to supply them and keep them from running out of product and having to stop work on jobs.

31. Applicant has gone out of its way to provide excellent service to Cumberland Paving. It would cause scheduling and delivering problems from Cumberland Paving if Applicant's services were no longer available.

32. Crowell Constructors has two asphalt plants in Cumberland County, one plant in Robeson County, one in Bladen County, and one in Columbus County.

33. Crowell Constructors has need for transportation of three loads of liquid asphalt per day. It moves this asphalt in its own truck as much as possible. During the busy season, however, Crowell Constructors on occasion has to call common carriers for service, and it is sometimes difficult to find a common carrier available. During the peak season, there is more business than all of the asphalt carriers combined can handle. Crowell Constructors has used the Applicant for transportation of liquid asphalt and has found that the Applicant provides very responsive service.

34. Crowell Constructors also has need for two loads per week of No. 2 fuel oil. This fuel oil, which comes from either Wilmington or Selma, is used to heat Crowell Constructors' asphalt plant. Applicant has provided this transportation for Crowell Constructors and has provided good service.

35. All of the supporting shippers presently use Applicant's services under lease to Honeycutt. Consequently, none of the Protestants (with the exception of Honeycutt) stand to lose any business they presently receive from any of the supporting shippers if this application is approved. Honeycutt retains the right under its authority to acquire equipment of its own and compete for business with the other authorized carriers including Applicant.

36. Five carriers are presently transporting liquid asphalt within North Carolina: the Protestants Widenhouse, East Carolina, and Honeycutt (using Applicant's equipment), and ATC Petroleum, and Infinger Transportation. Protestant Merritt hauls emulsion asphalt out of Apex.

37. Widenhouse is an authorized common carrier operating under Certificate No. C-400 which authorizes inter alia the transportation of asphalt and petroleum products statewide.

38. East Carolina is an authorized common carrier operating under Certificate No. C-161 which authorizes transportation of asphalt and petroleum products statewide.

39. Merritt is an authorized carrier operating under Certificate/Permit No. CP-74 which authorizes inter alia common carrier transportation of asphalt and petroleum products statewide.

40. Merrit has not participated in the transportation of asphalt out of Wilmington or Morehead City because the market is "very competitive".

41. Kenan is an authorized common carrier operating under Certificate No. C-245 which authorizes inter alia transportation of petroleum and petroleum products statewide. Kenan is not authorized to transport asphalt in North Carolina.

42. Kenan does not haul black oil out of Wilmington because its previous efforts to do so did not generate enough business to justify doing so.

43. Eagle is an authorized common carrier operating under Certificate No. C-296 which authorizes inter alia transportation of petroleum and petroleum products throughout the State except for a seventeen-county area in the west. Eagle is not authorized to transport asphalt in North Carolina.

44. Fleet is an authorized carrier operating under Certificate/Permit No. CP-39 which authorizes inter alia common carrier transportation of liquid commodities in bulk statewide.

45. Honeycutt's authority to transport asphalt and petroleum products statewide is contained in Certificate No. C-217.

CONCLUSIONS

This application for a common carrier certificate is governed by G.S. 62-262(e) which imposes upon the Applicant the burden of proving the following to the satisfaction of this Commission:

1. That the public convenience and necessity require the proposed service in addition to existing authorized transportation service;

2. That Applicant is fit, willing, and able to properly perform the proposed service; and

3. That Applicant is solvent and financially able to furnish adequate service on a continuing basis.

Consideration of the first statutory criterion requires definition of "public convenience and necessity". Utilities Commission v. Queen City Coach Co., 4 N.C. App. 116 (1969), defined the phrase as follows:

> "[1] Our Supreme Court has said many times that what constitutes 'public convenience and necessity' is primarily an administrative question with a number of imponderables to be taken into consideration, e.g., whether there is a substantial public need for the service; whether the existing carriers can reasonably meet this need, and whether it would endanger or impair the operations of existing carriers contrary to the public interest. Utilities Commission v. Trucking Co., 223 N.C. 687, 28 S.E.2d 201; Utilities Commission v. Ray, 236 N.C. 692, 73 S.E.2d 870; Utilities Commission v. Coach Co. and Utilities Commission v. Greyhound Corp., 260 N.C. 43, 132 S.E.2d 249."
>
> "[2] We are not inadvertent to the fact that the factors denominated as imponderables, to wit: whether the existing carriers can reasonably meet the need for the service and whether the granting of the application would endanger or impair the operations of existing carriers contrary to the public interest, are not solely determinative of the right of the Commission to grant the application. Both are directed to the question of public convenience and necessity. Utilities Commission v. Coach Co., 233 N.C. 119, 63

S.E.2d 113. Nevertheless, if the proposed operation under the certificate sought would seriously endanger or impair the operations of existing carriers contrary to the public interest, the certificate should not be issued. Utilities Commission v. Coach Co., supra."

The evidence in this docket with respect to public convenience and necessity is not substantially conflicting. Considering first the threshold question of whether there is a public demand and need for the proposed service, it is clear that there is a need for the service currently provided by Applicant under its lease arrangement with Honeycutt. Honeycutt has only one or two trucks and does not have the ability to serve the supporting shippers at the level being provided by Applicant. Consequently, the ten supporting shippers would be adversely and substantially affected if they were to be deprived of the availability of Applicant's services. Collectively, the testimony of the supporting shippers establishes that there is a limited amount of common carrier equipment available to serve the asphalt and petroleum products industry, and consequently, at times, it is difficult to obtain service. More rather than less available common carrier equipment is needed. The loss of an existing service would be detrimental to the industry generally in that all of the shippers are bargaining for the same equipment at peak times. Several shippers complained that they cannot get the responsive short-notice services that they need from other common carriers. The Applicant has provided this type of service and has apparently built a solid reputation based on the excellence of its service. Additionally, Applicant, as a small business concern, provides several shippers with an essential element of their commitment to the federal government with respect to government contracts.

The Protestants on this threshold issue object that the Applicant's attempt to meet the burden of proof of showing public convenience and necessity is based solely upon its operations under the lease arrangement with J. B. Honeycutt. The Examiner finds the Protestants' argument on this issue unpersuasive. The Applicant is not prevented by statute from establishing public convenience and necessity in the manner it has done. What G.S. 62-262(e) does require is a showing that the public convenience and necessity require the proposed service in addition to existing authorized transportation service. The Applicant has met the burden of proof on this issue. There is sufficient evidence to show that, with respect to the commodities involved in the application, there is a need for the proposed service in addition to the existing service. See, for example, the testimony of Jo Fowler, Marketing Representative of Apex Oil, who testified that, notwithstanding the Company's use of "quite a list of" carriers to transport its residual fuels, the Company has difficulty obtaining carriers during the cold season. Or see the testimony of John Burris White, Asphalt Plant Foreman of Crowell Constructors, who testified that during the peak paving season there is more business than all of the existing asphalt carriers can handle. In summary, the Examiner is of the opinion, and so finds and concludes, that the evidence in this proceeding is sufficient to support the application on this crucial issue.

The second element of public convenience and necessity which must be considered is whether the proposed operation would impair the operations of the Protestants and other existing carriers contrary to the public interest. There is no evidence in this record to support a finding that the service authorized by Exhibit B attached hereto would have a ruinous competitive effect upon authorized carriers. The mere fact that a grant of operating authority to the

Applicant would authorize it to compete with the Protestants is certainly not sufficient to establish that such competition would be harmful or ruinous. "There is no public policy condemning competition as such in the field of public utilities; the public policy only condemns unfair or destructive competition." Utilities Commission v. Queen City Coach Company, 261 N.C. 384 (1964). It appears that none of the Protestants with the exception of Honeycutt would stand to lose any business from any of the supporting shippers if this application is approved. As the supporting shippers are currently serviced by Applicant operating under lease to Honeycutt, the granting of this authority would serve only to eliminate Honeycutt as a middle man. Honeycutt would be free to acquire equipment of its own and to compete for business with other authorized carriers including Applicant.

The Hearing Examiner concludes that the public convenience and necessity require the proposed service in addition to existing authorized transportation services.

With respect to the second statutory criterion, all the evidence establishes that the Applicant is fit, willing, and able to perform properly the proposed service. The Applicant is at present leasing its fleet to Honeycutt, and it maintains a terminal, a substantial fleet of equipment, and a complement of experienced drivers with which it serves the shipping public.

The Hearing Examiner concludes that Applicant is fit, willing, and able to perform properly the service authorized by Exhibit B attached hereto.

The third and final statutory criterion pertains to the Applicant's solvency and financial ability to furnish adequate service on a continuing basis. On the basis of Applicant's financial information submitted with this application and the testimony offered at the hearing, there can be no question but that Applicant is financially sound and has the resources to purchase additional equipment and facilities as needed.

The Hearing Examiner concludes that Applicant is solvent and financially able to furnish adequate service on a continuing basis.

IT IS, THEREFORE, ORDERED as follows:

1. That the application of Tidewater Fuels, Inc., for common carrier operating authority to transport Group 3, petroleum and petroleum products, liquid, in bulk, in tank vehicles and Group 21, asphalt, in bulk, statewide, be, and the same is hereby, granted in accordance with Exhibit B attached hereto and made a part hereof.

2. That Tidewater Fuels, Inc., shall file with the North Carolina Division of Motor Vehicles evidence of required insurance, a list of equipment, and a designation of process agent, and shall file with the Commission a tariff of rates and charges, and otherwise comply with the rules and regulations of the Commission and institute operations under the authority herein required within thirty (30) days from the date that this Recommended Order becomes effective and final.

3. That unless Tidewater Fuels, Inc., complies with the requirements set forth in decretal paragraph 2 above and begins operations as authorized within

a period of thirty (30) days after this Recommended Order becomes final, unless such time is extended by the Commission upon written request, the operating authority granted herein shall cease and determine.

ISSUED BY ORDER OF THE COMMISSION.
This the 20th day of March 1987.

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

EXHIBIT B

SCOPE OF OPERATIONS

Docket No. T-2759

Tidewater Fuels, Inc.
Wilmington, North Carolina

EXHIBIT B

Irregular Route Common Carrier Authority

(1) Transportation of Group 3, petroleum and petroleum products, liquid, in bulk, in tank vehicles, statewide.

(2) Transportation of Group 21, asphalt, in bulk, statewide.

DOCKET NO. T-2759

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of	
Application of Tidewater Fuels, Inc., Application to Transport Group 3, Petroleum Products, Liquid, in Bulk in Tank Vehicles; and Group 21, Asphalt, in Bulk, Statewide	FINAL ORDER OVERRULING EXCEPTIONS AND AFFIRMING RECOMMENDED ORDER

ORAL ARGUMENT
HEARD IN: Commission Hearing Room, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on Tuesday, April 21, 1987, at 2:00 p.m.

BEFORE: Chairman Robert O. Wells, Presiding; and Commissioners Robert K. Koger, Edward B. Hipp, Ruth E. Cook, Julius A. Wright, and William W. Redman

APPEARANCES:

For the Applicant:

Ralph McDonald, Bailey, Dixon, Wooten, McDonald, Fountain and Walker, Attorneys at Law, Post Office Box 12865, Raleigh, North Carolina 27605-2865
For: Tidewater Fuels , Inc.
and
Robert W. Kaylor, Attorney at Law, Post Office Box 1384, Raleigh, North Carolina 27602

For the Protestants:

Thomas W. Steed, Jr., Moore & Van Allen, Attorneys at Law, Post Office Box 26507, Raleigh, North Carolina 27611
For: Kenan Transport Company, Fleet Transport Company, Inc., Eagle Transport Corporation, East Carolina Oil Transport, Inc., Merritt Trucking Company, Inc., A. C. Widenhouse, Inc., and J. B. Honeycutt, Inc.

BY THE COMMISSION: On March 20, 1987, Hearing Examiner Partin entered a Recommended Order Granting Authority to Tidewater Fuels, Inc., to act as a common carrier to transport Group 3, petroleum and petroleum products, liquid, in bulk, in tank vehicles and Group 21, asphalt, in bulk, statewide. On April 6, 1987, Protestants filed exceptions to the Recommended Order.

Oral arguments on the exceptions were subsequently heard by the Commission on April 21, 1987, with both the Applicant and Protestants represented by counsel.

Based upon a careful consideration of the Recommended Order of March 20, 1987, the oral arguments of the parties before the full Commission on April 21, 1987, and the entire record of this proceeding, the Commission is of the opinion, finds, and concludes that all the findings, conclusions, and ordering paragraphs contained in the Recommended Order dated March 20, 1987, should be affirmed and adopted as the Final Order of the Commission; and each of the exceptions thereto should be overruled and denied.

IT IS, THEREFORE, ORDERED as follows:

1. That each and every exception of the Protestants to the Recommended Order of March 20, 1987, be, and the same are hereby, overruled.

2. That the Recommended Order of March 20, 1987, be, and the same is hereby, affirmed and adopted as the Final Order of the Commission.

ISSUED BY ORDER OF THE COMMISSION.
This the 23rd day of April, 1987.

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

DOCKET NO. R-29, SUB 586

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Southern Railway Company - Petition for Authority to Dispose of the Depot Building at Marshall, North Carolina	)	RECOMMENDED ORDER DISMISSING PROCEEDING

HEARD: Thursday, December 4, 1986, Courtroom, Second Floor, Madison County Courthouse, Marshall, North Carolina

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

APPEARANCES:

For the Petitioner:

Alfred P. Carlton, Jr. Attorney at Law, Adams, McCullough and Beard, Post Office Box 389, Raleigh, North Carolina 27602

William H. Teasley, Attorney, Norfolk Southern Corporation, 204 S. Jefferson Street, Roanoke, Virginia 24042

For the Using and Consuming Public:

Theodore C. Brown, Jr., Attorney, Public Staff-North Carolina Utilities Commission, Post Office Box 29520, Raleigh, North Carolina 27626-0520

PARTIN, HEARING EXAMINER: On July 21, 1986, Southern Railway Company (hereinafter called "Southern Railway" or "Petitioner") filed a petition in this docket requesting authority to dispose of the depot building in Marshall, North Carolina. In its petition, as subsequently amended, Southern Railway alleged that it was allowed to close the agency station in Marshall by Order of the Commission on May 6, 1986, and that Marshall is presently an open agency governed by the Petitioner's agency station located in Asheville. Southern Railway further alleged that as a result of the closing of the agency station at Marshall, Petitioner no longer requires the depot to serve the public.

The Commission's files also show that Southern Railway posted the 10 days notice to the public of its petition as required by Commission rules.

The Commission received a number of letters in opposition to the petition of Southern Railway, including letters from Anita R. Ward, Mayor of the Town of Marshall; James T. Ledford, Chairman of the Madison County Board of Commissioners; and Talmage McLean and Elizabeth S. Roberts, Friends of the Marshall Depot.

On September 23, 1986, the Commission issued an Order Requiring Publication of Notice of Petition and Notice of Hearing. In its Order the Commission recited the letters in opposition to Southern Railway's petition and upon consideration thereof the Commission scheduled a public hearing and

required that newspaper notice be given in the Marshall area. The hearing was scheduled for Thursday, December 4, 1986, at 10:00 a.m. in Marshall.

The Commission's official file shows that the Petitioner filed affidavits of publication showing publication of the Notice of Hearing in newspapers having a general circulation in the Marshall area.

The Commission's file also shows that further letters in opposition to the proposed disposition of the depot building were filed by residents of Marshall.

On November 12, 1986, Southern Railway filed a Motion to Dismiss Proceeding, Motion for Postponement of Hearing, and Motion for Prehearing Conference. In its Motion, Southern Railway asked that the pending proceeding be dismissed as a matter of law for want of jurisdiction by the Commission to determine the disposition of the depot property. Also, on November 12, 1986, Southern Railway filed Motion for Leave to Amend its Petition. In its Motion, Southern Railway alleged that in the second sentence of paragraph four of its petition, Petitioner stated that Marshall is presently an open agency governed by mobile agency route SOU-NC-16 based at Asheville; that Petitioner's statement that the Marshall open agency is governed by a mobile agency route was made inadvertently and in error; and that Petitioner seeks to strike the erroneous language and to amend the petition to add a new second sentence to paragraph four to read as follows: "Marshall is presently an open agency governed by Petitioner's agency station located in Asheville, North Carolina."

The Motion to Amend Petition was allowed by Order of the Commission issued November 25, 1986.

On November 21, 1986, the Public Staff filed an Answer and Motion in response to the Petitioner's above-described Motions. In its Answer, the Public Staff stated that the Commission does have jurisdiction and should proceed with the scheduled hearing in this docket. The Public Staff also opposed the scheduling of a prehearing conference in Raleigh.

On November 25, 1986, the Commission issued an Order denying the Motion of Southern Railway to postpone the hearing scheduled for December 4, 1986; denied the Motion of Southern Railway to schedule a prehearing conference in Raleigh; granted the Motion of Southern Railway to amend its petition; and scheduled for oral argument in Marshall on December 4, 1986, the Motion of Southern Railway to dismiss the proceeding as a matter of law for want of jurisdiction by the Commission.

On November 25, 1986, Southern Railway filed Memorandum in Support of Motion to Dismiss.

The petition and the Motion to Dismiss for want of jurisdiction came on for hearing and oral argument in Marshall on December 4, 1986, at 10:00 a.m. The Petitioner and the Public Staff were present and represented by counsel. Southern Railway presented the testimony and exhibits of George Montague, Division Superintendent of Southern Railway. The following public witnesses offered testimony with the assistance of the Public Staff: Ruth Gregory, a resident of Madison County; Anita Ward, Mayor of the Town of Marshall; Richard Kingston, a member of the Town of Marshall Planning Committee; Beatrice Banks, an employee of the Madison County Public Library; and Clyde M. Roberts, former

mayor of the Town of Marshall and former member of the North Carolina General Assembly.

Upon consideration of the testimony and exhibits presented at the hearing in this docket, the Motion to Dismiss and oral argument of the parties, the entire record in this docket, and the judicial notice of Docket No. R-29, Sub 517, the Examiner makes the following

FINDINGS OF FACT

1. Southern Railway is a common carrier by rail in North Carolina and is subject to the jurisdiction of the Commission.

2. By petition filed July 21, 1986, Southern Railway sought authority to dispose of the depot building at Marshall, North Carolina. By subsequent motion filed November 12, 1986, Southern Railway moved for dismissal of the proceeding for want of jurisdiction by the Commission.

3. In Docket No. R-29, Sub 517, Southern Railway was granted authority by the Commission to discontinue its agency station at Marshall and to reclassify Marshall as a non-agency station under jurisdiction of the agency station located at Asheville. In its Order the Commission found that the public convenience and necessity do not require the continued operation of the agency station at Marshall. (Order of May 6, 1986)

4. Pursuant to the Order of May 6, 1986, Southern Railway closed to the public its agency station in Marshall on May 30, 1986. Southern Railway no longer physically offers freight or passenger service to the public at the Marshall depot building, nor does it offer any other convenience or accommodation at the depot. The depot building is presently unoccupied and serves no business purpose.

5. Southern Railway still holds title to the depot building.

6. Once a building is no longer used to serve the public, it is the policy of Southern Railway to remove the building. In a few cases, a building may be leased to a third party provided Southern Railway is relieved of all liability arising out of the use of the building by the third party.

7. Because the depot building's close proximity to the Southern Railway track and to U.S. Highway 25 and 70 constitutes a significant safety hazard, the Marshall depot is not available for lease to a third party.

8. Because of the safety hazard, it is the announced policy of Southern Railway to remove the depot building in Marshall.

9. There is public interest in the Town of Marshall in preserving the depot. Southern Railway has attempted to work with the community in preserving the depot building provided that the building can be relocated to another site as soon as possible and that the community, not the railroad, bear the expense of relocation. It is the position of the Town of Marshall that it cannot relocate the depot building.

CONCLUSION

Because the Commission has determined in Docket No. R-29, Sub 517, that the Marshall agency station is no longer serving the public convenience and necessity and that the station should be discontinued, the Commission does not have jurisdiction to determine whether or not, or in what manner, Southern Railway may dispose of the depot building. Accordingly, the Motion of Southern Railway to dismiss this proceeding for want of jurisdiction by the Commission should be allowed.

In Utilities Commission v. R.R., 268 N.C. 242, at 245 (1966), the Supreme Court stated as follows:

> "A railroad or other public utility corporation is engaged in the operation of a privately owned business. By virtue of the nature of the services it undertakes to render, certain exceptional duties are imposed upon it by the common law and by statute, and the Utilities Commission is authorized by statute to regulate its activities. In other respects, the company has the same freedom as does any other corporation in the management of its properties and in the employment and assignment of the duties of its employees.
>
> "The Utilities Commission has no authority to regulate, or impose duties upon, a railway company except insofar as that authority has been conferred upon the Commission by Chapter 62 of the General Statutes, liberally construed to effectuate the policy of the State announced therein . . . ." (emphasis added.)

The Commission's authority to regulate the abandonment of stations for freight and passengers is contained in N.C.G.S. § 62-247, which provides in relevant part as follows:

> "(c) A railroad company which has established and maintained for a year or more a . . . freight depot . . . for serving the public at a point upon its road or route shall not abandon such . . . depot . . . or other facility for serving the public nor substantially diminish the accommodations at said . . . depot . . . except by approval of the Commission which may be sought by the filing of an appropriate petition seeking the necessary authority . . . ."

By seeking to close its agency station at Marshall and to reclassify Marshall as a nonagency station under control of Southern's agency station in Asheville, Southern Railway in effect sought to close or abandon the depot facility for use by the public. The Commission concluded that "public convenience and necessity do not require the continued operation of the agency station at Marshall" and granted Southern's petition for authority to discontinue the agency station. Order of May 6, 1986, Docket No. R-29, Sub 517.

Since the Commission's Order of May 6, 1986, the depot building has no longer been "serving the public" as that term is used in § 62-247. Southern Railway has closed the depot building, and no business of any kind affecting the public is now conducted at the building. Southern, however, still holds title to the facility pursuant to its authority to hold property as set forth

in N.C.G.S. § 62-220(4). Because the facility is no longer serving a public purpose, as determined by the Commission's Order of May 6, 1986, the Examiner is of the opinion, and so finds and concludes, that the Commission has no authority to regulate its disposition. See Utilities Commission v. Atlantic Coastline Railroad Company, supra.

Attention is also called to Commission Rule R1-14(a)(3) and (4), which provides in part:

> "(a) Notices.--Where a railroad, express or a telegraph company desires to file application for authority:
> . . . . .
> "(3) To abandon, remove or dismantle railroad passenger or freight stations, or public team, spur, or side tracks;
> . . . . .
> "(4) . . . . notice of intention to make such application must first be filed with the Commission and the Public and a copy thereof posted, as herein provided,. . ."

This rule must be construed in a manner consistent with the authority granted to the Commission in G.S. 62-247(c). Pursuant to that statute, the railroad facility subject to the rule must be a facility maintained "for serving the public." Under the facts before the Examiner, Southern Railway complied with the provisions of this rule when it made application in Docket No. R-29, Sub 517, to close the agency station in Marshall.

Upon consideration of the findings and conclusions herein, this proceeding should be dismissed.

FURTHER COMMENTS

The evidence presented at the hearing showed that there is public interest in the Town of Marshall in preserving the depot. Because of the demonstrated safety hazard posed by the location of the depot between the railroad tracks and the highway, Southern Railway is not agreeable to making the depot available at that site. Southern has attempted to work with the community in preserving the depot building provided that the building can be relocated to another site as soon as possible and that the community, and not the railroad, bear the expense of relocation. Mayor Ward testified that the Town cannot consider the relocation of the depot building. Because of the interest shown at the hearing in preserving the building, the Examiner hopes that some satisfactory resolution of this issue can be found. In any event, the Commission has no jurisdiction to determine in what manner the building may be disposed of.

IT IS, THEREFORE, ORDERED that the Motion of Southern Railway for an Order dismissing this proceeding for want of jurisdiction by the Commission, be and the same is hereby, allowed.

ISSUED BY ORDER OF THE COMMISSION.
This the 12th day of February 1987.

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

DOCKET NO. P-183

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Application of Carolina Telephone Long Distance, Inc., for Authority to Provide InterLATA Long Distance Services Within the State of North Carolina	)	ORDER GRANTING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

HEARD IN: Commission Hearing Room 2115, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, July 2, 1987, at 9:30 a.m. and and July 6, 1987, at 2:00 p.m.

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

APPEARANCES:

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

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

and

Gene V. Coker, General Attorney, AT&T Communications of the Southern States, Inc., 1200 Peachtree Street, N.E., Atlanta, Georgia 30309

For MCI Telecommunications Corporation:

Gary Maines and Charles Meeker, Adams, McCullough and Beard, Attorneys at Law, P.O. Box 389, Raleigh, North Carolina 27602

and

Kenric E. Port, MCI Southeast Division, 400 Perimeter Center, Atlanta, Georgia 30319

For North Carolina Long Distance Association:

Walter Daniels, Daniels and Daniels, P.A., 1000 Park Forty Place, Durham, North Carolina 27713

For SouthernNet Services, Inc.:

Jerry B. Fruitt, Attorney at Law, 1042 Washington Street, Raleigh, North Carolina 27602

For the Public Staff

David T. Drooz, Staff Attorney and Robert Cauthen, 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

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: This proceeding was initiated by Carolina Telephone Long Distance, Inc. (CTLD), on May 18, 1987, by 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.

On May 22, 1987, the North Carolina Long Distance Association petitioned the Commission for leave to intervene in this docket. That petition was granted on May 28, 1987.

On June 4, 1987, AT&T Communications of the Southern States, Inc., petitioned the Commission for leave to intervene in this docket. That petition was granted on June 10, 1987.

On June 17, 1987, SouthernNet Services, Inc., petitioned for leave to intervene. That petition was granted on June 23, 1987.

On June 24, 1987, MCI Telecommunications Corporation filed a petition for leave to intervene. That petition was granted on June 29, 19878.

By Order issued June 11, 1987, the matter was scheduled for public hearing beginning on July 2, 1987.

Testimony in support of the application was offered by the following:

William F. Wardwell, Vice President-Administration, Carolina Telephone and Telegraph Company; Robert B. Hardister, Jr., Marketing Manager-Network Services, Carolina Telephone and Telegraph Company and Vice President of Carolina Telephone Long Distance, Inc.; Robert L. McDowell, Manager-Interexchange Customer Service Center, Carolina Telephone and Telegraph Company; Ronald D. Sondergard, Controller, Carolina Telephone and Telegraph Company; and Wallace O. Powers, General Network Planning Manager, Carolina Telephone and Telegraph Company.

The Commission, having heard the evidence and reviewed the entire record in this proceeding, now makes the following

FINDINGS OF FACT

1. Carolina Telephone Long Distance, Inc. (CTLD), seeks a certificate of public convenience and necessity to provide originating interLATA long distance telecommunications services as a public utility in North Carolina from exchanges served by Carolina Telephone and Telegraph Company which are being converted to equal access. CTLD is a North Carolina corporation and a separate, wholly owned subsidiary of Carolina Telephone and Telegraph Company. This is the first case in which a local exchange company has sought to set up a separate but wholly owned subsidiary to provide interLATA long distance service. As such, it raises significant public policy questions regarding structural and functional separation, cost allocations, and the possibility in the future that CTLD may seek to enter the intraLATA competitive market against Carolina Telephone Company.

2. CTLD filed supplemental documentation and proposed tariffs in support of its application on May 18, 1987.

3. CTLD is fit, capable, technically qualified and financially able to render interLATA long distance telecommunications services as a public utility in the State of North Carolina.

4. In Docket No. P-100, Sub 72, the Commission has found and concluded that interLATA competition is in the public interest and will not jeopardize reasonably affordable local phone service. The interLATA long distance telecommunications services here proposed by CTLD in North Carolina are required to serve the public interest effectively and adequately and will not jeopardize reasonably affordable local exchange service.

5. The use of common officers and employees between Carolina Telephone and Telegraph Company and CTLD raises significant issues regarding the use of proprietary data obtained from other interexchange carriers which can be dealt with through appropriate procedures.

6. CTLD 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.

7. CTLD agrees to compensate the local exchange telephone companies for revenue losses resulting from the completion of unauthorized or incidental intraLATA calls by its customers pursuant to the Compensation Plan adopted by the Commission in Docket No. P-100, Sub 72, and CTLD has stipulated and agreed that it will not subscribe to the pound button cut-through option available through the access services tariff of Carolina Telephone and Telegraph Company.

8. CTLD proposes to offer additional services such as operator services and optional calling plans as they become technically available. These proposed additional services will also be interLATA in nature and in general will be provided to customers who originate service in the Fayetteville and Rocky Mount Geographic Market Areas (GMAs).

9. CTLD proposes to terminate originated services at any point within the State of North Carolina through facilities obtained from U. S. Sprint Communications.

10. CTLD's proposed tariff mirrors the rates in effect for AT&T at the time of CTLD's filing.

11. Cost allocations procedures are proposed to comply with the requirements of FCC Docket No. 81-893 (Fifth Report and Order, released November 1984). Those procedures will constitute in large part the basis for Carolina's September 1987 filing in FCC Docket No. 86-111. Those procedures are subject to review by the FCC, subsequent adoption and review by the Commission, and various auditors, including the Public Staff. The issues of cost allocations and cross-subsidization in the instant case should be monitored and are appropriate for review in future general rate cases and other dockets of Carolina Telephone and Telegraph Company.

12. Facilities-based intraLATA competition is not permitted at this time, although resale intraLATA competition is permitted. CTLD is not asking for a certificate for either type of intraLATA competition and has stated that it has no present plans to ask for such a certificate. However, it is conceivable to the Commission that CTLD may request such authority in the future. This would bring CTLD into direct competition with a local exchange company, and would raise significant public policy questions. The Commission will examine any such application closely in a public hearing.

WHEREUPON, the Commission reaches the following

CONCLUSIONS

Based upon the foregoing findings of fact and the entire record in this proceeding, the Commission concludes that CTLD 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 filed in this docket on May 18, 1987, should be approved subject to the following terms and conditions:

1. CTLD shall abide by all applicable rules and regulations of the North Carolina Utilities Commission; and the findings, conclusions, restrictions, and conditions set forth in the "Order Authorizing Intrastate Long Distance Competition" entered in Docket No. P-100, Sub 72, on February 22, 1985; and all other applicable Commission Orders.

2. CTLD shall compensate the local exchange companies for revenue losses resulting from the completion of unauthorized intraLATA calls by its customers pursuant to the Compensation Plan adopted by the Commission in Docket No. P-100, Sub 72, until such time as the Commission authorizes intraLATA competition in North Carolina and discontinues such compensation plan upon approval of appropriate intraLATA access charges. In addition, CTLD shall not subscribe to the pound button cut-through option available through the access services tariff of Carolina Telephone and Telegraph Company.

3. CTLD shall not use or construct any facilities designed to bypass the access or local exchange facilities of the local exchange telephone company.

4. CTLD 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.

5. CTLD is the first request that the Commission has considered for certification by an interLATA company affiliated with a local exchange company. In its February 22, 1985, Order in Docket No. P-100, Sub 72, the Commission found that a competitive interLATA market is in the public interest and would not jeopardize reasonably affordable local exchange service. On balance, the Commission concludes that the competitive benefits provided by CTLD outweigh the risks of affiliation and that the certification requested should be granted. Nonetheless, the Commission concludes that Carolina Telephone and Telegraph Company and CTLD should maintain careful, detailed and thorough records of cost allocations for all labor, services, and use of space and equipment owned or controlled by Carolina Telephone and Telegraph Company and used on behalf of CTLD. Such records shall be subject to review at any general rate case or other subsequent appropriate proceeding of Carolina Telephone and Telegraph Company.

6. CTLD shall comply with the cost allocations and equal access procedures which it outlined at the hearing and which are in compliance with FCC regulations.

7. The name "Carolina Telephone Long Distance" is not misleading or confusing to the public, and is not objected to by Carolina Telephone and Telegraph Company. CTLD will not be required to pay royalties to Carolina Telephone and Telegraph Company for the use of its name.

8. Contracts between Carolina Telephone and Telegraph Company and CTLD shall be filed with the Commission as required by statute, and Carolina Telephone and Telegraph Company shall assure that CTLD is treated no differently than other interLATA carriers.

9. Employees or officers of Carolina Telephone and Telegraph Company who have access to proprietary information regarding other interLATA carriers shall sign an agreement not to disclose such information to CTLD and shall not be an officer of or employed by CTLD. Carolina Telephone and Telegraph Company shall file with the Commission a copy of such nondisclosure agreement and a written policy setting out in detail what other measures it will take to prevent proprietary information of other interLATA carriers from being transferred to CTLD.

IT IS, THEREFORE, ORDERED as follows:

1. That CTLD 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 originated from exchanges being converted to equal access by Carolina Telephone and Telegraph Company subject to the following terms and conditions:

A. CTLD shall abide by all applicable rules and regulations of the North Carolina Utilities Commission and the findings, conclusions, restrictions and conditions set forth in the "Order Authorizing Intrastate Long Distance Competition" entered in Docket No. P-100, Sub 72, on February 22, 1985, and all other applicable Commission Orders.

B. CTLD shall compensate the local exchange companies for revenue losses resulting from completion of unauthorized intraLATA calls by its customers pursuant to the Compensation Plan adopted by the Commission in Docket No. P-100, Sub 72, until such time as the Commission authorizes intraLATA competition in North Carolina and discontinues such Compensation Plan upon approval of appropriate intraLATA access charges. CTLD shall not subscribe to the pound button cut-through option available through the access services tariff of Carolina Telephone and Telegraph Company.

C. CTLD shall not use or construct any facilities designed to bypass the access or local exchange facilities of the local exchange telephone companies.

D. CTLD 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. Carolina Telephone and Telegraph Company and CTLD shall maintain careful, detailed and thorough records of all cost allocations for all labor, services, use of space and equipment, and all other items of value owned or controlled by Carolina Telephone and Telegraph Company and used on behalf of CTLD and such records shall be subject to review at such time as there is a general rate case or other appropriate proceeding for Carolina Telephone. Should such measures prove inadequate or unsatisfactory, the Commission reserves the right to order Carolina Telephone and Telegraph Company and CTLD to take such measures as may effect a more complete separation.

F. Employees or officers of Carolina Telephone and Telegraph Company who have access to proprietary information regarding other interLATA carriers shall sign an agreement not to disclose such information to CTLD and shall not be an officer of or employed by CTLD. Carolina Telephone and Telegraph Company shall file with the Commission a copy of such nondisclosure agreement and a policy setting out in detail what other measures it will take to prevent proprietary information on other interLATA carriers from being transferred to CTLD not later than 30 days from the date of this Order.

2. That this Order shall itself constitute the certificate of public convenience and necessity as granted to CTLD by the North Carolina Utilities Commission to provide interLATA long distance telecommunications services in North Carolina.

3. That the tariffs filed by CTLD with its application and as amended at the hearings conducted in this matter shall become effective immediately.

ISSUED BY ORDER OF THE COMMISSION.
This the 30th day of July 1987.

NORTH CAROLINA UTILITIES COMMISSION
Sandra J. Webster, Chief Clerk

(SEAL)

DOCKET NO. P-7, SUB 702

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of St. Regis Resort, Post Office Box 4000, Sneads Ferry, North Carolina 28460, Complainant vs. Carolina Telephone and Telegraph Company, Respondent	ORDER DEFERRING DECISION ON HOTEL STATUS

HEARD: Thursday, August 21, 1986, at 9:30 a.m., in the Commission Hearing Room, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina

BEFORE: Commissioner Ruth E. Cook, Presiding; Commissioner Sarah Lindsay Tate and Chairman Robert O. Wells

APPEARANCES:

For the Complainant:

Walter E. Daniels and Paul Overhauser, Walter E. Daniels, P.A., Attorney at Law, Post Office Box 13039, Research Triangle Park, North Carolina 27707

For the Respondent:

Robert Carl Voigt, Carolina Telephone and Telegraph Company, 720 Western Boulevard, Tarboro, North Carolina 27886

For the Using and Consuming Public:

Gisele Rankin, Staff Attorney, Public Staff-North Carolina Utilities Commission, Post Office Box 29520, Raleigh, North Carolina 27626-0520

BY THE COMMISSION: This proceeding was initiated by the filing of a complaint by the St. Regis Resort ("Complainant" or "St. Regis") against Carolina Telephone and Telegraph Company ("Carolina Telephone") on May 1, 1986. Due to the complexity of the procedural questions arising from subsequent filings by Carolina Telephone and St. Regis, the Commission heard oral argument on May 30, 1986, which was limited solely to said procedural questions. By Order dated June 10, 1986, the Commission set St. Regis' complaint for hearing on August 21, 1986, granted a preliminary injunction enjoining Carolina Telephone from disconnecting the Complainant's telephone service at the St. Regis Resort until a final determination of the matters in dispute could be made, permitted Carolina Telephone to take a voluntary dismissal with prejudice of its complaint in Docket No. P-7, Sub 704, and dismissed Carolina Telephone's petition for a show cause order in Docket No. P-7, Sub 706.

The Public Staff, by motion dated August 14, 1986, requested the Commission to require St. Regis to produce certain specified information. By Order dated August 20, 1986, the Commission required St. Regis to produce said information prior to the hearing. The transcript of the hearing shows that St. Regis provided the information as ordered.

The matter came on for hearing on August 21, 1986, and the Complainant presented the testimony and exhibits of Mr. Ken Wilkey, Managing Director of the St. Regis Resort and Conference Center. No other party presented evidence.

In response to Carolina Telephone's motion, and Commissioner Tate's request, for certain information, the Commission, by Order dated August 25, 1986, required St. Regis to produce floor plans, the agency contract, the status of recently sold units, and other information. St. Regis complied by Response filed September 9, 1986.

Upon consideration of the testimony and exhibits presented at the hearing, the arguments and briefs of counsel, the data responses of St. Regis, and the entire record in this docket, the Commission makes the following

FINDINGS OF FACT

1. On May 1, 1986, St. Regis filed a complaint against Carolina Telephone asking the Commission to enforce Carolina Telephone's tariff requiring it to provide service to all customers within its franchised territory, including St. Regis.

2. The St. Regis Resort will consist of guest rental units in three condominium buildings. There are two completed buildings, one with 84 units and one with 70 units; a third building, containing 70 units, is scheduled for completion in March 1987. Each unit is owned under the North Carolina Unit Ownership Act, Chapter 47 of the General Statutes.

3. The owner of each condominium unit has the option of placing his unit into a rental program by signing a management agreement. Of the 114 units sold and committed to participation or nonparticipation in the rental program, as of October 15, 1986, 111 units, or 97.4 percent, are participating in the rental program.

4. The condominium units placed in the rental pool are rented to the general public as "hotel" accommodation.

5. As part of the accommodations a hotel-type telephone is provided and telephone service is sold to resort guests. The telephone in each hotel room is connected to the hotel PBX. Guests are therefore able to call other guest rooms, the front desk, concierge, room service, and other hotel services through the PBX. Guests can also make local and long distance calls. Guests pay for these calls when they check out.

6. St. Regis does not offer to sell phone service to the general public; nor does it provide phone service to condominium units located within the resort buildings which are not part of the rental pool.

7. Whether the St. Regis Resort constitutes a hotel is a question of fact to be determined under 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, meeting rooms, the provision of maid and linen service, the proximity of the rooms or units to each other, and whether or not the place is licensed under North Carolina law as a hotel are all factors to be considered.

9. Another critical factor in determining hotel status is the presence of restrictions on owners' use of their units in the management agreement. The St. Regis management agreement provides that owners may occupy their units rent free as a transient guest for 14 days or less during each calendar year. For occupancy beyond the 14-day rent free time, the owners agree to pay St. Regis Resort the standard agency commission on the prevailing rate of the unit at that time.

10. In order to comply with hotel status, restrictions limiting owners' use of their units rent free or at a reduced rate to no more than two weeks a year would be appropriate for inclusion in the management agreement between St. Regis and the unit owners.

11. The provision of phone service is essential to the operation of a hotel and is demanded by guests. However, owners who occupy their rooms for extended periods of time do not expect to receive the same type of hotel phone service as do bona fide hotel guests, nor should they expect to receive such service.

CONCLUSIONS AND DISCUSSION OF EVIDENCE

Decision on the hotel status of St. Regis under G.S. 62-3(23)g should be deferred pending the filing of the reports and responses hereinafter described.

Summary of Evidence

St. Regis presented the only evidence in this proceeding.

St. Regis General Manager Ken Wilkey testified that the resort will have three buildings, all owned as condominium units under Chapter 47 of the North Carolina General Statutes. He testified that there are two completed buildings, one with 84 units and one with 70 units. In addition, a third building with 70 units is expected to be completed in March 1987. Mr. Wikey explained that when a unit is sold the buyer is given the option of placing it into a rental pool. If the buyer wishes to exercise this option, he signs a management agreement with St. Regis and then his unit is rented to the general public.

At the request of Commissioner Tate a late filed exhibit was prepared for the Commission that illustrated which of the units sold were in the rental program. The exhibit showed that as of September 9, 1986, of the 104 units sold and upon which a participation decision had been made, 101 unit owners had elected to participate in the rental program and had signed management

agreements. More specifically, in the first building there were 42 units sold of which 37 owners had elected to sign a management agreement and 5 owners were recent purchasers who had not yet made a decision; there were no units reserved for owner usage. In the second building 68 units were sold of which 64 owners had elected to sign the management agreement, one owner was still considering the option, and 3 units were reserved for owner usage. By Commission Order an updated exhibit was filed on October 17, 1986, showing that of the 114 units sold and upon which a participation decision had been made, 111 owners, or 97.4 percent, have elected to include their units in the hotel rental program.

Once units are placed into the rental pool the resort management rents the rooms to the general public as "hotel" accommodations. Mr. Wilkey testified that those owners who signed the management agreement expected their units to be rented as part of a professionally managed hotel.

Mr. Wilkey further testified that in hotel rooms where the owner of the units had signed a management agreement, the hotel installs a hotel phone with a message light, which is connected to the hotel PBX. The hotel telephone system allows the guest renting a room to call other guest rooms, the front desk, concierge, room service, and generally to have access to all hotel services by dialing one or three digits. The guest can also make local and long distance calls. When the guest checks out of the rooms, he pays for any telephone calls outside the hotel made during his stay.

Mr. Wilkey further testified that hotel guests expect easy access to hotel service via a room telephone and that if the room phones were not connected to the PBX a guest would have to call the hotel main number and then wait to be connected to whatever hotel service he was seeking. This lack of network hotel system would not only be very annoying to guests but would also make operation of the hotel extremely difficult. It could deter customers from staying at the resort in the future.

On September 9, 1986, St. Regis filed its Response to Order to Produce Specific Information. The suite rental (management) agreement submitted in this Response provides as follows:

> "Subject to restrictions described herein during each calendar year, Owner may occupy this Unit rent free as a transient guest for fourteen (14) days or parts thereof. Owner Use Time alloted should include no more than seven (7) days annually during peak occupancy periods from June 1st through August 31st. During alloted Owner Use Time, Owner agrees to pay the Company a housekeeping fee of twenty-five dollars ($25.00) per day which includes full maid service or thirty-five dollars ($35.00) for departure only maid service. Beyond the alloted fourteen (14) day Owner Use Time, Owner agrees to pay Company the standard agency commission on the prevailing rate of the Unit at the time. Owner and Guests of Owner shall abide by such cancellations, guarantee, check-in and check-out, and sales policies as required by the Company of regular guests of St. Regis Resort.

Qualification as a Hotel under G.S. 62-3(23)g

The question of whether or not a "condominium hotel" qualifies as a hotel or motel for purposes of exemption from public utility status under G.S.

62-3(23)g was first presented to the Commission in April 1985, when Sands Properties, Inc., filed a request for an opinion whether or not the Sands Villa Resort Hotel would be considered a "hotel" or "motel" for purposes of G.S. 62-3(23)g. As a result of that request, a subsequent request from Amhurst Development Company and Fraser Development Company, and a second request from the Sands resorts, the Commission formulated the following standard for determining whether a "condominium hotel" qualifies for the hotel/motel exemption set forth in G.S. 62-3(23)g. In order to qualify, the facility in question:

1. Will be operated and advertised as a conventional hotel, with all individual owners being required to sign an agency agreement allowing the hotel management to rent their rooms;

2. Will offer transient lodging to guests;

3. Will charge all guests, including owners, for telephone calls as is customary in hotels and motels; and

4. Will not be used for residential purposes by the owners. There should be no mixture of transient and permanent residents.

The Commission in an Order issued September 11, 1986, (Docket No. P-100, Sub 83), expanded and refined the above standard and found that 148 condominium units owned under the Unit Ownership Act at Fairfield Harbour resort constituted a hotel; 139 time share units at the resort were found not to qualify as a hotel. The Order of September 11, 1986, stated:

> "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 facts 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."

The Fairfield Harbour Order noted that G.S. 62-3(23)g does not provide a definition of the words "hotel" or "motel." Applying well-known principles of

statutory construction, the Commission examined a number of sources to arrive at a definition of "hotel." Attention was called to several North Carolina cases which had addressed the issue. For example, in Holstein v. Phillips & Sims, 146 N.C. 366, (1907), the North Carolina Supreme Court held that an "inn" or "hotel" is a public house of entertainment for all who choose to visit it. "It is this publicly holding a place out as one where all transient persons who may choose to come will be received as guests for compensation that is made the principal distinction between a hotel and a boarding house . . . " A "guest" at such a hotel is a transient person who resorts to and is received at the hotel for the purpose of obtaining accommodations which the hotel purports to afford. The hotel is a place where, within reasonable limitations, the public may demand accommodations.

Attention was also directed to G.S. 105-61(b), in the Revenue Act, which 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 Commission reaffirms its holding in the Fairfield Harbour decision as to the appropriate standard in determining hotel status. The Commission is further of the opinion that, under the facts of the instant case, the existence of mixed residential use and "hotel" use within a building should not, standing alone, disqualify St. Regis Resort as a hotel for purposes of exemption from utility status under G.S. 62-3(23)g. In 40 Am Jur 2d, "Hotels, Motels" §3, it is pointed out that it is not essential that the proprietor of a hotel maintain the place solely for the accommodation of transients; he may, for example, occupy the status of landlord with respect to some of the occupants of the building.

Restrictions on Owners' Use

In this proceeding the Public Staff contended that appropriate limits of two weeks should be placed on the owners' use of their units rent free or at the reduced rate and that such two weeks' restriction be made a part of the agency agreement executed between the owners and the hotel management. In its Brief the Public Staff contended as follows:

"Contrary to assertions that have been made that the owners must pay the full rack rate for use in excess of 14 days, the contract submitted by St. Regis with its September 9, 1986 Response to Order to Produce Specific Information shows that for use beyond the 14 days, the owner has to pay only the standard agency commission on the prevailing rate of the unit at that time. This means that the owners or friends of the owners could stay in the "hotel" rooms for approximately half the regular cost during any period of time requested by the owners to be excluded from the reservation or rental pool. Any facility with such control vested in over one hundred owners cannot be considered a hotel. Allowing the owners this much control is a marketing technique and is not necessary, as the agency agreement used by the Amhurst Development Company shows. This agreement, as provided to the Commission in conjunction with Amhurst's request for an opinion letter in mid-1985, provides that the Investor can occupy his unit for 14 days at no charge, but that no more than 20% of all Investors may occupy the Inn at any one time at the Investor Discourt. If the Investor occupies his unit in excess of 14 days, he pays the current average group rate for his unit. It further provides that if an Investor occupies a unit at the Investor Discount, he will not share in the rooms revenue for that proportionate part of the month, but will pay his full share of Inn Operating Expenses, as defined in the Agreement.

"The Public Staff's concerns as expressed herein and in its Motion for Reconsideration in the Fairfield case are such that its position is that unless the owner restrictions, as suggested herein and in the Fairfield brief, are placed in the agency agreements, St. Regis cannot be considered a hotel. The potential for abuse by owners, which would result in a significant portion of the use of the PBX being by owners rather than true hotel guests, is too great for any other conclusion to be reached."

St. Regis, on the other hand, contends that it is not a public utility and that the Commission has no authority to order it to amend the agency agreement and place such restrictions on owners' use therein.

Upon careful consideration of the contentions of the parties, the Commission finds and concludes that it does not have the authority to order that certain restrictions on the owners' use of their condominium units at St. Regis Resort be placed in the rental agreement between the hotel management and the unit owners. St. Regis is not a public utility, and the Commission has no authority to order changes in the agreement. Nonetheless, the Commission agrees with the Public Staff that appropriate restrictions on the owners' use of their units is a critical factor, among the other factors enumerated herein, in determining the status of the condominium units as a hotel. The absence or presence of such restrictions has a material impact on the hotel status issue. This Order has found and concluded that 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." (Finding of Fact No. 8) (emphasis added) Availability of transient lodging to the public is an essential element of the definition of a hotel or motel. The suite rental agreement submitted by St. Regis with its September 9, 1986,

Response to Order to Produce Specific Information provides that for use beyond the 14 rent free days, the owners have to pay only the standard agency commission on the prevailing rate of the units at that time. This means that the owners or friends of the owners could stay in the "hotel" rooms for approximately half the regular cost during almost any period of time requested by the owners to be excluded from the reservation or rental pool. (The agreement does limit "owner use time" to no more than seven days annually during the peak occupancy period June 1 through August 31.) As pointed out by the Public Staff: "Any facility with such control vested in over one hundred owners cannot be considered a hotel." Under these operating conditions it may happen that a significant use of the hotel PBX would be by the owners rather than by bona fide hotel guests. The purpose of the exemption statute, G.S. 62-3(23)g, would thereby be circumvented.

The Commission is of the opinion, and so finds and concludes, that restrictions limitng owners' use of their units rent free or at the reduced rate to no more than two weeks a year would be appropriate for inclusion in the rental agreement between St. Regis and the unit owners. After two weeks the owners should be required to pay the full hotel rate applicable to members of the public.

As stated above, the Commission is of the opinion that it has no authority to compel St. Regis to amend its agency agreement with the unit owners. The Commission will, however, afford St. Regis an opportunity to consider its willingness to place an appropriate restriction of two weeks a year on owner use rent free or at a reduced rate in the management agreement, in light of the Commission's discussion herein that such restriction on use constitutes a critical element in the determination of hotel status under the statute. St. Regis may choose to notify the unit owners that those owners who do not want to change their agency agreement will not be entitled to remain on the St. Regis PBX system. The Commission will defer decision on the hotel status issue pending a report from St. Regis on its willingness to amend the management agreement in view of the conclusions reached herein.

The Commission's decision on this issue is in accord with the Commission's Order on Motions for Reconsideration in Docket No. P-100, Sub 83 (Fairfield Harbour), issued on February 10, 1987.

Withdrawal of Unit from Rental Pool

In this proceeding and in the Fairfield Harbour case, Docket No. P-100, Sub 83, the Public Staff recommended that if the Commission found that the facilities in question qualified as a hotel within the meaning of G.S. 62-3(23)g, the management agreement between the hotel and the unit owners should be amended to provide that if a condominium unit is withdrawn from the hotel rental pool, the unit cannot be placed back into the hotel pool for rental purposes at a later date. In support of its recommendation in Fairfield Harbour, the Public Staff stated as follows:

> "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."

In the Fairfield Harbour case the Commission found the argument of the Public Staff persuasive and required that the agency agreement be amended 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 Commission is of the opinion that such a restriction on the withdrawal of a unit from the rental pool is also appropriate for St. Regis. Although the Commission cannot compel the inclusion of such restriction in the agency agreement, this Order will provide St. Regis an opportunity to consider its willingness to place such restriction in the management agreement regarding withdrawal of a unit from the rental pool.

The Annual Report

The Public Staff has also recommended to the Commission in this proceeding and in the Fairfield Harbour case that the two resorts be required to file an annual report on the number of units withdrawn from the hotel rental pool. St. Regis contends that the Commission is without jurisdiction to compel the filing of an annual report. The Commission is of the opinion that, if St. Regis is subsequently declared a hotel, St. Regis should be required to file an annual report showing the number of condominium units withdrawn from the rental pool each year. As pointed out by the Public Staff in these proceedings, if a sufficient number of units were withdrawn from the hotel rental pool, it could affect St. Regis' status as a hotel with respect to the condominium units. The Commission has carefully considered St. Regis' objections to the requirement of an annual report and finds these objections to be without merit. Monitoring the status of the rental pool each year is necessary to ensure that no entity other than the hotel is engaged in the resale of telephone service. The Commission finds that a reporting requirement would neither be unreasonably discriminatory nor burdensome on St. Regis. The Commission has also examined G.S. 47C-1-106 and finds that this statute is not applicable to the matter under consideration herein. The requirement of an annual report is essential to the Commission's authority to determine hotel status under G.S. 62-3(23)g.

IT IS, THEREFORE, ORDERED as follows:

1. That the Motion of St. Regis to allow late-filed evidence is granted.

2. That in view of the Commission's findings and conclusions in this Order that restrictions in the rental agreement limiting the owners' use of their units rent free or at a reduced rate to no more than two weeks a year constitute a critical element in the determination of hotel status under G.S.

62-3(23)g, the Commission will give St. Regis an opportunity to consider its willingness to place such restrictions in the rental agreement. St. Regis shall notify the Commission and the parties of its position on this issue on or before April 13, 1987; and if St. Regis is willing to incorporate such restrictions in the management agreement, it will also advise the Commission and the parties when such restrictions will be incorporated and the language of such restrictions. The Public Staff and Carolina Telephone may file any motion or response thereto within 15 days after receipt of the report. This docket shall remain open to receive the report of St. Regis and any motions or responses of the parties.

3. That, in view of the Commission's conclusions in this Order that the rental agreements with the owners should provide that if a condominium unit is withdrawn from the hotel pool the unit cannot be placed back into the hotel pool for rental purpose at a later date, the Commission will give St. Regis an opportunity to consider its willingness to place such restriction in the management agreement. St. Regis shall notify the Commission and the parties of its position on this issue on or before April 13, 1987. This docket shall remain open to receive the report of St. Regis and any further motions of the parties.

4. That decision on the hotel status of St. Regis under G.S. 62-3(23)g is deferred pending the filing and consideration of the reports and responses required under Ordering Paragraphs 2 and 3 above.

ISSUED BY ORDER OF THE COMMISSION.
This the 12th day of March 1987.

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

DOCKET NO. P-89, SUB 24

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION.

In the Matter of The Boulevard Florist, Inc., 300 East Boulevard, Suite 1B, Charlotte, North Carolina 28203, Complainant	)	
vs.	)	RECOMMENDED ORDER GRANTING COMPLAINT IN PART
Southern Bell Telephone and Telegraph Company and BellSouth Advertising & Publishing Corporation, Respondents	)	

HEARD IN: Commissioners' Board Room, Room 400, 4th Floor, County Office Building, 720 East Fourth Street, Charlotte, N. C., on Tuesday, June 9, 1987, at 10:00 a.m.

BEFORE: Robert H. Bennink, Jr., Hearing Examiner

APPEARANCES:

For the Complainant:

A. W. Turner, Jr., Staff Attorney, Public Staff-North Carolina Utilities Commission, Post Office Box 29520, Raleigh, North Carolina 27626-0520

For the Attorney General:

Lorinzo L. Joyner, Associate Attorney General, North Carolina Department of Justice, Post Office Box 629, Raleigh, North Carolina 27602-0629

For Respondent Southern Bell Telephone and Telegraph Company:

J. Billie Ray, Jr., General Attorney, and Edward L. Rankin III, Attorney, Legal Department, Southern Bell Telephone and Telegraph Company, Post Office Box 30188, Charlotte, North Carolina 28230

For Respondent BellSouth Advertising & Publishing Corporation:

John T. Allred, Petree, Stockton & Robinson, Attorneys at Law, 217 North Tryon Street, Post Office Box 32397, Charlotte, North Carolina 28232-2397

BENNINK, HEARING EXAMINER: On May 13, 1986, Boulevard Florist, Inc., of Charlotte, North Carolina, filed a formal complaint against Southern Bell Telephone and Telegraph Company ("Southern Bell") and BellSouth Advertising & Publishing Corporation ("BAPCO"). The complaint stated in part that,

> "From July 1985, through February, 1986, at any given time during each month in the above-stated period, our service was either interrupted or not functioning properly due to the negligence of Southern Bell and those persons involved with BellSouth Yellow Pages and Select Accounts Division of Southern Bell."

The complaint set forth certain factual allegations surrounding the nature of the complaint against Southern Bell and BAPCO (Respondents) and stated that an amount of $2,940.70 was in dispute with the two companies. The complaint further alleged:

> "In addition to the above, we are prepared to prove to the Commission that we did not receive the service the Yellow Page advertisement was to have provided this business, and therefore we do not feel liable for the payment for services not rendered."

On May 20, 1986, the Commission entered an Order in this docket serving the complaint on Southern Bell and BAPCO.

On June 13, 1986, Southern Bell filed an answer to the complaint, setting forth certain defenses in response to the complaint. In its prayer for relief,

Southern Bell requested that after a hearing the Commission dismiss this complaint and close the docket.

On June 13, 1986, BAPCO, through its general counsel, filed a letter designated a "special appearance/response" contesting the Commission's jurisdiction over this matter. BAPCO also described the manner in which it attempted to resolve the dispute with the Complainant. BAPCO further advised that it had adjusted the Complainant's account in the "amount of $840.20, which equals two month's advertising for this customer, as a courtesy because of its alleged problems with telephone service."

On June 25, 1986, the Commission entered an Order in this docket entitled "Order Serving Answer, Scheduling Oral Argument on BAPCO Letter, and Modifying Restraining Order."

In a letter dated July 17, 1986, counsel for BAPCO called the attention of the Commission to a case that, in the opinion of BAPCO's counsel, supported the position of BAPCO as set forth in its special appearance/response. The case is: In the Matter of: The Proposed Assessment of Additional Franchise Tax for the Taxable Quarters Ended March 31, 1980, June 30, 1980, and September 30, 1980, by the Secretary of Revenue of North Carolina vs. Carolina Telephone and Telegraph Company, 81 N.C. App. 240 (1986).

The matter came on for oral argument on BAPCO's letter of special appearance/response on November 3, 1986. Southern Bell, BAPCO, and the Public Staff were present and were represented by counsel. On December 22, 1986, the Commission entered an Order denying the motion to dismiss, requiring BAPCO to answer the complaint and scheduling a hearing. In that Order, the Commission concluded that BAPCO was a "necessary party respondent in this complaint proceeding, since it acts as the agent or alter ego of Southern Bell with respect to the yellow page operations" and ordered that BAPCO file an answer pursuant to NCUC Rule R1-9. BAPCO filed its answer on May 14, 1986, reaffirming the defense of lack of jurisdiction. By subsequent Orders which appear of record, the hearing in this docket was rescheduled for June 9, 1987, in the County Office Building in Charlotte, North Carolina.

The official file in this docket contains various other pleadings and Orders which have not been summarized in this Order, but which are matters of public record.

The hearing on the merits of the complaint was held on June 9, 1987, in Charlotte. The Complainant presented the testimony of Michael Milton, one of the two owners of Boulevard Florist, Inc.; Myra Hosley, a part-time employee and a customer; and Sherry Smith, a customer. The Attorney General presented the testimony of Jocelyn M. Perkerson, Utility Accountant with the North Carolina Department of Justice. Southern Bell presented the testimony of Archie Parker, Assistant Manager for Customer Services. BAPCO presented the testimony of two of its employees, Judy Alexander and Marsha Wiggins.

Based on the entire record in this docket, including all testimony and exhibits introduced into evidence, the Hearing Examiner now makes the following

FINDINGS OF FACT

1. The Complainant is a domestic corporation doing business as a florist in Charlotte. The Complainant is therefore a customer of Southern Bell and BAPCO for telephone and telephone directory services.

2. Respondents Southern Bell and BAPCO are both wholly-owned subsidiaries of BellSouth Corporation and, as such, are affiliated corporations

3. Southern Bell holds a franchise to provide telephone service in and around Charlotte as well as other parts of North Carolina.

4. To facilitate use of telephone service, Southern Bell is required to publish telephone directories for dissemination to its subscribers. These directories remain the property of Southern Bell. Prior to January 1, 1984, Southern Bell performed its directory-related functions through its Directory Department. The Company has historically included a yellow pages section in its directories.

5. Yellow pages advertising is a directory-related service and an integral part of providing adequate telephone service.

6. BAPCO has contracted to publish telephone directories, including the yellow pages, for Southern Bell. This contract was submitted to the Commission for approval, but the Commission has withheld approval of the contract. See Docket No. P-55, Sub 834 (Order dated November 9, 1984). BAPCO has published directories for Southern Bell since January 1, 1984.

7. To the extent that BAPCO has assumed the directory responsibilities, both white and yellow pages, heretofore performed by Southern Bell pursuant to its approved tariffs, BAPCO acts as an agent or alter ego of Southern Bell.

8. The Commission has jurisdiction over the Respondents and the subject matter of this docket.

9. The Complainant, during the effective period of the 1985 Charlotte telephone directory, received seventy-five percent (75%) of its business from telephone orders.

10. Boulevard Florist, Inc., has been both a business telephone subscriber of Southern Bell and a subscriber to Southern Bell's yellow pages since 1981.

11. The manner in which Complainant's yellow pages ad for the 1985-1986 Southern Bell directory was solicited and handled was consistent with the manner in which those ads have always been solicited and handled.

12. The Complainant contracted with BAPCO for advertising in the yellow pages of the 1985 Charlotte telephone directory. In negotiations with Mr. Ed Sussman and Ms. Judy Alexander, both of whom worked for BAPCO, the Complainant explained that, early in the life of the 1985 telephone directory, Boulevard Florist would be moving to a new location. Because of the location where it was moving, Boulevard Florist would need a new telephone number at that new location.

13. Based on Ms. Alexander's handling of the matter and her assurances with regard to the transfer recording service, the Complainant purchased a yellow pages advertisement in the 1985 Charlotte telephone directory listing its proposed new location and telephone number. The Complainant made clear the importance of having an intercept on the new telephone number until relocation occurred.

14. But for the assurances from BAPCO, by and through Mr. Sussman and Ms. Alexander, that the Complainant's special needs could be met, Boulevard Florist would not have contracted for the yellow pages ad listing the new address and telephone number.

15. BAPCO accepted the Complainant's yellow pages ad for inclusion in the directory, knowing the criticality of the Complainant's need for an intercept.

16. The 1985 telephone directory for Charlotte became effective in July 1985. The Complainant anticipated moving to its new location in August 1985. In fact, because of delays beyond the control of the Complainant, Boulevard Florist did not actually move until March 3, 1986. The Complainant kept BAPCO and Southern Bell informed of the delays in moving.

17. The advertisement contracted for by the Complainant was correct and accurate in all respects and the intercept was installed per Mr. Milton's request.

18. Between the July 1985 effective date of the Charlotte telephone directory and March 3, 1986, either the telephone service or the transfer recording, or both, provided to Boulevard Florist were intermittently out of order. These problems were at their worst during the summer and early fall of 1985, and were less frequent after that, but did continue to some lesser degree until the Complainant moved to its new address. This situation continued despite numerous complaint calls made by the Complainant.

19. The intercept did not function properly during the period between July 1985 and February 1986 and Southern Bell's repair records are not necessarily an accurate indication of the number of times it malfunctioned.

20. The Complainant reported service problems with the intercept to BAPCO through Ms. Alexander, to Southern Bell's Repair Department, and to Southern Bell's Select Accounts through Mr. Stuart Windham.

21. Whenever the Complainant reported an intercept service problem to Ms. Alexander, it was repaired promptly without further effort on the part of Mr. Milton.

22. The Complainant did not receive the full benefit of its 1985-1986 yellow pages advertisement because of the malfunctioning intercept.

23. The Respondents failed to continuously provide Boulevard Florist with the telephone service for which the Complainant contracted when Mr. Milton placed the order for the yellow pages advertisement in the 1985 Charlotte telephone directory.

24. If a service problem occurs with a telephone subscriber who has also contracted with BAPCO for a yellow pages advertisement, BAPCO has the authority, either express or implied, to take such steps as are necessary to correct the problem.

25. BAPCO, acting as Southern Bell's agent, assumed the responsibility to have the service problems which the Complainant experienced with the intercept corrected.

26. As a result of the service problems in question, Boulevard Florist alleges that it suffered immeasurable losses in new business, old customers, out-of-town and out-of-state floral orders, and goodwill.

27. Reliable telephone service is essential to the Complainant's business. The service problems experienced by Boulevard Florist, particularly during the summer and early fall of 1985, caused the Complainant to receive less than the full benefit of its 1985 yellow pages advertisement.

28. Southern Bell has agreed to grant Boulevard Florist a three (3) month local service billing adjustment or credit in the amount of $450.72, as an allowance for the service problems and interruptions experienced by the Complainant during the period of time in question. The Complainant does not now contest the three month local service adjustment offered by Southern Bell.

29. Boulevard Florist is entitled to a three (3) month billing adjustment or credit from the Respondents applicable to the advertising charges for the 1985 yellow pages ad placed by the Complainant in the Charlotte telephone directory. This billing adjustment represents a reasonable allowance and adjustment for the service problems which the Complainant experienced between July 1985, and March 3, 1986, which were at their worst during the summer and early fall of 1985.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 1 - 7

The evidence in support of these findings of fact is contained in the official file in this docket, particularly the Order entered by the Commission on December 22, 1986; in the tariffs filed by Southern Bell in Docket No. P-55, Sub 838, of which the Commission takes judicial notice pursuant to G.S. 62-62(b); and in the testimony of Attorney General witness Perkerson.

On December 30, 1983, Southern Bell filed General Subscriber Service Tariffs in Docket No. P-55, Sub 838. Section A2.3.11 entitled "Provision and Ownership of Directories" mandates that Southern Bell and the other local exchange companies (LECs) shall publish directories for dissemination to their subscribers to facilitate the use of telephone service. New directories must be issued by the LECs approximately every twelve (12) months. Current directories remain the property of the LECs. This tariff was filed and allowed to become effective pursuant to G.S. 62-130 and G.S. 62-134, both of which deal with the Commission's authority to make or change "rates."

G.S. 62-3(24) provides that:

"Rate" means every compensation, charge, fare, tariff, schedule, toll, rental and classification, or any of them, demanded, observed,

charged or collected by any public utility, for any service product or commodity offered by it to the public, and any rules, regulations, practices or contracts affecting any such compensation, charge, fare, tariff, schedule, toll, rental or classification. (Emphasis added).

Thus, it is clear from the foregoing that Southern Bell has a duty to publish telephone directories for the purpose of facilitating the use of telephone service and the manner in which that duty is discharged is properly subject to oversight by the Commission.

The Company's tariff does not specifically address the yellow pages section of the directory where classified advertising appears. Attorney General witness Perkerson, a public utility accountant who conducted the most recent audit of Southern Bell's directory operations and sponsored testimony thereon in that Company's last general rate case, testified that she was aware of no Commission Order requiring Southern Bell to publish yellow pages advertising in its directories. She stated that Southern Bell directories were published by the telephone operating company prior to 1984 and that the yellow pages advertising which the Company included in its directories was a very lucrative business. The revenues and expenses associated therewith have received and continue to receive ratemaking treatment, according to witness Perkerson. She testified as to how and why Southern Bell's directory-related operations were transferred and stated that she was aware of no Commission Order that relieved Southern Bell of its duty to publish directories or its responsibility to consumers if there are directory-related problems. The Hearing Examiner agrees.

Southern Bell's decision to make yellow pages advertising an incidental or ancillary service component of its directories was a business decision. However, such advertising is a directory-related service which the Commission has previously determined to be an integral part of providing adequate telephone service. The Commission has heretofore discussed that determination in the Order entered in this docket on December 22, 1986, and the Hearing Examiner hereby incorporates that Order by reference, especially pages 3 - 9. Based thereon, and in light of the discussion set forth in this Order in conjunction with the Evidence and Conclusions for Findings of Fact Nos. 24-25, the Hearing Examiner concludes that to the extent BAPCO has assumed the directory responsibilities, both white and yellow pages, previously performed by Southern Bell pursuant to its approved tariffs, BAPCO acts as an agent or alter ego of Southern Bell. The Hearing Examiner further concludes as a matter of law that BAPCO's assumption of this function does not alter the Commission's jurisdiction over the directory, including the yellow pages section.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NUMBER 8

This finding of fact is primarily based upon the matters set forth in the Order entered in this docket on December 22, 1986. Evidence presented at the hearing on June 9, 1987, further supports this finding of fact.

The testimony of Attorney General witness Jocelyn M. Perkerson describes the corporate interrelationship between the Respondents. She testified that BAPCO is in a role "very similar or like that of a subcontractor" with regard to publishing Southern Bell's directories. She also testified that BAPCO was

created by a transfer of assets and the sales force from Southern Bell to BAPCO.

Complainant witness Michael Milton testified extensively regarding his contacts with personnel at BAPCO and Southern Bell. He stated that he was very confused about which company he was dealing with regarding his yellow pages advertisement and transfer recording service. Witness Milton resolved the confusion throughout his testimony by simply referring to "the phone company." Mr. Milton also testified in great detail that Judy Alexander, a BAPCO employee, handled many service problems for him.

The testimony offered by witnesses Perkerson and Milton reinforces the Order previously entered in this docket on December 22, 1986. The Hearing Examiner concludes that the Commission has jurisdiction to resolve this docket.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 9 - 11

The evidence in support of these findings of fact is contained in the testimony of Mr. Michael Milton, President of Boulevard Florist, and is uncontroverted. Mr. Milton testified that his company had been doing business in the Charlotte area since 1981. At least 75% of the Complainant's business is generated by telephone orders. Southern Bell witness Parker testified, "I would agree with that [percentage]." Boulevard Florist has been a business telephone subscriber of Southern Bell and an advertiser in the yellow pages section of Southern Bell's directory for six (6) years. Yellow pages ads have been solicited from Boulevard Florist each year when a person shows up at the Complainant's place of business and identifies himself as selling yellow pages advertising. According to Mr. Milton, "...To me, it did not matter whether they worked for--I mean, I didn't know. I though it was all interconnected. I didn't know. I still don't." He received his telephone bill with Southern Bell's logo; yellow pages charges were listed. Mr. Milton paid the total with one check to Southern Bell. Consistent with past years, Mr. Ed Sussman showed up at Mr. Milton's place of business in the summer of 1985 and solicited an ad for the upcoming directory, indicating that he worked for BellSouth Yellow Pages.

There being no evidence to the contrary, the Hearing Examiner concludes that at least 75% of the business of Boulevard Florist is generated over the telephone; that the Complainant has been a business telephone subscriber and has advertised in the yellow pages of Southern Bell's Charlotte telephone directory for six years; and that each year the Complainant's ad was solicited and handled in the same manner. Mr. Milton's testimony also supports a finding that, in his mind, there was no clear distinction as to which entity sold and published the yellow pages section of Southern Bell's directory.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 12 - 17

The evidence supporting these findings of fact is contained in the testimony of Michael Milton, BAPCO witness Judy Alexander and Southern Bell witness Archie Parker. Unless otherwise indicated, such evidence was not disputed.

According to Mr. Milton, when he was first approached about an ad in the upcoming telephone directory by Mr. Sussman, he explained his plans to move his

business to a new location. The building was under construction, but was expected to be completed and ready for occupancy in August 1985. Since this would be early in the life of the new directory, Mr. Milton indicated that he wanted the ad to reflect his new address and telephone number. Mr. Sussman referred Mr. Milton to Ms. Alexander and represented that she would assist him if there were any problems.

When he spoke with Ms. Alexander, Mr. Milton advised her of his relocation plans and communicated the importance of having an intercept placed on the new telephone. Mr. Milton testified that Ms. Alexander responded that there would be no problem with the switching device and she would help him all she could in that regard. Mr. Milton testified that he then contracted for the advertisement reflecting his new address and telephone number, with the understanding that he was getting both the ad space and the transfer service. Witness Milton stated that if he had not been promised the transfer, he would not have taken out the ad that he did, but would have left it unchanged until the following year. According to Mr. Milton, Ms. Alexander handled getting the transfer recording installed and getting a new telephone number reserved.

Witness Alexander does not dispute Mr. Milton's testimony with respect to his advising her of the planned relocation and the importance of having an intercept or transfer. However, Ms. Alexander does deny that she assigned a new number to the Complainant or secured the intercept. She testified that after Mr. Milton explained his needs, she advised him that he would need to contact Southern Bell's business office to get a new telephone number assigned and that he did so.

All witnesses agree that the intercept was in fact installed per Mr. Milton's request and that the ad appearing in the yellow pages section of Southern Bell's directory was accurate and correct. Similarly, all witnesses agree that the relocation of Mr. Milton's business was delayed from August 1985 until March 3, 1986, through no fault of his own and that Mr. Milton kept BAPCO and/or Southern Bell informed of the delays.

With respect to the remaining issues, the Hearing Examiner finds that the facts and circumstances attendant to Mr. Milton's contracting for the instant ad are generally as he indicated during direct examination. The Hearing Examiner therefore concludes that Mr. Milton advised BAPCO of his need for an intercept; that but for the assurances from BAPCO (through Mr. Sussman and Ms. Alexander) that this need would be met, Mr. Milton would not have contracted for the ad that he did; that BAPCO accepted Mr. Milton's ad knowing the importance of his need for an intercept and representing that it would and/or could assist him in that regard; and that BAPCO did exactly as it promised.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 18 - 23

The evidence for these findings of fact is found in the testimony of Mr. Milton, Complainant witnesses Mira Hosley and Sharon Smith, Southern Bell witness Parker, and BAPCO witness Alexander. All witnesses agree that the intercept failed to function properly; they disagree, however, on the frequency of such failures.

Mr. Milton testified that the transfer recording problems began "after the [1985] directory came out" and continued until the Boulevard Florist moved to

its new location on March 3, 1986 . The problems affected both the "old number" at the Kings Road location (333-8221) and the "new number" at the prospective Independence Boulevard location (537-9999). All three of the Complainant's witnesses testified that both numbers were frequently out of service at the same time. Ms. Hosley testified she called the numbers occasionally to test them, and she frequently found problems. Ms. Smith testified that "it became almost a standing joke that if you really wanted to know what was going on, really had to have flowers right away, you really had to get in your car... and drive across town to see who was there."

According to Mr. Milton, shortly after the intercept was installed, he and his associate noticed that incoming phone business was declining. They started getting feedback from regular customers who indicated that they had telephoned the number listed in the directory and got a recording to the effect that the number was no longer in service; other times, the phone would ring continuously without being answered. Mr. Milton started dialing the new telephone number himself and verified the malfunctions. These service problems were recurrent throughout the period between July 1985 and March 3, 1986.

Mr. Milton testified that when he began to experience problems with the intercept, he called Ms. Alexander "because she was the person that Mr. Sussman had originally put me in touch with who had handled the setting up of the transfer recording and of the phone number. And I just felt that by going directly to her, that she would get to the root of the problem and get it solved for us." According to Mr. Milton, Ms. Alexander did not refer him to the Southern Bell Repair Service; she checked into the problem and got it rectified and reported back to him that things were working properly. He called Ms. Alexander on at least three occasions. Mr. Milton testified that he also called Southern Bell Repair Service three times to report the intercept service problems and also reported the problem to Stuart Windham, a Southern Bell employee, seven or eight times.

The problems affected all aspects of calling service. On at least four occasions all lines were disconnected and all telephone service was out. On more frequent occasions, one line was available for dialing out, but the other line for out-going calls and all incoming lines were out.

The most serious problem though was with the incoming lines. The problem with the transfer recording affected all the incoming lines. Ms. Hosley testified, "Well, I would call and get a recording for a new number, and you would call it and it would say it was disconnected. And then I called and it would ring and ring and ring and get no answer." Mr. Milton testified without contradiction that someone manned the shop during every working hour.

Witnesses Smith and Hosley testified that they experienced the most frequent problems during the hot part of the summer and fall of 1985. Mr. Milton testified that the problems continued until the March 3, 1986 , moving date. Mr. Milton stated that he began calling Southern Bell employee Stuart Windham after November 1985 and that he called him "on at least seven or eight occasions."

Southern Bell witness Parker testified that he checked the lines daily for one or two months without finding any problem after he began working on the problem in November 1985. The last date Southern Bell recorded a complaint

call was November 1, 1985, but Mr. Parker candidly stated that it was "[v]ery possible" that the Complainant made calls that were not recorded. Moreover, Mr. Parker testified that he conversed with Mr. Windham about the problem after Mr. Parker began working on the complaint (in November 1985 or later) and Mr. Windham reported that "there were several occasions that Mr. Milton had [reported to Mr. Windham] that the recording wasn't working."

Mr. Milton testified that the Boulevard Florist continued to have problems after Mr. Windham was assigned to the complaint. Witness Milton described Mr. Windham as being "receptive to my problem" and helpful, but somewhat ineffective. Mr. Milton said:

> "[T]here were occasions when I called to let him know we would not be moving as scheduled, to please make sure the transfer recording would remain in effect, to please make sure that they wouldn't switch off the current line and cut on the new line before we moved. And too many times he just didn't follow through on that."

Thus, until the recording could be put back in order, the only operating lines would be those for the unoccupied Independence Boulevard building.

The Respondents concede that service problems occurred, but challenge the frequency of the problems. Mr. Parker testified that Southern Bell's records show only three complaint calls, but admitted that Mr. Milton's calls to Ms. Alexander would not necessarily be included on the repair records. Mr. Parker testified he offered the Complainant a three-month billing adjustment on local service because of the service problems in question and the frustrations Mr. Milton had gone through.

BAPCO witness Alexander conceded that Mr. Milton reported the intercept service problem to her at least twice and that a BAPCO customer service supervisor, Joyce Johnson, got it repaired. Ms. Alexander would then call to verify that the intercept was working and would so inform the Complainant. She did not refer Mr. Milton to Southern Bell repair or business offices. Ms. Alexander talked to Mr. Milton four or five times; the last few times were intercept service complaints.

The Hearing Examiner concludes that Mr. Milton called to complain about the telephone service in question on as many as 13 or more occasions consisting of a minimum of two or three calls to Ms. Alexander, at least one call on a weekend, three or four calls to repair service, and at least seven or eight calls to Mr. Windham. This being the case, the Hearing Examiner further concludes that the service problems in question occurred more frequently than the Respondents contend. In addition, whenever Mr. Milton reported a service problem to Ms. Alexander, the problem was repaired promptly without further effort on his part. The Complainant's telephone service was intermittently out of order during the period of time from the effective date of the 1985 directory until March 3, 1986. The testimony indicates that the problem was at its worst during the summer and early fall of 1985, but that it continued on a less frequent basis until the Complainant moved to its new address.

Based on the Evidence and Conclusions for Finding of Fact Number 13, the Hearing Examiner further concludes that the Complainant contracted for the 1985 yellow pages advertisement in reliance on Ms. Alexander's assurances regarding

the transfer recording service. That service, which the Complainant contracted for in conjunction with the advertisement, was intermittently out of order until the Complainant moved on March 3, 1986. Thus, the Respondents failed to continuously provide service as they had contracted to do, particularly during the summer and early fall of 1985. As a result, the Complainant did not receive the full benefit of its yellow pages ad because of the intercept malfunction.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 24-25

The evidence supporting these findings of fact is contained in the testimony of BAPCO witness Alexander and Southern Bell witness Parker. Witness Parker testified on direct examination that BAPCO cannot assign a telephone number to a Southern Bell customer. He also testified that BAPCO employees cannot intercept numbers or calls for phones to be intercepted. Mr. Parker admitted on cross-examination, however, that if Ms. Alexander knew someone in Southern Bell's service order group, it was possible for her to arrange to have a telephone number assigned and intercept equipment installed.

BAPCO witness Alexander, who worked for Southern Bell until 1984, testified that she probably has the authority to arrange for an intercept on Mr. Milton's phone but did not do so and that BAPCO's Customer Service Department could do that. Ms. Alexander also testified that it was not unusual for her to get service calls from Southern Bell customers when she had helped them with their yellow pages ads.

The Hearing Examiner notes that the above testimony was not contradicted by any other witness and finds that it leads to the conclusion that, as a practical matter, if service problems occur with telephone subscribers who have also contracted with BAPCO for yellow pages ads in the Southern Bell directory, BAPCO has the authority, either express or implied, to take the steps necessary to arrange for the repair of the service problems reported to its personnel. The Hearing Examiner further concludes that, in this case, BAPCO exercised that authority. Since BAPCO has no franchise obligation to remedy service problems, it could only have done so as an agent or alter ego of Southern Bell.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 26

The evidence supporting this finding of fact is contained in the testimony of witnesses Milton, Hosley, and Smith. Ms. Hosley and Ms. Smith each testified that they had purchased flowers from other florists because they could not reach the Boulevard Florist by telephone during the period of time in question.

Mr. Milton testified, "I'm sure we lost business.... And I have got no way of measuring. I just don't know of how much business we lost. But I'm sure we lost some."

In a business so dependent on telephone orders, any attempt to determine lost business would be pure speculation. Mr. Milton's testimony that he surely lost business was not contradicted, but the extent of any such losses cannot be measured with any degree of certainty.

Clearly Ms. Hosley and Ms. Smith were potential customers who went elsewhere. Mr. Milton testified that there were times "when my partner, Gary and I would be ... wondering ... why we were not getting any incoming business over the phone." When he checked the telephone lines, he would find that they were not working. Regular customers complained that they could not reach the shop. As a result, witness Milton testified that he saw "a slow down in incoming orders."

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 27

The evidence for this finding of fact is found in the Evidence and Conclusions for Findings of Fact Nos. 9 and 26 and in the testimony of Mr. Milton. When three-quarters of a business's orders are received by telephone, reliable telephone service is a necessity. In this case, the periodically unreliable service provided to the Complainant resulted in losses.

The evidence in this case is contradictory and confusing regarding how often and for how long the Complainant's telephone was not in service. The Hearing Examiner concludes that the intercept service provided to the Complainant was out of order often enough to result in losses of business. The Complainant asserts that these losses occurred not only during the period of time from July 1985 through March 3, 1986, but continued thereafter and that goodwill was damaged.

A business purchases a yellow pages advertisement to maintain and generate business. The Hearing Examiner concludes that, because of the service problems in question, the Complainant did not receive the full benefit from its 1985 yellow pages advertisement.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 28 AND 29

The evidence for these findings of fact is based on the Evidence and Conclusions for Findings of Fact Nos. 23 and 27 and the testimony of Mr. Milton. It is elementary that a customer should not be required to pay for services he did not receive. The Complainant contracted with BAPCO for a yellow pages advertisement in conjunction with a transfer recording service. If not for the promised intercept service, the Complainant would not have ordered the yellow pages advertisement that it did. Adequate and reliable service was not provided to the Complainant on a continuous basis and, as a result, the Complainant received less than the full benefit of its 1985 yellow pages advertisement.

The complaint against Southern Bell alleges that interruptions in the telephone service provided to the Complainant occurred as a result of failures of the intercept service. Pursuant to applicable tariff provisions, Southern Bell has agreed to grant the Complainant a three (3) month local service adjustment in the amount of $450.72. Southern Bell witness Parker maintained that the Company's tariffs limit the relief that may be awarded to the Complainant. The Complainant no longer contests the three month local service adjustment offered by Southern Bell for the problems with that service. The Hearing Examiner concludes that such adjustment is reasonable.

Yellow pages, however, are not covered by the tariffs. Thus, the Hearing Examiner must decide what adjustment, if any, is just and reasonable in this

case. The Complainant testified, "I shouldn't have to pay anything for [the advertisement]. I don't believe I got the service the ad was supposed to provide." BAPCO originally offered the Complainant a two (2) month billing adjustment in the amount of $840.20 with respect to the directory advertising charges in question, but now requests the Commission to find that the Complainant is indebted to BAPCO for the full amount of the 1985 directory advertising charges.

The Hearing Examiner concludes that the Complainant did not receive the full benefit of its 1985 yellow pages ad because of the malfunctioning intercept and the resulting service problems which occurred primarily during the summer and early fall of 1985. On the basis of the evidence in this case, the Hearing Examiner is of the opinion, and so concludes, that the Respondents should be required to provide the Complainant with a three (3) month billing adjustment as a credit to the advertising charges associated with the Complainant's 1985 yellow pages ad. Although the value of the yellow pages ad placed by the Complainant was undoubtedly affected in a negative manner by the malfunctioning intercept, the Hearing Examiner cannot conclude that the yellow pages ad in question was rendered absolutely worthless for the full period of the directory as requested by the Complainant. The intercept service was provided for a period of approximately eight (8) months during the period from July 1985, through March 3, 1986, when the Complainant moved to its new location. The intercept service was discontinued on March 3, 1986, and therefore did not cause any further problems after that date. Mr. Milton also testified on cross-examination that the majority of the problems in question were generally corrected the same day and that, towards the end, the problems were corrected within a couple of hours. Those service problems were also at their worst during the summer and early fall of 1985, and were less frequent after that. The Complainant has accepted a three month local service billing credit from Southern Bell as an allowance for those service problems. Similarly, the Hearing Examiner concludes that a three month adjustment to the Complainant's yellow pages charges is warranted by the evidence in this case and will adequately compensate the Complainant for the fact that it received less than the full benefit of its 1985 yellow pages advertisement. This billing adjustment is just and reasonable to both the Complainant and the Respondents.

The billing adjustments for local service and for the 1985 yellow pages ad which the Complainant will receive pursuant to the provisions of this Order will, in the aggregate, total more than $1,700. The Hearing Examiner concludes that such amount will fairly compensate Boulevard Florist for the service problems experienced during the period of time under consideration and for the decreased benefit which the Complainant derived from the yellow pages ad in question. Furthermore, the Respondents are hereby directed to waive any late payment charges which may have been assessed against the Complainant in conjunction with the billing charges at issue in this docket.

The testimony in this case was very confused about how much the Complainant still owes for the 1985 yellow pages advertisement (somewhere between $2,834.43 and $4,808.88, although the pleadings seem to dispute these figures) and how much it has already paid (no figures mentioned but a general consensus that some amount has been paid; e.g., Transcript, page 144). The Hearing Examiner hereby calls upon the parties in this case to cooperate and

take all reasonable steps to amicably resolve the issue of the dollar value of the Complainant's remaining liability for the 1985 yellow pages ad.

IT IS, THEREFORE, ORDERED as follows:

1. That Southern Bell shall grant Boulevard Florist a three (3) month local service billing adjustment or credit in the amount of $450.72, as an allowance for the service problems experienced by the Complainant during the period of time from July 1985, through March 3, 1986.

2. That Southern Bell and BAPCO shall grant Boulevard Florist a three (3) month billing adjustment or credit applicable to the advertising charges for the 1985 yellow pages ad placed by the Complainant in the Charlotte telephone directory.

3. That Boulevard Florist shall pay the Respondents any additional amount that is still outstanding and unpaid for the 1985 yellow pages ad placed by the Complainant.

4. That no late payment charges shall be assessed against the Complainant in conjunction with any of the billing charges at issue in this docket.

ISSUED BY ORDER OF THE COMMISSION.
This the 1st day of December 1987.

NORTH CAROLINA UTILITIES COMMISSION
(SEAL) Gail Lambert Mount, Deputy Clerk

DOCKET NO. P-7, SUB 711

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Carolina Telephone and Telegraph Company - Extended Area Service between Fuquay-Varina, Apex, and Cary	)	ORDER REQUESTING COST STUDY

BY THE COMMISSION: On March 2, 1987, the Public Staff presented this matter in Monday morning staff conference. The Public Staff reported that it has received petitions from approximately 2300 subscribers for toll free service between Carolina Telephone and Telegraph Company's (CT&T, Carolina), Fuquay-Varina exchange and Southern Bell Telephone and Telegraph Company's (Southern Bell) Apex and Cary exchanges. In addition the Public Staff indicated that numerous businesses, churches, schools, and civic organizations in the three exchanges have filed letters supporting the extended area service (EAS) arrangement.

The Public Staff believes that the support demonstrated for the EAS is sufficient to pursue this matter further and recommends that Southern Bell be required to do an EAS cost study to determine the incremental equipment cost and resulting local rate increases necessary to provide the EAS from its Apex and Cary exchanges to the Fuquay-Varina exchange. The monthly increases that would apply at the Fuquay-Varina exchange, based on Carolina's matrix rate, are $.82 and $1.99 for one-party residential subscribers and one-party business subscribers, respectively.

Charles McLaurin, immediate past president of the Fuquay-Varina Chamber of Commerce, and Bill Freeman, former mayor pro tem of Fuquay-Varina and a present member of the House of Representatives, appeared at the May 2, 1987 conference and spoke on behalf of the proposed service offering. Larry Matthews, President of the Apex Chamber of Commerce, appeared on behalf of the Apex community and supported the toll free calling proposal. Finally, Ms. Regina McLaurin, immediate past president of the Cary Chamber of Commerce, appeared on behalf of Cary and spoke in support of the proposed EAS arrangement. These individuals indicated that a strong community of interest exists between these areas. The three exchanges are all located in Wake County and encompass one House district in the general assembly. The emergency zone for the Shearon Harris nuclear plant overlaps some of the telephone boundaries involved. Certain of the area schools cross these telephone boundaries also. These community representatives indicated that many indivduals live in one local calling area and work in another local calling area; therefore, toll free service is desirable for these individuals.

Don Hathcock appeared at staff conference on behalf of Southern Bell. Mr. Hathcock reminded the Commission of its September 25, 1986, Order in Docket No. P-100, Sub 89, involving extended area service. In Mr. Hathcock's opinion, this request violates the decision rendered in the September 25, 1986, case involving new requests for EAS.

On March 16, 1986, in staff conference, Mr. Hathcock presented the Commission with a status report of the local exchange companies' (LECs) actions taken relative to the Triangle J. Council of Governments' (Triangle J) request for toll free calling in the Triangle area. Mr. Hathcock stated that the

involved LECs are currently conducting calling studies and cost studies of the triangle area in an effort to make a proposal to Triangle J this summer.

The Commission has carefully considered this matter and concludes that Southern Bell should conduct cost and calling studies for its Apex and Cary exchanges relative to toll free calling between Apex, Cary, and Fuquay-Varina. Since Southern Bell and other involved LECs are actively conducting a study on toll free calling for the entire triangle region, the Commission requests Southern Bell to provide cost study and calling study information specific to calling between Fuquay-Varina, Apex, and Cary in conjunction with the larger study.

The Commission recognizes that the generic EAS Order did address the processing of pending and new EAS matters; however, Southern Bell is actively involved in the Triangle J study on its own volition which of necessity includes the areas involved in this requested EAS arrangement. The Commission therefore requests Southern Bell to conduct a cost and calling study involving EAS between its Apex and Cary exchanges and Carolina's Fuquay-Varina exchange. The Commission requests that such study be done on incremental and fully allocated cost bases. The Commission further requests that the estimated toll losses associated with the arrangements be computed. Finally, the Commission requests Southern Bell to file the EAS rate increases which would be applicable under its proposed EAS matrix tariff. These filings shall include work papers fully supporting the underlying calculations. A further Order will be issued by the Commission based upon the cost study results. The Commission requests that this information be submitted to the Commission in conjunction with completion of the Triangle J study with an anticipated filing date of June 15, 1987.

IT IS, THEREFORE, ORDERED that Southern Bell Telephone and Telegraph Company be, and is hereby, required to perform cost and calling studies relative to extended area service between Fuquay-Varina, Apex, and Cary as specified herein.

ISSUED BY ORDER OF THE COMMISSION.
This the 27th day of March 1987.

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

Commissioner Sarah Lindsay Tate, dissenting
Commissioner J. A. Wright, dissenting

COMMISSIONER TATE, DISSENTING: On September 25, 1986, this Commission issued an Order in Docket No. P-100, Sub 89 setting up a generic investigation of EAS so that cases would be handled consistently and equitably. That Order stated:

> "All EAS matters which have been scheduled for public hearing, for the polling of affected subscribers, or for cost studies to be performed will be processed on an individual case by case basis by the Commission. Regarding future EAS proposals, all decisions requiring the polling of customers will be suspended pending resolution of this investigation."

This Order clearly states that unless an EAS matter was at that time scheduled for hearing, or awaiting a poll or cost study, it would be suspended pending the generic investigation. In September of 1986, there was no matter pending regarding EAS between Fuquay-Varina, Cary and Apex. If the Commission does not honor its own Orders, should it expect others to do so?

The Majority's rationalization that an EAS involving all of Triangle J. somehow justifies ordering cost studies for a Fuquay-Varina, Cary and Apex EAS is pure sophistry. Apparently, this Commission is incapable of treating EAS matters with consistency and equity. In fact, of late, the Commission seems incapable of making a decision and sticking to it. Perhaps the Commission would do well to look up what STARE DECISIS means and begin practicing it.

. Commissioner Sarah Lindsay Tate

DOCKET NO. P-75, SUB 33
DOCKET NO. P-75, SUB 34

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

DOCKET NO. P-75, SUB 33

In the Matter of Petition of Barnardsville Telephone Company, Inc., for Investigation of Plans Offering Extended Area Service on a Countywide Basis	)	ORDER REQUIRING SERVICE IMPROVEMENTS AND EAS POLL AND DEFERRING RULING ON MOTION TO INSTITUTE SHOW CAUSE PROCEEDING
and	)	
DOCKET NO. P-75, SUB 34	)	
In the Matter of Petition of the Public Staff for a General Investigation into the Adequacy of Service Provided by the Barnardsville Telephone Company, Inc.	)	

HEARD IN: Barnardsville Elementary School, Barnardsville, North Carolina, on Tuesday, October 28, 1986, at 7:00 p.m.
and
Commission Hearing Room 2115, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on Thursday, October 30, 1986

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

APPEARANCES:

For Barnardsville Telephone Company, Inc.:

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

TELEPHONE - EXTENDED AREA SERVICE

For Continental Telephone Company of North Carolina:

F. Kent Burns, Boyce, Mitchell, Burns & Smith, P.A., Post Office Box 2479, Raleigh, North Carolina 27602

For Southern Bell Telephone and Telegraph Company:

Edward L. Rankin III, Attorney, and J. Billie Ray, Jr., General Attorney, 1012 Southern National Center, Post Office Box 30188, Charlotte, North Carolina 28230

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

BY THE COMMISSION: On July 2, 1986, Barnardsville Telephone Company, Inc. (Barnardsville, BTC, or Company), filed in Docket No. P-75, Sub 33, a "Petition for Investigation of EAS Plan." The petition requested that the Commission order an investigation of plans to provide extended area service (EAS) from the Barnardsville exchange to the other telephone exchanges in Buncombe County, North Carolina. Barnardsville asserted that if a concerted effort were made by all parties to address the need for EAS, a plan could be devised to satisfy the wants and needs of the Company's customers without placing an undue financial burden on those customers, while preserving the financial integrity of the Company. Therefore, Barnardsville requested the Commission to order an investigation of alternate plans to provide EAS from Barnardsville to the exchanges in Asheville, Arden, Black Mountain, Enka, Fairview, Leicester, Swannanoa, and Weaverville in Buncombe County, North Carolina.

On July 25, 1986, the Public Staff filed a "Petition for General Investigation of Barnardsville Telephone Company," accompanied by a petition signed by over one thousand people and several letters from community leaders supporting improvements to the telephone service provided by Barnardsville, a public utility providing local telephone service and access to the toll network to approximately 830 subscribers in Buncombe County, North Carolina. The Public Staff stated that since receiving the petition, its investigation indicated that there was justification for the Commission to initiate a general investigation into the adequacy of service provided by the Barnardsville Telephone Company.

On August 14, 1986, Barnardsville filed a response in opposition to the Public Staff's petition for a general investigation of the Company.

By Order dated September 3, 1986, the Commission consolidated both dockets for hearing and investigation and scheduled a public hearing for Tuesday, October 28, 1986, at 7:00 p.m. in the Barnardsville Elementary School for the purpose of receiving customer testimony regarding the request for EAS and the general adequacy of service provided by Barnardsville. Forty-two witnesses testified in favor of EAS with numerous witnesses expressing concern with the adequacy of service provided by the Company. The hearings were resumed in

Raleigh on Thursday, October 30, 1986, to receive the testimony of witnesses for the Company and other parties.

On September 11, 1986, Southern Bell Telephone and Telegraph Company (Southern Bell) filed a petition to intervene in these dockets. Southern Bell's petition to intervene was allowed by Commission Order dated September 15, 1986.

On October 14, 1986, Continental Telephone Company of North Carolina, Inc. (Continental), filed a petition for leave to intervene in these proceedings. Continental's petition to intervene was allowed by Commission Order dated October 16, 1986.

Barnardsville offered the testimony of the following witnesses: Joseph E. Hicks, President of Barnardsville Telephone Company, Inc., testified on service and various EAS options and costs; Arland Hocker, Vice President for Revenue Requirements for TDS, testified that a pooling of revenue arrangement was appropriate in EAS matters to protect smaller companies which do not have the ability to average costs over a large subscriber base; George E. Brombacher III, Southeast Region Customer Service Manager for TDS, testified on a proposed Extended Community Calling Plan (ECC) for Buncombe County; and James C. Meade, Director of Revenue Requirements for the TDS Southeast Region, testified on the revenue impacts of EAS. George L. Daniel's prefiled testimony relating to equipment cost was adopted and testified to by Joseph E. Hicks on behalf of Barnardsville.

Orville Douglas Fulp II, Revenue Requirements Manager for Contel Service Corporation, Eastern Region, testified as to Continental's opposition to any pooling arrangement for EAS; and Sandy E. Sanders, Staff Manager - Rates for Southern Bell Telephone and Telegraph Company, testified in opposition to EAS pooling in Buncombe County for Barnardsville and against flat rate nonoptional EAS in general.

The Public Staff did not prefile or offer any expert testimony in either docket.

At the conclusion of the hearing in Raleigh, the parties were requested to file briefs and/or proposed orders for consideration by the Commission in deciding these proceedings.

On November 17, 1986, Barnardsville filed a letter in these dockets as a late-filed exhibit setting forth certain information which had been requested by the Public Staff during the hearing held in Raleigh.

On November 21, 1986, Continental filed a brief setting forth the Company's position regarding these dockets.

On November 26, 1986, the Public Staff filed a motion in these dockets whereby the Commission was requested to institute a show cause proceeding against Barnardsville to determine whether the Company's certificate of public convenience and necessity should be revoked. On that same day, Southern Bell filed a brief and Barnardsville filed a brief and proposed order setting forth their positions regarding these dockets.

On December 12, 1986, the Attorney General filed a Notice of Intervention in these dockets on behalf of the using and consuming public.

On December 18, 1986, Barnardsville filed a response in opposition to the Public Staff's motion for show cause proceeding.

After reviewing all of the testimony, exhibits, and the entire record in this proceeding, the Commission now makes the following

FINDINGS OF FACT

1. Barnardsville Telephone Company, Inc., Continental Telephone Company of North Carolina, Inc., and Southern Bell Telephone and Telegraph Company are public utilities subject to the jurisdiction of the North Carolina Utilities Commission. These companies provide telephone service in various areas of North Carolina which they have undertaken to serve, including Buncombe County, North Carolina.

2. A petition signed by over one thousand people and several letters from community leaders have been filed with the Commission supporting implementation of countywide EAS for Barnardsville telephone subscribers. The preamble to this EAS petition provides as follows:

> "We the people of Barnardsville, in Buncombe County, wish to make this complaint!!! Why must we pay for long distant calls here when all other areas of Buncombe County can call free of charge????? We feel the people of Barnardsville, which is in Buncombe County are being discriminated against and should be provided with toll free calling on a county wide basis at a reasonable rate the same as the rest of the county."

3. Barnardsville residential customers currently pay a monthly local service rate for one-party service of $8.80. The current rate for a one-party business line in Barnardsville is $14.80 per month. As of October 31, 1986, Barnardsville had a total of 830 local access lines in service. Barnardsville does not presently have EAS to any point in Buncombe County. The Barnardsville telephone exchange is the only exchange in Buncombe County that presently does not have EAS which is essentially countywide. Countywide EAS for Buncombe County excluding Barnardsville was implemented effective January 25, 1986.

4. Barnardsville proposes to charge its customers an additional $9.71 per month per local access line for countywide EAS, if implemented. This $9.71 increment for EAS, if implemented, when added to the current $8.80 residential rate per month for basic local service would then result in a monthly rate for Barnardsville residential customers of $18.51 for basic local service, including countywide EAS. Weaverville residential customers served by Continental presently pay a rate of $19.35 per month for basic local service, including countywide EAS.

5. Extended Community Calling (ECC) is an optional service offering or discounted toll calling plan whereby customers can buy one hour's worth of long distance calling for a flat fee and additional one-tenth hour increments, also for a flat fee. ECC is presently offered in Buncombe County only from Asheville to Barnardsville and from Barnardsville to Asheville.

6. Barnardsville should proceed in a timely manner to address and correct the chronic service complaints and problems testified to at the public hearings and the service-related issues set forth in Hicks Exhibit JEH-2, the Company's "Quality of Service Audit."

7. A significant amount of interest in and support for countywide EAS for Barnardsville subscribers has been expressed by citizens, business institutions and local government officials.

8. Barnardsville Telephone Company should proceed to conduct a poll of its Barnardsville subscribers regarding implementation of countywide EAS.

WHEREUPON, the Commission reaches the following

CONCLUSIONS

Barnardsville Telephone Company, as a wholly owned subsidiary of Telephone and Data Systems, Inc. (TDS), has provided telephone service to the citizens of Barnardsville, North Carolina, since 1973. TDS is a Chicago, Illinois, holding company that operates approximately 58 telephone companies. BTC is managed from an office in Leesburg, Alabama. TDS also owns and operates the Fair Bluff exchange in North Carolina.

Barnardsville is located in northeastern Buncombe County approximately 20 miles north of Asheville. There are 2,000 people in BTC's service area and approximately 822 local telephone customers. Except for Barnardsville, essentially every part of Buncombe County has countywide toll free calling through extended area service. Specifically, there is EAS between the following exchanges: Weaverville, Asheville, Arden, Black Mountain, Enka-Candler, Fairview, Leicester, and Swannanoa. However, a call going in either direction between the Barnardsville exchange and any of the foregoing exchanges is a toll call (except for the Extended Community Calling Plan to and from Asheville). Hospitals and basic medical services are located in Asheville, which is outside the local calling scope of Barnardsville. Almost all of the businesses with which Barnardsville residents deal are located outside the local calling scope. Although Barnardsville has its own elementary school, the nearest high school is in Weaverville, which is outside the local Barnardsville calling scope.

For years there have been unsuccessful efforts to obtain countywide EAS for Barnardsville (see Docket Nos. P-75, Subs 24 and 24A, and Docket No. P-55, Sub 792). By Order entered in Docket No. P-55, Sub 792, on February 15, 1984, the Commission approved implementation of countywide EAS for Buncombe County excluding Barnardsville. Such EAS was implemented effective January 25, 1986.

On the basis of the petitions initially filed in these dockets by Barnardsville and the Public Staff on July 2, 1986, and July 25, 1986, respectively, the Commission established an investigation and scheduled a public hearing in Barnardsville for the purpose of receiving customer testimony regarding the request for EAS and the general adequacy of service provided by Barnardsville.

The public hearing was held in the Barnardsville Elementary School as scheduled. Approximately 500-650 people were present in the school

gymnasium/auditorium. Almost all of the witnesses testified to the need for countywide EAS, and most testified to the long-standing problems related to service. Only three people stated that their telephone service was good or adequate. Two of those three witnesses were also in favor of countywide EAS. Several speakers were careful to point out that their long-standing problems with telephone service were directed to the Company and its lack of support for adequate and modern equipment, not the the local employees.

Chronic telephone problems cited by speakers included the following:

1. Total breakdown of service during inclement weather.

2. Other parties breaking in on conversations on private lines; picking up phone to dial on private lines and hearing ongoing conversations.

3. Being connected with numbers totally different from the one dialed.

4. Receiving a dial tone after dialing a number.

5. Line goes dead after dialing a number.

6. Dialing a number over and over and getting a ringing signal because of too few lines. Dialing a number over and over and getting a ringing signal when at the same time the party you are calling is at home and their phone is not ringing.

7. Buzzing, popping, and cracking sounds during dialing and conversation.

8. General noise at such levels that it is impossible to hear.

9. Disconnections in the middle of conversations.

10. Line improperly sited (for instance, on the ground, on fence posts, through trees, etc.)

11. Extended Community Calling Plan: Not all Asheville prefixes are included. One can dial for hours sometimes and not be able to get through to Asheville because of the limited number of lines. Further, ECC only goes in one direction.

12. The volunteer fire department and rescue squad call diverter sometimes gets a busy signal when it attempts to route emergency calls to Asheville.

13. One of the very few businesses in Barnardsville (and the only one with a key system to our knowledge) - Ohio Electric Motors - stated in a letter (Dietz Exhibit 1) that it would no longer be able to survive and keep its 192 employees without "greatly improved" telephone service. Ohio Electric noted the following specific problems:

a. Calling long distance - not getting calls to go through, other conversations on the line, and background conversations.
b. Local calls - cut offs or nothing at all.
c. 800 calls - not getting 800 number calls through, recordings coming in on 800 calls.
d. Receiving calls - disconnected during conversation, busy signals.
e. Tie line to Asheville - cut offs.
f. FAX - local conversation when phone is picked up to dial out.

14. Lack of any outside pay phones.

15. Lack of true touchtone and other calling features (which apparently will not be available to Barnardsville customers until the mid-1990's, according to Mr. Hicks).

The customers of BTC made clear the fact that they have long since given up reporting these problems to the Company because they believed that there was nothing the local employees could do about them. This fact tends to render somewhat suspect the Company's trouble index.

Two petitions were submitted to the Commission by Marshall Roberts, head of the Steering Committee. One petition was signed by approximately 80% of the subscribers of BTC stating that their service was inadequate and agreeing to pay up to $19.35 per month for service comparable to that in the rest of Buncombe County. The second petition was signed by 17 residents who did not have phones but who stated that they would have telephones and be willing to pay up to $19.35 per month for service if the telephone service were adequate and comparable to that in the rest of Buncombe County. This is a clear indication that there would be a greater saturation of telephone customers in Barnardsville if service was adequate and if EAS was implemented.

Just before the first recess, Presiding Commissioner Hipp, pursuant to a Public Staff request, asked how many people in the room favored countywide EAS. All but one of the people present voted in the affirmative. When asked how many people believed their phone service was inadequate apart from the lack of EAS, almost all of the people in attendance raised their hands.

The public hearing concluded at approximately 11:30 p.m. Taking into account not only the testimony of public witnesses, but also the reaction of the audience to what was being said, there can be no question about three things: one is the overwhelming desire of Barnardsville citizens to have countywide EAS and their willingness to pay for it; second, apart from a lack of EAS, is their dissatisfaction with the present and past adequacy of telephone service; and third, their concern about future service and rates.

On October 30, 1986, in Raleigh, the Commission heard testimony from four witnesses sponsored by BTC and one witness each from Southern Bell and Continental. Both Southern Bell and Continental had intervened in this docket at an earlier date.

Company witness Hicks testified that the customers of Barnardsville Telephone Company are currently receiving a very high grade of basic telephone service and that, in his opinion, the real issue in this case is not that of poor telephone service, but the fact that Barnardsville customers are the only telephone customers in Buncombe County who cannot call all of the Buncombe County telephone exchanges "toll free." Mr. Hicks further testified that the cost of EAS today is approximately 30% of the cost projected three years ago, largely because the Company is now able to use different technology in the central office and because of changes in toll revenue separations and settlement procedures. According to Mr. Hicks, Barnardsville can now provide countywide EAS to its customers based upon a monthly rate increase of $9.71 per access line.

Accompanying Mr. Hicks' testimony was Exhibit JEH-2 entitled "Quality of Service Audit" conducted for the Company on August 13-14, 1986. Mr. Hicks testified that this report did not reveal any major service problems, although there were items that were receiving immediate attention by the Company. The following deficiencies were set forth in that report:

1. Pulsing Relays. Deficiencies here can cause wrong numbers, rings with no answer, dial tones after dialing, and dead lines. The relays were "seriously deficient" in their ability to pulse "the entire range" of 8-12 pulses per second. On 375 test calls over a wide range of parameters of resistance and capacitance, the overall failure rate was 13%. The Commission objective is 1%. The audit discovered that BTC did not even have the equipment necessary to test these relays until recently. Customers complained at the public hearing of the kinds of problems associated with deficient relays and apparently these problems have existed for years.

2. Noise:

   a. Central offices noises. This concerns noise on the phone line caused by deficiencies in the central office. The audit found the office "has a definite noise problem." Readings of dBRNC were too high at both the batteries and the power board. In addition, it found "static burst" on both local and toll calls.
   b. "B" route noise. The audit found "excessive noise readings" in fringe areas of the "B" route.
   c. Other route noise. Other routes showed excessive noise and power influence on tests at customer locations. Of the 12 customers whose locations were spot-checked, 33% had unacceptable circuit noise, 25% were marginal, and only 42% were acceptable. When tested for power influence at those same 12 locations, 25% of the lines were unacceptable, 50% marginal, and only 25% acceptable.
   d. Dial tone. There is a need for a precise, solid state dial tone supply to be obtained and installed, since currently the dial tone was measured at -22 dBM instead of the normal reading of -10 dBM.

Customers complained at the public hearings of these kinds of problems and such problems have apparently existed for years.

3. Toll cable deficiencies. The present toll cable is a 50 pair cable that was installed around 1962. The audit found that water has entered the cable in several locations. In addition, there apparently are lightning holes burned into it. Mr. Hicks cited this as the most serious problem found by the audit. Problems associated with this kind of deficiency are dead lines or noise. Customers complained at the public hearings of problems related to this kind of deficiency and indicated that such problems have existed for years.

4. Other problems. There were many other deficiencies cited by the audit, including:

a. A need for a digital subscriber carrier (instead of cable) on the "B" route.
b. A need to install 200 lines and 200 terminals at Barnardsville.
c. A need for repairs and renovations in the generator room.
d. A need for additional training of personnel on the AE step-by-step switch. Further, because the central office is "basically unmanned," the audit recommended consideration of a Northeast Electronics 41 SAU for finding intermittent troubles.
e. Main distribution frame. Shiners (bare wires) exist on several jumpers, some protectors are missing from cable pairs, and it simply needs to be cleaned.

With respect to these service problems, Mr. Hicks testified that Barnardsville is totally committed to correcting any service deficiencies and that, as a policy matter, service is the Company's number one goal. Mr. Hicks further testified that, with the exception of the toll cable which will be replaced by mid-1987, at a cost of approximately $100,000, the Company was then in the process of actively investigating and correcting all known service problems with such work to be completed by the end of 1986, at the latest. Mr. Hicks also made a commitment on the record that if the Commission approves and implements EAS at an incremental monthly charge of $9.71 per access line, Barnardsville will not file for a general rate increase for a period of two years.

Company witness Hocker testified concerning certain recommendations made on behalf of Barnardsville regarding proposed modifications to the current EAS joint company cost allocation arrangements. Mr. Hocker testified that if the Commission determines that EAS is in the public interest, modifications should be made to the current EAS intercompany settlement arrangement to achieve more equitable rate averaging. Specifically, Mr. Hocker testified that these modifications should be premised on the fact that EAS is still an interexchange service and that the costs of such service must be more equally apportioned among participating subscribers. Mr. Hocker suggested the following modifications to intercompany EAS offerings:

1. The joint cost of providing EAS should be incorporated into an annual cost study approach, just as is the case for the service EAS replaces.
2. To assure more equitable rate averaging, the joint company costs of providing EAS should be spread equally among all subscribers that receive access to the offering; i.e., all subscribers in Buncombe County.

Company witness Brombacher testified in support of a proposed revision to the Company's ECC plan designed to expand the plan's calling area to include all of Buncombe County. The Company's proposed expanded ECC plan would retain the current measured rate structure, but would also increase monthly local service rates for all BTC customers by $4.58 to make up for a revenue requirement deficiency allegedly resulting from a reduction in intrastate toll settlements.

Company witness Meade testified in support of the $9.71 per month incremental charge which Barnardsville alternatively proposes per each access line if countywide EAS is implemented. Specifically, Mr. Meade testified that the additional revenues required for Barnardsville, assuming there is no change in the joint company EAS compensation arrangement, is $89,499 annually. According to Mr. Meade, this annual cost reflects three components as follows:

1. $27,825 to cover the increased investment-related costs associated with implementing EAS.
2. $53,674 to cover toll revenue losses.
3. $24,000 as an estimate of the costs associated with preparation of the Company's EAS cost study amortized over a period of three years at an annual cost of $8,000.

Continental witness Fulp and Southern Bell witness Sanders testified in opposition to Barnardsville's proposal regarding the EAS pooling concept in particular and EAS for Barnardsville in general. Continental witness Fulp further testified that his Company conducted a toll usage study in preparation for the hearings in these dockets which indicated that during the study period 80.2% of the Company's Weaverville customers made no calls to Barnardsville. Southern Bell witness Sanders testified that, generally speaking, additional EAS is no longer as appropriate in North Carolina as it was earlier, but that if the Commission in fact decides that EAS is needed on certain routes, the matrix proposed by Southern Bell in Docket No. P-55, Sub 870, constitutes a more appropriate pricing method. Witness Sanders further testified that the latest data available to Southern Bell indicates that over 96% of the customers in each of the Company's exchanges in Buncombe County do not place any calls to Barnardsville in a given month. According to witness Sanders, Southern Bell presently has only four subscribers to the Asheville-Barnardsville ECC plan while Barnardsville has 300 subscribers to its Barnardsville-Asheville ECC plan. Witness Sanders stated that, at a minimum, Southern Bell's customers should be polled regarding their desire for EAS to Barnardsville at the matrix rates. Witness Sanders also testified that flat rate nonoptional EAS is inappropriate with respect to the EAS in question and that requiring Southern Bell to share BTC's cost to provide this EAS would be unfair, confiscatory and could cause an increase in the number of requests for EAS.

Based on the foregoing, the Commission reaches the following conclusions:

1. The customers of Barnardsville Telephone Company have in fact experienced the chronic service problems previously discussed in this Order as reflected in their testimony and also in the Company's own "Quality of Service Audit." The customers believe that the basic quality of local telephone service provided by Barnardsville is inadequate. Barnardsville, through the testimony of Company President Hicks and the brief filed on November 26, 1986, maintains that it is thoroughly committed to improving its quality of service

and to correcting all service deficiencies by the end of 1986, at the latest, with the exception of the Company's toll cable which will be replaced by mid-1987. Prior to ruling on the Public Staff's motion for a show cause proceeding, the Commission will allow Barnardsville a reasonable opportunity to prove that the Company can in fact correct all of the chronic service deficiencies experienced by its customers and to demonstrate that the Company is thoroughly committed to providing adequate service at reasonable rates on an ongoing basis. For this reason, the Commission hereby defers ruling on the Public Staff's motion for a show cause proceeding. Barnardsville will be required to file a full and complete report with the Commission by March 2, 1987, detailing all of the steps taken by the Company to correct the chronic service deficiencies in question and setting forth the procedures which the Company will henceforth follow to ensure that such chronic service problems do not recur in the future. This report and subsequent quality of service reports should contain the results of objective testing procedures, the results of which are subject to verification. The Commission will continue to closely monitor the quality of service provided by Barnardsville for the next two years to ensure that customers served by the Company receive adequate service at reasonable rates. Barnardsville will be required to file reports every six months beginning September 1, 1987, and continuing through March 1, 1989, regarding its quality of service. The Commission requests the Public Staff to also carefully monitor the quality of service provided by the Company for the next two years.

2. The Commission agrees with the Public Staff that Barnardsville should be required to provide adequate service to its customers at reasonable rates. Barnardsville maintains that it can meet this requirement. The Commission wishes to take this opportunity to impress upon Barnardsville the seriousness with which the Commission views this proceeding. Unless the Company can in fact correct its chronic service problems and still maintain reasonable rates for its customers, the likelihood of further regulatory proceedings is virtually inevitable. The Commission further notes that the Company has made a firm commitment not to file for a general rate increase for a period of two years if the Commission ultimately approves and implements EAS at an incremental monthly charge of $9.71 per access line.

3. The customers of Barnardsville Telephone Company have clearly demonstrated the fact that they consider their extremely limited local calling scope to be inadequate and that they definitely support implementation of countywide EAS in Buncombe County. This support has been demonstrated by both the EAS petition which was signed by over one thousand people and by the large turnout of people and testimony offered at the public hearing held on October 28, 1986, in Barnardsville. Therefore, the Commission will require Barnardsville to conduct a poll of its subscribers to determine whether countywide EAS should be implemented based upon a monthly incremental rate increase of $9.71 per access line. Although the Public Staff has attempted to call the validity of the Company's cost study into question, the Commission believes that the $9.71 incremental rate increase will be sufficient, based upon the expert testimony of Company witnesses, to recover all costs reasonably incurred by Barnardsville in conjunction with implementation of countywide EAS, if ultimately approved. The Commission will authorize implementation of countywide EAS for Barnardsville if approved by a majority of the Company's customers who vote by returning their EAS ballots.

4. If the EAS in question is ultimately approved by Barnardsville subscribers, it will be implemented without any increase in rates to those customers in Buncombe County who are served by Southern Bell and Continental. The Commission specifically rejects Barnardsville's proposed pooling or shared cost arrangement for the EAS in question for the reasons generally given by the witnesses for Southern Bell and Continental. The Commission is of the opinion that the incremental equipment costs which will be incurred by Southern Bell and Continental in providing EAS to Barnardsville, excluding lost toll revenues, will in all likelihood be de minimis. For instance, Continental witness Fulp testified that a recent calling study indicated that 80.2% of the Company's Weaverville customers made no calls to Barnardsville during the study period and that almost 91% of Continental's customers made two or less calls to Barnardsville per month. In its brief filed in this docket on November 21, 1986, Continental even stated that the interest of Weaverville subscribers in EAS to Barnardsville "...is so low that the cost of a cost study or a customer poll would be an unnecessary and unwarranted expense" and that the "...almost total lack of interest on the part of Continental and Southern Bell customers in calling Barnardsville indicates the futility of further efforts to establish EAS." Southern Bell witness Sanders testified that the Company's latest available data indicates that over 96% of the customers in each Southern Bell exchange in Buncombe County do not place any calls to Barnardsville in a given month. In addition, Southern Bell has only four subscribers to the Asheville-Barnardsville ECC plan as compared to the 300 subscribers to the Barnardsville-Asheville ECC plan. Southern Bell's ECC plan from Asheville to Barnardsville has been in effect since 1972. There is no ECC plan in effect between Barnardsville and Weaverville. In its brief filed on November 26, 1986, Southern Bell stated that "...based on previous Southern Bell calling data, a new toll study will likely show that there is not a community of interest high enough to justify Southern Bell's expense of performing a cost study" and that "...by all traditional standards, there is no demonstrable community of interest between Southern Bell's customers and Barnardsville." Based on this record, the Commission concludes that the volume of EAS calls originating in the service territories of Southern Bell and Continental and terminating in Barnardsville will in all likelihood impose only de minimis incremental equipment costs on those companies. The Commission further notes that the EAS matrix rates proposed by Southern Bell for use in these proceedings are still under investigation in Docket No. P-55, Sub 870, and have not been approved. No hearing has yet been held with respect to the Company's proposed EAS matrix. Therefore, the Commission concludes that it would be entirely inappropriate to apply the proposed matrix rates with respect to the EAS matter in question. Both Continental and Southern Bell had ample notice of the hearings in these dockets and neither company prepared or offered in evidence the results of an EAS cost study. Therefore, for all of the reasons set forth above, the Commission concludes that if countywide EAS for Barnardsville is ultimately approved, it will be implemented without any increase in rates to those customers in Buncombe County who are served by Southern Bell and Continental since it clearly appears that the incremental equipment costs to be incurred by those companies in providing EAS to Barnardsville, excluding lost toll revenues, will be de minimis. For these reasons, there is no need to conduct an EAS poll of telephone subscribers served by Southern Bell and Continental.

If, however, either Southern Bell or Continental or both desire to present the results of cost studies to the Commission which clearly demonstrate that

the incremental equipment costs, excluding lost toll revenues, associated with implementation of the EAS in question are not de minimis, and that those companies would thereby experience undue or irreparable financial harm as a result of implementing the EAS in question at no additional charge to their customers, the Commission will consider an appropriate petition or petitions for reconsideration. Any such petitions should be filed not later than 30 days from the date of this Order and will only be granted upon a clear and convincing showing of good cause.

5. If countywide EAS for Buncombe County is authorized after results of the EAS poll have been analyzed, Southern Bell will be required to tandem switch calls between Barnardsville and Weaverville and the exchanges served by Southern Bell unless it can be shown that a more efficient and cost effective method of switching should be utilized.

IT IS, THEREFORE, ORDERED as follows:

1. That Barnardsville Telephone Company shall take all actions necessary to correct the chronic service deficiencies and problems experienced by its customers and to demonstrate that the Company is thoroughly committed to providing adequate service at reasonable rates on an ongoing basis. Barnardsville shall file a report with the Commission not later than Monday, March 2, 1987, detailing all of the steps taken by the Company to correct the chronic service deficiencies discussed hereinabove and setting forth the procedures which the Company will henceforth follow to ensure that such chronic service problems do not recur in the future. This report and subsequent quality of service reports should contain the results of objective testing procedures which are subject to verification. Barnardsville shall file additional quality of service reports every six months beginning September 1, 1987, and continuing through March 1, 1989.

2. That a ruling on the motion for show cause proceeding filed by the Public Staff on November 26, 1986, be, and the same is hereby, deferred in order to allow Barnardsville a reasonable opportunity to demonstrate that the Company can in fact correct all of the chronic service problems experienced by its customers and to demonstrate that the Company is capable of providing adequate service to its customers at reasonable rates on an ongoing basis.

3. That Barnardsville shall conduct a poll of its customers as soon as possible regarding their desire for countywide EAS in Buncombe County based upon a monthly incremental EAS charge of $9.71 per access line. In conducting this poll, Barnardsville shall use the customer notice attached hereto as Appendix A. The final results of this poll shall be filed with the Commission not later than twenty (20) days after such results have been tabulated. If the final results of this poll are favorable to implementation of the EAS in

question, Barnardsville shall file, after consultation with Southern Bell and Continental, a statement regarding the earliest date that such EAS may be implemented.

ISSUED BY ORDER OF THE COMMISSION.
This the 30th day of January 1987.

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

Commissioner Sarah Lindsay Tate dissents.
Chairman Robert O. Wells did not participate.

APPENDIX A

NOTICE OF REQUEST FOR YOUR VOTE ON COUNTYWIDE EXTENDED AREA SERVICE CALLING IN BUNCOMBE COUNTY
DOCKET NOS. P-75, SUBS 33 AND 34

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

NOTICE IS HEREBY GIVEN that Barnardsville Telephone Company, Inc., has been authorized by the North Carolina Utilities Commission to poll the subscribers in the Barnardsville exchange regarding the matter of countywide extended area service (EAS) in Buncombe County. The purpose of the poll is to determine how many Barnardsville subscribers are in favor of paying higher monthly flat rates for toll-free calling throughout Buncombe County.

Proposed Monthly Rates for Countywide EAS

	Residence 1-Party	Business 1-Party
Present monthly rates	$ 8.80	$ 14.80
EAS rate increase	$ 9.71	$ 9.71
New monthly rates if EAS approved	$18.51	$ 24.51

Increases of $9.71 per month per access line will also apply to multiparty, key, and PBX rates.

You are requested to consider the question, mark your preference on the enclosed postcard ballot (prestamped and addressed), and mail the ballot at your earliest convenience. Ballots postmarked after midnight _____, 1987, will not be counted in the vote. In addition, the ballot must be signed by a customer and a telephone number must be provided in order for the ballot to be counted in the vote. FAILURE TO VOTE WILL BE CONSIDERED AS A VOTE TO AGREE TO THE OUTCOME DESIRED BY A MAJORITY OF THOSE VOTING. The Commission's decision on this countywide EAS proposal will be announced after the poll has been completed.

If you need additional information about this matter, you may contact your local telephone office (XXX-XXX-XXXX) or the Public Staff, P. O. Box 29510, Raleigh, North Carolina 27626-0520, (919) 733-2810.

ISSUED BY ORDER OF THE COMMISSION.
This the 30th day of January 1987.

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

DOCKET NO. P-55, SUB 879

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Request by Southern Bell Telephone and Telegraph) ORDER REQUIRING
Company to Conduct Extended Area Service Poll) POLL

BY THE COMMISSION: On December 31, 1986, Southern Bell Telephone and Telegraph Company (Southern Bell) filed a letter with the Commission requesting authority by January 15, 1987, to conduct a poll of the Company's customers in Chapel Hill and at the Raleigh-Durham Airport regarding their desire for extended area service (EAS) between the following locations:

1. RDU Airport to Chapel Hill
2. RDU Airport to Durham
3. Chapel Hill to RDU Airport

Southern Bell proposed to poll its customers on an interim basis using the rates contained in the Company's proposed EAS matrix tariff, which is pending in Docket No. P-55, Sub 870. Southern Bell states that the following EAS matrix tariff information would be applicable in the polling process:

	Mileage Band	Lines and Trunks in Added Exchange	Incremental Increases Res.	Bus.	PBX
RDU Airport to Chapel Hill	17-20	14,000 - 80,000	$1.00	$2.30	$4.04
RDU Airport to Durham	11-16	over 80,000	$1.90	$4.40	$7.70
Chapel Hill to RDU Airport	17-20	0 - 14,000	$0.34	$0.78	$1.35

This matter was presented in regular Staff Conference on January 12, 1987, by the Commission Staff. The Commission Staff requested that all interested parties be allowed an opportunity to make recommendations to the Commission regarding this matter.

John C. Brantley representing Raleigh-Durham Airport Authority (RDU or airport) appeared at Staff Conference and stated that RDU and all businesses in the airport support toll free calling between RDU and Chapel Hill and RDU and Durham. Mr. Brantley stated that the airport is currently experiencing rapid

growth and that telecommunications services are very important to the airport and its tenants. It was Mr. Brantley's stated belief that a poll of Chapel Hill and Durham subscribers regarding their preference on EAS to RDU at the stated matrix rates would likely result in a majority voting negatively for the EAS arrangement. The reason for this is the fact that the airport and its tenants now have foreign exchange (FX) lines to Chapel Hill and Durham which allow individuals in those areas to call the airport without a charge. However, Mr. Brantley stated that the current arrangement is inefficient. Mr. Brantley indicated that the airport and its tenants are willing to pay all costs associated with two-way toll free calling between the airport and Chapel Hill and the airport and Durham.

Don Hathcock appeared at the January 12, 1987, Staff Conference and presented Southern Bell Telephone and Telegraph Company's position on the proposed toll free calling between the airport and Chapel Hill and the airport and Durham. Southern Bell proposed conducting a poll of the Chapel Hill and RDU subscribers as to their willingness to pay additional rates to obtain toll free calling between the areas.

Southern Bell's proposed EAS matrix rates have been previously listed herein. Mr. Hathcock indicated that there appeared to be doubts as to the success of deriving a positive vote in Chapel Hill on the matter. Mr. Hathcock referenced a letter from Robert Gruber, Executive Director of the Public Staff, suggesting the opinion that a poll of the Chapel Hill exchange using the matrix rates would likely result in a negative majority vote. In response to the potential outcome of polling the Chapel Hill subscribers, Southern Bell offers several alternatives to its original proposal. Southern Bell indicates that cost studies could be conducted over the next 60 to 90 days. However, Southern Bell indicated that due to the anticipated expansion in the RDU Airport any cost studies conducted at present would be speculative at best.

Another alternative offered by Southern Bell is to treat the proposed RDU EAS similarly to the current situation with Research Triangle Park (RTP). Southern Bell recognizes the similarity in the telecommunication needs of RDU and RTP. Southern Bell recommends establishing an EAS boundary strictly within a well defined geographic area for RDU. Like the RTP, toll free calling for RDU would be limited to affected business subscribers only. Restrictions would be required for FX service and Feature Group A Service (FGA) within RDU. Southern Bell proposes establishing the EAS with an appropriate differential of approximately 25% for RDU customers only. The proposed rate would result in an increase in the monthly business one party rate from $37.85 to $47.31.

Norman Farmer representing General Telephone Company of the South (General) appeared at the January 12, 1987, Staff Conference to present General's position on the proposed EAS arrangement. General supports two-way EAS between Durham and RDU based on the requests General has received for the service from subscribers. General agrees with Southern Bell's proposal to respond to such needs on an expedited basis. General proposed polling Durham customers based on Southern Bell's matrix rating scheme. General advocates using the matrix rate on an interim basis until a cost study can be performed based on the expanded RDU operations and until resolution of Docket No. P-100, Sub 89. General also proposed restricting FX services and FGA services at RDU.

General stated a belief that a generalized expansion of local calling should be considered for the entire Triangle Area (Raleigh, Durham, and Chapel Hill) in the near future. General suggested a plan to offer expanded local calling on a two-part price structure which includes usage related charges based on incremental costs. Such a plan could be enhanced with flat rate extended calling options for those customers with significant extended calling requirements. General indicated a willingness to accept the Commission's decision on the RDU matter including the plan to treat the RDU in a similar manner to RTP. However, General points out that under such a plan General would not be sharing the increased flat rate charge billed by Southern Bell and that the Company would experience toll losses under such an arrangement.

The Public Staff offered its position on the proposed EAS arrangement. The Public Staff advocated authorizing the companies to proceed implementing the EAS arrangement at RDU and to use the RTP rate differential on an interim basis. The Public Staff advocates the requirement of cost studies from both Southern Bell and General in order to use actual cost in the rate differential to be applied to RDU on an ongoing basis. The Public Staff indicated that if the Commission believes a poll is not necessary then an interim rate may be unnecessary since cost studies may be completed prior to EAS implementation.

The Attorney General basically supported the Public Staff's position on this matter. The Attorney General advocates using an RTP type arrangement for the RDU EAS arrangement and using the 25% rate differential to RDU subscribers on an interim basis. The Attorney General advocates requiring cost studies ultimately from Southern Bell and General.

The Commission has carefully considered this matter and the position of each of the parties and concludes that a poll should be conducted by Southern Bell of its RDU subscribers to ascertain their willingness to pay increased basic local service rates for toll free calling between RDU and Durham and between RDU and Chapel Hill. The increased flat rate amount for polling purposes should be 25% of the Raleigh business rates. This poll should be conducted by Southern Bell as expeditiously as possible with the polling results submitted to the Commission thereafter. The Commission will look favorably upon the proposed EAS arrangement in the event of a positive majority vote by RDU subscribers. Upon receiving positive results from the RDU subscribers, the Commission will approve the toll free service with rate increases to RDU subscribers only. No increases in basic rates will be allowed for Chapel Hill and Durham subscribers. The Commission will not require Southern Bell and General to conduct cost studies of the proposed EAS arrangement at this time since RDU is anticipating a significant expansion in the near future and the results of a study would likely be significantly altered by the expansion. Further, both companies have agreed to the use of an RTP like plan. However, the Commission will give proper consideration to any filing presented by either General or Southern Bell which contains credible evidence tending to show that use of an RTP like plan for RDU results in substantial harm to either of the companies' financial operations. The Commission recognizes that Southern Bell and General are participating in a task force studying EAS matters and that specific recommendations for some arrangement for the entire Triangle area may be forthcoming. Thus the Commission finds the decision rendered of using an RTP like plan for the RDU EAS to Durham and Chapel Hill to be an appropriate and reasonable solution to

the matter. The Commission considers the boundary restrictions and FGA and FX restrictions proposed by Southern Bell and General reasonable.

IT IS, THEREFORE, ORDERED that Southern Bell Telephone and Telegraph Company shall conduct a poll of telephone subscribers located at Raleigh-Durham Airport in accordance with the provisions of this Order to determine whether such subscribers are willing to pay an approximate 25% increase in basic telephone rates to obtain two-way toll free calling between the airport and Durham and the airport and Chapel Hill.

ISSUED BY ORDER OF THE COMMISSION.
This the 21st day of January 1987.

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

Commissioner Sarah Lindsay Tate, dissenting

COMMISSIONER TATE, DISSENTING. I dissent from this Order because I believe it is essential that the beneficiaries of an EAS should pay the costs of obtaining the service. Without cost studies, it is impossible to know what the costs are or whether the 25% differential covers those costs. I would adopt the position of the Public Staff and the Attorney General to allow the rates to become effective on an interim basis until cost studies could be conducted after the expected expansion at RDU. After analysis of the cost studies, a permanent rate could be set.

This Commission has failed to determine a consistent policy for EAS matters and thus implements EAS whenever requested and on whatever terms seem to be most politically acceptable. Each time an EAS is approved without fully recovering the cost of service, the unrecovered cost is passed on to the general body of ratepayers, thereby raising the local rates of everyone to benefit a few. This is poor policy and unfair.

Since the Raleigh Durham Airport Authority has graciously offered to pay all of the costs, the Commission does not have its usual painful problem of how to apportion the cost. But without cost studies, there is no way to know that the Airport customers are being fairly assessed the real cost.

Secondly, while Southern Bell will receive some revenues through the 25% differential, General Telephone will have costs but no recovery. The Majority suggests that if substantial harm occurs, either Southern Bell or General can ask the Commission for further consideration. However, at that time the EAS would be in existence. The Airport customers should be notified that their rates may change at the time they are polled, so they can reach an informed decision.

The Majority has once again failed to follow a consistent approach which treats all EAS matters equally and fairly. There are no precedents to be followed because each case is treated as unique.

Sarah Lindsay Tate, Commissioner

TELEPHONE - RATES

DOCKET NO. P-26, SUB 93

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Application of Heins Telephone Company for Authority to Adjust Its Rates and Charges for Intrastate Telephone Service	)	ORDER GRANTING PARTIAL INCREASE IN RATES AND CHARGES

HEARD IN: Superior Courtroom, Lee County Courthouse, Sanford, North Carolina, Monday, December 8, 1986, and Commission Hearing Room, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, Tuesday, December 9, 1986

BEFORE: Commissioner Ruth E. Cook, Presiding; and Commissioners Edward B. Hipp and Julius A. Wright

APPEARANCES:

For Heins Telephone Company:

F. Kent Burns, Boyce, Mitchell, Burns & Smith, P.A., Post Office Box 2479, Raleigh, North Carolina 27602

For the Using and Consuming Public:

Vickie L. Moir, Staff Attorney and Antoinette R. Wike, Chief Counsel, Public Staff - North Carolina Utilities Commission, Post Office Box 29520, Raleigh, North Carolina 27626-0520

For AT&T Communications of the Southern States:

Michael Crowell, Tharrington, Smith & Hargrove, Attorneys at Law, 209 Fayetteville Street Mall, Post Office Box 1151, Raleigh, North Carolina 27602

BY THE COMMISSION: On July 14, 1986, Heins Telephone Company (Heins, the Company, or the Applicant) filed an application with the Commission for authority to adjust its rates and charges for telephone service in North Carolina effective for service rendered on and after August 15, 1986. The requested increase in rates and charges was $670,296, in additional revenues from intrastate operations when applied to a test period consisting of the 12 months ended December 31, 1985.

By Order dated August 12, 1986, the Commission declared the matter to be a general rate case pursuant to G.S. 62-137, suspended the proposed increase in rates and charges for 270 days from the August 15, 1986, effective date, set hearings to begin on December 8, 1986, declared the test period to be the 12 months ended December 31, 1985, required the Company at its expense to give public notice of the proposed increase and hearings, and set the time for the Public Staff and other intervenors to file testimony.

On November 20, 1986, a Petition to Intervene was filed by AT&T Communications of the Southern States, Inc. The Commission granted this Petition by Order issued November 24, 1986.

The public hearings came on as scheduled. No public witnesses appeared to testify at the hearing in Sanford. Public witness Joseph R. Overby appeared and offered testimony at the hearings in Raleigh.

The Company presented the testimony and exhibits of the following witnesses: George H. Sidman, President; L. Stephen Coffield, Vice President-Finance; and Walter L. Drury, Vice President-Administration and Treasurer. The Company also presented the testimony and exhibits of Dr. James H. Vander Weide, Research Professor of Finance and Economics at the Fuqua School of Business of Duke University and President of Financial Strategy Associates.

The Public Staff presented the testimony and exhibits of the following witnesses: James S. McLawhorn, Engineer-Communications Division; John Robert Hinton, Financial Analyst-Economic Research Division; William J. Willis, Jr., Engineer-Communications Division; and Lafayette K. Morgan, Jr., Staff Accountant-Accounting Division.

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

FINDINGS OF FACT

1. The Applicant, Heins Telephone Company, is a corporation duly organized under the laws of the State of North Carolina and has its principal office and place of business in Sanford, North Carolina. Heins is a wholly owned subsidiary of ALLTEL Corporation. Heins is providing telecommunications service to the public in North Carolina and is subject to the jurisdiction of this Commission. The Company 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, Heins requested rates designed to produce additional gross annual revenues of $670,296, based on a test year ended December 31, 1985.

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 Heins is adequate.

5. The Company's reasonable original cost rate base is $12,811,619, consisting of telephone plant in service of $24,630,303, materials and supplies of $256,378, working capital allowance of $348,329, and Rural Telephone Bank (RTB) Stock of $477,662, reduced by accumulated depreciation of $10,321,104, customer deposits of $95,216, accumulated deferred income taxes of $2,166,935,

pre-1971 investment tax credits of $2,933, and average tax accruals of $314,865.

6. Heins' gross revenues for the test year under present rates after accounting and pro forma adjustments are $7,095,756.

7. The Company's reasonable level of test year operating revenue deductions after accounting, pro forma, and end-of-period adjustments is $6,143,207.

8. The capital structure which is reasonable and appropriate for use in this proceeding is:

Item	Percent
Long-term debt	58.79%
Common equity	41.21%
Total	100.00%

9. The proper embedded cost of long-term debt is 5.65%. The reasonable rate of return for Heins to be allowed to earn on its common equity is 13.25%. A weighted average of the cost of long-term debt and common equity yields an overall just and reasonable rate of return of 8.78% to be applied to the Company's original cost rate base. This rate of return will allow the Company by sound management to maintain its facilities, to meet the reasonable requirements of its customers, and to compete in the market for capital on terms which are reasonable to its customers and to its investors.

10. Based upon the foregoing, Heins should be authorized to increase its annual level of gross revenues under present rates by $352,536 in order to be given a reasonable opportunity to earn the 8.78% rate of return on rate base which the Commission has found just and reasonable. This increased revenue requirement is based on the cost of the Company's property and its reasonable test year operating revenues and expenses as determined in the above findings of fact.

11. The rates and charges to be filed pursuant to this Order in accordance with the guidelines contained herein and attached hereto as Appendix A, which will produce an increase in annual revenues of $352,536, are just and reasonable.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 1, 2, AND 3

The evidence supporting these findings of fact is contained in the verified application, in the Commission Order setting the matter for investigation and hearing, and in the record as a whole. Heins became a wholly owned subsidiary of ALLTEL Corporation on August 20, 1986, as authorized by Commission Order issued June 26, 1986, in Docket No. P-26, Sub 94. These findings of fact are generally informational, procedural, and jurisdictional in nature, and the matters which they involve are essentially uncontested.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 4

The evidence concerning the quality of service was presented by Company witness Sidman and Public Staff witness McLawhorn. The only public witness appearing at the hearings testified that the service rendered by the Company was good.

Company witness Sidman testified that the service being provided by Heins meets the standards of the Commission. He also stated that ALLTEL Corporation's management, as well as Heins', is committed to meeting the future needs of its customers.

Under cross-examination, witness Sidman stated that he was familiar with the quality of service objectives proposed by Public Staff witness McLawhorn. He stated that the proposed objectives are appropriate in the evaluation of the quality of service provided by Heins Telephone Company in the future. He further testified that Heins is prepared to consistently meet those objectives.

Public Staff witness McLawhorn testified that Heins met the Commission's objectives in most cases with regard to the central office and paystation tests performed by the Public Staff. With regard to Company-provided operating statistics, witness McLawhorn stated that Heins has consistently met the Commission's objectives with the exception of the recommended objective for repeat reports per 100 access lines. Also, he stated that the Olivia exchange needs improvement with regard to the recommended objective for total trouble reports per 100 access lines. Witness McLawhorn concluded that the overall level of service provided by Heins at the time of his investigation was adequate. Further, he recommended the adoption of the guidelines contained in Appendix B to his direct testimony as the proper quality of service guidelines to be used henceforth in evaluating Heins Telephone Company.

Based upon the evidence in this proceeding, the Commission concludes that the overall quality of service provided by Heins is adequate. The Commission is of the opinion that the Company should make a fair and reasonable effort to correct the weak spots outlined in Public Staff witness McLawhorn's Exhibit No. 8 to his direct testimony which are as follows: intraoffice call completion in the Broadway and Sanford exchanges; direct distance dialing transmission in the Sanford exchange; total trouble reports in the Olivia exchange; and repeat reports companywide. Further, the Commission concludes that the quality of service objectives proposed by witness McLawhorn in his Appendix B and agreed to by Company witness Sidman are appropriate for use in evaluating the service of Heins from this point forward. The Commission recognizes that these objectives will bring Heins in line with the objectives found reasonable by this Commission for the evaluation of the quality of service provided by other telephone companies in North Carolina. The Commission also concludes that Heins should strive to consistently meet these objectives on both an exchange and a total-company basis.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 5

The evidence concerning the proper intrastate original cost rate base is found in the testimony and exhibits of Company witness Coffield and Public Staff witness Morgan. The following chart summarizes the amounts which the

Company and the Public Staff contend constitute the rate base to be used in this proceeding as set forth in their proposed orders in this docket.

Item	Company	Public Staff	Difference
Telephone plant in service	$ 24,630,303	$ 24,630,303	$ -
Materials and supplies	256,378	256,378	-
Working capital allowance	348,329	347,910	(419)
Rural Telephone Bank stock	477,662	477,662	-
Accumulated depreciation	(10,321,104)	(10,321,104)	-
Customer deposits	(95,216)	(95,216)	-
Deferred income taxes	(2,166,935)	(2,166,935)	-
Pre-1971 investment tax credits	(2,933)	(2,933)	-
Average tax accruals	(314,865)	(314,865)	-
Original cost rate base	$ 12,811,619	$ 12,811,200	$ (419)

As the table shows, the Company and the Public Staff are in agreement on all items of the rate base except for the working capital allowance. The Commission therefore concludes that the amounts shown for telephone plant in service, materials and supplies, RTB stock, accumulated depreciation, customer deposits, accumulated deferred income taxes, pre-1971 investment tax credits, and average tax accruals are just and reasonable for use in setting rates in this proceeding.

The sole difference in rate base is accounted for by the different levels of operating expenses used by the parties in determining working capital. Both parties used the formula method to determine Heins' working capital allowance. This formula, as used by this Commission, is based on one-twelfth of operating expenses less depreciation and other taxes. The differences between the parties' level of operating expenses used in the working capital calculation is brought about by the parties' disagreement as to whether rate case expenses should be amortized over two years or three years. The Commission concluded in the Evidence and Conclusions for Finding of Fact No. 7 that these expenses should be amortized over two years; therefore, the Commission finds and concludes that the proper amount of working capital to be included in the rate base is $348,329, which includes $46,994 for average prepayments.

Based on the foregoing, the Commission concludes that the fair and reasonable original cost rate base to be used in setting rates in this proceeding is $12,811,619, as shown in the following table:

Item	Amount
Telephone plant in service	$ 24,630,303
Materials and supplies	256,378
Investment in RTB stock	477,662
Working capital	348,329
Customer deposits	(95,216)
Accumulated depreciation	(10,321,104)
Accumulated deferred income taxes	(2,166,935)
Average tax accruals	(314,865)
Pre-1971 investment tax credits	(2,933)
Original cost rate base	$ 12,811,619

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 Coffield and Public Staff witnesses Willis and Morgan. The following schedule reflects the parties' positions in their proposed orders as to the issue of the proper level of end-of-period revenues.

Item	Company	Public Staff	Difference
Local service revenue	$3,397,120	$3,397,120	$ -
Toll service revenue	2,844,589	2,874,816	30,227
Miscellaneous revenue	809,093	838,963	29,870
Uncollectibles	(15,143)	(15,143)	-
Total operating revenues	$7,035,659	$7,095,756	$60,097

As the table shows, the Company and the Public Staff agree on the amounts of local service and uncollectible revenues; therefore, the Commission concludes that these amounts are just and reasonable for use in setting rates in this proceeding. The factor used by the Public Staff and the Company and accepted by the Commission to calculate uncollectible revenues is .0036.

The difference in toll service revenues of $30,227 is the direct result of the use of different capital structures and long-term debt cost rates by the parties. As discussed under the Evidence and Conclusions for Finding of Fact No. 8 the Commission has adopted the use of the Company-specific capital structure and related long-term debt cost rate rather than the parent consolidated capital structure and associated long-term debt cost rate. Therefore, the Commission concludes that the proper amount of toll service revenue for use in this proceeding is $2,874,816.

The difference in miscellaneous revenues of $29,870 arises out of the parties' different treatment of a refund of gross receipts taxes on the Company's directory advertising revenues which was paid by the Company between 1976 and 1984.

The Company excluded these gross receipts tax refund revenues on the basis that it believes these revenues to be nonrecurring since there will be no more gross receipts tax on directory advertising revenues and hence no more refunds in the future.

Public Staff witness Morgan recommended that this gross receipts tax refund received by the Company during the test period be returned to the customers. He testified on this issue as follows:

> During the test year, the Company was refunded $89,610 for gross receipts taxes paid on yellow page advertising revenues from 1976 to 1984. The Company made an adjustment to remove this refund from miscellaneous revenues. On Schedule 3-7, I have made an adjustment to amortize this refund over a three-year period. The three-year amortization period is based upon the recommended rate case expense amortization period. It is my opinion that it is proper for the ratepayers to receive the benefit of this refund since they have paid in rates that were set based upon yellow page advertising revenues being included in the gross receipts tax base. Any refund of these taxes should be returned to the ratepayers.

Witness Morgan further testified that in the last two rate cases neither the Company, the Public Staff, nor the Commission made an adjustment to remove yellow page advertising revenues from the gross receipts tax calculations. Since the Commission included gross receipts taxes related to yellow page advertising in the cost of service in these two cases, rates were set to cover the level of gross receipts taxes which have now been refunded.

Both Company witness Coffield and Public Staff witness Morgan indicated that the amount of refund includes interest for the refund period.

On cross-examination, witness Coffield stated that the Company opposes the refund amortization because the Company considers the refund to be nonrecurring.

Witness Morgan, on the other hand, testified that there are items, such as rate case expense, which do not recur annually but are amortized over a given period; therefore, the nonrecurring nature of this refund does not prevent it from being amortized for the purpose of setting rates in this proceeding.

There are several dockets in which this Commission has addressed the issue of refunds, including three with circumstances similar to this case: Docket No. P-55, Sub 834, in which Southern Bell was required to give ratepayers the benefit of an AT&T refund; Docket No. E-35, Sub 13, in which Western Carolina University was required to give ratepayers the benefit of a refund received from Nantahala Power and Light Company related to overcharges for purchased power; and Docket No. G-100, Sub 37, in which natural gas distribution companies were required to refund monies received from their supplier Transco. The Commission takes judicial notice of its Orders in these proceedings.

Heins, like the companies cited, received a cash refund for overpayment of an expense. In all cases the expense item that was overpaid was placed in the cost of service based on conditions at the time rates were set. Subsequent to collecting rates to cover a higher level of expense, each company became eligible for refunds upon the determination that the level of expense should have been lower.

Based upon the foregoing, the Commission finds that gross receipts taxes were overstated in prior cases and that customers were overcharged by the amount of the refunded taxes.

Public Staff witness Morgan, on cross-examination, stated that the $89,610 gross receipts tax refund received by the Company included interest of $19,096. Accordingly, the Commission also finds that it is appropriate that interest should be added to the refund according to G.S. 62-130(e), which reads as follows:

> In all cases where the Commission requires or orders a public utility to refund monies to its customers which were advanced by or overcollected from its customers, the Commission shall require or order the utility to add to said refund an amount of interest at such rate as the Commission may determine to be just and reasonable;...

The Commission finds that it is appropriate that the total refund of $89,610, which includes interest of $19,096, should be refunded to Heins' customers. In consideration that the gross receipts tax refund arises from the overpayment of an expense that was allowed by this Commission to be collected in rates for the period of time between 1976 and 1984 based on conditions at the time rates were set, the Commission finds that it is fair and reasonable to amortize this refund over a three-year period.

In summary, the Commission concludes that the proper end-of-period level of operating revenues for use herein is $7,095,756 and is made up of the following:

Item	Amount
Local service revenue	$3,397,120
Toll service revenue	2,874,816
Miscellaneous revenue	838,963
Uncollectibles	(15,143)
Total operating revenues	$7,095,756

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 7

The evidence concerning this finding of fact is found in the testimony and exhibits of Company witness Coffield and Public Staff witness Morgan. The following chart compares the amounts which the parties contend should be included in the end-of-period level of operating revenue deductions as reflected in their proposed orders:

Item	Company	Public Staff	Difference
Operating expenses	$3,595,336	$3,595,336	$ -
Rate case expenses	15,070	10,047	(5,023)
Depreciation expense	1,651,736	1,651,736	-
Taxes other than income	518,297	518,565	268
Interest on customer deposits	5,608	5,608	-
State income tax	41,924	53,335	11,411
Federal income tax	223,798	306,035	82,237
Total operating revenue deductions	$6,051,769	$6,140,662	$ 88,893

As can be seen from the chart, the parties agree that the proper amount of operating expenses for use in this case is $3,595,336; the appropriate depreciation expense is $1,651,736; and the appropriate level of interest on customer deposits is $5,608. There being no disagreement, the Commission finds and concludes that those amounts are just and reasonable.

The difference between the parties as to rate case expenses involves the question as to whether these expenses should be amortized over two years as proposed by the Company or over three years as proposed by the Public Staff. The Public Staff stated that the shortest interval between rate cases is three years, the elapsed time period since the Company's last rate case, and therefore the Public Staff is of the opinion that this time period should be used. The Company argued that it has only had four rate cases in the history of the Company and that each time the interval between cases has been significantly shorter than the interval between prior cases. The Company stated it anticipates that it will have to file another rate case within two years because of changes in the industry affecting the Company. Further, the Company noted in its last general rate case in Docket No. P-26, Sub 88, that the Commission adopted a two-year amortization period for rate case expense.

The Commission observes that the frequency of Heins' rate cases has been increasing and recognizes that the Company anticipates filing another rate case within two years. In view of the Company's testimony in this regard and the current dynamic environment of the telephone industry, the Commission finds and concludes that a two-year amortization period is a fair and reasonable amortization period for use in this proceeding. Therefore, the use of $15,070, as the amount of rate case expenses to be included in the cost of service, is reasonable.

The parties' disagreement on the appropriate level of income taxes and taxes other than income arises from their differences over rate base, revenues, and expenses. The Commission has made it's own determination of rate base, revenues, and expenses and concludes that the proper amount of income taxes is $356,892, and the proper amount of taxes other than income is $518,565.

Based upon the preceding discussion, the Commission concludes that the proper level of end-of-period operating revenue deductions is $6,143,207. The following chart summarizes these findings:

Item	Amount
Operating expenses	$3,595,336
Rate case expenses	15,070
Depreciation expense	1,651,736
Taxes other than income	518,565
Interest on customer deposits	5,608
State income tax	53,033
Federal income tax	303,859
Total operating revenue deductions	$6,143,207

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 existed prior to the enactment of the Tax Reform Act of 1986. The Commission, however, takes judicial notice of the enactment of the Tax Reform Act of 1986. This wide-ranging tax reform law will significantly reduce the federal tax rate of most, if not all, investor-owned public utilities (including Heins) engaged in providing public utility services in North Carolina. This reduced federal tax rate has had 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. Therefore, Heins will 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 appropriate amount of reduced federal taxes which is not reflected in the cost of service in this Order. Specifically, Heins 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. 8 AND 9

Two witnesses testified on the issues of capital structure, cost of equity capital, 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 John Robert Hinton.

Concerning the capital structure issue, the Company originally proposed in prefiled testimony filed July 14, 1986, that the Commission use Heins' per books capital structure at December 31, 1985. However, in supplemental testimony entered into the record subsequent to the merger of Heins into ALLTEL Corporation, witness Vander Weide changed his recommendation to the

consolidated capital structure of the ALLTEL Corporation at September 30, 1986. Public Staff witness Hinton recommended the use of the Heins' per books capital structure at September 30, 1986. The recommended capital structures and embedded cost rates are as follows:

COMPANY PREFILED TESTIMONY
HEINS TELEPHONE COMPANY - DECEMBER 31, 1985

Item	Percent	Embedded Cost
Long-term debt	61.38%	5.61%
Common equity	38.62%	
Total	100.00%	

COMPANY SUPPLEMENTAL TESTIMONY
ALLTEL CORPORATION - SEPTEMBER 30, 1986

Item	Percent	Embedded Cost
Long-term debt	53.15%	8.09%
Preferred stock	3.74%	7.49%
Common equity	43.11%	
Total	100.00%	

PUBLIC STAFF TESTIMONY
HEINS TELEPHONE COMPANY - SEPTEMBER 30, 1986

Item	Percent	Embedded Cost
Long-term debt	58.79%	5.65%
Common equity	41.21%	
Total	100.00%	

In his supplemental testimony, Dr. Vander Weide cited the fact that the Commission had adopted the ALLTEL consolidated capital structure in the most recent ALLTEL Carolina rate case Order, Docket No. P-118, Sub 39, issued November 25, 1986, and concluded that if the Commission uses the consolidated capital structure for one ALLTEL subsidiary and the company-specific capital structure for another, ALLTEL's equity investors will have no chance of achieving their required return. Witness Vander Weide stated that consistency and fairness require use of the consolidated capital structure here since that capital structure was used in the ALLTEL Carolina case.

Dr. Vander Weide was questioned on cross-examination about the combined revenue requirement effect of consistently using the ALLTEL consolidated capital structure versus the company-specific capital structures in the two cases, ALLTEL Carolina and Heins. After reviewing Public Staff Cross-Examination Exhibit No. 3, witness Vander Weide agreed that it appeared to be true that the total revenue requirement using the consolidated capital structure in both cases was $170,400 more than it would be based on the company-specific capital structures. However, Dr. Vander Weide pointed out that the numerical estimate of the difference in the capital structure recommendations is partially affected by the fact that the capital structures and cost rates used in the comparison are at different points in time. In the Public Staff Cross-Examination Exhibit No. 3 the ALLTEL consolidated capital

structure is at June 30, 1986, for the ALLTEL Carolina case and in the Heins case the consolidated capital structure is at September 30, 1986.

Public Staff witness Hinton testified that in recent general rate cases involving a wholly owned subsidiary of a holding company, the Public Staff has recommended using the consolidated capital structure for ratemaking purposes. However, he stated that several factors caused him to recommend the use of the actual capital structure of the subsidiary in this proceeding. Witness Hinton explained that the recent merger was approved with the intention that benefits would be realized by Heins' customers. On witness Hinton's Exhibit JRH-2, he showed that the use of the ALLTEL consolidated capital structure as opposed to the Heins' per books capital structure would result in a $265,437 increase in the Company's revenue requirement on this issue alone. It was his opinion that the merger with ALLTEL should not remove from Heins' customers the benefits of the low cost debt financing that the Company has been able to obtain through association with the Rural Electrification Authority (REA) and the Rural Telephone Bank (RTB) pursuant to federal government policy.

Witness Hinton further testified that Heins should be able to employ a higher degree of leverage and maintain a lower overall cost of capital than the consolidated ALLTEL system for the following reasons: first, Heins has been able to obtain the lower interest rates of REA and RTB financing; second, some of the assets of ALLTEL Corporation are invested in nonregulated markets and are therefore subject to more business risks than the assets of Heins Telephone Company which are invested in a regulated market. Further, witness Hinton pointed out that now that the Heins capital structure is under the control of ALLTEL Corporation there exists an incentive for ALLTEL Corporation to allow or cause Heins' equity ratio to increase. If an increase should occur without evidence of increased business risk, witness Hinton stated that the Public Staff would consider recommending the use of the consolidated capital structure and associated cost rates in the Company's next rate case proceeding.

Witness Hinton was cross-examined regarding the Public Staff's position on the choice between parent and subsidiary capital structures in general. It was his opinion that each individual case has certain facts and circumstances that should be considered in recommending the appropriate capital structure. He was also asked about the difference in the revenue requirement resulting from the use of the consolidated capital structure as opposed to the company-specific capital structure in the ALLTEL Carolina case and responded that the use of the consolidated capital structure reduced the revenue requirement by approximately $50,000. A late-filed exhibit provided by the Public Staff at the Company's request shows the amount to be $51,463. Witness Hinton further testified that insufficient time had elapsed since the merger of Heins into ALLTEL Corporation to warrant the use of the consolidated capital structure in this case.

In making a decision on the appropriate capital structure to be used in this proceeding, the Commission finds that it is necessary to take judicial notice of its Orders issued in the ALLTEL Carolina general rate case proceeding in Docket No. P-118, Sub 39, issued November 25, 1986, and the Order approving the merger of Heins into ALLTEL Corporation in Docket No. P-26, Sub 94, issued June 26, 1986.

In the ALLTEL Carolina case the Commission approved the use of the June 30, 1986, consolidated capital structure as recommended by the Public

Staff. Because of such approval, Heins' witness Vander Weide believes the Commission must also adopt the consolidated capital structure in this proceeding if ALLTEL's equity investors are to have a chance of achieving their allowed return. The Commission observes that the June 30, 1986, consolidated capital structure of ALLTEL Corporation preceded the August 20, 1986, merger of Heins into the ALLTEL Corporation; therefore, there was no reflection of the impact Heins would have had at that time on the consolidated capital structure and associated cost rates. Further, if Heins had been a part of the ALLTEL Corporation during the ALLTEL Carolina general rate case proceedings the overall consolidated cost of long-term debt should have been somewhat lower which would have lowered the revenue requirement found fair in the ALLTEL Carolina case, because of Heins' lower cost for long-term debt financing which is 100% through REA and RTB financings.

In the evidence presented by Heins in the case for merger of Heins into ALLTEL Corporation, the application in Docket No. P-26, Sub 94, stated as follows:

> The property of Heins Telephone will continue to be reflected on the books of Heins Telephone at its original cost and the determination of Heins Telephone's rates will continue to be made on the basis of Heins Telephone's own revenues, expenses, and investment.

Further, the following oral representations were made on behalf of Heins in the merger proceedings:

> Heins Telephone Company will continue to operate with its own capital structure which will not be changed as a result of this transaction. There will be absolutely no change in the books or records of Heins Telephone Company as a result of the acquisition of the stock by ALLTEL Corporation. It is still a separate corporation. It has its own plant, its own capital structure, its own expenses, its own revenues, and that will continue regardless of who owns the stock.

In the Order issued by the Commission in Docket No. P-26, Sub 94, approving the merger of Heins into ALLTEL Corporation, the Commission makes a finding which reads inpart as follows:

> After the merger, Heins Telephone Company will continue to provide the telephone service to the public that it now provides, its books and records will continue to be maintained as they are now, and the determination of its rates will continue to be made on the basis of Heins Telephone Company's own revenues, expenses, and investment.

The Commission believes that it is fair to interpret that the statement "the determination of its rates will continue to be made on the basis of Heins Telephone Company's own revenues, expenses, and investment" implies that expenses would include interest expense which would be determined based on Heins own capital structure and long-term debt cost rate. In the approval of

the merger, it was the Commission's intent that the merger would benefit Heins' ratepayers. However, in this case the Company in proposing the use of a consolidated capital structure and related cost rates is requesting the Commission to take a position which would increase the revenue requirement of Heins by approximately $300,000 on this issue alone. The Commission cannot agree with the Company's position in this regard. It would be grossly unfair to use the consolidated capital structure and associated cost rates in determining the revenue requirement for Heins in light of the circumstances surrounding this case.

The use of a consolidated or imputed capital structure is a well-established ratemaking practice which is used to reflect the influence of a parent corporation on its regulated subsidiaries. However, in this case, the Commission concludes that the parent-subsidiary relationship has had little, if any, effect on the subsidiary's capital structure and it should not be taken into account in determining Heins' revenue requirement in this proceeding. Heins was merged into ALLTEL Corporation on August 20, 1986, and the consolidated capital structure proposed by the Company in this proceeding is as of September 30, 1986. Such proposal would reflect only 40 days of possible influence by the parent directly on the capital structure of Heins. The Commission concludes that to adopt the ALLTEL consolidated capital structure for Heins at this time would burden the Company's ratepayers with the cost of a merger from which they have received no apparent benefit, a result which would clearly be unjust and unreasonable.

Based upon the foregoing, the Commission concludes that the Heins Company specific September 30, 1986, capital structure and related embedded cost rate are appropriate for use in this proceeding as follows:

Item	Percent	Cost Rate
Long-term debt	58.79%	5.65%
Common equity	41.21%	
Total	100.00%	

Concerning the issue of the appropriate rate of return that the Company should be allowed to earn, Company witness Vander Weide originally recommended an overall rate of return of 9.33% based on a cost of equity of 15.25% and the Heins' per books capital structure at December 31, 1985. In supplemental testimony Dr. Vander Weide recommended an overall rate of return of 9.19% based on a cost of common equity of 14.25% using Heins' capital structure at September 30, 1986, and an overall rate of return of 10.40% based on a cost of common equity of 13.50% using the ALLTEL consolidated capital structure at the same time.

Dr. Vander Weide used the discounted cash flow (DCF) model and the risk premium method to estimate the cost of equity to Heins. Dr. Vander Weide acknowledged that he was unable to apply either of these methods directly to Heins since its stock is not publicly traded and its bonds are not rated. He also applied these methods directly to ALLTEL Corporation to arrive at its cost of common equity.

For his DCF approach, witness Vander Weide selected two groups of companies judged to be of comparable total risk to Heins. These were a group of eight non-Bell telephone companies and a group of seven regional Bell holding companies. He applied a quarterly version of the DCF model since investors receive dividends quarterly and incorporated a 5% adjustment for flotation costs and market pressure. To estimate the growth component of the DCF, he relied on the five-year estimates of future earnings per share growth reported by the Institutional Brokers Estimate System (IBES) because in his opinion stock prices reflect the expectation of analyst's forecasts more than they do historical growth trends.

For his risk premium approach, Dr. Vander Weide estimated the expected yield on common stocks in excess of the long-term yield on A-rated utility bonds and concluded that investors today require an equity return of at least 3.5 to 5.5 percentage points above the expected yield on Heins' long-term debt issues. Adding this risk premium to the expected yield on Heins' debt issues, he determined the cost of equity capital to Heins. Based upon his original analysis, he concluded that the cost of equity capital to Heins was in the range of 13.5% to 15.5%. He selected 15.25% because Heins is a small company with above average risks. When he updated his study to reflect current costs and conditions, he determined the cost of equity capital to Heins when viewed alone to be 14.25%. In his update, he applied the same factors in the same way to determine the cost of equity capital to ALLTEL consolidated. This cost of equity capital was determined to be 13.5% which he recommended that the Commission use in this proceeding along with the ALLTEL consolidated capital structure.

Public Staff witness Hinton recommended an overall rate of return of 8.43% based on an estimated cost of equity of 12.40% and the Heins' company specific capital structure at September 30, 1986. Witness Hinton applied the DCF method to three groups of companies chosen to be of comparable risk to Heins. The first two groups of companies consisted of nine non-Bell independent telephone companies and a group of seven regional Bell holding companies. The third group was composed of 12 nonutility companies that exhibited risk comparable to that of the average independent telephone company on the basis of three measures of risk: Value Line's beta value and safety rank and Standard and Poor's stock rating. Witness Hinton incorporated both historical and forecasted growth rates in earnings per share, dividends per share, and book value per share in his DCF method. He made no adjustment for flotation costs. Based upon this analysis, he concluded that a reasonable estimate for the cost of equity to Heins was in the range of 11.9% to 12.6%. Witness Hinton further concluded that the best single estimate of the cost of equity to Heins was 12.4%. Witness Hinton 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 contributing to his higher DCF cost of equity estimates.

There was also disagreement between the parties as to the relative risks to equity investors in Heins and the ALLTEL Corporation. According to witness Hinton, Heins faces less business risk and less financial risk than ALLTEL Corporation. Witness Hinton was of the opinion that, while ALLTEL Corporation operates in both regulated and nonregulated markets, Heins' operations encompass a regulated and largely rural market and Heins is therefore subject to less business risk. Further, witness Hinton pointed out that it is his opinion that Heins has less financial risk than ALLTEL Corporation because of

its low-cost REA and RTB financing. Dr. Vander Weide reached the opposite conclusion in recommending 14.25% cost of equity to Heins based on Heins' per books capital structure and a 13.50% cost of equity based on the ALLTEL consolidated capital structure. The Company believes that the risk of investing in a very small telephone company, such as Heins, operating in one area and having only one source of revenue is substantially more risky, than investing in a Company that's very large, such as ALLTEL Corporation, operating in many states, having different kinds of businesses, having stocks widely traded, and possessing more depth of management. Dr. Vander Weide stated in his testimony that he believed the economic impact of four major changes in the telecommunications industry increases the risk of investment in Heins' debt and equity capital. These factors are as follows:

1. Regulatory and federal court rulings which have resulted in increased competition;
2. Transition from social to economic pricing;
3. Technological advances which have provided the opportunity for bypass of the telephone network; and
4. Changing industry boundaries.

The determination of the appropriate fair rate of return for the Company is of great importance and must be made with 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. The return allowed must balance the interests of the ratepayers and investors and meet the test set forth in G.S. 62-133(b)(4):

> ...(to) enable the public utility by sound management to produce a fair return for its shareholders, considering changing economic conditions and other factors, as they then exist, to maintain its facilities and services in accordance with the reasonable requirements of its customers in the territory covered by its franchise, and to compete in the market for capital funds on terms which are fair to its customers and to its existing investors.

This return 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 evidence presented in this case 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 Heins. The Commission finds that the reasonable rate of return for Heins to be allowed on its common equity in this proceeding is 13.25%. Combining this with the appropriate capital structure and cost of debt heretofore determined yields an overall just and reasonable rate of return of 8.78% to be applied to the Company's original cost rate base. Such a rate of return will enable Heins 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 13.25% allowed herein is consistent with the evidence offered in this proceeding. Such evidence clearly indicates that interest rates have declined significantly in recent months. 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 13.25% allowed in this case is 200 basis points less than the 15.25% rate of return Heins was allowed in its last general rate case. This is a reduction of more than 13% in the Company's last allowed rate of return on common equity approved on May 15, 1984, in Docket No. P-26, Sub 88.

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 Heins is 13.25%. It is a 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 Heins 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 the 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. 10

The Commission has previously discussed its findings and conclusions concerning the fair rate of return which Heins Telephone Company should be given the opportunity to earn.

The following schedules summarize the gross revenues and the rates of return which the Company should have a reasonable opportunity to achieve based upon increases approved herein. The schedules, illustrating the Company's gross revenue requirements, incorporate the findings and conclusions heretofore and herein made by the Commission.

SCHEDULE I
HEINS TELEPHONE COMPANY
North Carolina Intrastate Operations
STATEMENT OF OPERATING INCOME
Twelve Months Ended December 31, 1985

Item	Present Rates	Increase Approved	Approved Rates
Operating Revenues:			
Local service	$3,397,120	$352,536	$3,749,656
Toll service	2,874,816	-	2,874,816
Miscellaneous	838,963	-	838,963
Uncollectibles	(15,143)	(1,269)	(16,412)
Total operating revenues	7,095,756	351,267	7,447,023
Operating Revenue Deductions:			
Operating expenses	3,610,406	-	3,610,406
Depreciation and amortization	1,651,736	-	1,651,736
Interest on customer deposits	5,608	-	5,608
Operating taxes other than income taxes	518,565	11,311	529,876
State income tax	53,033	20,397	73,430
Federal income tax	303,859	146,997	450,856
Total operating revenue deductions	6,143,207	178,705	6,321,912
Net operating income for return	$ 952,549	$172,562	$1,125,111

SCHEDULE II
HEINS TELEPHONE COMPANY
North Carolina Intrastate Operations
STATEMENT OF RATE BASE AND RATE OF RETURN
Twelve Months Ended December 31, 1985

Item	Amount
Telephone plant in service	$ 24,630,303
Materials and supplies	256,378
Investment in RTB stock	477,662
Working capital	348,329
Customer deposits	(95,216)
Depreciation reserve	(10,321,104)
Accumulated deferred income taxes	(2,166,935)
Average tax accruals	(314,865)
Pre-1971 investment tax credits	(2,933)
Original cost rate base	$ 12,811,619
Rates of return	
Present rates	7.44%
Approved rates	8.78%

SCHEDULE III
HEINS TELEPHONE COMPANY
North Carolina Intrastate Operations
STATEMENT OF CAPITALIZATION AND RELATED COSTS
Twelve Months Ended December 31, 1985

Item	Ratio %	Original Cost Rate Base	Embedded Cost %	Net Operating Income
	Present Rates - Original Cost Rate Base			
Long-term debt	58.79%	$ 7,531,951	5.65%	$ 425,555
Common equity	41.21%	5,279,668	9.98%	526,994
Total	100.00%	$12,811,619		$ 952,549
	Approved Rates - Original Cost Rate Base			
Long-term debt	58.79%	$ 7,531,951	5.65%	$ 425,555
Common equity	41.21%	5,279,668	13.25%	699,556
Total	100.00%	$12,811,619		$1,125,111

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 11

Company witness Drury and Public Staff witness Willis presented testimony concerning Heins' proposed rate structure.

Company witness Drury testified that he designed the proposed rate structure by reviewing all of the services currently offered by the Company through its tariffs. Witness Drury evaluated these services through discussions with other management staff and compared the Company's rates to those of other telephone companies in North Carolina. The repricing which he proposed included increases in the rates for local basic exchange services, service connection charges, directory listings, the local directory assistance charge, local private lines, and extension line mileage. According to witness Drury, his approach in developing the Company's revenue requirement lessened, to the extent possible, the impact on basic service rates.

In his prefiled testimony, witness Drury indicated that he was making a reevaluation of coin service and would offer additional testimony with revisions in the Company's schedules at the time of the hearing. At the hearing, witness Drury proposed that the local message rate for coin telephone service be increased from $.20 to $.25 per call, that the guarantee for the Company's semipublic rates be increased from the business one-party rate to 1.25 times the business one-party rate, and that the installation charge for semipublic paystation booths be increased from $14.58 to $30.00. Witness Drury stated that these proposals would generate $28,320 of additional annual revenues.

Public Staff witness Willis stated that he had reviewed the Company's tariff proposals and concurred in its rate design, with the exception of the effect which the Company's proposed revenue requirement had on local basic exchange rates and the method used by the Company to establish its proposed annual revenue increase for its directory assistance tariff proposal. Witness Willis noted that the Company proposed to increase its local directory assistance charge from $.20 per direct dialed inquiry in excess of five per

month per access line to $.30 for each direct dialed inquiry in excess of three per month per access line. Witness Willis stated that the Company had assumed that its estimate of chargeable calls exceeding three per month per access line would be repressed by 30%, resulting in an annual revenue increase of $10,899.

Witness Willis recommended that the Company's proposal to increase the local directory assistance charge to $.30 for each inquiry exceeding three per month be permitted. In reference to the Company's estimate of additional annual revenue, however, witness Willis stated that he had tested the anticipated number of chargeable local directory assistance calls supplied by Heins against a four-month study by Southern Bell Telephone Company of the frequency profile of its local directory assistance calls. According to witness Willis, using the Southern Bell study as a surrogate for estimating the number of billable calls in excess of a three-call allowance per month for Heins indicated that the number of billable calls would exceed Heins' estimated number of unrepressed billable units by approximately 27%. Based upon his analysis, witness Willis recommended that Heins' estimate of 165,654 unrepressed billable units rather than its estimate of 115,949 repressed units be adopted, resulting in an annual increase of $25,810 to be used in developing the Company's revenue requirement.

Based upon all of 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 A attached hereto will be just and reasonable. The Company will be directed to reduce the rates approved in this proceeding by the $.12 per month per access line reduction approved by Order issued December 23, 1986, in Docket No. P-100, Sub 90, to reflect the cost reduction associated with the deregulation of inside wiring.

IT IS, THEREFORE, ORDERED as follows:

1. That the Applicant, Heins Telephone Company, is hereby authorized to increase its local service rates and charges so as to produce additional annual gross revenues of $352,536 based on test year operations.

2. That Heins is hereby directed to file proposed tariffs reflecting changes in rates and charges to recover the revenues approved herein, in accordance with the guidelines established in the Evidence and Conclusions for Finding of Fact No. 11 and Appendix A attached hereto, within 10 days from the date of this Order. These tariff proposals shall also reflect the $.12 per month per access line reduction approved for Heins in Docket No. P-100, Sub 90. These tariff proposals shall be provided to the Commission (five copies are required) and the Public Staff (formats such as Item 30 of the minimum filing requirement, N.C.U.C. Form P-1, are suggested).

3. That the Public Staff may file written comments concerning the Company's tariffs within five working days of the date on which they are filed with the Commission.

4. That the rates and charges necessary to produce the annual gross revenues authorized in this proceeding shall become effective upon the issuance of a further Order approving the tariffs and customer notice.

5. That the service objectives recommended by the Public Staff, which are attached to this Order as Appendix B, are approved and adopted as the appropriate standards to be used henceforth in evaluating the quality of service provided by the Company. Heins shall make every fair and reasonable effort to meet these objectives on an exchange and a total-company basis and shall maintain statistics on a monthly basis for review by the Commission and the Public Staff, upon request. Further, the Company shall make every fair and reasonable effort to remedy the service weak spots outlined in Public Staff witness McLawhorn's Exhibit No. 8.

6. That the federal income tax and the related gross receipts tax components of the rates and charges approved in this proceeding for Heins shall be billed and collected on a provisional 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.

7. That Heins shall place in a deferred account the difference between revenues billed under the rates approved in this proceeding, including the provisional components of those rates, and revenues that would have been billed had the Commission determined the attendant cost of service based on the federal income tax component on the Internal Revenue Code as amended by the Tax Reform Act of 1986, assuming all other elements of the cost of service equation are held constant.

ISSUED BY ORDER OF THE COMMISSION.
This the 17th day of February 1987.

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

APPENDIX A

HEINS TELEPHONE COMPANY
DOCKET NO. P-26, SUB 93
RATE DESIGN AND TARIFF GUIDELINES

1. A charge of $.30 for directory assistance inquiries exceeding three calls per month is allowed.

2. The directory listing charges should be increased to the levels proposed by the Company.

3. Effective January 1, 1987, in accordance with the Federal Communications Commission's Second Report and Order in CC Docket 79-105, the installation and maintenance of all inside wiring were detariffed. Accordingly, the proposed increases in rates for inside wiring by the Company are inappropriate and should not be considered in producing the increase in annual revenues granted herein.

4. The service charges shown below are just and reasonable:

	Residence	Business
Service order (primary)	$21.00	$25.00
Service order (secondary)	11.00	16.00
Premises visit charge	10.00	11.00
Central office work, each	7.00	8.00
Equipment work, each	5.00	7.00
Restoration charge	18.00	24.00

5. A monthly guarantee of 1.25 times the individual business line rate is approved for semipublic telephone service.

6. A nonrecurring charge of $30.00 for the installation of a semipublic paystation booth is just and reasonable.

7. An increase in the local coin telephone rate from $.20 to $.25 per call is approved.

8. The annual increase in revenue of $352,536 allowed herein should be effected through individual categories of service as shown below:

Category of Service	Annual Revenue Increase
Basic local exchange	$249,824
Local directory assistance	25,810
Service connection charges	34,964
Directory listings	2,656
Coin telephone service	28,320
Miscellaneous service arrangements	6,336
Local private line service, channels, and equipment	4,626
Total	$352,536

9. Basic local exchange rates produced from the annual revenue increase granted in paragraph 8 above should be decreased in accordance with the Commission Order in Docket No. P-100, Sub 90, issued December 23, 1986.

APPENDIX B

HEINS TELEPHONE COMPANY
DOCKET NO. P-26, SUB 93
APPROVED 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 "O" 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

DOCKET NO. P-55, SUB 834

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Southern Bell Telephone and Telegraph Company Application for Adjustment in Rates and Charges	)	INTERIM PROTECTIVE ORDER REQUIRING PRODUCTION OF INFORMATION

ORAL ARGUMENT
HEARD IN: Commission Hearing Room 2115, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on Monday, September 14, 1987, at 2:00 p.m.

BEFORE: Chairman Robert O. Wells, Presiding; and Commissioners Robert K. Koger, Sarah Lindsay Tate, Edward B. Hipp, Ruth E. Cook, and William W. Redman, Jr.

APPEARANCES:

For the Public Staff:

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

For the Attorney General:

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

For Carolina Utility Customers Association, Inc.:

Jerry B. Fruitt, Attorney at Law, Post Office Box 12547, Raleigh, North Carolina 27605

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 BellSouth Advertising & Publishing Corporation:

John T. Allred, Petree, Stockton & Robinson, Attorneys at Law, 217 North Tryon Street, Charlotte, North Carolina 28202
and
Martin T. Walsh, General Counsel, BellSouth Advertising and Publishing Company, 59 Executive Park Drive South, N. E., Atlanta, Georgia 30347

BY THE COMMISSION: On November 9, 1984, the Commission entered an Order in this docket whereby Southern Bell Telephone and Telegraph Company (Southern Bell) was granted a general rate increase of approximately $50 million in the Company's intrastate rates and charges in North Carolina. In that Order, the Commission expressly withheld approval of the contract which Southern Bell has entered into with BellSouth Advertising & Publishing Corporation (BAPCO) whereby BAPCO assumed responsibility as of January 1, 1984, for publishing telephone directories for Southern Bell and South Central Bell Telephone Company, including directories for the telephone exchanges throughout Southern Bell's North Carolina service area. Both BAPCO and Southern Bell are wholly-owned subsidiaries of the BellSouth Corporation and as such are affiliates of each other.

In the Order entered in this docket on November 9, 1984, the Commission directed Southern Bell to direct BAPCO to maintain the records of its directory operations in such manner and detail as to allow an examination of those records to determine if revenues were properly stated and costs were properly assigned or allocated. The Commission further stated that the form of these records and reports would be prescribed at a later date.

On April 29, 1987, the Public Staff filed a motion in this docket whereby the Commission was requested to (1) direct Southern Bell to require BAPCO to provide the information requested in a proposed annual reporting form attached to said motion and (2) curtail certain claims of confidentiality and proprietary information being made by Southern Bell and BAPCO. The Public Staff also attached a report to its motion summarizing its findings and recommendations regarding the information that BAPCO should be required to provide in an annual report. The Public Staff further states that its report marked the culmination of over a year of investigation and analysis, including several meetings with Southern Bell and BAPCO. The Public Staff asserts that Southern Bell and BAPCO should be required to provide the information in question pursuant to G.S. 62-51, which provides as follows:

> Members of the Commission, Commission staff, and public staff are hereby authorized to inspect the books and records of corporations affiliated with public utilities regulated by the Utilities Commission under the provisions of this Chapter, including parent corporations and subsidiaries of parent corporations. This authorization shall extend to all reasonably necessary inspection of all books and records of account and agreements and transactions between public utilities doing business in North Carolina and their affiliated corporations where such records relate either directly or indirectly to the provision of intrastate service by the utility. The right to inspect such books and records shall apply both to books and records in the State of North Carolina and such books and records located outside of the State of North Carolina. If any such affiliated corporation shall refuse to permit such inspection of its books and records and its transactions with public utilities doing business in North Carolina, the Utilities Commission is empowered to order the public utility regulated in North Carolina to show cause why it should not secure from its affiliated corporation such books and records for inspection in North Carolina or why their franchise to operate as a public utility in North Carolina should not be cancelled.

The Public Staff asserts that there can be no question that the directory revenues, allocation of expenses and publishing fees have and will continue to have a direct impact on the rates Southern Bell charges its North Carolina ratepayers.

On April 29, 1987, the Attorney General filed a motion and affidavit in support of the Public Staff's motion to require directory operations data and curtail proprietary claims.

On May 22, 1987, Southern Bell filed a reply in opposition to the motions filed by the Public Staff and Attorney General. In its reply, Southern Bell admitted that members of the Commission, Commission Staff, and Public Staff are clearly authorized to inspect the books and records of corporations affiliated with Southern Bell pursuant to G.S. 62-51 and that such right extends to all reasonable and necessary inspections of such books and records of account where such records relate either directly or indirectly to the provision of the North Carolina intrastate service by the utility. Nevertheless, Southern Bell maintains that these statutory rights are not unlimited and that the motions of the Public Staff and Attorney General make some unreasonable reporting and record keeping demands regarding (1) the extent of the information that should be made available and (2) the contention that such information should not be protected as proprietary in nature.

Southern Bell also asserts that the information requested by the Public Staff relating to directories published by BAPCO for other independent companies which was never part of the business of Southern Bell when BAPCO functioned as a department of Southern Bell is not relevant either directly or indirectly to the provision of intrastate telephone service by Southern Bell in North Carolina. In addition, Southern Bell further asserts that the Commission should exercise statutory authority to protect that portion of the information requested by the Public Staff which BAPCO claims to be confidential and proprietary in nature and that BAPCO should be allowed to provide any such information pursuant to a proprietary agreement.

On May 26, 1987, BAPCO filed its response in opposition to the motions filed by the Public Staff and Attorney General. BAPCO states that, subject to appropriate protections, the Company will provide the Public Staff and Commission with annual reports and access to pertinent accounting and other records dealing with the publication of directories for Southern Bell in North Carolina, including relevant North Carolina and total Company financial data. BAPCO further states it has agreed to provide most of the data requested by the Public Staff, subject to a protective agreement, except for any such data which the Company deems to be irrelevant to the function the Public Staff is seeking to perform; for example, information concerning BAPCO's independent company directories. BAPCO requested the Commission to schedule an oral argument to consider all of the issues related to this matter.

On June 3, 1987, the Public Staff filed a reply to the above-summarized responses filed by Southern Bell and BAPCO. In its reply, the Public Staff set forth further statements in support of its motion to require directory operations data and requested the Commission to enter an interim protective order similar to the proposed order attached to the Public Staff's reply. The Public Staff further stated that:

The legitimate rights of all of the parties involved in this matter can best be served by instituting a procedure whereby the Public Staff is given immediate access to the information it requests, and the Companies are given notice of any specific information that the Public Staff plans or is required to use publicly, and are protected unless the Commission subsequently determines that the information does not warrant protection. This would facilitate the Public Staff's immediate access to the information requested, thereby eliminating the extreme inconvenience and burdensome delays that have occurred in the past, while preserving the status quo for a full hearing at a later time, if necessary, on the Companies' claims of confidentiality.

On June 19, 1987, Southern Bell and BAPCO filed responses to the Public Staff's motion for an interim protective order. Southern Bell stated that, in this instance, the Company does not object to the method of protection (proposed interim protective order) suggested by the Public Staff, but that the Commission should require the Public Staff to:

1. Detail the means it will use to advise its members regarding the treatment of this information;
2. Explain the binding effect once an individual leaves the employ of the Public Staff; and
3. What assistance, auditability or responsiveness can be expected of it in the event an unauthorized disclosure is suspected.

Southern Bell further stated that the Company continues to object to any requirement that it should provide (1) individual state by state information and (2) information regarding independent company directories.

BAPCO's response indicated that the Company agrees in principal with the Public Staff's proposal for an interim protective order to protect and preserve the confidentiality of its financial data, but continues to object to being required to provide individual state specific information and information regarding independent company directories. BAPCO also requested the Commission to require the Public Staff to provide proposed internal procedures for its members (including former members) that would adequately safeguard BAPCO's confidential financial data, including the proposed procedures the Public Staff would use to investigate any unauthorized disclosures of such information.

On July 7, 1987, the Commission entered an Order in this docket scheduling an oral argument to consider the issues raised herein by the Public Staff and the other parties, including the following:

1. The nature and extent of the data which shall be required of Southern Bell and BAPCO; and

2. The terms of a protective order including internal procedures to be used by the Public Staff necessary to serve the public interest and protect concerns of Southern Bell and BAPCO regarding confidential and proprietary data.

Upon call of the matter for oral argument at the appointed time and place, counsel for the following parties appeared and offered oral argument:

1. Public Staff
2. Attorney General
3. Carolina Utility Customers Association, Inc.
4. Southern Bell
5. BAPCO

After careful consideration of the pleadings filed in this docket, the oral argument offered by the parties, and the entire record in this proceeding, the Commission has reached the following

FINDINGS OF FACT

1. Effective January 1, 1984, BAPCO assumed responsibility for publishing telephone directories for the telephone exchanges throughout Southern Bell's service area in North Carolina and the other states served by Southern Bell and South Central Bell. BAPCO and Southern Bell are both wholly-owned subsidiaries of the BellSouth Corporation and as such are affiliates of each other.

2. On February 3, 1984, Southern Bell filed a request in Docket No. P-55, Sub 839, seeking approval to transfer certain assets related to its directory operations to BAPCO. Southern Bell and the Public Staff subsequently entered into a stipulation in Docket No. P-55, Sub 839, which was approved by the Commission on June 6, 1984, thereby authorizing the transfer of Southern Bell's directory-related assets to BAPCO. By Order entered in Docket No. P-55, Sub 834, on November 9, 1984, the Commission found and concluded that the contract between Southern Bell and BAPCO concerning directory publishing operations in North Carolina should not be approved and that Southern Bell should require BAPCO to maintain the records of its directory operations in such manner and detail as to allow an examination of those records to determine if revenues were properly stated and costs were appropriately assigned or allocated. The form of these records and reports was to be prescribed at a later date.

3. The Public Staff has requested the Commission to approve the annual reporting requirements proposed by the Public Staff and to order Southern Bell to require BAPCO to provide the information requested in that report on an annual basis subject to the provisions of an appropriate interim protective order.

4. Southern Bell and BAPCO are willing to supply certain of the information requested by the Public Staff pursuant to an appropriate protective order and proprietary safeguards, but object to providing individual state specific information (other than North Carolina information) and information regarding independent company directories which Southern Bell and BAPCO assert to be irrelevant and proprietary. Southern Bell and BAPCO agree to provide the requested information which is specific to North Carolina and information on a total company basis subject to appropriate proprietary and confidential protections. The companies are not willing to voluntarily supply any information related to BAPCO's individual state by state operations or its publication of independent company directories, even under the terms of a protective order and confidentiality agreement.

5. The Public Staff is willing to accept the information which it is requesting subject to the provisions of an appropriate interim protective order.

6. G.S. 62-51 defines the scope of the authority of the Commission and the Public Staff to inspect the books and records of corporations affiliated with public utilities regulated by the Commission.

WHEREUPON, the Commission reaches the following

CONCLUSIONS

The facts set forth above are essentially uncontroverted. The parties disagree as to the extent of the application of G.S. 62-51 to this fact situation.

Our analysis begins with an examination of the authority to inspect granted by G.S. 62-51. The crucial sentence of the statute provides, "This authorization shall extend to all reasonably necessary inspection of all books and records of account and agreements and transactions between public utilities doing business in North Carolina and their affiliated corporations where such records relate either directly or indirectly to the provision of the intrastate service by the utility." This sentence provides first of all that the inspection must be reasonably necessary. The sentence then defines the materials subject to inspection. Two groups of materials are listed. The first group is "all books and records of account." The second group is "agreements and transactions between public utilities doing business in North Carolina and their affiliated corporations." This second group of materials is limited to dealings between North Carolina utilities and their affiliates. However, the limiting phrase--"between public utilities doing business in North Carolina and their affiliated corporations"--does not modify the first group of materials, "all books and records of account." This is clear from the wording of the sentence and from the punctuation of the sentence. Therefore, inspection of an affiliate's books and records of account is not limited to the dealings between North Carolina public utilities and their affiliates. However, inspection that goes beyond the accounting books and records to the details of agreements and transactions that are not reflected upon the books and records of account is limited to dealings between North Carolina utilities and their affiliates. Having defined the two groups of materials subject to inspection, the sentence concludes with a phrase that imposes a limitation on the inspection of both groups of materials. The materials, of whatever kind, must "relate either directly or indirectly to the provision of intrastate service by the utility" in order to be subject to inspection.

As to the company specific dealings between Southern Bell and BAPCO in North Carolina, it appears that the parties are in agreement that the requested information so far withheld will be supplied on an annual basis to the Public Staff pursuant to the provisions of an appropriate interim protective order. Southern Bell and BAPCO have also agreed to provide the Public Staff with the information requested on a total company basis for BAPCO pursuant to an interim protective order.

As to the dealings between BAPCO and the other states which comprise the BellSouth Corporation and dealings regarding independent company directories,

the issue becomes whether these dealings relate either directly or indirectly to the provision of intrastate service by Southern Bell and whether inspection of these materials is reasonably necessary. If this issue is answered in the affirmative, the Public Staff is entitled to inspection of whatever the "books and records of account" reflect as to these dealings, but the Public Staff is not entitled to go beyond the "books and records of account." The phrase "books and records of account" has a generally accepted meaning among accountants. There is also case law dealing with the meaning of the phrase. The Commission assumes that the parties would be able to agree upon the scope of the phrase but, if not, they could present their dispute for a ruling. The Commission concludes that BAPCO's books of record and account on an individual state by state basis and with independent companies are, at the very least, indirectly related to the provision of intrastate service by Southern Bell and that the inspection of BAPCO's books and records as to these dealings is reasonably necessary.

Both the Commission and our appellate courts have had occasion to examine the relationship between North Carolina utilities and their affiliates in the past. In Utilities Commission v. Telephone Company, 281 N.C. 318 (1972), the Supreme Court had occasion to examine the relationship between General Telephone Company of the Southeast and its supply affiliate, Automatic Electric Company. The Court wrote as follows:

> [T]he Commission may not fix or control prices which Automatic charges its customers for its products. The Commission may, however, in a proper case, refuse to allow General to include in its rate base, or in its operating expenses, the full price General actually paid Automatic for equipment and supplies...[T]he fact that equipment or services are sold to the utility by an affiliated corporation does not alter the ultimate question for the Commission. That question is whether the prices paid by the utility are reasonable and, therefore, reflect the "reasonable original cost" of the properties. The only effect of the affiliation between the utility and its supplier is that such a relationship calls for a close scrutiny by the Commission of the price paid by the utility.

Id. at 344-45. In this same case, the Supreme Court noted that Automatic sells supplies not only to its affiliated North Carolina utility company, but also to other, non-affiliated companies. The Supreme Court noted, "[Automatic's] prices to General are no higher and are often lower than its prices to such non-affiliated customers. Though this circumstance is not controlling, it is relevant." Id. at 347. Thus, the Supreme Court found it relevant for the Commission to examine the price that a company such as Automatic charges non-affiliated customers. In order to have access to this relevant evidence, the books and records of account of the affiliate must be inspected as to out-of-state, as well as intrastate, dealings.

More recently, in the case of Utilities Commission v. Intervenor Residents, 305 N.C. 62 (1982), the Supreme Court again noted the Commission's obligation to test the reasonableness of payments to companies affiliated with a public utility. It stated,

> Reasonableness may be tested, as the Court of Appeals has stated, on the basis of (1) the cost of the same services in the open

market, (2) the cost similar utilities pay to their service companies, or (3) the reasonableness of the expenses incurred by the affiliated company in generating the service.

Id. at 77. The Commission believes that in order to present evidence as to the reasonableness of the revenues and expenses allocated by an affiliated company, the Public Staff must be able to examine the full books and records of the affiliate, both as to its out-of-state and its intrastate dealings. This again tends to show that the out-of-state dealings of a utility's affiliate are at least indirectly related to the intrastate service of the utility and that inspection of such dealings is reasonably necessary.

The Commission has recognized that while comparisons are relevant and important to the determination to the reasonableness of transactions between affiliates, other factors may also be considered. For example, affiliates may enjoy economies of operation due to their close affiliation with their customers which would enable the affiliate to pass significant savings on and still enjoy a reasonable profit. Again, the full books and records of account must be examined to determine if this is the case.

While competition and competitive markets are clearly mainstays in our economic well being, arms-length bargaining is the classic process that is the life-blood of the free and competitive markets system. When transactions are made at arms-length between completely independent buyers and sellers, each buyer has a very strong incentive to find the lowest possible price from any of the alternative independent sources of supply. On the seller side of the market, sellers are searching for buyers. One of the ways sellers have of increasing the probability that they will find buyers, or be found by buyers, is to quote the lowest price possible. In the absence of independent buyers and sellers on each side of the market, there may be incentives for affiliated companies to establish procedures that may tend to maximize the profits of the joint, combined affiliated operation.

Clearly, this Commission has an obligation to carefully examine the reasonableness of all transactions between regulated public utilities and companies affiliated with such utilities. It is emphasized that this Commission must not only be concerned with the value of revenue and expense allocations in a relative and/or absolute sense, but we must also make certain that no cost savings have been unduly diverted from the regulated segment of a business enterprise to the unregulated segment of said enterprise or to an affiliated interest. For the Commission and the Public Staff to fulfill their respective obligations in this regard, access to all books and records of account of all public utilities, affiliated companies and all affiliated interests of public utilities is essential.

The Public Staff has agreed to accept the material that it desires pursuant to an appropriate interim protective order. Such an order will prohibit any public disclosure of the information subject to the provisions of the order. Should the Public Staff feel a need to use the information in any manner that would allow for public disclosure, the order will provide for the parties to come back before the Commission for a ruling as to whether a further protective order should be issued.

The Commission is extremely sensitive to and very concerned with the absolute need for confidentiality which was strongly expressed by Southern Bell and BAPCO in this docket. This fact must be balanced against the statutory mission of the Public Staff to represent the interests of the using and consuming public in North Carolina which requires the pursuit of prompt access to relevant information and data affecting public utilities and their rates. The Commission believes that the following protective procedures will adequately protect the need for confidentiality expressed by both Southern Bell and BAPCO and will serve the public interest:

1. Southern Bell and BAPCO shall forthwith prepare and file with the Public Staff all of the information requested in the schedules proposed by the Public Staff which are attached hereto as Appendix A entitled "BellSouth Advertising and Publishing Corporation Annual Reporting Requirements." Such information shall be supplied to the Public Staff subject to the proprietary protections specified in this interim protective order and subject to any appropriate proprietary procedures agreed upon by the companies and the Public Staff.

2. In the event the Public Staff plans or is requested to use publicly or otherwise disclose all or any part of the information supplied under this Order, the Public Staff shall serve upon Southern Bell and BAPCO a notice of intent to disclose, at least fourteen (14) days prior to such planned or requested public use or disclosure.

3. Upon receipt of a notice of intent to disclose pursuant to Paragraph (2) above, Southern Bell and BAPCO may file a motion for further protective order with the Commission, which will be heard by the Commission on an expedited basis. Upon the receipt of such a motion for further protective order, the Public Staff shall not publicly use or disclose the information as to which the company in its motion requests a further protective order, until such time as the Commission issues an Order in response to the company's motion.

4. All information held by the Public Staff under the terms of this Order shall be held on an interim basis by the Public Staff under proprietary confidentiality protections, and shall not be used publicly or otherwise disclosed by the Public Staff until the expiration of the fourteen (14) day period specified in a notice of intent to disclose served pursuant to Paragraph (2) above, or until the Commission issues an Order in response to a motion for further protective order.

5. The provisions of this Order may be superseded by the provisions of a subsequent Order issued in response to a motion for further protective order.

Given the assertions by Southern Bell and BAPCO that much if not all of the information being requested by the Public Staff and Attorney General is proprietary, it is certainly fair and reasonable to allow the companies a full and fair opportunity to be heard on their claims of proprietary confidentiality before such information may be disclosed publicly. The Commission is confident that the procedures set forth in this interim protective order will in fact serve to adequately and fully protect the legitimate rights of all parties and will serve the public interest.

Southern Bell and BAPCO should prepare and file the information required in the annual reporting forms attached to this Order as Appendix A beginning with calendar year 1984. Reports covering calendar years 1984, 1985, and 1986 shall be filed with the Public Staff pursuant to the provisions of this interim protective order not later than December 31, 1987. Beginning with calendar year 1987, the annual reports should be filed not later than April 15 of the following year.

The Commission further notes that the annual reporting requirements attached hereto as Appendix A do not encompass the individual state by state information which has been previously discussed in this Order. In its motion and report filed in this docket on April 29, 1987, the Public Staff stated that it had made a conscious effort to limit BAPCO's annual reporting requirements to the minimum necessary to provide minimal oversight and that, for example, the Public Staff had not requested any information by states because of the strong objections to providing such information raised by Southern Bell and BAPCO, even under proprietary protection. The Public Staff further stated that it had offered to further limit the annual reporting requirements provided that access to the information would be available in an audit situation, but that such offer was rejected by the companies. At the oral argument held in this docket on September 14, 1987, counsel for the Public Staff requested the Commission to require BAPCO to also make available the individual state by state information, subject to the proprietary protections afforded by a protective order.

The Commission concludes that the Public Staff should have reasonable access to the individual state by state information possessed by BAPCO as reflected in that Company's books of record and account during the course of any audit undertaken by the Public Staff and subject to the proprietary protections afforded by this interim protective order. The Commission believes that the individual state by state records and the information and records regarding independent company directories, although allegedly proprietary and confidential in nature, are records which relate, at the very least, indirectly to the provision of intrastate telephone service by Southern Bell in North Carolina and that such records are therefore relevant.

The Attorney General has also requested that the Commission require Southern Bell and BAPCO to provide his office with copies of the annual reporting requirements attached to this Order as Appendix A. In support of his request, the Attorney General cites that portion of G.S. 62-20 which provides that "[t]he Attorney General shall have access to all books, papers, studies, reports and other documents filed with the Commission."

G.S. 62-20 authorizes the Attorney General to intervene, when he deems it to be advisable in the public interest, in proceedings before the Commission on behalf of the using and consuming public. Said statute also provides that the Attorney General shall have access to all books, papers, studies, reports and other documents filed with the Commission. This being the case, the Commission concludes that Southern Bell and BAPCO should provide the Attorney General with copies of the annual reporting requirements specified in Appendix A to this Order, subject to the same proprietary and procedural protections and provisions specified in this interim protective order as are applicable to the Public Staff.

At the oral argument, counsel for Carolina Utility Customers Association, Inc. (CUCA), stated that CUCA supports the Public Staff's motion in this regard but is not requesting that it should be provided with copies of the annual reporting requirements in question.

The Commission further notes that the parties to this case have generally indicated a willingness to negotiate with respect to the specific terms of the proprietary procedures to be followed under the provisions of this Order. The Commission urges all parties to exercise caution and to operate in good faith to see that the spirit, as well as the letter, of this interim protective order and all proprietary procedures adopted pursuant thereto are upheld and followed.

IT IS, THEREFORE, ORDERED as follows:

1. That Southern Bell and BAPCO be, and the same are hereby, required to compile the information necessary to complete the annual reporting forms attached hereto as Appendix A. Such forms shall be filed with the Public Staff pursuant to the applicable provisions of this interim protective order, beginning with calendar year 1984. Annual reports for calendar years 1984 through 1986 shall be filed with the Public Staff not later than December 31, 1987. Annual reports for each calendar year subsequent to 1986, shall be filed with the Public Staff not later than April 15 of the following year. Said reports shall also be made available to the Attorney General subject to the same proprietary and procedural protections and provisions specified in this interim protective order as are applicable to the Public Staff. At the times the required reports are served on the Public Staff and/or the Attorney General, Southern Bell and BAPCO shall file a letter with the Chief Clerk stating that the reports have been served on the appropriate parties.

2. That in the event the Public Staff plans or is requested to use publicly or otherwise disclose all or any part of the information supplied under this Order, the Public Staff shall serve upon Southern Bell and BAPCO a notice of intent to disclose, at least fourteen (14) days prior to such planned or requested public use or disclosure.

3. That upon receipt of a notice of intent to disclose pursuant to decretal paragraph 2 above, Southern Bell and BAPCO may file a motion for further protective order with the Commission, which will be heard by the Commission on an expedited basis. Upon the receipt of such a motion for further protective order, the Public Staff shall not publicly use or disclose the information as to which the company in its motion requests a further protective order, until such time as the Commission issues an Order in response to the company's motion.

4. That all information held by the Public Staff under the terms of this Order shall be held on an interim basis by the Public Staff under proprietary confidentiality protections, and shall not be used publicly or otherwise disclosed by the Public Staff until the expiration of the fourteen (14) day period specified in a notice of intent to disclose served pursuant to decretal paragraph 2 above, or until the Commission issues an Order in response to a motion for further protective order.

5. That the provisions of this interim protective order may be superseded by the provisions of a subsequent Order issued in response to a motion for further protective order.

6. That the proprietary and procedural protections and provisions set forth in decretal paragraphs 1 through 5 of this interim protective order shall also apply to the Attorney General at such time as the Attorney General is supplied with the annual reports to be filed pursuant to this Order.

7. That during the course of any audit, Southern Bell and BAPCO shall make available to the Public Staff the individual state by state information and information regarding independent company directories contained in the books and records of account maintained by BAPCO. Such information shall be made available pursuant to the provisions of this interim protective order and G.S. 62-51.

ISSUED BY ORDER OF THE COMMISSION.
This the 5th day of October 1987.

NORTH CAROLINA UTILITIES COMMISSION
Sandra J. Webster, Chief Clerk

(SEAL)

Commissioner Sarah Lindsay Tate dissents.

Note: For Appendix A, see the official Order in the Chief Clerk's Office.

DOCKET NO. P-55, SUB 834

COMMISSIONER TATE, DISSENTING. I dissent to that portion of the Majority opinion which requires the companies to furnish individual state by state information and data on independent company directories.

In the pre-divestiture days of monopoly, this Commission did not require Southern Bell to provide information on its operations in other states. Of course, directories were then published within each state; however, many other operating expenses such as the Licensing Agreement, Western Electric and the Bell Labs were allocated separately to each state. This Commission did not then require the company to provide information on the allocations made in South Carolina, Georgia and Florida. Now that we are in the process of deregulating, I believe that our requirements of information should be <u>less</u>, not <u>more</u>. In a competitive environment, there is less need for such data and more danger that competitors could acquire it. The Majority has lurched into reverse instead of creeping forward.

Sarah Lindsay Tate, Commissioner

DOCKET NO. P-55, SUB 859

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Investigation to Determine Whether to Amend Southern Bell Telephone and Telegraph Company's Emergency Service Tariff Section	))))	ORDER REGARDING 911 SERVICE TARIFF

BY THE COMMISSION: Commission Rule R9-5 entitled "911 Emergency Telephone Number System" provides as follows:

> "It is the policy of the Commission that regulated telephone companies shall make 911 emergency telephone service available to local governmental agencies upon reasonable terms and time schedules as proscribed in relevant orders of the Commission. Every telephone company shall notify the Commission within ten (10) working days of an official request from a local governmental authority for the availability costs and implementation dates for the 911 emergency telephone number in the exchange(s) of that authority's jurisdiction. The telephone company's response must be made to the inquiring authority within sixty (60) days. Notice of the inquiry and telephone company's response shall be filed with the Chief Clerk who shall provide copies to the Communications Division of the Public Staff and to the North Carolina Department of Crime Control and Public Safety, 911 Section. The implementation of the 911 service shall be further in accordance with the provisions of the Commission's modified order of October 19, 1979, in Docket No. P-100, Sub 48, Investigation of 911 Emergency Telephone Number.

During the Commission Staff Conference held on March 18, 1985, the Commission considered a proposed tariff filed by Southern Bell Telephone and Telegraph Company (Southern Bell) which would allow local government systems additional options with respect to the payment of nonrecurring charges applicable to the establishment of a universal emergency number or 911 service. Under Southern Bell's proposed tariff filing, two additional payment options would now be provided to those local government authorities requesting 911 service as follows:

1. Upon request by a local government authority, Southern Bell will spread the payment of the applicable nonrecurring charges for 911 service by such local government in equal installments over a period of time not to exceed 18 months.

2. Upon request by a local government authority, Southern Bell will bill the applicable nonrecurring charges for 911 service pro rata to the local exchange subscribers in the 911 service area over a period of time not to exceed 18 months. The minimum customer charge per month under this option would be $.25 per line.

Southern Bell's proposed tariff filing was initially considered and was approved unconditionally by the Commission during the Commission Conference

held on March 18, 1985, with Commissioner Tate voting in opposition to such approval.

However, on March 20, 1985, the Commission entered an Order in Docket No. P-55, Sub 859, entitled "Order on Reconsideration Approving 911 Service Tariff with Procedural Modifications." The Order on Reconsideration provided that upon request by a local government authority, Southern Bell will be required to poll the affected customers by written ballot to determine if a majority of the customers are willing to assume the burden of paying the nonrecurring charges as pro rated over a period of up to 18 months with $.25 per line being the minimum monthly charge. The Commission set forth the following statements in support of the Order on Reconsideration:

> "The Commission has now decided to reconsider its earlier decision and action to unconditionally approve the proposed 911 service tariff. This reconsideration is appropriate in order to ensure that local ratepayers will not be required to pay the nonrecurring charges associated with implementation of 911 service without first being given notice and an opportunity to be heard. In this regard, the Commission is concerned that its earlier unconditional approval of the proposed tariff filing could, in effect, be construed as exercising the power of taxation whereby a local government authority could request implementation of 911 service and then require Southern Bell's ratepayers to bear the cost thereof, without any notice other than the local government action.
>
> "Accordingly, after reconsideration the Commission will require Southern Bell to modify its 911 service tariff to provide that, when requested by a local government authority, the Company will conduct a poll of its affected customers by written ballot to determine whether the majority of those customers are willing to assume the burden of paying the nonrecurring charges associated with implementation of 911 service by prorating those charges on their monthly bills over a specified period of time not to exceed 18 months, with the minimum monthly charge being $.25 per line. At such time as the poll results have been compiled and filed with the Commission, the Commission will take such action as is deemed appropriate to either approve or disapprove the request to include a monthly charge for 911 service on customer bills.
>
> "As a general proposition, the Commission would anticipate approving a monthly customer charge in those instances where at least 50% of the returned ballots were in favor of implementation of 911 service and would disapprove such billing procedure where less than 50% of the returned ballots were in favor of such implementation. The Commission concludes that this procedure clearly affords and recognizes the due process rights of Southern Bell's customers and is generally consistent with the practices and procedures followed by the Commission regarding implementation of other enhanced telephone services, such as extended area service in particular."

On March 29, 1985, Southern Bell filed revised 911 tariffs in conformity with the provisions of the Order on Reconsideration.

On June 10, 1986, the Buncombe County Board of Commissioners filed a letter with the Commission requesting that the local exchange companies serving Buncombe County conduct a poll of their subscribers by written ballot to determine whether the subscribers would be willing to "(1) assume the burden of paying the nonrecurring charges for installation and implementation of a 911 Emergency Service number in Buncombe County over a period of time not to exceed 18 months, and (2) whether the subscribers would be willing to pay a regular recurring monthly charge for the maintenance and servicing of such a system."

On June 24, 1986, the Commission issued an "Order Requesting Comments" with respect to the following issues:

1. Whether Section A24 of Southern Bell Telephone and Telegraph Company's General Subscriber Service Tariff should be expanded to apply to all other local exchange companies (LECs).
2. Whether the Southern Bell tariff should be expanded to cover the resulting recurring charges of 911.
3. All other facts which the parties deem relevant to assisting the Commission in its decision-making process.

The Public Staff filed comments in response to the Commission's "Order Requesting Comments" dated June 24, 1986, taking the position that there is a serious legal question with respect to whether the Commission has the authority to authorize telephone companies to bill general ratepayers for charges associated with telephone services subscribed to by a government agency. Therefore, the Public Staff recommended that before taking any further action the Commission should request the Attorney General to render an opinion on the question of whether the imposition of recurring and nonrecurring charges on general ratepayers to pay for local government services is legal.

Comments were also filed by Southern Bell, Carolina Telephone Company, Continental Telephone Company, Barnardsville Telephone Company, General Telephone Company, ALLTEL Carolina, Inc., Central Telephone Company, Lexington Telephone Company, and North State Telephone Company.

On November 17, 1986, the Commission entered an Order in this docket entitled "Order Requesting Further Comments and/or Briefs" requesting the parties to this docket, including the Attorney General, to address the legal issue "as to whether the recurring and nonrecurring charges for 911 service may legally be imposed upon general telephone subscribers for charges associated with 911 telephone service subscribed to by a local government agency or whether the cost for such 911 service should be paid directly by the local government agency and assessed through local government taxation." Commissioner Hipp filed a written dissent to this Order which was concurred in by Commissioner Koger.

Comments were subsequently filed by several parties. A summary of those comments follows.

PUBLIC STAFF

On December 30, 1986, the Public Staff filed the following comments:

"1. Article V of the North Carolina Constitution places limits on the taxing power. Several responses to the Commission's 24 June 1986 Order Requesting Comments in this case raised the issue of whether requiring customers to pay charges for 911 service is an unlawful imposition of a tax. The Public Staff does not believe this legal issue can or should be resolved through further comments or briefs in that the issue involves matters not within the usual province of the Commission's jurisdiction, i.e., tax law and constitutional law.

"2. The Public Staff therefore reiterates its position that the Commission should request the Attorney General's opinion on the constitutionality of imposing either recurring or nonrecurring charges for 911 services on customers."

SOUTHERN BELL

Southern Bell takes the position that the charges associated with 911 service subscribed to by a local government agency are not a tax and may legally be billed to local exchange customers. Southern Bell views 911 emergency service as an enhancement or supplement to ordinary telephone service and states that approval of monthly customer charges for such service is within the supervisory and ratemaking authority of the Commission. (See General Statutes, Section 62-2 Declaration of Policy; Section 62-30 General Powers; Section 62-32 Supervisory Powers, rates and service, especially Section 62-32(b); and Section 62-42, especially 62-42(a)(5)). Assessment of an extra charge for 911 service upon order of the Commission is not a tax. It is not an enforced contribution exacted by the local government, but is a rate or charge approved by the Commission in the public interest. Participation by a local government as the "subscriber" is a practical and necessary requirement to implement 911 service. However, the mere designation of a local government as the "subscriber" to the 911 service does not compel the conclusion that the charge to the local telephone subscribers is a tax and should not prevent the customers who are the users and beneficiaries of the service from being assessed the charges associated with the service. Nevertheless, Southern Bell still opposes extension of its current 911 tariff to also cover the payment of recurring charges by local telephone subscribers.

GENERAL TELEPHONE COMPANY OF THE SOUTH

General Telephone Company takes the position that the imposition of recurring and nonrecurring charges for 911 service on general telephone subscribers would not be a tax, so long as the charges are directly associated with 911 service. Notwithstanding the Company's position that subscriber funding of 911 service would not be an illegal tax, General believes that the sources of funding for the service should be disassociated from telephone service rates and associated with the areas served by the service. General's preferred position is that 911 service should be funded by the governmental agency requesting the service. However, should the Commission determine that funding should be through the local exchange telephone company billing the local subscribers, General proposes that the additional amounts would be billed

only to those subscribers served by the governmental agency requesting the service.

BUNCOMBE AND CLEVELAND COUNTIES

The Boards of Commissioners of Buncombe and Cleveland Counties filed comments requesting the Commission to approve 911 tariff changes which would authorize Southern Bell to bill both nonrecurring and recurring charges for 911 service to local telephone subscribers. Buncombe County equates such 911 charges with "user fees" that the Commission may legally impose on local telephone subscribers who, by a majority vote, indicate their willingness to pay such charges.

CITY OF CONOVER, NORTH CAROLINA

The City of Conover, through the Attorney General, has provided the following comments set forth in a memorandum from the City Manager:

> "It appears this is not in keeping with the long established necessity to provide citizens with a means to get a response for police, fire and other emergencies.
>
> "The Utilities Commission appears to be out of control when it comes to passing costs to the general public that is now paid by all taxpayers from the General Fund.
>
> "Since all the cities are using the 911 System of the County, and city residents are paying most of the costs because of the tax base of the municipalities, then it may behoove city officials to have this ruling reversed, make sure the County continues to fund this from the General Fund, or as a last resort, look into the possibility of other alternatives."

NCSU CENTER FOR URBAN AFFAIRS AND COMMUNITY SERVICES

The NCSU Center for Urban Affairs and Community Services (the Center) filed comments in support of expanding Southern Bell's 911 tariff to also encompass recurring charges. Similar to Buncombe County, the Center also views such 911 charges as permissible "user fees" as indicated by the following comments:

> "Payment of nonrecurring and recurring charges through a general subscriber charge is similar to a usage fee that many local governments have imposed for support of parks, garbage collection, and other services due to the loss of many federal funding sources. The fee would also be similar to the long distance access fee now charged, in that the 911 fee is for the privilege of having a 911 service. Payment of the costs for 911 service is not necessarily a tax but a charge for an improved phone service, just as access fees improve phone service by allowing the user to call long distance." (Emphasis added).

CENTRAL TELEPHONE COMPANY

Central Telephone Company filed comments in opposition to charging local telephone subscribers for 911 charges. Central takes the position that local government entities should recover the cost for services they provide such as 911 service through the assessment of local taxes and that a tariff should not be approved which would attempt to collect 911 costs for a local government in the form of a surcharge on local bills for either recurring or nonrecurring charges. G.S. 62-3(24) defines the term "rate" to mean every compensation or charge collected by a public utility for any service product or commodity offered to the public. Central takes the position that 911 service is not being offered by the local exchange companies "to the public" because the municipality or county requesting the 911 service is the utility customer rather than the local telephone subscribers. Therefore, Central contends that charges for 911 service which would be collected by the LECs from local telephone subscribers are not "rates" which may be approved by the Utilities Commission. Central views 911 service as being provided by the local government authority rather than the local telephone companies. Central further contends that since a large part of the installation charge for 911 service is related to terminal equipment, it would be improper for the Commission to order a pro rata payment for such equipment by local telephone subscribers due to the deregulation of telephone terminal and customer premises equipment.

LEXINGTON TELEPHONE COMPANY

Lexington Telephone Company filed comments stating that the Company favors the establishment of 911 service with appropriate charges recovered directly from the local governmental body providing the Emergency Service Bureau (Public Safety Answering Point). Central further states that should the Commission determine that the imposition of charges on general ratepayers to pay for local government services is legal, and in the public interest, then the Commission is urged to adopt regulations to limit those charges to the local telephone company's cost. In no way should those charges be expanded to cover reimbursement to governmental agencies for other costs or expenses of the governmental agency.

CAROLINA TELEPHONE AND TELEGRAPH COMPANY

Carolina Telephone and Telegraph Company filed comments stating that at present it may well be illegal for an LEC to bill recurring or nonrecurring charges for 911 service to general telephone subscribers. Carolina believes that charges for such service should be paid directly by local government agencies and assessed through local government taxation. If another mechanism is needed, it should be implemented only after statutory provisions are enacted clearly granting authority for billing such charges. In short, Carolina contends that it may now be impermissible to bill recurring or nonrecurring charges in the manner contemplated, and, until enabling legislation is enacted, such charges should remain a function of the local government payable through the local government budgetary process.

Carolina provides the following definition of what constitutes a "tax":

> "...a burden, charge, exaction, imposition, or contribution, assessed in accordance with some reasonable rule of apportionment by authority of a sovereign state upon the persons or property within its jurisdiction, to provide public revenue for the support of the government, the administration of the law, or the payment of public expenses. Any payment exacted by the State or its municipal subdivisions as a contribution toward the cost of maintaining governmental functions, where the special benefits derived from their performance is merged in the general benefit, is a tax." 71 Am Jur 2d, State and Local Taxation, Section 2, footnotes omitted. (Emphasis added).

Carolina takes the position that the 911 charges in question are arguably a tax for payment of public expenses for maintenance of a governmental function. It is Carolina's position that the Commission would be better advised to institute such a program for payment for 911 service only after enactment by the General Assembly of statutes clearly giving the Commission authority to so act and establishing in local governments the necessary taxing authority. Carolina further notes that in at least one other jurisdiction, the federal government has refused to pay such charges as an unauthorized tax.

ATTORNEY GENERAL-UTILITIES DIVISION

The Attorney General filed comments setting forth the following conclusions with respect to the proposal to allow local telephone subscribers to pay the recurring and nonrecurring charges associated with 911 service:

> "(A) The tariff as presently proposed fails, not as a matter of tax law, but as a matter of contract and constitutional law and public policy because the tariff allows one user to contract for service without paying for that service while compelling those who have not contracted for the service to pay for it.
>
> "(B) A tariff which either allows a local government to contract and pay for the service or a procedure which allows a local citizens' group to initiate a request for 911 and pay for that service in a manner similar to EAS could be properly approved by this Commission, if the Commission determines that 911 is not an integral part of police and fire protection."

The Attorney General states that billing end-users the charges for 911 telephone service is not a tax if the tariff is structured so that a county's citizens who are telephone subscribers can request the service. While police and fire protection are traditional forms of local governmental activity, authority for which has been delegated by the General Assembly, the Attorney General takes the position that providing telephone service or a telephone link to that police and fire protection is not a traditional form of local government activity. The question is whether 911 service is merely the telephone link to fire and police protection or whether it is an essential part of providing that protection. If provision of 911 service is an essential part of police and fire protection, it becomes a governmental function. Imposition to fees for this service would then be in the nature of a tax.

The Attorney General states that a governmental function is generally one in which only a governmental agency can engage. Britt v. Wilmington, 236 N.C. 446, 451, 73 S.E. 2d 289 (1952). Revenues derived from providing such a function are in the nature of a tax, 236 N.C. at 452, citing Unemployement Compensation Commission v. Wachovia Bank and Trust Company, 215 N.C. 491, 2 S.E. 2d 592 (1939). Thus, in Britt where providing off-street parking was held to be a legitimate function of the governmental activity of abating traffic congestion which "endangered the health, safety and welfare of the general public" and created "a public nuisance," 236 N.C. at 448, the Court held that fees charge for that function were in the nature of taxes. Likewise, in Utilities Commission v. Wilson, 252 N.C. 640, 114 S.E. 2d 786 (1960), the Court held that a city's requiring lower telephone rates in return for granting a telephone franchise was in the nature of a franchise tax.

If 911 service is such an integral part of providing police and fire protection, fees charged to local telephone subscribers for such service and collected by the telephone company become in the nature of taxes; i.e., "an enforced contribution of money assessed by authority of a sovereign state...(and) necessary to the maintenance of government..." Orange County v. Wilson, 202 N.C. 424, 163 S.E. 2d 113, 115 (1932). Imposition and collection of such fees are not properly authorized by current law.

The Attorney General takes the position that the matter is a question of ultimate fact perhaps best resolved by the Commission after notice and hearing. However, it is the view of the Attorney General that the provision of 911 service is not a governmental function because it does not meet the test of being a function in which only a governmental agency can engage. It is the telephone company which provides 911 service not the local government. A local government can provide fire and police protection adequately without 911 service.

If 911 service is in fact not a governmental function, but a matter of enhanced telephone linkage between subscribers, the Attorney General takes the position that direct charges for 911 service to telephone subscribers who request such service are fees they must pay for enhanced telephone service. Such fees, if established after investigation and hearing, are rates charged for "service...offered...to the public" and are the legitimate function of this Commission to set. N.C. Gen. Stat. 62-3(24) and 62-133.

The Attorney General states that the tariff as currently proposed poses a problem even if provision of 911 service is viewed as a nongovernmental, and thus properly tariffed, function. Even if direct rates can be set for this service, the tariff as currently written provides that the user is a local government. Unlike EAS, where a group of subscribers approach the Commission and request the service, the 911 tariff allows one user to contract for a service for which other users are required to pay. This raises significant questions of contract law, constitutional law and public policy, which not even an opinion poll can probably cure.

FINDINGS AND CONCLUSIONS

The primary issue which must be decided in this case is whether a charge to end-users (local telephone subscribers) for 911 service is a tax and, if so, whether the LECs can legally collect or can be compelled to collect such a charge.

An essential characteristic of a tax is that it is a compulsory contribution exacted pursuant to legislative authority. The term "tax" has been generally defined as follows:

> "...a burden, charge, exaction, imposition, or contribution, assessed in accordance with some reasonable rule of apportionment by authority of a sovereign state upon the persons or property within its jurisdiction, to provide public revenue for the support of the government, the administration of the law, or the payment of public expenses. Any payment exacted by the State or its municipal subdivisions as a contribution toward the cost of maintaining governmental functions, where the special benefits derived from their performance is merged in the general benefit, is a tax." 71 Am Jur 2d, State and Local Taxation, Section 2, footnotes omitted. (Emphasis added).

and

> "A tax is an enforced contribution of money assessed by authority of a sovereign state. It is a source of revenue, necessary to the maintenance of government, and collectible in the way and within the period provided by law..." Orange County v. Wilson, 202 N.C. 424, 428, 163 S.E. 2d 113 (1932).

Subsequent North Carolina court decisions have restated the above definitions of a tax and there is no disagreement in other jurisdictions over the meaning of that term. See Prudential Insurance Company of America v. Powell, 217 N.C. 495, 8 S.E. 2d 619 (1940); State ex rel. Dorothea Dix Hospital v. Davis, 292 N.C. 147, 232 S.E. 2d 698 (1977); 71 Am Jur 2d, State and Local Taxation, Sections 1-4.

Generally, a governmental function is one in which only a governmental agency can engage. Revenues derived from providing such a function are in the nature of a tax. Britt v. Wilmington, 236 N.C. 446, 73 S.E. 2d 289 (1952). It is clear that police and fire protection are traditional forms of local governmental activity which have been authorized by our General Assembly. The real question in this case is whether 911 service is merely the telephone link to such fire and police protection or whether 911 service is an essential part of providing that protection. If the provision of 911 service is an essential part of providing police and fire protection, it becomes a governmental function and imposition of end-user fees for that service would then be in the nature of a tax which is not properly authorized by current law. On the other hand, if 911 service is viewed as an enhancement or supplement to basic telephone service which simply provides a telephone link to police and fire protection, then it would follow that the provision of 911 service is not a governmental function because it does not meet the Britt test of being a function in which only a governmental agency can engage since such protection can arguably be adequately provided without 911 service.

If 911 service is in fact not a governmental function, but a matter of enhanced telephone linkage between subscribers, it follows that direct charges for 911 service to telephone subscribers who request such service are fees they must pay for enhanced telephone service. Such fees, if established after investigation and hearing, are rates charged for "service...offered...to the

public" and are the legitimate function of this Commission to set. N.C.G.S. 62-3(24) and 62-130.

After reviewing all of the comments filed by the parties to this docket, the Commission concludes that we possess the necessary legal authority under the Public Utilities Act to approve a charge to local telephone subscribers to cover the recurring and/or nonrecurring charges associated with 911 service as lawful rates for utility service offered to the public. This conclusion is based upon a finding that 911 service is not an essential part of providing police or fire protection. Therefore, 911 service is not a governmental function. The Commission views 911 service as an enhancement of or supplement to basic telephone service which simply provides a telephone link to police and fire protection, since such protection can be adequately provided without 911 service. It is the telephone company which provides 911 service, not the local government. The tariff does not give local governments the power to impose a monthly charge for 911 service on their citizens. The power to order such a rate or charge rests with this Commission as part of our supervisory and ratemaking authority. For these reasons, the Commission concludes that an end-user charge approved as a matter of sound regulatory policy for 911 service provided to local telephone subscribers does not constitute an illegal tax and is not in the nature of an illegal tax. The Commission adopts these findings and conclusions for the reasons generally set forth in the comments filed by the Attorney General, Southern Bell, General Telephone Company, and other interested parties. Therefore, 911 charges may legally be approved as rates for enhanced telephone service offered to the public.

The Commission believes that the decision of the Comptroller General of the United States (File B-215735, dated July 1, 1985) is not applicable to the end-user rates or charges for telephone service provided to the public which this Commission may approve for 911 service pursuant to Southern Bell's 911 service tariff. The decision of the Comptroller General was based upon the Texas 9-1-1 Emergency Number Act which explicitly authorized certain governmental entities or communication districts to assess a 911 emergency service fee to recoup operating costs. This law requires the LECs in Texas to collect this fee from their local telephone customers and to remit all such collections quarterly to the communication district. The Act requires that the 911 fee must be added to and separately stated on the telephone bills which are regularly issued by the LECs. The LECs in Texas merely serve as collection agents for services provided by each communication district, which means that the legal burden of the fee or tax is not imposed on the utility as vendor but on the consumer of utility services--the vendee. The rates which this Commission may approve pursuant to the Public Utilities Act to cover charges associated with 911 service are clearly distinguishable from the emergency service fee authorized by Texas law. Such rates would not constitute the imposition of an unlawful tax on agencies of the federal government. The 911 emergency service fee authorized by the Texas legislature is clearly a tax imposed on local telephone subscribers for 911 service which is merely collected by the LECs and then remitted to the appropriate local government agency. In North Carolina, the LECs will retain all revenues produced by the lawful rates which this Commission will approve as payment for 911 telephone service provided to the public to cover the nonrecurring charges associated with implementation of such service. These revenues will not be remitted to the LECs in North Carolina.

The Commission further concludes that Southern Bell's approved tariff for 911 service should continue to be limited to only the payment of nonrecurring charges by local telephone subscribers and that such tariff should not be expanded to cover the recurring charges associated with implementation of 911 service. The Commission has decided to reject the request made by the Buncombe County Board of Commissioners and others to expand the 911 tariff to cover recurring charges for policy reasons which are based primarily on the objections to such expansion generally advanced in this docket by most of the LECs. For instance, Carolina Telephone Company contends that the recurring charges for basic 911 service are not sufficiently large to permit efficient billing to affected local telephone subscribers and that the Company anticipates that recurring charges for enhanced 911 service would vary from month to month creating billing problems which would continue for as long as the service was offered. North State Telephone Company and Southern Bell both assert the position that since 911 emergency service is provided for the use and benefit of the general public which would include all citizens within a given area, and not just for the benefit of telephone subscribers, it is logical and appropriate that the recurring charges for such service should be paid for by the local government agency.

The Commission will, however, expand Southern Bell's 911 tariff to apply to all other regulated LECs as a means of encouraging the implementation of additional 911 service in North Carolina. The Commission believes that the imposition of rates on local telephone subscribers to cover the nonrecurring charges associated with implementation of 911 service will not be unduly burdensome, since such rates will only be applied for a maximum period of 18 months. As a matter of regulatory policy, the Commission is much more reluctant to impose end-user charges to cover the recurring charges associated with 911 service.

Having concluded that authorizing the LECs to bill nonrecurring charges to local telephone subscribers for 911 service does not amount to the imposition of an illegal tax, the Commission must now address the further issue raised by the Attorney General regarding whether or not Southern Bell's 911 tariff fails, not as a matter of tax law, but as a matter of contract and constitutional law and public policy because the tariff allows one user to contract for service without paying for that service while compelling those who have not contracted for the service to pay for it.

The Attorney General takes the position that the 911 tariff poses a problem even if the provision of 911 service is viewed as a nongovernmental, and thus properly tariffed, function. Even if direct rates can be set for this service, the Attorney General notes that the tariff as currently written provides that the user is a local government. Unlike EAS, where a group of subscribers approach the Commission and request the service, the 911 tariff allows one user to contract for a service for which other users are required to pay. The Attorney General asserts that this raises significant questions of contract law, constitutional law and public policy, which not even an opinion poll can probably cure. The Attorney General concludes that a tariff which either allows a local government to contract and pay for the service or a procedure which allows a local citizens' group to initiate a request for 911 and pay for that service in a manner similar to EAS could be properly approved by this Commission, if it is determined that 911 service is not an integral part of police and fire protection.

The Commission agrees that certain technical and procedural modifications should be made to the 911 tariff along the lines suggested by the Attorney General, so that a subscriber poll would be initiated on the basis of a petition filed by a local citizen's group (similar to the procedures followed in EAS cases) with the concurrence and support of the local governmental agency that would operate the Public Safety Answering Point. Under this procedure, the 911 tariff should be modified to indicate that for purposes of paying the nonrecurring charges associated with 911 service implemented after and on the basis of a favorable poll of affected telephone subscribers, the users of and subscribers to the service would be the LEC customers and the local government agency rather than the local government agency alone. The local government agency will be considered to be the subscriber or user under the tariff for purposes of paying the recurring charges associated with 911 service.

IT IS, THEREFORE, ORDERED as follows:

1. That Southern Bell shall revise and refile its tariff for 911 service in conformity with the provisions and procedural modifications set forth in this Order to be concurred in by all other regulated LECs.

2. That the request by Buncombe County to expand Southern Bell's 911 service tariff to cover the recurring charges associated with 911 service is hereby denied.

3. That Southern Bell and other affected LECs shall contact the Buncombe County Board of Commissioners to determine whether Buncombe County desires to proceed with a poll of affected customers regarding their willingness to pay rates to cover the nonrecurring charges associated with implementation of 911 service in Buncombe County, assuming Buncombe County is willing to pay the recurring charges for such service.

4. That the Chief Clerk shall mail a copy of this Order to all regulated local exchange companies and all parties who filed comments in this docket.

ISSUED BY ORDER OF THE COMMISSION.
This the 20th day of February 1987.

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

Commissioner Sarah Lindsay Tate dissents.
Commissioner J. A. Wright dissents

P-55, SUB 859

COMMISSIONERS TATE & WRIGHT, DISSENTING: We dissent from this Order because we believe the Majority has exceeded its statutory authority by attempting to levy a tax on telephone customers.

There is no doubt in Southern Bell's Tariff that the customers of 911 is a local government: "when requested by local government authorities..."(A 24.1. 1A) and "Application for 911 service must be executed in writing by the customer (a municipality, a local government authority or their duly appointed

agent)". (A 24.1. 2I) In fact governmental agencies in 27 counties in North Carolina have obtained 911 service from their local telephone companies.

Since the customer is the governmental agency, (which is providing governmental services of fire and police protection, etc.) the customer must pay the bill from its own tax revenue sources. No city or county can legally pass on its telephone bills to telephone customers although any government which has statutory authority can levy a tax on all its constituents to pay its expenses. Similarly, this Commission can set telephone rates, but has no authority to provide governmental services or to require telephone customers to pay for them. In this case, the Majority has attempted to co-mingle governmental and regulatory functions.

The Majority suggests that by polling the customers of 911 service that some defects are cured. In fact in the earlier Order issued by this Commission on March 20, 1985, the Commission said in reconsidering a previous Order, "In this regard, the Commission is concerned that its earlier unconditional approval of the proposed tariff filing could, in effect, be construed as exercising the power of taxation whereby a local government authority could request implementation of 911 service and then require Southern Bell's ratepayers to bear the cost thereof, without any notice other than the local government action. Accordingly, after consideration the Commission will require Southern Bell to modify its 911 service tariff to provide that, when requested by a local government authority, the Company will conduct a poll of its affected customers by written ballot to determine whether the majority of those customers are willing to assume the burden of paying the non-recurring charges associated with implementation of 911 service by prorating those charges on their monthly bills over a specified period of time not to exceed 18 months..." The Commission admits that there is a problem with whether or not its actions are actually levying a tax, and attempts to cure that defect by providing notice and a poll of the subscribers. If the Commission has indeed levied a tax (as we believe it has) then no amount of notice or any number of polls will cure the problem, since the Commission simply has no authority to levy a tax.

The Majority asserts that the provision of 911 service is closely akin to enhanced telecommunication services, such as EAS. However, an EAS arrangement can be accomplished without the participation of or support of any governmental unit. In the case of 911, some local government has to assume the responsibility for answering the calls and responding with governmental assistance. And, as noted before, in the case of 911, the customer by tariff must be a governmental agency.

Since more than 27 various governmental agencies have already acquired 911 service, it is obvious that these communities consider that the provision of 911 is a government responsibility. Those governmental agencies have not attempted to evade their responsibility by asking telephone customers in their communities to pay the expense of providing the 911 service. It is unfair now to allow Buncombe County to obtain this service by "taxing" telephone ratepayers.

Likewise, the Majority can blithely ignore the decision of the Comptroller General of the United States who decided a similar provision was a tax by asserting that the laws of Texas and North Carolina are dissimilar. However,

if 911 is interpreted to be a tax imposed by a Commission which has no authority to impose a tax, 911 is similarly an illegal tax in North Carolina.

In short, the Majority says that this 911 arrangement looks like a tax and operates like a tax but concludes it is not a tax. We disagree. This Commission has the authority, and only the authority that is given to it by the Legislature of North Carolina. We cannot find any statutory authority allowing us to impose these charges on telephone customers.

Sarah Lindsay Tate, Commissioner
Julius A. Wright, Commissioner

DOCKET NO. W-785
(On Remand)

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of

Application by Martha H. Mackie, Post Office Box 672, Wake Forest, North Carolina, for Authority to Abandon Water and Sewer Utility Service in Falls of the Neuse Village in Wake County, North Carolina	)))))	RECOMMENDED ORDER DENYING ABANDONMENT, GRANTING FRANCHISE, AND APPROVING RATES

HEARD IN: Commission Hearing Room, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina on July 8-9, 1987.

BEFORE: Sammy R. Kirby, Hearing Examiner

APPEARANCES:

For the Applicant:

I. Beverly Lake, Attorney at Law, Post Office Box 72, Wake Forest, North Carolina 27587

For the Public Staff:

Vickie L. Moir and Robert B. Cauthen, Jr., Staff Attorneys, Public Staff - North Carolina Utilities Commission, Post Office Box 29520, Raleigh, North Carolina 27626-0520

KIRBY, HEARING EXAMINER: On January 25, 1984, Martha H. Mackie (Applicant) filed an application with the North Carolina Utilities Commission seeking authority to abandon the water and sewer utility service in the village of Falls of the Neuse in Wake County, North Carolina. Applicant asserted that she was not operating a public utility but that in the event she was found subject to the Commission's jurisdiction, she should be allowed to discontinue utility service pursuant to G. S. 62-118(a). A public hearing was held before a Hearing Examiner on April 10, 1984. A Recommended Order was issued on June 18, 1984, which declared Martha H. Mackie a public utility, denied her application for leave to abandon utility service, and required her to submit an application for a certificate of public convenience and necessity. Applicant filed exceptions. After oral argument, the Commission issued a Final Order on September 10, 1984, which, with one minor revision, affirmed the Recommended Order.

Applicant filed Notice of Appeal. The Court of Appeals heard the appeal and filed its opinion on February 4, 1986. The Court, with Judge Webb dissenting, affirmed the portions of the Commission's Final Order holding Applicant to be a public utility and holding that her operation of the utility systems serves the public convenience and necessity. The Court of Appeals vacated the portion of the Commission's order denying the application for

authority to abandon and remanded the matter to the Commission. See State ex rel. Utilities Commission v. Martha H. Mackie, 79 N.C. App. 19, 338 S.E.2d 888 (1986).

Applicant filed Notice of Appeal and Petition for Discretionary Review. The Public Staff also filed a Petition for Discretionary Review. Both petitions were allowed by order of the North Carolina Supreme Court on May 6, 1986. By its January 6, 1987 decision the Supreme Court affirmed the Court of Appeals decision with the modification that the parties ". . . may present on remand additional evidence of reasonable expenses of operation and the revenues which the water and sewer systems may reasonably be expected to produce." See 318 N.C. 686, ____ S.E.2d _____ (1987)

On February 20, 1987, the Public Staff filed a Motion requesting the Commission to schedule a prehearing conference for the purposes of determining an appropriate date for further hearing and defining the issues on remand and the scope of the further hearing. The Commission scheduled such a prehearing conference.

The prehearing conference was conducted as scheduled. As a result of that conference, the Commission issued its Prehearing Order of April 27, 1987, which scheduled the hearing, established the test year, set dates for the filing of the Applicant's proposed rates and the filing of testimony, and defined the issues to be considered on remand as follows:

(a) Should the Applicant Martha H. Mackie be authorized to abandon providing water and sewer utility service in the village of Falls of the Neuse pursuant to G.S. 62-118(a)?

(b) If abandonment is not authorized, what rates and charges should be approved for the Applicant's water and sewer utility service?

(c) If abandonment is not authorized, for what territory should the Applicant be issued a certificate of public convenience and necessity for water and sewer utility service?

On May 11, 1987, the Applicant filed her proposed water and sewer rates. On May 19, 1987, the Commission issued its Order Requiring Public Notice.

The matter came on for hearing at the time and place set forth above. Both the Applicant and the Public Staff were present and represented by counsel. The following public witnesses appeared and offered testimony: Nelson Leonard, George Womble, Nina Barham, Marvin Pollard, James Womble, Don de Jong, and Louise Barham. The Applicant offered the testimony of William Joslin, who served as secretary of Scarsdale Investment Corporation; R. W. Van Tilburg, Regional Supervisor of the Raleigh Office of the Division of Environmental Management, Department of Natural Resources and Community Development; Bill Chappell, who has assisted his father in managing Applicant's properties in Falls of the Neuse; Martha H. Mackie, the Applicant; and George Mackie, the husband of the Applicant. The Public Staff offered the testimony and exhibits of Kevin O'Donnell, Public Utilities Financial Analyst in the Public Staff's Economic Research Division; George Dennis, Supervisor of the Water Section of

the Public Staff's Accounting Division; and Jerry Tweed, Director of the Public Staff's Water and Sewer Division.

On July 20, 1987, the Public Staff filed its Motion to Require Public Notice and to Schedule Additional Hearing upon Customer Request. This motion was filed in order to notify newly discovered customers of the Commission proceedings. On August 3, 1987, the Commission issued its Order allowing the motion. No additional hearing was scheduled.

The Applicant and the Public Staff submitted certain late-filed exhibits following the hearing. Various other filings were made which are a matter of record.

The record of the April 10, 1984 proceeding is already before the Hearing Examiner. The Hearing Examiner also takes judicial notice of the June 18, 1984 Recommended Order and the Commission's September 10, 1984 Final Order in this docket as well as the decisions of the Court of Appeals and the Supreme Court.

Based upon a careful consideration of the entire record in this proceeding, the Hearing Examiner makes the following:

FINDINGS OF FACT

1. Applicant owns and operates a public sewerage system for compensation and owns and operates facilities furnishing water service to more than ten residential customers for compensation. Martha H. Mackie is a public utility under the jurisdiction of and subject to regulation by the North Carolina Utilities Commission.

2. Most of Applicant's customers have no alternative means of obtaining water and sewer service. At the hearing, the Applicant offered to convey, without charge, to a trustee or association designated by the Public Staff certain land and interests related to the water and sewer facilities, as hereinafter set forth, if the Commission would authorize her to abandon providing water and sewer service. Neither the Public Staff nor the Applicant's customers accepted her offer. The public convenience and necessity are served by the Applicant's furnishing water and sewer service to her customers in Falls of the Neuse Village.

3. The test year to be used in this proceeding to determine the issues of abandonment and rates is the calendar year of 1986.

4. As of the hearing on remand, the Applicant was serving 27 water customers and 24 sewer customers.

5. The fair, just, and reasonable rate of return (or margin on expenses) for use in this proceeding is 10.2%.

6. The reasonable rate base at the end of the test year is $1,450 for water operations and $368 for sewer operations.

7. The Applicant's operating revenue deductions for water and sewer operations for the test year are $3,951 for water and $3,332 for sewer under present rates.

8. The operating ratio methodology is the appropriate method of setting rates in this proceeding.

9. The reasonable expenses of operation for the Applicant's water system are $3,776 and the reasonable expenses of operation for the Applicant's sewer system are $3,604 under approved rates. The Applicant's water system and the Applicant's sewer system can each produce sufficient revenues under the approved rates to meet the respective reasonable expenses of operation, and authority to abandon public utility service should be denied.

10. Improvements are needed to both the Applicant's water and sewer systems; however, even after reasonable investments are made to improve the systems, each system can produce sufficient revenues to meet its reasonable expenses of operation.

11. Assuming that the Applicant made a $10,000 investment in upgrading the water system and was entitled to a 10.2% return, the Applicant would have a total annual revenue requirement of $5,454 or $16.83 per month per customer.

12. Assuming that the Applicant made a $25,000 investment in upgrading the sewer system and was entitled to a 10.2% return, the Applicant would have a total annual revenue requirement of $7,649 or $26.56 per month per customer.

13. The Applicant should be authorized to charge a flat monthly rate of $12.76 for water service and a flat monthly rate of $13.67 for sewer service.

14. The Applicant should be granted a certificate of public convenience and necessity to provide water and sewer utility service to existing connections, including existing homes which are vacant but dependent upon the Applicant for water and/or sewer service.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 1

The evidence supporting this finding of fact is found in both the evidence offered at the April 10, 1984 hearing and in the testimony and exhibits of Bill Chappell, George Mackie, and the public witnesses at the July 8-9, 1987 hearing on remand.

The evidence shows that Applicant owns and operates a public sewerage system for compensation and owns and operates facilities furnishing water service to more than ten residential customers for compensation. The Court of Appeals opinion, which was affirmed by the North Carolina Supreme Court, held that Applicant "is providing water and sewage disposal service 'to or for the public' within the meaning of G.S. 62-3(23)a.2 and is subject to regulation by the Utilities Commission." 79 N. C. App. at 27. The evidence on remand supports and reinforces that holding. The Hearing Examiner therefore concludes that Applicant is a public utility under the jurisdiction of and subject to regulation by the North Carolina Utilities Commission.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 2

The evidence supporting this finding is found in the record of the April 10, 1984 hearing, the testimony of public witnesses and of Jerry Tweed at the hearing on remand, and the entire record of that hearing as a whole.

Following the 1984 hearing, the Commission found, "The customers do not have wells; some customers do not own enough land to install a septic tank." The Court of Appeals noted, "Evidence before the Commission indicates that a number of the residences served by the water and sewer systems are situated on quarter-acre lots, which are of insufficient size to support both a well and septic system. The occupants of these residences, who are currently among appellant's customers, have no alternative means of water supply or sewage disposal other than the service provided by appellant." 79 N.C. App. at 28. The Court stated that this evidence supports the finding made by the Commission. The Court of Appeals went on to state that the Commission's finding "supports a conclusion not only that appellant's services constitute a convenience to that segment of the public who use them, but also that such services are necessary to the safety and health of the public." Id.

The evidence offered during the hearing on remand again shows that there are a number of customers dependent upon Applicant for water and sewer services who have no alternative means for these essential services. Several of the public witnesses, including George Womble, Nina Barham, Marvin Pollard, and Louise Barham, testified that drilling for water in the area is uncertain and that their lots are not big enough for wells and septic tanks.

Mr. Tweed considered other possible sources of water and sewer service. Mr. Tweed stated that he had considered the possibilities of water and sewer service by: (1) the city of Raleigh, (2) a nearby condominium association, and (3) private wells and septic tanks. He testified that the city had informed him that it did not plan to have service available for more than ten years. In regard to pumping the sewage effluent across the river to a package plant serving condominiums in an old mill, Mr. Tweed recognized that such an arrangement could possibly be a solution assuming that the effluent would be accepted by the association, the Division of Environmental Management would approve, and the necessary easements could be obtained. However, he stated that such an arrangement would be less feasible than upgrading the existing sewer system due to the cost, and he further stated that he could see no incentive for the association to accept the Falls of the Neuse effluent. In regard to water, he stated that the condominium association's system has just sufficient water to supply its own needs, much less the needs of Falls of the Neuse. As to the customers' installing wells and septic tanks, Mr. Tweed stated:

> The Wake County Health Department requires a minimum lot size of 20,000 square feet to support a septic tank with a community water system assuming soil conditions are suitable. For a lot to support a well and septic tank they require a minimum of 30,000 square feet. From a review of plats presented in the previous proceeding and a visual inspection of the service area it is obvious that most of the lots do not meet the 20,000 square feet requirement.

G. S. 62-118(a) provides that upon finding that public convenience and necessity are no longer served, the Commission has the power to authorize abandonment of utility service. On remand, the Applicant, through her attorney, made the following offer:

> . . . that if the Commission authorizes her to cease the use of her land for water service and sewage disposal, she will not only deed without any charge to any trustee or association the Public Staff designates the one acre tract now used for sewage disposal together with all of her interests in the sewer pipelines connected thereto but will also give without charge to such trustee or association one-half an acre of her land on the west side next to the land of the United States government on which is now located the brick and concrete or cinder block pump house and receiving tank and including that cinder block receiving tank, together with all of her interests in the pipeline now running from the spring on the government's land to that pump house and a 10 foot wide easement for a water main running from that pump house out to the public road on the east side of her presently elevated water tank, the easement to be located so as not to encroach unnecessarily upon the strip of land approximately 100 feet wide providing her only access to the public road. She will also agree to continue the present water and sewer rates in effect until October 15, 1987, after which time she will be free to stop and cut off all use of her remaining land as a source of water and sewage disposal service and free to remove from her property the elevated steel water tank now standing on that 100 foot wide strip.

Applicant argues in her post-hearing brief and her proposed order that by reason of this offer, the public convenience and necessity will no longer be served by requiring her to continue operation of the water and sewer utility systems. The Hearing Examiner cannot agree. Several of the public witnesses addressed the possibility of the customers' taking over operation of the water and sewer systems. They indicated that they would not be willing to do so. The Public Staff did not come forward with any trustee or association willing to accept the Applicant's offer. The Applicant, as a public utility, has the responsibility to provide utility service to her customers. Applicant's customers are under no obligation to take over the utility systems, and they have not agreed to do so.

Thus, the evidence offered during the hearing on remand clearly shows, as did the evidence at the April 10, 1984 hearing, that the Applicant's customers are dependent upon her for necessary utility services and that most of them are without alternative means for obtaining such services. The Hearing Examiner concludes that the public convenience and necessity are served by Applicant's water and sewer service in Falls of the Neuse.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 3

This finding is based upon the stipulation of the parties as reflected in the Prehearing Order and upon the evidence in the record as a whole.

The April 10, 1984 hearing on abandonment was based on the evidence available at that time. In remanding the abandonment issue to the Commission for further proceedings, the Court of Appeals wrote that "the decision as to

whether to permit the taking of additional evidence will be that of the Commission." 79 N.C. App. at 31. The Supreme Court modified the Court of Appeals decision to provide that on remand the parties may present additional evidence of reasonable expenses of operation and the revenues which the water and sewer systems may reasonably be expected to produce. At the Prehearing Conference, the parties recognized that more recent information is available, and the parties stipulated that the issue of abandonment and, if necessary, the issue of rates should be decided on the basis of a 1986 test year. The Prehearing Order states:

> 3. Pursuant to the stipulation of the parties, the issues identified above will be considered on the basis of a test year of 1986. Information as to earlier years may be presented only to show any abnormality or distortion in the 1986 figures.

This finding is uncontested.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 4

The evidence for this finding of fact is found in the testimony of the public witnesses, the testimony of Applicant's witnesses George Mackie and Bill Chappell, Applicant's Exhibit 5, and Applicant's late-filed Exhibit 6, an affidavit of George Mackie.

The prefiled testimony and exhibits of Applicant's witness George Mackie indicated that there were 18 water customers and 17 sewer customers. However, testimony from public witnesses on the first day of the hearing revealed customers in addition to those listed by Mr. Mackie. The Hearing Examiner requested that Mr. Chappell, who had provided the customer information to Mr. Mackie, return the following day to clarify the matter. Overnight, Mr. Mackie and Mr. Chappell conducted a further investigation which included going door-to-door in the area. On the second day of the hearing, they testified to their investigation and Mr. Mackie presented Applicant's Exhibit 5, a list of the water and sewer connections showing the owner and the occupant of each house. Mr. Mackie testified, "There are 26 water connections that I have identified and 24 sewer. . . " He further testified at the hearing and through his Exhibit 6 that the Falls Fire Department is a water customer and that the Falls Baptist Church is a water and sewer customer and that neither was included on Exhibit 5. Mr. Mackie testified that neither the Fire Department nor the Baptist Church had been charged in the past but that "they will be charged." Mr. Mackie testified that Exhibit 5 includes Wayland Chappell, the Applicant's manager, who had not been charged for his water and sewer service. Mr. Mackie counted Mr. Chappell as a paying customer in his late-filed Exhibit 6. This testimony makes a total of 28 water and 25 sewer connections, the numbers used in Mr. Mackie's Exhibit 6. However, Mr. Mackie's testimony and Exhibit 5 show one of the houses connected to both the water and sewer systems to be unoccupied as of the hearing. The Hearing Examiner therefore concludes that the proper number of customers to be used in this proceeding is 27 water customers and 24 sewer customers. Wayland Chappell is being included as a paying customer; however, a salary adjustment will be made to reflect the fact that he received free water and sewer service in the past as a part of his compensation as manager.

The discovery of these additional customers was an important development since it provides a significantly larger customer base from which the Applicant can recover her expenses.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 5

The evidence for this finding of fact is found in the testimony of Applicant's witness George Mackie and Public Staff witness Kevin O'Donnell.

Mr. Mackie presented the Applicant's testimony on rate of return. He stated in his prefiled testimony, "In my opinion the return to Mrs. Mackie for these uses of her properties, after paying all of her operating expenses, taxes and depreciation, should be not less than 10% of the total of such expenses, taxes and depreciation." During cross-examination, Mr. Mackie was asked whether he considered 10% to be a reasonable return. He first answered no, but he then testified, "At the time of the testimony, as the testimony stands today, we'll say yes. We'll just leave it be. . . .Let's just simplify it and say yes, ma'am, it is a fair, equitable and fair return."

Public Staff witness O'Donnell testified that the Applicant should be granted a 10.2% margin on expenses. He derived this margin on expenses by combining the risk-free rate of 5-year U.S. Treasury bonds, which he estimated at 7.2%, with a 3% factor to adjust for risk. Mr. O'Donnell testified that he used the operating ratio methodology in this case rather than the rate base methodology (see G.S. 62-133.1(a)) since operating expenses are larger than rate base and therefore the operating ratio methodology provides for a more reasonable level of revenues than the rate base methodology.

The determination of a fair rate of return must be made by the Hearing Examiner using his own judgment and the testimony of record. The return allowed must balance the interests of the Applicant and the ratepayers and must meet the standard of G.S. 62-133(b)(4). The Hearing Examiner finds the fair, just, and reasonable rate of return (or margin on expenses) for Applicant to be 10.2%. This rate is supported by competent, material, and substantial evidence of record. This rate is higher than the 10% rate which the Applicant sought through her witness. The Hearing Examiner concludes that the rate of return approved herein will afford the Applicant a reasonable opportunity to earn a fair return while providing adequate service to her customers.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 6

The evidence for this finding of fact is found in the testimony and exhibits of Applicant's witness George Mackie and Public Staff witnesses George Dennis and Jerry Tweed. Both the Applicant and the Public Staff deal with the revenues that the utility can realize in terms of the operating ratio methodology of G.S. 62-133.1. See the testimony of Public Staff witness O'Donnell and Applicant's late-filed Exhibit 6. It is still necessary to consider rate base in order to confirm that the operating ratio methodology is fairer to Applicant.

Mr. Mackie's testimony at this hearing, the testimony at the April 10, 1984 hearing, and the Recommended Order and Final Order issued after the 1984 hearing all indicate that Mr. Mackie purchased the land in question from Scarsdale Investment Corporation in 1982, that the purchase price was $45,000,

that the land consists of two non-contiguous tracts (one tract of approximately 18 acres on which the water facilities are located and a second tract of approximately 1 acre on which the sewage disposal facilities are located), and that Mr. Mackie had the land deeded to his wife, the Applicant, as a gift to her. The Public Staff argues that its late-filed Exhibit 3 indicates a purchase price of $40,000; however, the Hearing Examiner will accept Mr. Mackie's testimony that the purchase price was $45,000.

Mr. Mackie testified that at the time of purchase no allocation was made of the purchase price either between the two tracts of land or between the water and sewer facilities and the remaining land. However, Mr. Mackie testified that he had an opinion as to how the purchase price should be allocated between the utility facilities and the remaining land. He testified that in his opinion 15% of the purchase price should be allocated to the sewage disposal sand pit, 25% of the purchase price should be allocated to the elevated tank and water lines, 15% of the purchase price should be allocated to the receiving tank and pump house, 10% of the purchase price should be allocated to the land which the water tanks and water lines occupy, and the remaining 35% of the purchase price should be allocated to the remainder of the larger tract of land. Thus, he testified that in his opinion the following amounts should be attributed to the utility systems:

Item	Amount
Sewage disposal sandpit	$ 6,750
Elevated tank and water lines	11,250
Receiving tank and pumphouse	6,750
Land for tanks and water lines	4,500
Total	$29,250

Mr. Mackie's allocation attributes $29,250 of the purchase price to the utility systems and leaves $15,750 of the purchase price to the remaining portion of the 18-acre tract of land. Mr. Mackie provided no justification for his allocation other than that the percentages represent his opinion. Mr. Mackie testified on cross-examination that he had no records of the original cost of the utility facilities.

Public Staff witness Dennis testified that the Applicant's rate base should consist of the following:

Item	Water Operations	Sewer Operations	Combined Operations
Plant in service	$1,328	$-	$1,328
Accumulated depreciation	(248)	-	(248)
Cash working capital	349	308	657
Average tax accruals	(32)	(30)	(62)
Original cost rate base	$1,397	$278	$1,675

Mr. Dennis' figure of $1,328 for water plant in service consists of $264 for a chemical feed pump purchased in 1986 and $1,064 for piping installed during 1985. Mr. Dennis stated that these are the only items for which the Applicant has supporting documentation and that, to his knowledge, these are the only capital items that the Applicant has purchased since taking over the utility systems. Witness Dennis calculated an amount of accumulated depreciation on

plant in service as of December 31, 1986. His amount for accumulated depreciation is based on a three-year life for the chemical feed pump and a ten-year life for the piping. Mr. Dennis testified that the estimates of asset lives were provided to him by Mr. Tweed but that he concurred based on his own experience. Mr. Dennis testified that a cash working capital allowance of $349 for water operations and $308 for sewer operations is necessary for the day-to-day operation of the utilities. He further testified that his calculation of working capital is based upon one-eighth of O&M expenses. Additionally, Mr. Dennis reduced rate base by the average tax accruals, calculated as 1/6 of the gross receipts tax and 1/2 of property tax. The average tax accruals, as calculated by Mr. Dennis, are $32 for water operations and $30 for sewer operations.

Mr. Dennis testified that no portion of the $45,000 purchase price paid by Mr. Mackie should be included in rate base. He gave several reasons. Mr. Dennis testified that the General Statutes allow a utility the opportunity to earn a fair return on the unrecovered (through depreciation) original cost of utility property. He testified that Mr. Mackie's purchase price does not relate to the unrecovered original cost of the utility property that was purchased. The Mackies both testified that they had no knowledge of the original cost of the utility facilities. Further, Mr. Dennis testified, "This system was installed around 1950. A normal composite depreciation rate of 4% per year, which is what we normally use in water and sewer rate cases, translates into a useful life of 25 years, would have completely depreciated this property by 1975." Thus, Mr. Dennis testified that regardless of any prior owners' actual depreciation practices, normal ratemaking procedures would set a normal level of depreciation expense for ratemaking purposes and that normal level of depreciation expense would have begun at the time the property became used and useful in providing utility service. Since this was around 1950, Mr. Dennis concluded that the property's ratemaking life had effectively ended. Furthermore, to the extent that the purchase price reflects on the fair value of the utility property, Mr. Dennis pointed out that the General Statutes do not allow rates to be set on the basis of fair market value. Next, Mr. Dennis testified:

> Martha Mackie is the utility owner. As such, if she should claim entitlement to a return on her investment, she would lose because she has no investment in property. George Mackie paid $45,000 for the property; however, he gave the property as a gift to his wife. Martha Mackie has no investment in this property other than that which I have shown through my testimony and exhibit.

Finally, Mr. Dennis pointed out that the purchase price may have been discounted to reflect a negative effect of the utility systems on the value of the land.

G.S. 62-133(b)(1) provides, in pertinent part, that as a first step to fixing utility rates on rate base, the Commission shall "[a]scertain the reasonable original cost of the public utility's property used and useful . . . in providing the service rendered to the public within this State, less that portion of the cost which has been consumed by previous use recovered by

depreciation expense. . . "[1] G.S. 62-133(b)(4) provides for the Commission to fix a rate of return "on the cost of the property ascertained pursuant to subdivision (1) . . ." The evidence at the 1984 hearing and at the present hearing tends to show that the utility property purchased by Mr. Mackie had been installed and used for public utility purposes (though unknown to the Commission) well before his purchase of it. Thus, the $45,000 purchase price does not relate to the "original cost" of the utility property. The Applicant presented no evidence as to the original cost. Mr. Mackie testified, "I have made inquiries but I have found no one who has any record relating to these costs." On the basis of the evidence herein, the Hearing Examiner concludes that the Applicant's rate base should not include any portion of the purchase price paid by Mr. Mackie.

As an alternative rationale, the Hearing Examiner concludes that since the property purchased by Mr. Mackie was given to the Applicant, the purchase price does not represent any cost--original or otherwise--to the Applicant and this property should be excluded from rate base.[2] As a second alternative rationale, the Hearing Examiner concludes that he cannot accept Mr. Mackie's opinion as to the proper allocation of the $45,000 purchase price between the utility facilities and the remaining land. Mr. Mackie gave no support for his opinion. He testified that, in his opinion, the larger tract of land "has little value apart from its use in the supply of water. . . " He attributed most of the purchase price to the utility facilities. He attributed only $15,750 to the bulk of the land (probably about 17 acres) unrelated to the utility facilities. However, public witness George Womble, a realtor and

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1 Rates are no longer set on the basis of the fair value of the utility property, as they were at one time. See Session Laws 1963, c. 1165, s.1 and 1977 c. 691.

2 This Commission considered the rate base treatment of capital provided by a third party (someone other than the utility, the utility's investors or the utility's ratepayers) in a recent CP&L rate case. The CP&L case involved accumulated deferred income taxes which CP&L received through payments to CP&L by the N.C. Eastern Municipal Power Agency in connection with the sale of certain assets. CP&L had the use of these funds until the taxes were due. In its November 20, 1984, decision in Docket No. E-2, Sub 481, the Commission wrote:

> While G. S. 62-133 is not explicit on this point, the Commission believes that it is reasonably implicit that the "fair return" to which the equity investors are entitled is only supported by capital which such investors have themselves supplied. To construe the statute otherwise would provide those investors with what amounts to an undeserved windfall. Looking at the other side of the coin, it would clearly be unfair and unreasonable to cause the ratepayers to pay a return to the investors on funds which the investors have not supplied.

74th Report of the N.C. Utilities Commission Orders and Decisions, pp. 240-242. The Commission excluded the funds in question from rate base "to prevent the ratepayers from paying a return on capital which has no cost to the Company." Id. at 242.

developer, testified, "Property out there was selling for about $6000 or $7000 an acre at that point in time." The Hearing Examiner simply cannot accept Mr. Mackie's testimony as to the value of the utility property given to the Applicant. See Utilities Commission v. Duke Power Co., 305 N.C. 1, 19-23, ____ S.E.2d ____ (1982).

The Hearing Examiner therefore concludes that the Applicant's rate base should include as plant in service the chemical feed pump and water piping, the only capital items as to which the Applicant could show the original cost. The Public Staff also included in rate base cash working capital (based on 1/8 of operating and maintenance expenses) net of average tax accruals (based on 1/6 of gross receipts tax and 1/2 of property tax). The Hearing Examiner accepts this method but has recalculated cash working capital net of average tax accruals based on the level of operating and maintenance expenses approved hereinafter. This recalculation results in the following:

Item	Water Operations	Sewer Operations	Combined Operations
Plant in service	$1,328	$-	$1,328
Accumulated depreciation	(248)	-	(248)
Cash working capital	413	407	820
Average tax accruals	(43)	(39)	(82)
Original cost rate base	$1,450	$368	$1,818

The Hearing Examiner therefore concludes that the reasonable rate base as of the end of the test year is $1,450 for the water operations and $368 for the sewer operations.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 7

The evidence for this finding of fact is found in the testimony of the Applicant, Applicant's witness George Mackie, and Public Staff witnesses George Dennis and Jerry Tweed.

The following chart summarizes the differences between the parties with respect to operating revenue deductions other than gross receipts tax, state income tax, and federal income tax:

Item	Company	Public Staff	Difference
Salaries and wages	$ 8,746	$2,034	$ (6,712)
Office and administrative	2,000	1,241	(759)
Maintenance and repairs	2,379	168	(2,211)
Transportation expenses	23	135	112
Power for pumping	984	984	-
Testing fees	428	247	(181)
Rate case expenses	-	444	444
Other expenses	308	-	(308)
Depreciation	2,475	194	(2,281)
Property tax	391	41	(350)
Social security taxes	518	-	(518)
	$18,252	$5,488	$(12,764)

The parties are in agreement as to one item, the proper level of expenses for pumping power. The Hearing Examiner concurs with the parties in this regard and finds that the reasonable level of expenses for pumping power is $984. The parties disagree as to all other items.

Salaries and Wages

The first area of difference is salaries and wages. The Applicant requests a level of $8,746. The Applicant's figure is based on $1,500 for Mr. Chappell, $3,600 for an administrative supervisor, $1,500 for a legal retainer, $2,000 for an engineering retainer, $34 for grasscutting, and $112 for transportation. The Public Staff recommends a level of $2,034. The Public Staff's recommendation is $6,712 less than that of the Applicant and is composed of the following differences:

Summary of Differences as to Salaries and Wages	Amount
Included wages for Applicant	$ 534
Excluded salary for administrative supervisor	(3,600)
Excluded retainer for legal counsel	(1,500)
Excluded retainer for engineering consultant	(2,000)
Reclassified grasscutting expense	(34)
Reclassified transportation expense	(112)
Total salaries and wages adjustment	$(6,712)

The first two Public Staff adjustments to salaries and wages will be discussed together. Mr. Dennis made an adjustment to salaries and wages to include $534 as a salary for the administrative services performed by the Applicant. This $534 salary level is the actual amount received by the Applicant during the test year. The Applicant did not include the $534 as salary, but instead recommended that an administrative supervisor be hired at an annual salary level of $3,600, eliminating the administrative responsibilities of both the Applicant and Mr. Mackie. The requested amount of $3,600 does not represent an expense currently being incurred. It is an estimate, in Mr. Mackie's opinion, of obtaining the services of an administrative supervisor.

Both the Applicant and Mr. Mackie testified to their other businesses and activities, and they stated that they do not have the time to manage the utility operations. Mr. Mackie testified that Wayland Chappell, the general manager/maintenance supervisor, "collects the monthly charges, looks after the sanitation at the sewage disposal sandpit, the flow and purity of the water, its chlorination, conferences with health inspectors, mailing or delivering periodic samples and reports to the appropriate health offices, keeping Mrs. Mackie informed of any problems and the progress of their solutions, and generally manages the ordinary care and maintenance of the properties." He testified that Mr. Charles Baker, the bookkeeper, is in charge of depositing the utility's receipts, paying the bills of the utility and keeping the books and records. As to the remaining duties required in the operation of the utility, the Applicant testified that she answers phone calls from her customers and from others who have questions about the property. She further testified that she occasionally goes out to the utility property. However, she testified that she generally refers complaints and problems to Mr. Chappell and Mr. Mackie. Mr. Mackie testified, "What it is, she makes recommendations to me. She and I talk. I mean we communicate about things but she doesn't like

to make the final decision in a lot of things. She likes for me to do it. So she has responsibility. . . she takes responsibility in an oblique way." As to his own role, Mr. Mackie testified, "The properties and their uses and operations are hers, not mine, but, as her husband, I discuss matters with her, give her my opinions and visit the properties frequently and assist Mr. Chappell, the employed manager, in keeping an eye on the properties and arranging for necessary repairs and maintenance." He testified that he had climbed the elevated water tank and inspected the other utility property. When asked why he climbed the elevated tank, Mr. Mackie stated that there was no particular reason. He explained, "I just do it. I just like to go and check it to make sure that it is right because it is old." He testified that he frequently visits the property, usually on his way to or from somewhere else. Mr. Mackie has not been paid anything for his involvement in the utility business.

Mr. Tweed testified, "An administrative supervisor is not necessary when all the work is being done by others and in this case I believe 99.9% if not all of the work is either being done by others or should be done by others in conjunction with their salaries. . . [I]n this case if something is done by Mr. and Mrs. Mackie, I believe that it could be done by others and compensation has been allowed in ample enough amount for others to do it." It was the testimony of Mr. Dennis that there is very little need for an administrative supervisor. Mr. Dennis testified that, in his opinion, based on the duties currently performed by the bookkeeper and the general manager/maintenance supervisor, who received salaries of $1,200 and $1,500 respectively during the test year, there are very few administrative duties left. Nonetheless, Mr. Dennis testified that he included $534 as salary expense to compensate for any remaining administrative duties. Mr. Dennis and Mr. Tweed both testified that the total level of salaries is reasonable for a company of this size. Mr. Tweed testified that water and sewer utilities of this size typically have total salary levels of between $3 and $5 per customer per month.

Based upon the foregoing, the Hearing Examiner concludes that it would be unreasonable and improper to allow the Applicant's request for an additional $3,600 salary for an administrative supervisor. The Hearing Examiner believes that the Applicant's general manager/maintenance supervisor generally handles the day-to-day operations of the utility business and that the few additional administrative duties beyond Mr. Chappell's duties certainly do not justify a salary of $3,600. The Hearing Examiner believes that it is reasonable to include in salary expenses the $534 paid to the Applicant as compensation for administrative duties beyond those performed by Mr. Chappell.[3] In approving this expense for ratemaking purposes, the Hearing Examiner notes that it is for the Applicant to decide whether this compensation should be paid to herself or to Mr. Mackie, depending upon who actually performs the additional administrative duties.

The Public Staff's third adjustment to salaries and wages relates to the Public Staff's exclusion of the Applicant's request for $1,500 as a retainer

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3 The Examiner notes that this $534 figure is for work performed for the utility. It is in addition to Mrs. Mackie's net operating income as owner of the utilities.

for legal counsel. Mr. Mackie testified that if Applicant is required to continue to operate the utilities, she will need to retain legal counsel at an expected cost of no less than $1,500 per year. Mr. Dennis stated that in his opinion it would be imprudent and improper for the customers to pay a legal retainer fee of that magnitude. Both Mr. Dennis and Mr. Tweed testified that they do not know of any water or sewer utility of this size in the state that pays a retainer for legal services. Based upon the evidence, the Hearing Examiner concludes that it is unreasonable to include a legal retainer in the cost of service. The Hearing Examiner is unaware of any water or sewer utility of this size that includes such a retainer in its cost of service, and the Examiner finds no justification for keeping legal counsel on an annual retainer.

In its fourth adjustment to salaries and wages, the Public Staff has excluded the Applicant's figure of $2,000 as an annual retainer for an engineering consultant. Mr. Mackie testified that in his opinion it is essential that the Applicant have an engineer available on a consultant basis. For such an arrangement, he estimated the cost to be at least $2,000 annually. Mr. Tweed testified that he had never seen a water or sewer company of this size have an engineer on retainer. Further, he testified that the services of an engineer would seldom be needed and could be hired as needed without being kept on retainer. The Hearing Examiner notes that, as was the case with the Applicant's recommended expenses for the administrative supervisor and legal counsel, the requested fee for an engineering consultant is an estimate of an expense not in fact incurred at this time. No engineer has been retained by the Applicant. Based upon the evidence presented, the Hearing Examiner concludes that the Applicant should be able to operate adequately without an engineer on a retainer basis and finds that the Applicant's proposal to include $2,000 as an operating revenue deduction for an engineering consultant retainer fee is unreasonable in this proceeding. An engineer will be required in connection with the major improvements discussed hereinafter; however, that matter is discussed later and the engineer need not be on retainer.

The final two Public Staff adjustments to salaries and wages are simply reclassifications. The first reclassifies $34 of grasscutting expenses from salaries to maintenance and repair expenses. The second reclassifies $112 of gasoline cost from salaries to transportation expenses. Mr. Dennis testifed that reclassifying these items does not affect the revenue requirement of the Applicant. The Hearing Examiner concludes that these reclassification adjustments are appropriate for use in this proceeding.

Two other matters relating to salaries and wages must be addressed. The first is the bookkeeper's salary. The Public Staff classified this as office and administrative expenses; however, for clarity, the Examiner has reclassified it under salaries and wages and will discuss it here. The Applicant's proposed level is $2,000 while the Public Staff's recommendation is $1,200, which is the actual amount paid for the bookkeeping services of Mr. Baker during the test year. Mr. Mackie testified that although only $1,200 was incurred in bookkeeping fees during the test year, it is necessary to hire someone more experienced in public utility bookkeeping, record keeping, report making, and preparation of tax returns. In order to hire someone with these qualifications, it is Mr. Mackie's opinion that $800 in additional bookkeeping fees will be necessary. The Applicant indicated that she employed an accounting firm to prepare her tax returns and that an unspecified part of

their charges is attributable to the utility business. Mr. Dennis testified that Mr. Baker has done an adequate job and that $1,200 is an adequate amount of compensation to pay for bookkeeping, filing annual reports to the Commission, and handling state and federal income tax matters. Mr. Dennis felt that the present salary is sufficient to cover tax-related work. The Hearing Examiner finds no need for a more experienced bookkeeper. The Hearing Examiner finds Mr. Baker's recordkeeping, as reflected in Mr. Mackie's exhibits, to be quite adequate. However, since Mr. Baker has apparently not been preparing tax returns for the utility business, the Hearing Examiner finds it reasonable to allow some additional salary to cover this work. Since the necessary information will be readily available and since the utility business is only one part of the Applicant's tax returns, the Hearing Examiner, in his own judgment, believes that $200 should be a reasonable amount as additional compensation for preparing the utility-related aspects of the Applicant's tax returns.

Finally, as discussed in the Evidence and Conclusions for Finding of Fact No. 4, it is apparent that in the past Mr. Chappell, the general manager/maintenance supervisor, received his water and sewer service free as part of his total compensation package. He is now being counted among the 27 water customers and the 24 sewer customers, and Mr. Mackie indicated that all customers would be charged in the future. Therefore, the Hearing Examiner finds it appropriate to increase Mr. Chappell's salary to cover his water and sewer rates. Otherwise, he would experience a cut in his compensation as he begins to pay for water and sewer service. Based upon the rates approved in this proceeding, as discussed in the Evidence and Conclusions for Finding of Fact No. 13, the Hearing Examiner finds it appropriate to include an additional $318 in the Applicant's salaries and wages expense. In consideration of his duties in managing the utility's day-to-day operations and his current salary level of $1,500, the Hearing Examiner concludes that this further compensation for Mr. Chappell is reasonable.

Based upon all of the above conclusions with respect to salaries and wages, the Hearing Examiner concludes that $3,752 is the proper level to include as an operating revenue deduction for salaries and wages. In approving the salary increases herein, the Hearing Examiner is not dictating how Applicant must allocate the total salary allowance. The Hearing Examiner is concerned with setting a level of salaries adequate for the operation of the utility business. The total salaries allowed in rates amount to approximately $6.13 per customer per month and are, on the basis of the evidence, clearly adequate for a utility of this size.

Office and Administrative Expenses

The next area of difference between the Applicant and the Public Staff relates to office and administrative expenses. The Applicant recommends a level of $2,000 (which consists entirely of bookkeeping fees) while the Public Staff recommends an amount of $1,241.

The difference of $759 between the parties consists of three items. Two of the items, an additional $25 in bank service charges and $16 in check printing charges, represent reclassifications by the Public Staff to include these amounts as office and administrative expenses rather than as "other expenses." The Hearing Examiner recognizes that these reclassifications have

no effect on the proper level of operating revenue deductions, but agrees that the Public Staff's treatment reflects the proper classification of these expenses. Therefore, the Hearing Examiner concludes that the reclassifications proposed by the Public Staff are appropriate. The remaining item relates to the proper level of bookkeeping fees. This is in fact a salary item, and the Examiner has reclassified it as such and has discussed it previously.

Based upon the above, the Hearing Examiner concludes that $41 is the reasonable level to include as an operating revenue deduction for office and administrative expenses.

Maintenance and Repairs

The next area of difference between the Applicant and the Public Staff relates to maintenance and repairs. The Applicant recommends a level of $2,379 while the Public Staff recommends a level of $168. The difference of $2,211 consists of four items:

Summary of Differences as to Maintenance and Repairs	Amount
Excluded $2,000 for estimated annual major repairs	$(2,000)
Capitalized chemical feed pump	(264)
Included grasscutting expenses	34
Included Clorox	19
Total adjustments	$(2,211)

The Public Staff's recommendation of $168 is based on the test year expenses. It includes $34 for grasscutting and $19 for Clorox plus two other test year maintenance expenses, $70 for lumber to repair the pumphouse roof and $45 for unclogging a sewer line. The Applicant's recommendation of $2,379 includes $2,000 for estimated annual major repairs, $264 for a chemical feed pump, and the $70 and $45 cited above.

Mr. Mackie testified that major repairs to keep the utility facilities in good operating condition will average an annual charge of at least $2,000. He stated in his late-filed Exhibit 6, "Nothing of this sort was done in 1986 due to the pendency of this litigation." In support of the $2,000, he cited replacement of sand in the sewage disposal facility, a new roof for the pumphouse, and painting the elevated water tank. As to the reasonable annual level for normal maintenance and repairs, aside from these "major repairs," Mr. Mackie testified, "I do not have an opinion satisfactory to myself as to that, but it will certainly be substantial. It would be as much or more than was spent for those purposes in 1986. . . " Mr. Mackie included the chemical feed pump purchased during the test year in maintenance and repairs. He testified that the previous pump had worn out in 30 months, that the life of such equipment is short, and that this expense should therefore be treated as maintenance, rather than as a capital expenditure to be amortized.

Mr. Tweed testified that his plan of improvements, as discussed in the Evidence and Conclusions for Finding of Fact No. 10, would take the elevated water tank out of service and, therefore, the painting of the tank would not be necessary. Furthermore, Mr. Tweed testified that if the tank were painted, the expense would normally be amortized over a five- to seven-year period rather than treated as annual maintenance expense. Mr. Dennis felt that the chemical

feed pump should appropriately be assigned a three-year life and capitalized for ratemaking purposes. As discussed in the Evidence and Conclusions for Finding of Fact No. 6, the Hearing Examiner has agreed with Mr. Dennis as to the treatment of the chemical feed pump.

On the basis of the evidence, the Hearing Examiner finds that it would be inappropriate to include the Applicant's request to reflect $2,000 in annual major repairs in rates. It is clear from Mr. Mackie's testimony that the $2,000 figure is an estimate of his, that it is not based on test year experience, and that it includes some items that have substantial lives. Further, it includes work on some items, such as the elevated tank and the present pumphouse, which may be eliminated entirely based on the plan of necessary improvements undertaken by the Applicant. On the other hand, the Hearing Examiner concludes that the evidence reveals that the test year maintenance and repairs expenses of $168 is abnormally low. Mr. Mackie indicated that little had been expended on repairs during the test year. Public witness Leonard testified that there had been no maintenance on the sewer facilities and that they had been "abandoned for the last 12 months." At the prehearing conference the parties agreed that information as to years before the test year could be presented to show any abnormalities in the 1986 test year figures. Mr. Mackie included as his Exhibits 3A and 3B records of the Applicant's expenditures for 1985 and 1984. These exhibits show 1985 maintenance expenses of $1,736 and 1984 maintenance expenses of $852. In order to reflect a more accurate level of maintenance and repairs expenses, the Hearing Examiner finds it appropriate to average the experience of the three years' expenses shown in the record. See Jacksonville Sub. Utilities Corp. v. Hawkins, 380 So. 2d 425 (Fla. 1980). This calculation results in a level of operating revenue deduction for maintenance and repairs of $919 ($337 allocated to water operations and $582 allocated to sewer operations) which the Hearing Examiner finds reasonable.

Transportation Expenses

The next area of difference between the Applicant and the Public Staff relates to transportation expenses. The Applicant included $23 for this item while the Public Staff included $135, a difference of $112. As discussed earlier, gasoline costs of $112 were removed from salaries and wages and included as transportation. The Hearing Examiner concludes that it is reasonable to reclassify this $112 item, making a total level of operating revenue deduction for transportation of $135.

Testing Fees

The next area of difference between the Applicant and the Public Staff relates to testing fees. The Applicant included a level of $428, which is the actual expenses (consisting of three payments of $144, $144, and $140) incurred during the test year. The Public Staff included $247 for the test year.

Mr. Dennis testified that he used $247 based upon the recommendation of Mr. Tweed. He testified that most of the difference is attributable to the fact that the Applicant apparently paid for two years' worth of coliform analysis during the test year. He testified, "[T]he charge is $12.00 per month per well. Since there is only one source of water, one point at which the coliform analysis needs to be taken, the annual charge would be $144." Mr.

Mackie's Exhibit 3 shows the two test year payments of $144 to be for coliform analysis. The Hearing Examiner agrees with Mr. Dennis that one of these payments should be excluded to reflect a normalized annual level of coliform analysis charges. The $140 payment is for another type of test. Mr. Tweed made some adjustment to this amount which is not clear from the testimony. The Hearing Examiner will accept the $140 figure. The Hearing Examiner concludes that $284 is the reasonable operating revenue deduction for testing fees.

Rate Case Expenses

The next area of difference between the parties is rate case expenses. Mr. Mackie testifed that the Applicant had incurred legal expenses totaling $1,247.84 since 1984 in connection with this litigation over abandonment. He testified that this did not include legal fees, but that the Applicant's attorney had not charged any legal fees due to his family relationship to the Applicant. The Public Staff took Mr. Mackie's figure, rounded to $1,248, and added to it certain further estimated expenses that would be involved in a general rate case, coming to a total of $1,333. The Public Staff then amortized this amount over three years, resulting in a recommendation of $444 as an annual level of rate case expenses. Mr. Dennis had some problem with charging utility customers expenses incurred by the Applicant in trying to abandon utility service; however, he allowed all of the legal expenses incurred by the Applicant, plus certain further estimated expenses, in order to derive at his recommendation of a normalized level of rate case expenses. He testified that once the abandonment issue is resolved, the Applicant should not require an inordinate amount of ongoing legal expenses. He testified that many small water companies do not even have a lawyer for their rate cases and that rate case expenses of $750 to $1,250 are normal for small utility rate cases. It was his opinion that his recommendation is adequate for a utility of this size.

The Hearing Examiner concludes that it is appropriate to amortize rate case expenses over a three-year period since utilities of this type seldom file rate cases more often than that. The Hearing Examiner further concludes that Mr. Dennis' recommendation, which is based on amortization of all litigation expenses incurred by the Applicant since 1984, sets a reasonable, normalized level of rate case expenses. The Hearing Examiner finds and concludes that $444 is the reasonable operating revenue deduction for rate case expenses.

Other Expenses

The next area of difference is in other expenses. The Applicant recommends a level of $308 for this item, while the Public Staff recommends no amount.

Mr. Dennis reduced other expenses by $41 due to entries for $25 relating to bank service charges and $16 for check printing charges which were reclassified by the Public Staff as office and administrative expenses, as addressed earlier. Based on earlier conclusions, the Hearing Examiner concludes that these reclassification adjustments are appropriate for purposes of this proceeding. Mr. Dennis further testified that he reduced other expenses by $267 in order to remove work clothes purchased for Mr. Mackie from the cost of service. Mr. Mackie's Exhibit 3 shows expenditures during the test year of $177 for uniforms, $42 for alterations of uniforms, and $48 for repairs

to uniforms. Mr. Mackie testified that he purchased some work clothes to wear while inspecting and working at the utility property and that he had the clothes altered and repaired. Mr. Dennis testified that in his opinion the $267 is exorbitant in light of the level of duties performed by Mr. Mackie, the number of customers being served, and the fact that Mr. Chappell is paid to look after the utility systems.

The Hearing Examiner is of the opinion that the cost of work clothes incurred by the Applicant during the test year is unreasonable for ratemaking purposes in light of the duties performed by Mr. Mackie and the level and type of duties for which Mr. Chappell is paid. Therefore, the Hearing Examiner concludes that the exclusion of this item from the cost of service is reasonable.

Depreciation

The next area of difference is depreciation expense. The Applicant included $2,475 for this item while the Public Staff included $194. The difference between the parties is due to the Applicant's proposal to depreciate the sewage disposal sandpit, elevated tank, water lines, receiving tank, and pumphouse over a 10-year period.[4] The Public Staff only depreciates the chemical feed pump ($264 over three years) and the new water pipes ($1,064 over 10 years). This matter has already been touched upon in the rate base discussion in the Evidence and Conclusions for Finding of Fact No. 6; however, it deserves further discussion herein.

As noted earlier, Mr. Dennis testified that under normal ratemaking procedures, the property at issue would have been assigned a useful life of 25 years starting with its installation and would have been fully depreciated long ago. He testified that no depreciation should be allowed now regardless of the actual depreciation practices of the property's prior owners. Furthermore, Mr. Dennis testified that no depreciation should be allowed since the Applicant has no investment in the property, which was given to her by her husband. The Applicant, on the other hand, argues that neither she nor the prior owners have been able to accumulate any depreciation reserve. The Applicant argues that if the property's use for utility purposes continues, "these facilities will be worn out; that is, consumed in such service to this segment of the public, just as truly as a ton of coal is so consumed when burned by an electric power company in the generation of electricity." The Applicant argues that this consumption is a cost of service and, accepting Mr. Mackie's allocation of a portion of the purchase price to the utility property, the Applicant argues for an annual depreciation allowance of $2,475. The Applicant recognizes that a utility is not entitled to a depreciation allowance for contributions in aid of construction. State ex rel. Utilities Commission v. Heater Utilities, Inc. 288 N.C. 457, 219 S.E. 2d 56 (1975). However, the Applicant argues that the reason for this rule is that contributions in aid of construction are built by, or with funds furnished by, the utility customers and conveyed by them to the utility without charge. The Applicant argues that this principle does not

4 Mr. Mackie allocated $24,750 of depreciable property to the utility facilities, as discussed in the Evidence and Conclusions for Finding of Fact No. 6. The $4,500 that he allocated to land is not depreciable.

apply in the present case since Mr. Mackie, rather than the utility customers, contributed the utility property in question. She argued that the fair price paid by Mr. Mackie is the proper evaluation for depreciation purposes and that she is entitled to claim such depreciation as a cost of service.

The Hearing Examiner cannot agree with the Applicant. The Hearing Examiner does not believe that the principle involved is limited to property donated by the utility's customers. G. S. 62-133(b)(3) provides that a utility's reasonable operating expenses shall include "actual investment currently consumed through reasonable actual depreciation." (Emphasis added.) In the Heater case cited by the Applicant, it is stated:

> The purpose of the annual allowance for depreciation and the resulting accumulation of a depreciation reserve is not, as is sometimes erroneously supposed, to provide the utility with a fund by which it may purchase a replacement for the property when it is worn out. The purpose of the allowance is to enable the utility to recover the cost of such property to it. (Emphasis added.)

Id. at 466. Accord Mechanic Falls Water Co. v. Public Utilities Commission, 381 A.2d 1080, 1104 (Maine, 1977); Utilities Corp. v. Commonwealth, 211 Va. 620, 624-5, ___ S.E.2d ___ (1971). The Heater decision goes on to state that G.S. 62-133(b)(3) "clearly directs that the annual allowance for depreciation of durable properties, such as a pipeline, be based upon the original cost of the property to the utility and not upon either its current fair value or the cost of installation borne by a former owner, such as the real estate developers in the present case." (Emphasis added.) 288 N.C. at 467. See also Utilities Commission v. State and Utilities Commission v. Telegraph Company, 239 N.C. 333, 80 S.E. 2d 133 (1953). Thus, it is clear from our statute and from Heater that the purpose of the depreciation allowance in North Carolina is to recompensate the utility for its actual investment.

Mr. Mackie repeatedly emphasized that the property in question belongs to the Applicant, not to him and not to both of them. It is undisputed that Mr. Mackie, not the Applicant, paid the purchase price. The cost to the Applicant of the utility property purchased by Mr. Mackie is zero. Therefore, for the reasons cited in the rate base discussion above and for the reasons cited herein, the Hearing Examiner finds no basis for a depreciation allowance as to the utility property given to the Applicant by Mr. Mackie. A depreciation allowance of $194 will be reflected in rates, as recommended by the Public Staff.

Taxes

The next area of difference relates to property taxes. The Applicant included $391 for property taxes while the Public Staff included $41. The $391 included by the Applicant represents the full amount of property taxes paid by the Applicant on her two tracts of land, which total about 19 acres. Mr. Mackie explained in his late-filed Exhibit 6 that the County did not allocate the tax bill. Yet it is clear from the evidence, and the Applicant herself states in her post-hearing brief, that the two tracts include not only the utility facilities, but also "approximately 17 acres of land adjoining them but totally unrelated to the use of these facilities." The Public Staff allocated 2/19ths of the total property taxes to the ratepayers based on the fraction of

the land dedicated to utility purposes. The Public Staff's approach is clearly the more reasonable, and the Hearing Examiner concludes that $41 is the proper level of property taxes to be recovered from the ratepayers.

The next area of difference relates to social security taxes. The Applicant included $518 for this item; the Public Staff did not include any amount. Mr. Mackie stated in his late-filed Exhibit 6 that he calculated social security taxes at a rate of 7.15% on the salary level requested by the Applicant for the general manager, the bookkeeper, and an administrative supervisor. The Public Staff included no allowance because the disbursements journals for 1984, 1985, and 1986, which were included in Mr. Mackie's exhibits, contain no record of the Applicant's having paid any social security taxes on the salary payments to Mr. Chappell and Mr. Baker. Applicant's liability for social security taxes depends upon whether her workers are employees "under the usual common law rules applicable in determining the employer-employee relationship . . ." 26 USCA § 3121(d)(2). This determination depends upon the particular facts of the case; the entire situation must be examined. 70A Am Jur 2d, Social Security and Welfare §§29-41. Factors include the right to control and direct the workers' judgment and their manner and method of work. In close cases, the parties' own view of their relationship, particularly with respect to the payment of taxes, is very significant. Illinois Tri-Seal Products, Inc. v. U.S., 353 F.2d 216 (Ct. of Claims, 1965). The testimony relevant to this issue, as summarized above and herein, tends to show[5] that the Applicant has not undertaken to direct the utility workers, that she generally refers problems to others, that she doesn't like to make final decisions, that Mr. Chappell manages the day-to-day utility operations, that he sometimes gets his son to help him, that Mr. Baker deposits receipts and pays bills for the utility by checks using a signature stamp, and that Applicant has not paid social security taxes on the utility workers in the past. The Hearing Examiner concludes that the Applicant's utility rates should not reflect any allowance for social security taxes at this time.

Based upon all of the foregoing, the Hearing Examiner concludes that $6,794 is the reasonable level of operating revenue deductions before

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5 The Applicant testified that she had been to the utility property on business. However, when asked how many times she had visited the property to see Mr. Chappell or to inspect the facilities or to deal with a customer complaint, she answered, "I don't handle that myself." She testified as follows:

> Q. You pay Mr. Chappell to do that. That's correct, isn't it?
> A. Yes.
> Q. So you won't have to.
> A. Yes, and if it is something important my husband goes out and handles it.

When asked if it would be fair to say that she was not responsible for handling the financial details of the utility business, the Applicant answered, "that is definitely true."

consideration of gross receipts taxes, state income taxes, and federal income taxes.

In order to separate the expenses between the water and sewer operations, Mr. Dennis assigned to water or sewer those expenses which were specifically identified as being water or sewer and divided all other expenses equally, half to water and half to sewer. The Hearing Examiner concludes that the allocation method proposed by the Public Staff is appropriate for use in this proceeding.

Based on the newly discovered number of customers, the present monthly water charge of $15 yields an annual level of water revenues of $4,860 and the present monthly sewer charge of $10 results in sewer revenues of $2,880. Gross receipts taxes are calculated based upon a 4% rate on water revenues and a 6% rate on sewer revenues. Application of these rates will produce a present annual level of gross receipts tax of $194 for the water operations and $173 for the sewer operations. The Hearing Examiner's approved level of rates will result in a level for gross receipts tax of $165 for the water operations and $236 for the sewer operations.

Based upon the foregoing conclusions with respect to the level of water and sewer revenues and operating revenue deductions under present and approved rates, the present and approved level of state and federal income taxes, based on a state income tax rate of 7% and a federal income tax rate of 15%, are summarized as follows:

Item	Water Operations		Sewer Operations	
	Present	Approved	Present	Approved
State income taxes	$ 81	$32	$ (40)	$30
Federal income taxes	161	64	(80)	59
Total income taxes	$242	$96	$(120)	$89

As reflected above, the Hearing Examiner has used a state income tax rate of 7% in computing the Applicant's cost of service rather than the 6% rate proposed by the Public Staff. On July 16, 1987, the North Carolina General Assembly established a state corporate income tax rate of 7% effective for taxable years beginning January 1, 1987. See 1987 Session Laws, c. 622, ss. 8 and 17. The Hearing Examiner takes notice of this legislation and finds it to be more appropriate to use the 7% rate in determining the Applicant's cost of service in this proceeding. In using the corporate rates, the Hearing Examiner recognizes that the Applicant is an individual taxpayer, not a corporation. It was brought out during the cross examination of Mr. Dennis that the Public Staff consistently recommends use of the corporate rates because it would be unfair to look at an individual's tax rates, which may change from year to year. He explained, "We are trying to be fair to the Company by assuming a tax rate along the normal corporate structure." Mr. Mackie noted that the Applicant would have to pay income taxes on taxable income, but he did not compute an amount. Thus, the Public Staff's proposed corporate rates are the only rates in the record. Further, the Hearing Examiner finds use of the corporate rates to be reasonable. See Moyston v. New Mexico Public Service Comm., 76 N.M. 146, 412 P.2d 840 (N.M., 1966).

In summary, the Hearing Examiner concludes that the appropriate level of operating revenue deductions under present rates are as follows:

Item	Water Operations	Sewer Operations	Combined Operations
Salaries and wages	$1,876	$1,876	$3,752
Office and administrative	21	20	41
Maintenance and repairs	337	582	919
Transportation expenses	68	67	135
Power for pumping	492	492	984
Testing fees	284	-	284
Rate case expenses	222	222	444
Depreciation	194	-	194
Property tax	21	20	41
Gross receipts tax	194	173	367
State income tax	81	(40)	41
Federal income tax	161	(80)	81
Total operating revenue deductions	$3,951	$3,332	$7,283

Under the rates approved hereinafter, the reasonable level of operating revenue deductions will be $3,776 for water operations and $3,604 for sewer operations, a total of $7,380 on combined operations consisting of the following items (which reflect changes in gross receipts taxes, state income taxes, and federal income taxes consistent with the revenue adjustments approved herein):

Item	Water Operations	Sewer Operations	Combined Operations
Salaries and wages	$1,876	$1,876	$3,752
Office and administrative	21	20	41
Maintenance and repairs	337	582	919
Transportation expenses	68	67	135
Power for pumping	492	492	984
Testing fees	284	-	284
Rate case expenses	222	222	444
Depreciation	194	-	194
Property tax	21	20	41
Gross receipts tax	165	236	401
State income tax	32	30	62
Federal income tax	64	59	123
Total operating revenue deductions	$3,776	$3,604	$7,380

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 8

This finding of fact is based on the testimony of Public Staff witness Kevin O'Donnell and on the Evidence and Conclusions for Findings of Fact Nos. 6 and 7.

G.S. 62-133.1(a) provides that the Commission may fix water and sewer utility rates "on the ratio of the operating expenses to the operating revenues, such ratio to be determined by the Commission, unless the utility requests that such rates be fixed under G.S. 62-133(b)." As noted previously, both the Applicant and the Public Staff deal with rates in terms of the operating ratio methodology. Public Staff witness O'Donnell stated that the operating ratio methodology provides the Applicant a more reasonable level of revenues than the rate base methodology of G.S. 62-133(b) because the rate base is small compared to the level of operating expenses and, therefore, the rate

base methodology would provide insufficient revenues. The Hearing Examiner essentially having accepted the Public Staff's position with respect to rate base, it is apparent that the operating ratio methodology provides a higher level of revenues than the rate base methodology. The Hearing Examiner therefore concludes that the operating ratio methodology is the appropriate method for determining the revenues that the utility can realize and for setting rates in this proceeding.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 9

This finding of fact is in reality a conclusion, which is based upon the other findings of fact herein and the evidence cited in support of those findings.

G.S. 62-118(a) provides that upon finding "that there is no reasonable probablity of a public utility realizing sufficient revenue from a service to meet its expenses, the Commission shall have power, after petition and notice, to authorize by order any public utility to abandon or reduce such service." In remanding this case to the Commission, the Court of Appeals wrote:

> The ultimate issue for resolution is whether the operation of the system can produce sufficient revenues to meet the expenses of operation. G.S. 62-118(a). To resolve the issue, there must necessarily be findings of fact as to the reasonable expenses of operation and the revenues which the system can be reasonably expected to produce.

79 N.C. App. at 31. The Court also held that the Commission must give consideration to evidence concerning necessary repairs and improvements.

In the findings of fact and the discussion thereof above, the Hearing Examiner has found, based on the test year, that the Applicant's utility systems will have reasonable operating expenses, under the approved rates, of $3,776 for the water utility and $3,604 for the sewer utility. The Hearing Examiner finds the Applicant's revenue requirement for the water system to be $4,135 and the revenue requirement for the sewer system to be $3,938. Such revenues will give the Applicant an opportunity to earn a 10.2% margin on operating expenses requiring a return. The Applicant's present rates would produce, based upon the newly discussed number of customers, water utility revenues of $4,860 and sewer utility revenues of $2,880. It is therefore apparent that a 4.3% overall increase ($333) in rates will produce the revenues found reasonable herein. The Hearing Examiner finds and concludes that the Applicant's utility systems can reasonably be expected to produce the revenue requirements found reasonable herein. The necessary increase in rates will be moderate. Public witnesses testified that they were prepared to accept a small or a fair rate increase. The Applicant raises the spector of customers dropping off the systems, thereby drastically reducing her revenues. In support, she cites the fact that five customers left the utility systems when she increased rates to their present level shortly after acquiring the property. The evidence at the hearing on remand tends to show, and the Hearing Examiner has hereinabove found, that most of the Applicant's present customers have no alternative means for obtaining water and sewer service. The Hearing Examiner therefore finds and concludes that the evidence does not show that there is no reasonable probability of the Applicant's realizing revenues

sufficient to meet her expenses; that, in fact, the Applicant's water and sewer systems can each produce sufficient revenues to meet their respective reasonable operating expenses, and that authority to abandon public utility service should be denied.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 10 THROUGH 12

The evidence for these findings of fact is found in the testimony of Applicant's witnesses R. W. Van Tilburg and George Mackie, Public Staff witness Tweed, and Public Staff's late-filed Exhibit 2. The Court of Appeals held that the Commission must give consideration to evidence concerning necessary repairs and improvements, and this evidence is addressed herein.

The Applicant presented witness Van Tilburg, Regional Supervisor of the Raleigh Office of the Division of Environmental Management for the Department of Natural Resources and Community Development, to address the status of the Applicant's sewage disposal facilities. He testified that the present facilities do not have the required discharge permit and that the facilities, in their present condition, could not meet the permit requirements. He testified that the Mackies have declined to seek either transfer of the discharge permit from the prior owner or renewal of the permit. The present facilities discharge to a sand filter bed on the surface of the land. If that is continued, Mr. Van Tilburg testified that a high degree of treatment is necessary and a package treatment plant, which he estimated at $50,000 to $75,000, will have to be installed. If the facilities were altered so as to discharge into the Neuse River, which he stated was about 350 feet away, he testified that it would be possible to upgrade the existing septic tank-sand filter system, and he estimated this cost at $20,000 to $25,000, not including engineering and easement costs, but including the cost of the discharge pipe to the river. He testified that his staff was available to work with the Applicant's engineer.

Public witness Leonard testified that he owns land between the sewer facilities and the river across which a discharge pipe of approximately 1,500 feet could be run. He testified that he would be willing to sell an easement across his land. He had no opinion to what he would ask for such an easement. The shorter route to the river cited by Mr. Van Tilburg crosses about 40 feet of Mr. Leonard's land and then land owned by the federal government.

Mr. Mackie testified as to the needed improvements. As to the water system, he testified that the water lines are in marginal condition and will have to be replaced within five years. However, on cross examination he explained, "That's on a layman's opinion who knows nothing of the pipe business." He testified that the pumphouse needs a new door and a new roof and that these will cost at least $1,800. He testified that the elevated tank is in good condition inside but needs sand blasting and painting outside, which will cost about $5,000 and will give the tank a life expectancy of 10 years. As to the sewage disposal facilities, he testified that the pipes are in good condition, that the sand needs replacing, and that the sand will cost about $4,000 and will give the facilities a life expectancy of about 10 years. If the sewage disposal facilities are rebuilt, Mr. Mackie testified that it will cost more than $50,000. He testified that this opinion is based on a couple of telephone calls, one to a "fellow over in Durham who I don't recall his name" and another to "a boy . . . over at Dillon Supply, I believe. I am not sure."

He testified that neither was an expert in sewage treatment plants, that neither visited the site, and that "[t]here was not a request made for a complete pricing of a sewage plant to a company that does that type of work. This is an opinion. It is not a fact."

Mr. Tweed testified that he had worked with many aspects of water and sewer utility operations since joining the Public Staff in 1979, that previously he was superintendent of the wastewater treatment facility for the Town of Mooresville, and that he was certified as a Grade 4 wastewater treatment plant operator. As to the water facilities, he testified that the source of water, a spring on adjoining government land, should be replaced by a well if possible and that the elevated tank should be replaced by a ground pressure tank in the well. This plan would remove the elevated tank, which the Applicant regards as an eyesore. Witness Tweed expressed concern that the elevated tank was oversized for the system and that water may stay in it too long and become stagnant. He testified that an engineer would have to be retained to provide detailed plans and estimates, but that his rough estimate for the necessary improvements was as follows:

Engineering fees	$ 2,000
Well	4,000
Installed pressure tank	3,000
Miscellaneous	1,000
Total	$10,000

On cross examination, Mr. Tweed testified that his estimate for the well did not include anything for the 7/10 of an acre that would be required around the well because other land of the Applicant would be freed from utility purposes in the process. Mr. Tweed included a miscellaneous item of $1,000 as a fudge factor or margin of safety. He testified that his estimate was a rough estimate based on his experience. He testified that he would apply a 25-year life to the new water facilities for depreciation purposes. As to the sewer facilities, Mr. Tweed testified that the existing system could be renovated and a discharge pipe extended to the river for $20,000. Again, an engineer would have to be retained. He testified that his figure of $20,000, which he initially took from Mr. Van Tilburg, included an engineering fee of $2,000 and a discharge pipe to the river of $3,000, leaving $15,000 to modify the existing facilities. Mr. Tweed's estimate did not include the cost of an easement.

Mr. Tweed recommended that the Applicant file an engineer's report with detailed estimates. He explained, "Now I believe that the Mackies could possibly go out and hire the most expensive engineer to come up with the most elaborate plan for upgrading the systems and probably show that it's cost prohibitive. On the other hand, I think that if they are frugal in their attempts and really try to find a wise, economically feasible solution, that it can be found within this $30,000 total range that I have submitted to the Commission."

Both Mr. Dennis and Mr. Tweed addressed ways in which the Applicant could avoid regulatory lag when she seeks a rate increase to cover the cost of these improvements. Mr. Dennis suggested that the Applicant could file her rate case while the improvements are underway, scheduling the work to be completed by the time the hearing begins. Mr. Tweed testified that the Applicant could ask for

emergency interim rate relief, subject to refund, when she files her rate case application.

The Public Staff's late-filed Exhibit 2 calculated the effect on rates of $10,000 in improvements to the water facilities and $20,000 in improvements to the sewer facilities. The Hearing Examiner will make a similar computation using a reasonable level of improvements, all other factors (except those necessarily changed by the improvements) being as determined in the preceding findings of fact. The purpose of this calculation is not to dictate a particular plan of improvements or to show exactly what rates will be in the future, but rather to give consideration to the evidence concerning necessary repairs and improvements as this evidence relates to the Applicant's application to abandon.

As to the water facilities, the Applicant proposed certain improvements to the existing facilities, totaling $6,800. The Public Staff proposed improvements totaling $10,000. It is not for the Hearing Examiner to decide which plan should be followed. The issue is whether a reasonable plan of necessary improvements will result in a situation in which there is no reasonable probability of the utility's realizing sufficient revenues to meet its expenses. For this purpose, the Hearing Examiner will make a calculation on the basis of the Public Staff's recommendation. If $10,000 were spent on improvements to the water facilities and added to the rate base hereinabove established, the rate base methodology would produce greater revenues for the Applicant than the operating ratio methodology. Using the number of customers, the rate of return, and the operating revenue deductions previously determined herein with the additional annual depreciation expense on the new investment (based on a 25-year life), these improvements would result in a revenue requirement of $5,454 to be recovered by a water rate of $16.83 per month.

As to the sewer facilities, two plans were proposed. The evidence shows one of the plans, the package treatment plant at the site, to be much more expensive that the other. The less expensive plan requires an easement to the Neuse River. Although the record includes no estimate as to the cost of such an easement, the law authorizes the Applicant, as a public utility, to acquire such an easement, by eminent domain if necessary, in return for just compensation. Accepting (on the basis of his expertise and experience) Mr. Tweed's estimate of $20,000, which included everything except the easement cost, the Hearing Examiner concludes that a level of improvements in the area of $25,000 is appropriate for the present purposes. Making a calculation as hereinabove described, using the rate base methodology, and factoring in $25,000 in improvements results in a revenue requirement of $7,649 to be recovered by a sewer rate of $26.56 per month.

The following schedule illustrates the above calculations of revenue requirements:

WATER OPERATIONS

Item	Rate Base Method	Retention Factor	Revenue Requirement
Operating revenue deductions:			
O&M expenses	$3,300		
Depreciation	594		
Property tax	21		
Total	$3,915	.96	$4,078
Net operating income for return:			
Debt service return	398	.96	415
Equity return (GRT @4%, SIT @7%, FIT @15%)	729	.75888	961
Revenue Requirement			$5,454

SEWER OPERATIONS

Item	Rate Base Method	Retention Factor	Revenue Requirement
Operating revenue deductions:			
O&M expenses	$3,259		
Depreciation	1,000		
Property tax	20		
Total	$4,279	.94	$4,552
Net operating income for return:			
Debt service return	877	.94	933
Equity return (GRT @6%, SIT @7%, FIT @15%)	1,608	.7431	2,164
Revenue Requirement			$7,649

Thus, the evidence tends to show that the needed improvements will result in rate increases. However, the Hearing Examiner cannot conclude that the rate increases will be cost prohibitive to the Applicant's customers. The Applicant argues in her brief that her customers "will not willingly pay" such rates and that "a substantial number of [customers] would very likely [discontinue service] almost immedately if the present rates charged for water or sewer service are increased appreciably. . . " However, the Applicant did not present evidence tending to show that customers will refuse to pay such rates or will leave her systems, and the Hearing Examiner cannot find from the record as a whole that this will be the case, especially in light of the lack of alternatives available to most of the present customers for these essential services. Therefore, having considered evidence concerning necessary repairs and improvements, the Hearing Examiner again finds and concludes that the

evidence does not show that there is no reasonable probability of the Applicant's realizing revenues sufficient to meet her expenses and that authority to abandon public utility service should be denied.

The Hearing Examiner concludes that the Applicant should hire an engineer to prepare a report estimating the cost of making necessary improvements to the water and sewer utility systems, in consultation with Mr. Tweed of the Public Staff, Mr. Van Tilburg of the Division of Environmental Management, and Mr. Don Williams of the Division of Health Services. This report should be submitted to the Commission within 90 days of the effective date of this Order.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 13

This finding of fact and conclusion is based on the proceeding findings of fact. The Hearing Examiner, having concluded that the Applicant should not be authorized to abandon utility service, now turns to the second issue identified at the prehearing conference. This issue is the level of rates and charges which should be authorized for the Applicant's water and sewer service.

On the basis of the above findings of fact, and in particular Findings of Fact Nos. 5, 6, 7, and 8, the annual revenue requirement for the Applicant's water operations is $4,135 and the annual revenue requirement for the Applicant's sewer operations is $3,938. The revenue requirements are composed of the following components:

Item	Water Operations	Sewer Operations
O&M expenses	$3,300	$3,259
Depreciation expense	194	-
Property tax	21	20
Gross receipts tax	165	236
State income tax	32	30
Federal income tax	64	59
Return on operating revenue deductions	359	334
Total	$4,135	$3,938

On the basis of 27 water customers and 24 sewer customers, the annual revenue requirements equate to $12.76 per month per customer for water service and $13.67 per month per customer for sewer service. The Hearing Examiner finds and concludes that a monthly water rate of $12.76 and a monthly sewer rate of $13.67 are just and reasonable for the Applicant and for her customers and should be approved herein. A Schedule of Rates including these rates and other charges and provisions consistent with the Commission's Rules is attached hereto as Appendix B.

The following schedules summarize the gross revenues and rates of return which the Applicant should have a reasonable opportunity to achieve based upon the determinations made herein. The schedules incorporate the findings and conclusions heretofore made by the Hearing Examiner.

SCHEDULE I

MARTHA H. MACKIE
Docket No. W-785
COMBINED OPERATIONS
NET OPERATING INCOME FOR RETURN
For the Test Year Ended December 31, 1986

Item	Present Rates	Overall Increase Approved	Approved Rates
Operating Revenues:			
Water revenues	$4,860	$ (725)	$4,135
Sewer revenues	2,880	1,058	3,938
Total operating revenues	7,740	333	8,073
Operating Revenue Deductions:			
O&M expenses	6,559	-	6,559
Depreciation expense	194	-	194
Property taxes	41	-	41
Gross receipts taxes	367	34	401
State income taxes	41	21	62
Federal income taxes	81	42	123
Total operating revenue deductions	7,283	97	7,380
Net operating income for return	$ 457	$ 236	$ 693

SCHEDULE IA

MARTHA H. MACKIE
Docket No. W-785
WATER OPERATIONS
NET OPERATING INCOME FOR RETURN
For the Test Year Ended December 31, 1986

Item	Present Rates	Decrease Approved	Approved Rates
Total Operating Revenue:			
Service Revenues	$4,860	$ (725)	$4,135
Operating Revenue Deductions:			
O&M expenses	3,300	-	3,300
Depreciation expense	194	-	194
Property taxes	21	-	21
Gross receipts taxes	194	(29)	165
State income taxes	81	(49)	32
Federal income taxes	161	(97)	64
Total operating revenue deductions	3,951	(175)	3,776
Net operating income (loss) for return	$ 909	$ (550)	$ 359

SCHEDULE I-B

MARTHA H. MACKIE
Docket No. W-785
SEWER OPERATIONS
NET OPERATING INCOME FOR RETURN
For the Test Year Ended December 31, 1986

Item	Present Rates	Increase Approved	Approved Rates
Total Operating Revenue:			
Service Revenues	$2,880	$1,058	$3,938
Operating Revenue Deductions:			
O&M expenses	3,259	-	3,259
Depreciation expense	-	-	-
Property taxes	20	-	20
Gross receipts taxes	173	63	236
State income taxes	(40)	70	30
Federal income taxes	(80)	139	59
Total operating revenue deductions	3,332	272	3,604
Net operating income (loss) for return	$ (452)	$ 786	$ 334

SCHEDULE II

MARTHA H. MACKIE
Docket No. W-785
STATEMENT OF RATE BASE
For the Test Year Ended December 31, 1986

Item	Approved Rates		
	Water Operations	Sewer Operations	Combined Operations
Plant in service	$1,328	$ -	$1,328
Accumulated depreciation	(248)	-	(248)
Cash working capital	413	407	820
Average tax accruals	(43)	(39)	(82)
Rate base	$1,450	$ 368	$1,818

SCHEDULE III

MARTHA H. MACKIE
Docket No. W-785
MARGIN ON OPERATING REVENUE DEDUCTIONS
REQUIRING A RETURN
For the Test Year Ended December 31, 1986

Item	Present Rates	Approved Rates
Water Operations:		
Net operating income for return	$ 909	$ 359
Operating revenue deductions requiring a return	$3,515	$3,515
Return	25.86%	10.20%
Sewer Operations:		
Net operating income (loss) for return	$ (452)	$ 334
Operating revenue deductions requiring a return	$3,279	$3,279
Return	(13.78%)	10.20%
Combined Operations:		
Net operating income for return	$ 457	$ 693
Operating revenue deductions requiring a return	$6,794	$6,794
Return	6.73%	10.20%

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 14

The evidence for this finding of fact and conclusion is found in the testimony of Applicant's witnesses George Mackie, Chappell, and Van Tilburg and Public Staff witness Tweed.

The testimony and exhibits of Mr. Mackie and Mr. Chappell tend to show that the residences and other buildings presently served by the Applicant are not contiguous and cannot be enclosed within a single boundary without enclosing other properties in between. Mr. Van Tilburg, when asked about additional connections to the sewer facilities, testified that if the facilities were upgraded, they "could be upgraded to accept any capacity that was desired to put through there and assuming that the facility as it was upgraded had capacity to treat more waste than is currently being put through the system, and normally they are designed to handle more than the minimal waste, then, yes, we would allow waste to go through it up to the capacity of the facility." Mr. Tweed recommended that the Applicant be required to serve the existing users, including houses vacant at the time of the hearing but dependent upon the Applicant for water and/or sewer service. In her post-hearing brief, the Applicant requested "that if such certificate be issued to her it be limited in territorial extent to those residences or other buildings presently so physically connected to her facilities, the owners and occupants of which, at the present time, are named in her said Exhibit 5."

The parties agree to limiting the Applicant's certificate of public convenience and necessity to existing connections. The Hearing Examiner wishes to note, however, that such a limitation may well work to the Applicant's disadvantage in the future. If new customers join the systems, the Applicant's revenues will increase. Mr. Tweed raised as possibilities that a subdivision may be developed in the area or that other residents may wish to connect if their private water or sewer facilities fail. Abandonment having been denied, the Applicant may wish to reevaluate her desire to limit her customer base. Although the Hearing Examiner will issue a certificate limited to existing connections, the Examiner notes the Applicant's right under G.S. 62-110 to serve in contiguous territory not receiving service from another public utility and the Applicant's right to seek an amendment to the territory set forth in her certificate. Prospective customers who are denied a connection by the Applicant might also seek relief from the Commission pursuant to G.S. 62-73. Any and all requests for additional connections, either by the Applicant or others, will be dealt with by the Commission as they may arise in the future.

IT IS, THEREFORE, ORDERED as follows:

1. That the Applicant's request for authority to abandon providing water and sewer utility service should be, and the same hereby is, denied;

2. That a certificate of public convenience and necessity, i.e., a utility franchise to provide water and sewer utility service to her existing connections, should be, and hereby is, issued to the Applicant and is attached hereto as Appendix A;

3. That the Schedule of Rates attached hereto as Appendix B should be, and hereby is, established for the Applicant's utility service rendered on and after the effective date of this Order, and said Schedule of Rates is hereby deemed to be filed with the Commission pursuant to G.S. 62-138;

4. That, pursuant to the Commission's statutory power and authority to provide for reasonable and adequate public utility service, the Hearing Examiner directs that the Applicant undertake a study, in consultation as hereinabove provided, of needed improvements to her water and sewer utility facilities and file an engineer's report on a reasonable plan of improvements and the cost thereof with the Commission within 90 days after the effective date of this Order; and

5. That the Applicant shall mail or hand deliver the Notice attached hereto as Appendix C to all her customers within 30 days after the effective date of this Order.

ISSUED BY ORDER OF THE COMMISSION.
This the 28th day of December 1987.

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

APPENDIX A

DOCKET NO. W-785
BEFORE THE NORTH CAROLINA UTILITIES COMMISSION
Know All Men By These Presents, That
MARTHA H. MACKIE
is hereby granted this
CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY
to provide water and sewer utility service
in
FALLS OF THE NEUSE VILLAGE
(existing connections only)

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 28th day of December 1987.

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

APPENDIX B

SCHEDULE OF RATES
for
DOCKET NO. W-785
MARTHA H. MACKIE
for providing water and sewer utility service in
FALLS OF THE NEUSE VILLAGE
Wake County, North Carolina

FLAT MONTHLY WATER RATE:	$12.76
FLAT MONTHLY SEWER RATE:	$13.67
RECONNECTION CHARGES:	
If water service cut off by utility for good cause:	$ 4.00
If water service cut off at customer's request:	$ 2.00
If sewer service discontinued for any reason:	$15.00

BILLS DUE: On billing date

BILLS PAST DUE: 15 days after billing date

BILLING FREQUENCY: Shall be monthly for service in arrears.

Issued in accordance with authority granted by the North Carolina Utilities Commission in Docket No. W-785, on this the 28th day of December 1987.

APPENDIX C

DOCKET NO. W-785

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Application by Martha H. Mackie, Post Office Box 672, Wake Forest, North Carolina, for Authority to Abandon Water and Sewer Utility Service in Falls of the Neuse Village in Wake County, North Carolina	NOTICE TO CUSTOMERS

NOTICE IS HEREBY GIVEN that the North Carolina Utilities Commission has entered an Order on the application of Martha H. Mackie (Applicant) to abandon water and sewer utility service in the Village of Falls of the Neuse in Wake County.

On January 25, 1984, the Applicant filed an application with the North Carolina Utilities Commission seeking authority to abandon water and sewer utility service in the Village of Falls of the Neuse. The Commission issued Orders in June, 1984, and September, 1984, denying the request for abandonment of service. The Applicant appealed those Orders, and the North Carolina Supreme Court remanded the matter to the Commission for a further hearing. That further hearing was held before a Commission Hearing Examiner on July 8 and 9, 1987.

The Utilities Commission has now issued an Order that denies the Applicant's request for authority to abandon utility service, issues a public utility franchise to the Applicant to serve her existing water and sewer connections, and establishes rates of $12.76 per month for water service and $13.67 per month for sewer service. The Commission has also ordered the Applicant to study and provide estimates for improvements to the water and sewer utility systems.

ISSUED BY ORDER OF THE COMMISSION.
This the 28th day of December 1987.

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 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 and Sewer Utility Service in Emerald Point Subdivision, Mecklenburg County, North Carolina and for Approval of Rates	ORDER DENYING MOTION TO REVOKE AND REAWARD FRANCHISE AND GRANTING IMPLEMENTATION OF RATES

HEARD IN: Commission Hearing Room, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on November 4 and 5, 1986

BEFORE: Commissioner Robert K. Koger, Presiding; and Commissioners Sarah Lindsay Tate and Edward B. Hipp

APPEARANCES:

For the Complainant:

Robert F. Page, Crisp, Davis, Schwentker, Page & Currin, Post Office Drawer 30489, Raleigh, North Carolina 27622
For: Enderby Development Associates, Inc.

For the Respondent:

Edward S. Finley, Jr., Hunton and Williams, Post Office Box 109, Raleigh, North Carolina 27622
For: Carolina Water Service, Inc., of North Carolina

BY THE COMMISSION: On October 2, 1985, the Commission issued its Order Granting Franchise and Approving Rates in Docket No. W-354, Sub 42, by which the Commission granted Carolina Water Service, Inc., of North Carolina (Carolina Water Service) a certificate of public convenience and necessity to provide water and sewer utility service in the Emerald Point Subdivision in Mecklenburg County. By that same Order, the Commission approved rates for such service but provided that the rates should not become effective until Carolina Water Service had filed certain further information with the Commission.

On July 11, 1986, Enderby Development Associates, Inc., (Enderby) filed a Motion to Revoke and Reaward Franchise in this docket, requesting (1) that the certificate of public convenience and necessity awarded to Carolina Water Service on October 2, 1985, 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 its 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 certificate rights pending a hearing on the merits, and that a hearing be

scheduled as quickly as possible. 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 the Merits, by which the Commission scheduled oral argument on the motion for preliminary injunction for 2:00 p.m., September 2, 1986, in the Commission Hearing Room, and a hearing on the merits at the time and place above indicated. The oral argument on preliminary injunction was held as scheduled. Both Carolina Water Service and Enderby filed affidavits. Carolina Water Service submitted a brief in support of its request; Enderby responded to this brief by letter. By Order of September 10, 1986, the Commission granted Carolina Water Service's motion for preliminary injunction, enjoining Enderby from interference with Carolina Water Service's Emerald Point franchise pending hearing on the merits.

The matter came on for hearing on the merits at the time and place indicated above. All parties were present and were represented by counsel. Both at the close of Enderby's case and at the close of its own case, Carolina Water Service moved for dismissal of the Motion to Revoke and Reaward Franchise. A ruling on this motion was deferred.

Enderby presented the direct testimony of the following witnesses: Richard Enderby, developer of the Emerald Point Subdivision; Billy Burnett, licensed utility operator; and Arthur Mouberry, Supervisor of Permits and Engineering for the Division of Environmental Management, North Carolina Department of Natural Resources and Community Development.

Carolina Water Service presented the direct testimony of the following witnesses: Barbara Wiggins, Environmentalist, Water Quality Section, Mecklenburg County Environmental Health Department; Ralph Williams, owner of Twin States Instruments, Inc.; Steve Carter, sales representative for Interstate Utility Sales; Dale Stewart, owner of the engineering consulting firm of D. C. Stewart and Associates; Don Boulware, utility operator for Carolina Water Service; Kenneth Reid Baucom, utility operator for Carolina Water Service; and Carl Daniel, Regional Director of Operations for Carolina Water Service.

Enderby presented the rebuttal testimony of Richard Enderby and Billy Burnett.

Subsequent to the hearing, on February 11, 1987, Carolina Water Service filed a Motion for Implementation of Rates asking that it be allowed to begin billing the rates approved by the Commission's October 2, 1985 Order and that the billing begin as of September 10, 1986. On February 26, 1987, Enderby filed its Response asserting that Carolina Water Service has not complied with the conditions of the October 2, 1985 Order approving rates and that it should not be allowed to implement the rates.

Based upon the foregoing, the evidence produced at the hearing and the entire record in these matters, the Commission makes the following:

FINDINGS OF FACT

1. The Complainant Enderby is a North Carolina corporation with its principal office in Charlotte, North Carolina. Enderby is developing a 140-unit condominium project at Emerald Point Subdivision, located adjacent to Lake Wylie in Mecklenburg County.

2. Carolina Water Service is a North Carolina corporation that has been duly franchised by this Commission to operate as a public utility providing water and sewer utility service to its customers in North Carolina and is subject to the jurisdiction of the Commission. Carolina Water Service is a wholly-owned subsidiary of Utilities, Inc., an Illinois corporation.

3. On July 17, 1985, Enderby and Carolina Water Service entered into a contract pursuant to which Enderby was to construct the water and sewer facilities for Emerald Point and convey the facilities to Carolina Water Service. Carolina Water Service was to pay Enderby $5,000 after the completion of the facilities and to undertake operation of the facilities. The contract provided that Enderby was to convey all necessary deeds and easements to Carolina Water Service and to cooperate with Carolina Water Service in acquiring the necessary permits.

4. On July 30, 1985, Carolina Water Service applied to this Commission for a certificate of public convenience and necessity to operate the water and sewer utility systems at Emerald Point. Carolina Water Service attached a copy of its contract with Enderby to its application. No objection to the application was made. By Order of October 2, 1985, the Commission granted the certificate to Carolina Water Service. No appeal was taken.

5. Beginning in October of 1985 families began to occupy some units of the Emerald Point condominiums. By the end of 1985 eleven units were occupied. Enderby did not notify Carolina Water Service of the fact that the units were occupied or of the number of units occupied, and Carolina Water Service did not ask. Carolina Water Service undertook operation of the Emerald Point system in November of 1985.

6. During the course of Carolina Water Service's operations at Emerald Point, Enderby become concerned with the quality of service being provided. These concerns centered on the operation of the wastewater facility and on sewer line blockages occurring in Emerald Point.

7. During the early months of 1986, Enderby became concerned that there were unreported, untreated discharges from the wastewater facility into Lake Wylie, in violation of the NPDES permit. In late spring, it was discovered that there was a leak under the weir plate in the flow meter chamber of the waste water facility. Because of the leak, the chamber did not fill with sufficient effluent to spill through the V-notch in the weir plate, where it would have been measured. The leak was repaired.

8. Enderby also became concerned that the blowers in the wastewater facility, which pump air into the treatment mixture to support aerobic bacteria, were not operating properly. The blowers are operated on a timed, intermittent basis. It was discovered that the blowers were wired as if there

were three blowers when there were in fact only two, resulting in periods when no blower was operating. Upon discovery, Carolina Water Service remedied the wiring.

9. Enderby also complained that Carolina Water Service was not adding chlorine to the wastewater during the period when the system was filling during initial operation. There is no state requirement that chlorine be added to wastewater so long as all the NPDES permit requirements are met. Carolina Water Service personnel testified that chlorination would not have been necessary at the facility's then current level of operation.

10. Enderby's other complaints as to the performance rendered by Carolina Water Service centered largely upon two sewer line blockages in April 1986. In the first incident, there was a sewer line overflow directly behind Building 7 of the condominiums, which was unoccupied at the time. The backup was only of cleaning water from the building. This overflow resulted not from the acts of Carolina Water Service, but rather from a piece of PVC piping left blocking the line by one of Enderby's contractors. Carolina Water Service responded in less than one hour when contacted about the problem. Also in April, there was an incident with a service line overflowing caused by either a crushed or defective pipe. Two to three feet of water were found backed up into the manhole. Carolina Water Service had Roto-Rooter out within one and one-half hours after being notified, but Roto-Rooter was unable to remedy the problem. Enderby's contractor, Harris Construction, had to be called to fix the pipe. This took some three days.

11. In early May, 1986, Enderby called the regional director for Carolina Water Service to discuss his concerns with the service. During this conversation, Enderby brought up the fact that he had not yet been paid the $5,000 called for in the July 17, 1985 contract. On May 12, 1986, Carolina Water Service's president wrote to Enderby and included a check for $5,000. By letter to Carolina Water Service dated May 15, 1986, Enderby indicated that he considered the July 17, 1985 contract to be null and void and prohibited Carolina Water Service from operating the water and sewer systems. Enderby then contracted with Burnett Construction Company, Inc., for operation of the Emerald Point water and sewer systems.

12. On May 21, 1986, Carolina Water Service instituted a civil action in the Superior Court of Mecklenburg County requesting, among other relief, that Enderby be enjoined from interfering with Carolina Water Services' right of access to the water and sewer facilities at Emerald Point for the purpose of maintaining and operating those facilities. After a hearing on May 28, 1986, Judge Chase Saunders denied Carolina Water Service's request for a preliminary injunction in that action.

13. Pursuant to this Commission's Order of September 10, 1986, allowing a preliminary injunction against further interference by Enderby with Carolina Water Service's franchise rights, Carolina Water Service reentered the Emerald Point facilities on September 15, 1986.

14. Carolina Water Service should be allowed to implement the rates approved by the Commission's Order of October 2, 1985, in Docket No. W-354, Sub 42, as of the date of the present Order.

Evidence and Conclusions for Findings of Fact Nos. 1-4

The evidence for these findings is found in the application filed on July 30, 1985, in Docket No. W-354, Sub 42; in the Agreement for Water and Sewer Service dated July 17, 1985, attached to that application; in the Commission Order issued on October 2, 1985, in Docket No. W-354, Sub 42; in the Commission's official files in Docket Nos. W-354, Sub 42 and Sub 50; and in the testimony of witnesses Enderby and Daniel.

Enderby contends that Carolina Water Service was awarded its certificate of public convenience and necessity to provide water and sewer utility service in Emerald Point through fraud or deceit practiced on this Commission. We find no evidence to support this contention. A copy of the July 17, 1985 contract with Enderby was attached to Carolina Water Service's application for the franchise. The contract stated that it was Enderby's contractual responsibility to convey title to the necessary property to Carolina Water Service and to cooperate with Carolina Water Service in acquiring necessary permits. This Commission, in its October 2, 1985 Order Granting Franchise provided that

> the rates approved herein shall not become effective until Carolina Water Service has filed with the Commission information indicating proof of ownership or control of the water and sewer systems and that the water and sewer systems plans have been approved by the appropriate State agencies. (emphasis added)

Clearly, this Commission was not misled by the application. Further, Enderby had a chance to object during the franchise proceedings and did not do so.

Enderby testified that when he met with Carolina Water Service representatives to discuss entering a contract with them, there was very little conversation, that Carolina Water Service was not willing to negotiate and that the only comfort they gave him was in agreeing that they would not add on taps from beyond the Emerald Point development. He testified that it was a take it or leave it proposition. However, when asked on cross examination what provisions he tried to negotiate, he answered "not much." Carl Daniel was the regional director of operations for Carolina Water Service. He testified that he was contacted by the engineer designing the sewage treatment plant and water system for Enderby, that he met with Enderby and listened to Enderby's concerns, that Carolina Water Service "devoted quite a bit of time" to the negotiations with Enderby and Enderby's attorney, and that the agreement was not a take it or leave it proposition.

Evidence and Conclusions for Finding of Fact No. 5

The evidence for this finding is found in the testimony of witnesses Enderby, Baucom, and Boulware. Witness Enderby testified that the first condominium unit became occupied on October 15, 1985, and that by the end of 1985 there were 11 units occupied. He stated that this was obvious and that Carolina Water Service knew of the occupancy by the end of the year. Witness Baucom testified that Carolina Water Service had no way of knowing how many units were occupied, that they were not told how many customers were on the system, that Enderby was not cooperative in letting them know how many occupants there were, and that they did not ask how many occupants were using

the sewer system. Witness Boulware testified that he began operation of the Emerald Point system for Carolina Water Service in November of 1985.

Evidence and Conclusions for Findings of Fact Nos. 6-11

The evidence for these findings is found in the testimony of witnesses Enderby, Burnette, Mauberry, Wiggins, Williams, Carter, Stewart, Boulware, Oliver, Baucom and Daniel

Witness Enderby testified that he became concerned when he learned that Carolina Water Service had not conducted any tests for the first six months that they operated the sewage treatment plant and that they had represented to the Division of Environmental Management in Mooresville that there was no flow through the plant even though there were 20 units on line as of May 15. Enderby testified that Carolina Water Service's maintenance was "minimal at best." Enderby also testified that Carolina Water Service failed to add chlorine to the waste water and that the contractor who put the sewage treatment system in for him advised him that the flow meter was not working because the weir plate was not operating, that one of the blowers in the treatment facility was tripped off, and that the other blower was manually switched off. Enderby testified that his frustration with Carolina Water Service "came to a head when we had our sewage line backup with raw sewage pouring out onto the ground" in the pool area, the focal point of the development. When asked what caused the lines to back up, Enderby testified that there was mud in the lines and that one of the lines was crushed. He did not know how the mud got into the line or how the line was crushed, but he contended that the failure was in Carolina Water Service's maintenance. On cross examination, Enderby stated that Carolina Water Service had unplugged the lines and had fixed the weir plate. He testified that since returning to the system, Carolina Water Service was doing a good job.

Witness Enderby testified that one reason he was so concerned about the sewage system was that the NPDES waste water permit authorizing discharge into Lake Wylie was issued in his name and he was still the responsible party on the permit. On cross examination he admitted that on November 25, 1985, Carolina Water Service had requested that he provide them with the necessary deeds and easements so that they could have the permit transferred, that he had not responded until April 25, 1986, and that he still had not deeded the necessary property to Carolina Water Service.

Witness Burnette testified that Enderby asked him to look at the sewage treatment plant and give him a report. He testified to the condition of the plant and cited the same concerns as Enderby with respect to the leak under the weir plate, the operation of the blowers, and the lack of chlorination. He testified that in his opinion untreated wastewater had been discharged into Lake Wylie in violation of the NPDES discharge permit since the time the first unit was attached to the sewage treatment system. He testified that it was not necessary for a blower to operate 24 hours a day, but that the only treatment process was the mixture of oxygen from the air and that chlorination was an after-treatment.

Witness Mauberry from the Division of Environmental Management testified that the NPDES permit in this case was issued to Enderby, that it allowed a discharge of up to 60,000 gallons per day into Lake Wylie, that it required

certain monitoring and reporting, that the first report received covered January 1986 and showed no discharge, and that reports through May 1986 showed no discharge.

Witness Wiggins of the Mecklenburg County Environmental Health Department testified that she inspected Emerald Point on May 16, 1986, and found that there was discharge, but that most of it was under the weir plate. She sampled the discharge as of June 16, 1986, and found that there was nothing out of compliance.

Witness Williams of Twin States Instruments testified that he examined the flow meter at Emerald Point on May 24, 1986, at the request of Carolina Water Service to check it for calibration. He stated that there was no measuring on it, that the calibration had not been set at zero, that this couldn't be done until the water level rose to the bottom of the weir plate, and that he observed water going underneath the weir plate.

Witness Carter testified that he was a sales representative for Davco, the manufacturer of the sewage treatment plant. He testified that it was an aeration treatment plant in which oxygen was added to the wastewater so that naturally occurring bacteria could decompose the organic load. There were two blowers that were set up to alternate so that one or the other would come on each time the timer tripped on. He testified that it was common for neither blower to operate part of the time, especially when the flow was low. However, he found that the Emerald Point plant was wired for three blowers, rather than two, so that every third cycle the timer would signal a blower to come on that in fact was not there. He determined that a wire had been misplaced, and Carolina Water Service rewired the blowers for duplex mode. Witness Carter testified that the amount of dissolved oxygen in the wastewater is based on what the operator feels is necessary and that the fact that the two blowers were wired for triplex mode did not necessarily mean that the wastewater was getting an insufficient amount of oxygen.

Witness Stewart, a consulting engineer, testified that he was familiar with sewage treatment plants such as the one at Emerald Point, that the wastewater should be aerated periodically but not 24 hours a day, and that chlorination was not necessary as long as the State's fecal coliform standard was met. He stated that the fact that there was no chlorine in this system did not necessarily tell whether untreated sewage had been discharged from the plant.

Witness Boulware testified that he was the main operator of the Emerald Point plant for Carolina Water Service from November 1985 through the middle of 1986, that he tried to visit the plant at least twice a week to monitor and check the equipment and do maintenance and tests, that he periodically tested the dissolved oxygen in the aeration chamber and timed the blowers accordingly, that they never turned the blowers off and left them off, that they corrected the fault in the wiring of the blowers once it was realized, that they began chlorination on May 14 even through they did not have a measurable flow and did not see the need for it, and that Carolina Water Service hired a subcontractor to seal the leak under the weir plate on June 2. He testified that he started the flow meters on May 14 and that it hadn't been started earlier because there was only a negligible discharge flowing under the weir plate. When asked why he had seen no discharge even though there were units connected to the system,

he answered "I really have no specific answer for that question." He testified that there may have been faults in the collection system, but he stated that he did not check the entire collection system for faults.

Witness Oliver testified that he was operating manager for Carolina Water Service and that it was his duty to oversee the Emerald Point system. He testified that he was aware of two blockages during the spring of 1986. He testified that in early April he was called by someone from Emerald Point and told that there was a stoppage causing an overflow of sewage behind Building 7 near the pool area. He testified that he inspected and found that there was no raw sewage coming out, but that the overflow was actually cleaning water from the building. He found that the contractor had left a piece of pipe in the manhole and that this was defective construction. The contractor was notified, and he corrected the problem. Witness Oliver was notified in late April 1986 that sewage was overflowing into Lake Wylie. It was determined that there was a blockage between two manholes, and Roto-Rooter was called. Roto-Rooter discovered an obstruction or a cracked line. Harris Construction was called and they made the repair.

Witness Baucom, an operator for Carolina Water Service, testified that he never left the blowers at Emerald Point switched off, that he found them switched off once, and that he was responsible for rewiring the blowers to put them in duplex mode. He testified that he never saw any discharge, and that he "figured that there was not enough occupants to create an amount of flow."

Witness Daniel testified that Enderby called him in May and was extremely upset, that Enderby brought up the fact that the $5,000 payment called for in the contract had not been made, that he requested payment to Enderby on May 7, 1986, that Perry Owens sent a $5,000 check to Enderby on May 12, and that Enderby subsequently barred Carolina Water Service from the premises. Witness Daniel testified that Carolina Water Service had made several requests of Enderby in an effort to get the NPDES permit transferred to Carolina Water Service, that in April Enderby provided a letter stating that the sewage facilities had been deeded to Carolina Water Service, that this letter was forwarded to the state agency, and that the State wrote back that Enderby's attorney had contracted them and requested that they not process the transfer. Daniel testified that the water permit was in the name of Carolina Water Service and that they had received two notices of violations during months that Enderby was having the system operated by someone else. Daniel testified that although Enderby provided a letter stating that he had deeded the utility facilities to Carolina Water Service, no deed in fact ever passed.

On the basis of this evidence, the Commission concludes that the service rendered by Carolina Water Service in Emerald Point has, under all of the circumstances, been adequate and that no wilful failure to comply with applicable regulation has been shown.

As to the charge that Carolina Water Service allowed discharges into Lake Wylie in violation of its NPDES permit, the evidence shows that any discharges were minimal, intermittent and properly treated. Any discharges went unmeasured and unrecorded because of the low flows and the leak under the weir plate in the flow meter chamber. Proper construction of the Emerald Point facilities, including the flow meter chamber, was the responsibility of Enderby. Carolina Water Service's uncertainty as to the number of families

occupying Emerald Point contributed to its lack of alarm at the lack of a recorded discharge. Still, the evidence is that Carolina Water Service did not ask how many units were connected to the sewer system. They continued to file reports month after month showing no discharge. The Commission feels that Carolina Water Service could have been more observant and diligent in discovering the leak and the discharges sooner.

Enderby also complained about the blowers not operating at the wastewater facility and about the wastewater not being chlorinated. Enderby's contractor was responsible for the blowers being improperly wired in the triplex mode. There is no evidence that Carolina Water Service employees ever turned the blowers off. Even with the blowers running intermittently, every test performed by Carolina Water Service showed sufficient oxygen in the system. With the low flows, not as much oxygen was needed. As to the wastewater not being chlorinated, there is no requirement that wastewater be chlorinated as long as the NPDES permit parameters are met. Carolina Water Service began to add chlorine even though they did not feel it was needed. Again, the Commission cannot find a wilful failure.

Enderby also complained of sewer line blockages based on the two incidents in April 1986. Both incidents appear to have been the fault of Enderby's own contractors. Carolina Water Service responded promptly both times when notified of the problem.

In summary, Carolina Water Service's service at Emerald Point during the period in question, if not exemplary, was adequate given the circumstances. The evidence does not show such a failure as would support an action to revoke Carolina Water Services' Emerald Point franchise. N.C. General Statute 62.112(b) provides in pertinent part as follows:

> Any franchise may be suspended or revoked, in whole or in part, in the discretion of the Commission, upon application of the holder thereof; or, after notice and hearing, may be suspended or revoked, in whole or in part, upon complaint, or upon the Commission's own initiative, for wilful failure to comply with any provision of this Chapter, or with any lawful order, rule, or regulation of the Commission promulgated thereunder, or with any term, condition or limitation or such franchise . . . (emphasis added)

Enderby made no showing that Carolina Water Service has wilfully refused to follow any applicable utility law or Commission rule or regulation. The most serious charge has to do with Carolina Water Service's alleged discharges into Lake Wylie in violation of the NPDES permit. Even here, the evidence falls short of the showing of wilfullness required for a franchise revocation. Even if Carolina failed to detect the discharge when it should have, the Commission has more than sufficient power to remedy the problems of which Enderby complains without the extraordinary remedy of franchise revocation. Enderby's Motion to Revoke and Reaward Franchise will be denied. Consistent with this decision, the Commission finds and concludes that the injunction ordered by the Commission on September 10, 1986, should be continued.

Evidence and Conclusions for Findings of Fact Nos. 12 and 13

The evidence for these findings is found in this Commission's Order of September 10, 1986, in this docket and in the testimony that Carolina Water Service reentered the Emerald Point Subdivision and resumed operation of the utility systems there on September 15, 1986.

Evidence and Conclusions for Finding of Fact No. 14

The evidence for this finding and conclusion is found in the findings of fact, the evidence, the orders and proceedings cited hereinabove.

On October 2, 1985, in Docket No. W-354, Sub 42, the Commission issued its Order Granting Franchise and Approving Rates for Emerald Point. The Commission found that there was a need for water and sewer utility service in the subdivision that could best be met by Carolina Water Service and it issued a franchise. The Commission also found that no documentation had been submitted showing that the system plans had been approved by the appropriate state agency and that the system facilities were to become the property of Carolina Water Service when installed. In light of this, the Commission approved rates but provided that the rates should not become effective until Carolina Water Service filed "information indicating proof of ownership or control of the water and sewer systems and that the water and sewer systems plans have been approved by the appropriate state agencies." (emphasis added)

By its Motion for Implementation of Rates filed in this proceeding on February 11, 1987, Carolina Water Service argues that this Commission's Preliminary Injunction Order of September 10, 1986, establishes Carolina Water Service's right to operate utility systems at Emerald Point and, therefore, that Carolina Water Service should be allowed to begin charging the previously approved rates as of that date. By its Response, Enderby contends that Carolina Water Service has not met the requirements of the Commission's October 2, 1985 Order and that rates should not become effective.

The Commission concludes that substantial compliance with the Order of October 2, 1985, has been shown and that that justifies the Commission in authorizing Carolina Water Service to begin charging the previously approved rates for its service at Emerald Point. Although the ownership of the relevant facilities is a matter to be determined by the pending action in Superior Court, Carolina Water Service presently has control of the water and sewer systems pursuant to this Commission's preliminary injunction and Enderby himself admits that service has been good since Carolina Water Service reentered the premises pursuant to that preliminary injunction. As to the requirement of a showing that the water and sewer system plans have been approved by the appropriate State agencies, such a showing may be inferred from the present record. Though a dispute remains as to which party should hold the water and sewer permits in its name, it is apparently undisputed that the system plans have been approved and that the necessary permits have been issued. This was the Commission's concern in its October 2, 1985 Order. Service is being--and has been--provided to the residents of Emerald Point by Carolina Water Service. Those residents have received thousands of dollars worth of free service. Until they are charged rates for the service they receive, the cost of that service will be born by the shareholders or the other

ratepayers of Carolina Water Service. The Commission concludes that appropriate notice should be given the customers at Emerald Point and that the previously approved rates should be implemented as of the date of this Order. Should any future developments in the Superior Court or otherwise make it questionable as to whether such rates should continue, that matter can be brought to the attention of the Commission for its consideration.

IT IS, THEREFORE, ORDERED as follows:

1. That the Motion to Revoke and Reaward Franchise filed in this proceeding by Enderby on July 11, 1986, should be, and the same hereby is, denied;

2. That the injunctive relief previously ordered by this Commission by its Order of September 10, 1986, in this docket should be, and the same hereby is, continued;

3. That Carolina Water Service should be, and hereby is, authorized to implement the rates approved by the Commission's Order of October 2, 1985, in Docket No. W-354, Sub 42, as of the effective date of the present Order; and

4. That Carolina Water Service shall give notice of the implementation of its rates at Emerald Point by enclosing the notice attached hereto as Appendix A with its first billing to existing customers at Emerald Point.

ISSUED BY ORDER OF THE COMMISSION.
This the 9th day of April 1987.

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

APPENDIX A

DOCKET NO. W-354, SUB 50

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of 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 and Sewer Utility Service in Emerald Point Subdivision, Mecklenburg County, North Carolina and for Approval of Rates	NOTICE

NOTICE IS HEREBY GIVEN that the North Carolina Utilities Commission has entered an Order authorizing Carolina Water Service, Inc., of North Carolina to charge for water and sewer utility service in the Emerald Point Subdivision in Mecklenburg County.

The Utilities Commission entered an Order of October 2, 1985, granting Carolina Water Service a franchise to provide water and sewer utility service in the Emerald Point Subdivision, but delaying the implementation of rates

until certain further information was filed with the Commission. By Order of April 9, 1987, the Commission authorized Carolina Water Service to begin charging water and sewer rates as of the date of that Order. The rates are the state-wide uniform rates approved for Carolina Water Service in North Carolina. A schedule of rates may be obtained from Carolina Water Service.

ISSUED BY ORDER OF THE COMMISSION.
This the 9th day of April 1987.

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

SCHEDULE OF RATES
DOCKET NO. W-354, SUB 50
Carolina Water Service, Inc., of North Carolina
WATER RATE SCHEDULE

METERED WATER RATES

Residential (monthly charges)

(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 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

(D) Flat rate for unmetered single-family residences: $13.00

Commercial and Other (monthly charges)

(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.

DOCKET NO. W-887

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Application by Outer Banks Beach Club, Inc., P. O. Box 6931, Asheville, North Carolina, for a Certificate of Public Convenience and Necessity to Furnish Sewer Utility Service to Certain Customers in Kill Devil Hills in Dare County, North Carolina, and for Approval of Rates	)	FINAL ORDER GRANTING FRANCHISE AND APPROVING INITIAL RATES

HEARD IN: Commission Hearing Room, Dobbs Building, Raleigh, North Carolina, on Thursday, September 10, 1987, at 9:30 a.m.

BEFORE: Commissioner Robert K. Koger, Presiding and Chairman Robert O. Wells and Commissioner Julius A. "Chip" Wright.

APPEARANCES:

For Outer Banks Beach Club, Inc.:

Charles R. Worley, McGuire, Wood, Worley & Bissette, P.A., P. O. Box 1411, Asheville, North Carolina 28802

For the Using and Consuming Public:

Gisele L. Rankin, Staff Attorney, North Carolina Utilities Commission, P. O. Box 29520, Raleigh, North Carolina 27626-0520

BY THE COMMISSION: On December 31, 1986, a Recommended Order was entered in this docket granting a certificate of public convenience and necessity to the Outer Banks Beach Club, Inc. (Applicant), and approving initial rates. On January 20, 1987, the Applicant filed certain exceptions to the Recommended Order.

Oral argument on the Applicant's exceptions was heard by the Commission on March 30, 1987.

The Applicant's exceptions to the Recommended Order relate to the findings and conclusions of the Hearing Examiner regarding the amount of tap-on fees to be assessed by Applicant.

By Order entered in this docket on April 15, 1987, the Commission required the Applicant to file with the Commission certain late-filed exhibits containing the information set forth in Appendix 1 attached thereto. The Order further provided that the information shall be accompanied by an affidavit attesting to the correctness and source of the late-filed information and shall include any workpapers developed in that regard.

On May 12, 1987, the Applicant filed with the Commission the late-filed exhibits pursuant to the Commission Order of April 15, 1987, reflecting the costs associated with the sewer plant to be $2,497,755.

On May 22, 1987, the Public Staff filed its comments in response to the Applicant's May 12, 1987, filing wherein the Public Staff states that the Applicant's late-filed exhibit contradicts all of the Applicant's previously filed evidence and shows the total cost of the sewer system to be $2,497,755.

By Order entered on June 22, 1987, the Commission scheduled a further hearing in this docket on September 10, 1987, for the purpose of determining, among other things, the proper actual and projected costs associated with the construction of the sewer facilities of the Applicant. Said Order further provided that the Public Staff was requested to conduct an audit of the books and records of the Applicant in connection with its expenditures associated with the construction of its sewer facilities at issue in this proceeding and file a report of the audit together with its recommendation concerning, among other things, the proper costs associated with the construction of the Applicant's sewer facilities. Such report and its recommendations was to be filed with the Commission within 20 days prior to the hearing in this docket and be presented at the hearing heretofore scheduled.

On August 21, 1987, the Public Staff filed its report and testimony of Lafayette Morgan, Staff Accountant, Public Staff Accounting Division, in connection with its audit of the books and records of the Applicant.

The matter came on for further hearing on September 10, 1987, and the Applicant offered the testimony of its President, C. Wayne Kinser. The Public Staff presented the testimony of Jerry H. Tweed, Director, Public Staff Water and Sewer Division and the testimony and exhibits of Lafayette Morgan, Staff Accountant, Public Staff Accounting Division.

Based upon the foregoing, the evidence presented at the hearing on September 10, 1987, and prior hearings conducted in this particular docket, and the entire record in these proceedings, the Commission makes the following

FINDINGS OF FACT

1. The Applicant has filed an application for a Certificate of Public Convenience and Necessity to serve multi-family dwelling units and commercial users.

2. At the present time the Applicant's sewage treatment plant has slightly over 200,000 gallons of capacity per day.

3. The Applicant has an additional 200,000 gallons of capacity per day under construction with completion expected within approximately two years.

4. There is a demand and need for sewer utility service in the area in which the expanded sewage treatment plant is or will be located that can best be met by the Applicant at this time. Sewer utility service is not now proposed for the service area by any other public utility, municipality, or membership corporation.

5. To assure that the wastewater treatment plant will be enlarged to meet the demand as it occurs and to prevent the problems associated with the premature departure of the developer in these situations, the Applicant shall execute a bond in the amount of $200,000 conditioned upon the construction by

the Applicant of the facilities proposed herein. Mr. Wayne Kinser shall sign individually as security on the bond.

6. The rates approved herein, as shown on attached Appendix B, are reasonable based upon the estimated operating expenses provided in the application and are deemed to be fair to the customers and the Applicant.

7. The tap-on fees approved herein, as shown on attached Appendix B, are adequate to allow recovery of one hundred percent of the Applicant's estimated construction cost, including a provision for interest, of the proposed sewer system.

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

The evidence for these findings of fact is found in the application and the testimony of witness Kinser, President of Outer Banks Beach Club, Inc. These findings are noncontroversial and procedural in nature.

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

The evidence for these findings of fact is found in the testimony of Company witness Kinser, Public Staff witness Tweed, and the public witnesses.

With respect to the need for additional sewer utility service, there is little or no dispute. The Town of Kill Devil Hills is not currently in a position to build a plant or expand its existing plant. The concerns expressed by the public witnesses dealt with the fear of the consequences if witness Kinser abandons the system before expansion of it is completed and the possible effects on the Ocean Acres system if the Applicant siphons off commercial customers. The filing of an executed bond, as recommended by the Public Staff and agreed to by witness Kinser, should allay the first concern. Dealing with the second is more complicated. Since the Commission does not regulate municipal systems, it cannot prevent the Town of Kill Devil Hills from taking over customers of the Applicant if it so desires. The Applicant, however, cannot take customers of the Town even if the customers request it because the Applicant's franchise, as granted herein, does not include the areas already served by the Town.

Witness Kinser, on behalf of the Applicant, testified that the proposal is to serve only multi-family and commercial users and testified further in response to cross-examination by the Public Staff that his intent was not to serve a single family residence built within the geographical boundaries of the system because a single family resident could just as economically or more economically be served by septic systems. This raises a serious problem because, generally speaking, a public utility cannot choose to limit its availability, but rather must hold itself out to serve all who apply up to the capacity of its facilities, within reasonable distance of the plant and its lines. This obligation arises from the status it enjoys as a franchised utility with a monopoly in a given area. At this time, however, no one has applied for service to whom the Applicant is unwilling to provide service. No decision, therefore, needs to be made at this time. It must be understood, however, that this Order and the certificate granted hereunder cannot be interpreted as approving any limitation on the Applicant's obligation to serve.

The Applicant's certificate covers the general geographic area surrounding the existing collection system, as shown on the map filed with its application.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 6

The evidence for this finding of fact is found in the application and the testimony of Company witness Kinser and Public Staff witness Tweed.

The Applicant and Public Staff's proposed rates are as follows:

Flat Rate Residential Service (monthly charge)	Applicant	Public Staff
1 bedroom	$13.00	$13.00
2 bedroom	$18.00	$16.00
Each additional bedroom per bedroom	$ 3.00	$ 3.00
Nonresidential Service (monthly)		
Per 100 gallons of allocated per day capacity	$ 3.58	$ 5.00

The capacity allocated for each bedroom is 150 gallons per day. Under the Applicant's proposed rates this results in a residential customer with one bedroom paying $8.67 per 100 gallons of allocated capacity per day ($13.00/1.5), a two bedroom customer paying $6.00 per 100 gallons ($18.00/3) and a three bedroom customer paying a $4.67 per 100 gallons ($21.00/4.5).

The Commission agrees that is it appropriate to apply a base fee to each residential unit regardless of the number of bedrooms and concludes that $13.00 per month is appropriate. The Applicant proposes to charge $5.00 extra for a 2 bedroom unit and then $3.00 for each additional bedroom. The Commission finds it is appropriate to add $3.00 per month for each additional bedroom, but can find no just reason for a $5.00 increase between a one and two bedroom unit.

The Commission recognizes that the rate reduction for the two bedroom units will cause revenues to be less than anticipated. Some of this revenue loss can be recovered by increasing the nonresidential rate proposed by the Applicant of $3.58 per 100 gallons of allocated per day capacity to make it more comparable to the residential rate. The Commission therefore concludes that the Public Staff's recommended rate of $5.00 per 100 gallons of allocated per day capacity is an appropriate nonresidential rate.

The Commission, after reviewing page 4 of the application filed in this docket, notes that the revenues exceed the expenses by $5,276. The expenses include $27,501 for annual depreciation. This Commission does not allow, for ratemaking purposes, depreciation on contributed property. Removal of this expense item would result in an approximate net income of $32,000 which would be excessive. However, due to the lack of evidence regarding the revenue and because the expense data shown in the application are estimated figures and because both the Applicant and Public Staff are basically in agreement concerning the sewer rate (not the connection charge), the Commission concludes that the rates approved herein are reasonable based upon the cost of other sewer operations regulated by this Commission.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 7

The evidence for this finding of fact is found in the application and the testimonies of Company witness Kinser and Public Staff witnesses Tweed and Morgan.

The Applicant has requested tap-on fees as follows:

0-14,000 gallons per day allocated capacity	-	$1,500 per bedroom or equivalent
14,000-20,000 gallons per day allocated capacity	-	$1,350 per bedroom or equivalent
Over 20,000 gallons per day allocated capacity	-	$1,200 per bedroom or equivalent

The allocated capacity per day per bedroom is 150 gallons. Therefore the user who is allocated 1-14,000 gallons per day will be paying a tap-on fee of $10.00 per gallon ($1,500/150), the user between 14,000 and 20,000 gallons per day $9.00 per gallon ($1,350/150), and the user greater than 20,000 gallons per day will pay $8.00 per gallon.

The Applicant has presented its costs associated with the involved sewer system of $2,497,755.38 which was set forth in its late-filed exhibit submitted on May 12, 1987. The Public Staff, in its filing of August 21, 1987, represents that the overall cost of the sewer plant is $2,477,616.04.

Witness Morgan's Exhibit 1, Schedule 1, summarizes these costs and reflects the associated tap-on fees as follows:

Unit	Company Amount	Adjustment	Public Staff Amount
1st 100,000 gallons	$ 931,343.41	$(93,474.61)	$ 837,868.80
2nd 100,000 gallons	494,111.97	73,335.27	567,447.24
3rd 100,000 gallons	536,150.00	0.00	536,150.00
4th 100,000 gallons	536,150.00	0.00	536,150.00
Total	$2,497,755.38	$(20,139.34)	$2,477,616.04
Tap-on fee based on 400,000 GPD	$ 6.24	$ (.05)	$ 6.19

During the course of the first hearing in this docket, the Applicant presented an exhibit which included a projection of the costs associated with constructing the final two 100,000 gallon phases of its sewer plant. Included in the projected costs was interest computed at 10% in the amount of $100,000 and the tap-on fee of $4.10 per gallon determined appropriate in the Recommended Order entered in this docket included said amount of interest. Witness Kinser testified at the hearing on September 10, 1987, that, to the best of his knowledge, the projected costs of $536,150 each for the third and fourth 100,000 gallon phases of the sewer plant, as reflected in its late-filed exhibit of May 12, 1987, did not include any amount for interest.

The Commission, at the conclusion of the September 10, 1987, hearing, requested the Applicant to file a late-filed exhibit addressing the question of whether or not an amount representing interest was in fact included in the most recent cost projections due to the uncertainty of the parties at the hearing.

On September 28, 1987, the Applicant filed an affidavit representing that the amount of $536,150 for each of the third and fourth 100,000 gallon additions did not include any amount representing interest during construction.

Therefore, the Commission concludes that interest during construction in the amount of $100,000 as originally proposed by the Applicant should be included in the total costs associated with completion of the third and fourth 100,000 gallon phase additions to its sewer plant.

Accordingly, the Commission concludes that the total costs associated with the entire 400,000 gallon capacity sewer plant is $2,577,616 computed as follows:

Unit	Amount
1st 100,000 gallons	$837,869
2nd 100,000 gallons	$567,447
3rd 100,000 gallons	$586,150
4th 100,000 gallons	$586,150
	$2,577,616

Further, the Commission concludes that the appropriate tap-on fee is $6.44 per gallon of allocated per day capacity ($2,577,616 ÷ 400,000 gallons).

Company witness Kinser testified that his proposed tap-on fees of approximately 1¼ to 1½ times his cost were intended to compensate him for his risk associated with possible inability to sell the capacity or to sell it within a reasonable time frame.

Commission Rule R7-16(c) provides that "An applicant for a main extension to serve a new subdivision, tract, housing project ... shall be required to advance to the utility before construction is commenced the estimated reasonable cost of installation of mains .... If additional facilities are required specifically to provide pressure or storage exclusively for the service requested, the cost of such facilities may be included in advance upon approval by the Commission."

Rule R7-16(c) provides that the money so advanced will be subject to refund by the utility without interest to the party or parties entitled thereto. The total amount refunded shall not exceed the amount advanced.

The method described in this rule allows a company to place the burden of speculation as to whether or not units will be sold upon the developer requesting the service rather than that burden being borne by the utility company to its existing customers. Without proper application of this rule to water and sewer companies, a developer could request a utility to expand its facilities to serve an additional 100 customers and then build only 10 homes leaving the utility with 90% of its costs of plant additions unrecovered. It

would be unfair for the existing customers of the utility to offset the losses of a failed developer.

The Commission's Rule R10-12 provides that "Each utility shall develop a plan, acceptable to the Commission, for the installation of extensions of sewer laterals and service lines where such facilities are in excess of those included in the regular rates for service and for which the customer shall be required to pay all or part of the cost. This plan must be related to the investment that prudently can be made for the probable revenues."

The Commission's Rule R10-13(b) provides that "until adequate facilities can be provided, a utility may decline to serve an applicant if, in the best judgment of the utility, it does not have adequate facilities to render service applied for ..."

The Commission concludes that it is not prudent for the utility Company to take the risk associated with major capital expenditures for expansion of plant given the relief allowed for in the above quoted Commission rules. The extent of the expansion involved in this case approaches 100% of the existing capacity. The Applicant contends that if it does not take the risk, the area will not develop because developers will be unwilling to take the risk. If the developers are willing to commit to paying 1¼ to 1½ times the construction cost after their units are constructed but unwilling to advance to the utility the actual cost of construction, then venture must be very risky indeed in the eyes of the developers. Therefore, the Public Convenience and Necessity may not require the services sought by this Applicant as it pertains to the expansion of the existing plant.

The duty of this Commission is to regulate the rates and charges of public utilities to assure that customers are not taken advantage of by a monopoly provider of utility service. The Commission must also assure that a public utility will serve all who apply within a franchised service area up to the capacity of its system especially when the Applicant for service is willing to advance the funds necessary for expansion of the system. The Applicant should not be allowed by this Commission to serve only those potential customers who are willing to contract to pay 1¼ to 1½ times the construction cost.

The Applicant contends that it is not a monopoly in that the potential customers may elect to construct their own facilities although the costs to them would be in excess of that tap-on fee requested by Outer Banks Beach Club, Inc. This is true of almost any public utility service and a great part of the reason for Commission regulation, in order to prevent wastefulness and costly duplication of facilities. To the Commission's knowledge, tap-on fees in excess of the total cost of construction have never been approved by the Commission.

The Commission therefore concludes that the Applicant's tap-on fee should be established at $6.44 per gallon of allocated per day capacity which allows for 100% recovery of the estimated construction cost, including carrying charges in the amount of $100,000 during the construction period and the capital recovery period, of the sewer system.

IT IS, THEREFORE, ORDERED:

1. That Outer Banks Beach Club, Inc, be, and hereby is, granted a Certificate of Public Convenience and Necessity to provide sewer utility service in the service area previously described herein. Appendix A, attached hereto, shall constitute the Certificate of Public Convenience and Necessity.

2. That the Applicant be, and hereby is, authorized to charge the rates and charges shown on the Schedule of Rates, attached hereto as Appendix B. Said Schedule of Rates shall be deemed filed with the Commission pursuant to G.S. § 62-134.

3. That the Applicant shall execute a bond in the amount of $200,000 payable to the Commission and conditioned upon the construction by the Applicant of facilities required to provide adequate and reasonable sewer services in the franchise area. Said bond shall be submitted for approval by the Commission 30 days from the effective date of this Order.

4. That the Notice to the Public, attached to this Order as Appendix C, shall be mailed to each of the Applicant's current customers and published by the Applicant in the newspaper having general coverage in the area; 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 Outer Banks Beach Club, Inc., submit to the Commission a copy of the Affidavits of Publication within 45 days of the date of this Order.

ISSUED BY ORDER OF THE COMMISSION.
This the 20th day of October 1987.

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

APPENDIX A
DOCKET NO. W-887
BEFORE THE NORTH CAROLINA UTILITIES COMMISSION
Know All Men By These Presents, That
OUTER BANKS BEACH CLUB, INC.
is hereby granted this
CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY
to provide sewer utility service in
certain areas in
KILL DEVIL HILLS
Dare County, North Carolina

subject to such orders, rules, regulations, and conditions as are now or may hereafter be lawfully made by the North Carolina Utilities Commission

ISSUED BY ORDER OF THE COMMISSION.
This the 20th day of October 1987.

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

APPENDIX B
SCHEDULE OF RATES
OUTER BANKS BEACH CLUB, INC.
for providing sewer utility service in certain areas in
KILL DEVIL HILLS
Dare County, North Carolina

Flat Rate Residential Service: (monthly):

1 bedroom	-	$13.00/month
Each additional bedroom	-	$ 3.00/bedroom/month

Nonresidential Service: (monthly)
$5.00/100 gallons of allocated per day capacity

Tap On Fees:
$6.44 per gallon of allocated per day capacity

Reconnection Charges:
If sewer service cut off by utility for good cause: $15.00

Bills Due: On billing date
Bills Past Due: 15 days after billing date
Billing Frequency: Shall be quarterly for service in arrears
Finance Charges For Late Payment: 1% per month will be applied to the unpaid balance of all bills still past due 25 days after billing date.

Issued in Accordance with Authority granted by the North Carolina Utilities Commission in Docket No. W-887 on this the 20th day of October 1987.

APPENDIX C
NOTICE TO THE CUSTOMERS

Notice is hereby given that the North Carolina Utilities Commission has granted a franchise to Outer Banks Beach Club, Inc., to provide sewer service in certain areas in Kill Devil Hills. The rates and tap-on fees approved by the Commission are as follows:

Flat Rate Residential Service: (monthly)

1 bedroom	-	$13.00/month
Each additional bedroom	-	$ 3.00/bedroom/month

Nonresidential Service: (monthly)
$5.00/100 gallons of allocated per day capacity

Tap-on Fees:
$6.44 per gallon of allocated per day capacity

Billing Frequency: Shall be quarterly for service in arrears

Issued in Accordance with Authority Granted by the North Carolina Utilities Commission in Docket No. W-887, on this the 20th day of October 1987.

DOCKET NO. W-89, SUB 28

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Application of Hensley Enterprises, Inc., Post Office Box 8, Lowell, North Carolina, for Authority to Increase Rates for Water Utility Service in its Service Areas, Gaston County, North Carolina	)	RECOMMENDED ORDER GRANTING PARTIAL RATE INCREASE AND TERMINATING ASSESSMENT

HEARD IN: Council Chambers, City Hall, Corner of South Street and Franklin Boulevard, Gastonia, North Carolina, on Wednesday, December 3, 1986, at 9:30 a.m.

BEFORE: Rudy Shaw, Hearing Examiner

APPEARANCES:

For the Applicant:

Charles F. Powers, III, Parker, Sink, Powers, Sink and Potter, Attorneys at Law, Post Office Box 1471, Raleigh, North Carolina 27602

For the Intervenors:

David T. Drooz, Staff Attorney, Public Staff - North Carolina Utilities Commission, Post Office Box 29520, Raleigh, North Carolina 27626-0520
For: The Public Staff, North Carolina Utilities Commission, representing the using and consuming public

Lorinzo L. Joyner, Associate Attorney General, Attorney General's Office, Post Office Box 629, Raleigh, North Carolina 27602
For: The Attorney General's Office, representing the using and consuming public

SHAW, HEARING EXAMINER: On June 17, 1986, Hensley Enterprises, Inc. (HEI, Hensley, the Applicant, or the Company), Lowell, North Carolina, filed an application with the Commission for authority to increase its rates for water utility service in all its service areas in North Carolina.

On July 8, 1986, the Commission issued an Order declaring the application to be a general rate case pursuant to G.S. § 62-137, suspending the proposed rates, scheduling a hearing, and requiring that public notice be given to all customers affected by the proposed new rates. On August 4, 1986, the Applicant filed a Certificate of Service showing that the public notice had been given as required.

Protest letters from Bobby Dean Russell, Archie P. McKinnis, Nicky D. Derby, James B. Petty, Ben Alexander, and Kitty S. Wynnberry were filed with the Chief Clerk on August 19, 1986.

On November 10, 1986, the Public Staff filed a Motion for Additional Time to File Expert Testimony and Exhibits. On November 13, 1986, the Commission issued an Order Granting Extension of Time.

On November 14, 1986, Lorinzo L. Joyner filed a Notice of Intervention on behalf of the Attorney General.

On November 21, 1986, the Public Staff filed the testimony and exhibits of Andy Lee, Public Staff Water Division, and Fredrick Hering, Public Staff Accounting Division, and Notice of Affidavit and Affidavit of Kevin O'Donnell, Public Staff Economics Division.

The matter came on for hearing as scheduled in Gastonia on December 3, 1986.

The following customers appeared and offered testimony: Larry Capps, James B. Petty, Larry Thompson, Archie McKinnis, Bob Russell, and Barry Long.

The Applicant presented the testimony of Arnold T. Hensley, President of the Company.

Through its attorney, the Applicant agreed that the operating ratio method of setting rates as recommended by the Public Staff should be used in this proceeding. The Applicant also stipulated through counsel that it accepted and did not contest the adjustments to revenues and expenses made by the Public Staff except for the Public Staff's adjustments to salaries and wages, electric power for pumping, insurance expense, and taxes on assessments.

The Public Staff offered the testimonies of Fredrick Hering and Andy Lee. The Public Staff also offered into evidence the affidavit of Kevin O'Donnell.

At the close of the hearing, the Hearing Examiner requested late-filed exhibits from the Applicant and the Public Staff. The Applicant was requested to file an exhibit showing the total number of well lots and ownership of each well lot and a response to the question of whether witness Hensley, as individual owner or co-owner of certain well sites, would be willing to transfer ownership of all well lots to Hensley Enterprises, Inc. The Applicant was also required to late-file an exhibit listing its systems that are now approved by the Division of Health Services. The Public Staff was required to late-file an exhibit showing the average monthly water usage per residential customer for the 12-month period of December 1985 through November 1986, and an exhibit reflecting the Public Staff's review of the Applicant's proposed insurance expense charges presented at the hearing.

On December 12, 1986, the Public Staff filed late-filed exhibits as requested by the Hearing Examiner. On January 16, 1987, the Applicant filed the late-filed exhibits requested by the Hearing Examiner.

As a result of the Applicant's stipulation to accept part of the Public Staff's recommendations, the remaining issues to be decided are: (1) the appropriate level of wages and salary expense, (2) the appropriate level of electric power for pumping expense, (3) the appropriate level of insurance expense, (4) the appropriate margin on operating revenue deductions requiring a return, (5) whether the 15% assessment previously allowed the Applicant should

be continued or terminated, and (6) what actions should be taken by the Applicant to improve the service provided to its customers. The appropriate treatment of tax expense for the assessment funds will also be an issue if the assessment is continued.

Upon consideration of the testimony and exhibits presented at the hearing and the entire record in this proceeding, the Hearing Examiner makes the following

FINDINGS OF FACT

1. The Applicant, Hensley Enterprises, Inc., is a public utility providing water utility service to more than 1,800 customers in 33 subdivisions in Gaston County, North Carolina, and is subject to the jurisdiction of this Commission.

2. The Applicant's present and proposed rates are as follows:

Metered Rates	Present	Proposed
0-2,000 gals/month	$ 6.50(minimum)	$ 8.00(minimum)
all over 2,000 gals/month	$ 1.30/1,000 gals	$ 1.60/1,000 gals
Flat Rate	$10.50/month	$15.20/month

3. The Public Staff proposed that, except for its proposed bulk rates, the present rates remain in effect.

4. The test period established for use in this proceeding is the 12 months ended December 31, 1985.

5. The operating ratio methodology, which gives a margin on operating revenue deductions requiring a return, is the proper method of determining rates for the Applicant in this proceeding.

6. The Applicant's original cost rate base as of December 31, 1985, was $165,658, which includes plant in service of $795,470 and cash working capital of $28,096, less accumulated depreciation of $176,202, contributions in aid-of construction of $477,867, and average tax accruals of $3,839.

7. The Applicant's adjusted gross revenues for the test year under present rates were $270,943. Under the Applicant's proposed rates, gross revenues based on the test year would be $334,068.

8. The appropriate level of operating revenue deductions under present rates is $261,573.

9. The Applicant should be allowed the opportunity to earn an 11.50% margin on operating revenue deductions requiring a return, which is just and reasonable.

10. The Applicant should be able to earn gross revenues of $296,314 under the rates approved in this case. The increase approved herein of $25,371 will

produce operating ratios of 90.36% including taxes and interest and 89.69% excluding taxes and interest.

11. The 15% assessment for capital improvements should be terminated.

12. Control of all well sites and other property used to provide water service which are not titled in the Company's name should be transferred to the Company within 30 days of the effective date of this Order.

13. The Applicant has made some progress in completing the capital improvements previously required by the Commission, but a number of improvements are still needed in order for all water systems to provide adequate service. Mr. Hensley agreed to meet with Public Staff Engineer Lee and a member of the Commission Staff to review the need for further improvements.

14. The Applicant should terminate bulk rate service to Dick Landry within 90 days from the effective date of this Order. The rate for bulk rate service to Craig Bess in Tablerock Subdivision should be increased to the same rate approved for all other customers.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 1, 2, 3, AND 4

The evidence supporting these findings of fact are contained in the application for rate increase filed June 17, 1986, the testimony and late-filed affidavit of Public Staff witness Lee, the Commission's July 8, 1986, Order setting hearing, and the entire record of this proceeding. These findings are essentially procedural and jurisdictional in nature and are uncontested and uncontroverted.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 5

The evidence supporting this finding of fact is included in the Company's application, the testimony and exhibit of Public Staff witness Hering, and the affidavit of Public Staff witness O'Donnell.

Witness Hering used the operating ratio method to determine the recommended revenue requirement, as shown in his exhibit. The Company at the hearing agreed with this method, since it produces a higher revenue requirement than the use of the rate base method in this case.

The Hearing Examiner finds and concludes that the operating ratio method is the proper technique for use in this proceeding as the resulting revenue requirement is higher than would otherwise be produced using the rate base methodology.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 6

The evidence for this finding of fact is found in the Company's prefiled application, the testimony of Company witness Hensley, and the testimonies and exhibits of Public Staff witnesses Hering and Lee.

The following chart summarizes the differences between the parties with respect to this item:

Item	Company	Public Staff	Difference
Utility plant in service	$ 788,814	$ 795,470	$ 6,656
Accumulated depreciation	(172,002)	(176,202)	(4,200)
Net utility plant in service	616,812	619,268	2,456
Contributions in aid of construction	(477,867)	(477,867)	-
Cash working capital	-	25,829	25,829
Average tax accruals	-	(3,608)	(3,608)
Original cost rate base	$138,945	$163,622	$24,677

During the hearing the Company stipulated that it was in agreement with all of the adjustments made by the Public Staff with respect to the calculation of the original cost rate base.

Based upon the evidence of record, the Company's stipulation, and the required adjustments to cash working capital and average tax accruals to reflect the impact of the additional salary expense allowed by the Hearing Examiner as discussed in the Evidence and Conclusions for Finding of Fact No. 8, the Hearing Examiner concludes that the appropriate level of original cost rate base is $165,658, as shown below.

Utility plant in service	$795,470
Accumulated depreciation	(176,202)
Net utility plant in service	$619,268
Contributions in aid of construction	(477,867)
Cash working capital	28,096
Average tax accruals	(3,839)
Original cost rate base	$165,658

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 7

The evidence for this finding of fact is found in the Company's verified application, the testimony and exhibits of Public Staff witness Hering, and the testimony and late-filed affidavit and exhibit of Public Staff witness Lee.

The Company and Public Staff did not disagree as to the number of end-of-period customers nor did the Company disagree with the billing analysis performed by Public Staff witness Lee. Therefore, the Hearing Examiner agrees with the Public Staff that the appropriate level of operating revenues under present rates for use in this proceeding is $270,943 and under the Applicant's proposed rates is $334,068.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 8

The evidence for this finding is found in the Company's prefiled application, the testimony and late-filed exhibits of Company witness Hensley, and the testimony, exhibits, and late-filed exhibits of Public Staff witnesses Hering and Lee.

The following chart summarizes the differences between the parties with respect to operating revenue deductions:

Item	Company	Public Staff	Difference
Salaries and wages	$113,140	$ 91,520	$(21,620)
Maintenance and repairs	8,844	8,824	(20)
Power for pumping	41,137	45,366	4,229
Administrative and general	23,279	25,107	1,828
Insurance expense	10,363	11,621	1,258
Transportation	15,621	16,187	566
Supplies	19,269	6,487	(12,782)
Contract services	1,476	1,516	40
Total O & M expenses	233,129	206,628	(26,501)
Depreciation and amortization	10,839	13,777	2,938
Payroll tax	6,618	7,275	657
Property tax	2,383	1,179	(1,204)
Gross receipts tax	12,654	10,838	(1,816)
State income tax	-	1,875	1,875
Federal income tax	-	4,537	4,537
Total operating revenue deductions	$265,623	$246,109	$(19,514)

The Company, at the hearing, stipulated that it agreed with all adjustments recommended by the Public Staff except for these four: (1) salaries, (2) power for pumping, (3) insurance expense, and (4) income tax expense for assessment revenues.

Based on the Company's stipulation, the Hearing Examiner finds and concludes that the expense levels recommended by the Public Staff, with the exception of the disputed expenses, are the appropriate levels for use in this rate case proceeding.

The Company, at the hearing, disagreed with the Public Staff's recommended level of salaries and wages. Witness Hensley, during direct testimony, requested an additional $17,800 over the level of salaries recommended by Public Staff Accountant Hering. These additional funds were requested for two purposes: (1) to add a part-time office person at a salary level of $7,800 per year, and (2) an additional $10,000 for overtime that the Company will have to pay over the next year.

Witness Hensley requested during his testimony that he be allowed to hire his daughter-in-law, Reba Hensley, as a part-time office employee at a salary level of $7,800. He stated that this need for additional help was shown by the fact that she worked in the office for all of 1985 and most of 1986.

Witness Hensley further testified that Reba Hensley was paid "out of my pocket" with nonutility related funds.

Testimony from the Public Staff and the Company indicated that there are approximately 1,800 customers being served by the Applicant. It is the opinion of the Hearing Examiner that it is unreasonable to contend that one office person should handle the office operations of a company with 1,800 customers.

Based on the testimony of witness Hensley and the number of customers served by Hensley, the Hearing Examiner is of the opinion that salaries and wages expenses should be increased by $7,800 to allow the Company to employ a part-time employee to work in the office operations of the Company.

Witness Hensley also requested an additional $10,000 of overtime payment for his field employees. Witness Hensley stated that he is currently incurring overtime each week at the level of six to eight hours per employee with four field employees. He then stated that one employee was injured and only working in a supervisory capacity. The Public Staff contends that the figures used by witness Hensley are based on a very short period of time, as the injured employee was not working at the time of the audit and witness Hensley has based his assumption on only four weeks, at the most, at the time of the hearing. However, when asked if there had been any weeks when he had not paid overtime since having four field employees, he responded, "Few, very few." Witness Hensley further testified that the amount of overtime would average six to eight hours per week per employee for the four field employees.

In the opinion of the Hearing Examiner, the Applicant has offered ample evidence to support the need for additional salaries and wages expense for overtime for his field employees.

Therefore, salaries and wages expense should be increased by $10,000 to reflect the requested amount of overtime for field employees and $7,800 to reflect the addition of a part-time office employee for a total salaries and wages expense of $109,320.

The Applicant and Public Staff disagreed on the level of electrical expenses to be allowed in this rate case proceeding. The Applicant listed an annual level of electric expense of $41,137 on its application for the test year ended December 31, 1985. The Public Staff recommended that the Applicant's 1985 electrical expense be increased by $4,229 to a level of $45,366. The Applicant presented an exhibit at the hearing listing its electrical expense for the 12-month period of December 1985 through November 1986 to be $51,726, which the Applicant proposed as appropriate for this rate case proceeding. Public Staff witness Lee testified that the Applicant's increased electrical expense for December 1985 through November 1986 was probably due to customer growth and increased water usage per customer due to the drought conditions and that such additional water sales should generate additional revenues to more than offset the additional electrical expense.

The Hearing Examiner requested Public Staff witness Lee to prepare a late-filed exhibit showing the average monthly water usage per residential customer for the 12-month period of December 1985 through November 1986. The Public Staff filed the exhibit as requested. This exhibit, Lee Exhibit 2, shows the customer growth, average monthly customer usage, total metered water sold, and revenues for the 12-month period coinciding with the Applicant's proposed electrical expense revision. If electrical expense is updated to November 1986, resulting in an electrical expense of $51,726, then a corresponding revenue adjustment would be necessary. The updated revenue level would be $285,243 according to Lee Exhibit 2. Since the $6,360 expense increase would be more than offset by the $14,300 revenue increase, such an update would not benefit the Applicant.

Based upon the evidence presented by the Applicant and Public Staff, the Hearing Examiner concludes that the $45,366 level of electrical expenses recommended by the Public Staff is appropriate for use in determining rates in this proceeding.

The Company also disputed the prefiled insurance expense level of $7,771 recommended by witness Hering. The Company disagreed with this level of insurance because the cost of its liability insurance increased greatly in its new policy. Witness Hensley presented an exhibit at the hearing showing the cost for the Company's new insurance policy.

Witness Hering, after investigating the new policy, recommended in a late-filed exhibit an annual insurance level of $11,621.

Based on the late-filed exhibits and an adjustment to reflect the addition of a part-time employee allowed by the Hearing Examiner, the Hearing Examiner finds and concludes that the current on-going level of insurance is $11,959.

The last disputed expense was the income tax expense for assessment revenues. The Company requested that this new expense be included along with its income tax expense based on its normal operating income.

The Public Staff proposed that, if the assessments were continued, then the assessment monies should additionally cover any tax liability created by the Company receiving these assessments. As the assessments are an involuntary contribution to the Company, the customers should not be penalized further by paying higher water rates due to the assessment becoming taxable under the new tax laws.

The Hearing Examiner finds in the Evidence and Conclusions for Finding of Fact No. 11 that the assessments should be discontinued and thus has no need to address the tax expense issue relating to assessment revenues.

Based on the foregoing, the Hearing Examiner finds and concludes that the appropriate level of operating revenue deductions under present rates is $261,573, as summarized in the following chart.

Item	Amount
Salaries and wages	109,320
Maintenance and repairs	8,824
Power for pumping	45,366
Administration and general expense	25,107
Insurance expense	11,959
Transportation	16,187
Supplies	6,487
Contract services	1,516
Total operating and maintenance expense	$224,766
Depreciation and amortization	13,777
Payroll tax	8,656
Property tax	1,179
Gross receipts tax	10,838
State income tax	704
Federal income tax	1,653
Total operating revenue deductions	$261,573

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 9

The evidence supporting this finding of fact is found in the testimony of Company witness Hensley, the testimony and exhibit of Public Staff witness Hering, and the affidavit of Public Staff witness O'Donnell.

The Company, at the hearing, requested a rate of return of 16%. The rate was requested by witness Hensley, who stated that he had no knowledge of current capital markets or any background in financial or economic analysis.

The affidavit of Public Staff witness O'Donnell recommended that a 10.4% rate of return would be appropriate for this type of business. Public Staff witness Hering also provided evidence of the appropriate rate of return. He testified that comparable water companies had rates of return set in the 10.5% to 10.6% range in recent hearings. However, witness Hensley testified that when he borrowed $20,000 from Southern National Bank for the utility business, he was required to personally sign the loan. He said, "If it couldn't be paid back then I could lose a house and everything that I've got."

The Hearing Examiner finds that a 11.50% rate of return under the operating ratio method is fair and appropriate given that the assessment is being terminated; further capital improvements will need to be made solely from the Applicant's net income or stockholder equity; and the President of this utility has had to personally sign a loan borrowed for use by the Company during the test year.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 10

Based on the foregoing evidence and conclusions, the Applicant should be allowed an increase in revenues of $25,371, resulting in gross revenues of $296,314 under the rates approved herein. Such revenue level will produce an 11.50% rate of return on operating expenses requiring a return. This margin is fair and reasonable and will provide the Company the opportunity to achieve an operating ratio of 89.69%, excluding taxes and interest expense, and 90.36%, including taxes and interest expense. These operating ratios are just and reasonable to the Applicant and to its customers.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 11

The evidence supporting this finding is contained in the testimony of Public Staff Engineer Lee, Public Staff Accountant Hering, Company President Hensley, in the reports of assessment receipts and disbursements filed by the Applicant, and in the following Commission Orders: Docket No. W-89, Sub 18, dated January 25, 1982; Docket No. W-89, Sub 20, dated December 23, 1982; and Docket No. W-89, Sub 24, dated November 2, 1984.

Witness Lee testfied that the Applicant should finance its capital improvements through stockholder equity, loans, and its retain earnings as other utilities do. Further, witness Lee stated that the stockholders should receive a return on their investment which is commensurate with the risk they undertake.

According to witness Lee the traditional type of financing arrangements has been distorted by the Applicant's 15% assessment for capital improvement. This 15% assessment which is currently in effect shifts the financial burden and risk to the Company's customers; however, they receive no return. Even though assessment expenditures are not added to rate base, the stockholder (witness Hensley) receives title to additional valuable capital assets without making a corresponding additional investment.

Witness Lee testified that in his opinion the need for the capital improvements would not exist if the water systems had been properly installed in the beginning. It is the opinion of witness Lee that poor management decisions led to the need for the capital improvements. The Hearing Examiner concludes, based upon the evidence presented in this case, that Hensley's customers should not be penalized for poor management decisions and thus be required to make an involuntary capital contribution in the form of assessments. Rather, the responsibility for capital investments and management decisions should rest with the stockholder.

The Hearing Examiner recognizes that the need for capital improvements will continue even though the assessment is ended. However, these improvements can be financed through stockholder equity, retained earnings, and loans. Stockholder equity can come from witness Hensley, who is the 100% stockholder in HEI, since he has a substantial personal income from his HEI salary. Retained earnings should also be available since the rates set in this Order are designed to allow HEI to earn a reasonable net income. Finally, loans should also be a feasible source of capital for the Applicant. Although witness Hensley testified that banks would not loan money to the Company, he

admitted on cross-examination that the Company had obtained a $20,000 bank loan, which he had to personally endorse, and repaid it in the test year.

There are several reasons why the assessment should be terminated. First, the Commission Order dated November 2, 1984, in the Applicant's last rate case, Docket No. W-89, Sub 24, specifically stated: "The continued assessment approved shall expire in all events on January 31, 1987, unless sooner terminated by Commission Order." The Commission knew the extent of capital improvements needed, their approximate cost, and the amount of assessment funds being collected annually by the Applicant when it issued the 1984 Order. Witness Hensley testified in the present proceeding that the need for the assessment monies still exists there but he could not cite any change of circumstances or unforeseen event that might justify reversing the Commission's decisions in its 1984 Order. The mandate of the Commission in Docket No. W-89, Sub 24, that the assessment should terminate by January 31, 1987, should be observed in this Order.

Second, the Order issued in Docket No. W-89, Sub 24, further stated that:

> The continuation of the assessment approved herein until January 31, 1987, shall be dependent upon Applicant's compliance with the provisions of this Order; provided, further, that, in addition to the assessment approved herein, the Applicant shall apply a substantial part of its net income to make the capital improvements ordered in this Order, and the assessment approved herein shall be conditioned upon such substantial application.

The testimony of witness Hensley is contradictory as to whether the Company devoted a "substantial part of its net income" to capital improvements. He stated that since the assessment was initiated in February 1982, in Docket No. W-89, Sub 18, he had collected $171,000 in assessment monies and had spent $180,000. These figures are also set out in the most recent quarterly report filed by the Applicant. Witness Hensley plainly testified that the $180,000 spent on capital improvements over the past 4-3/4 years included all expenditures from both the assessment fund and the Company's net income although he later recanted this testimony.

In the initial hearing which approved the 15% assessment, Docket No. W-89, Sub 19, witness Hensley testified that the total cost of the needed improvement would be approximately $180,000. In the present proceeding, witness Hensley testified that $171,000 had been collected from the assessment, and yet $131,000 of capital improvements still need to be made. The Hearing Examiner questions if Hensley would ever "catch up" with the needed capital improvements, whether or not the assessments were allowed to continue.

In the Order issued in Docket No. W-89, Sub 18, issued on January 25, 1987; Docket No. W-89, Sub 20, issued on December 23, 1982; and Docket No. W-89, Sub 24, issued on November 2, 1984, the Applicant was advised that the approval of the assessment did not relieve the Applicant of making improvements with funds secured through its own financing and that the Applicant shall continue to attempt to secure such financing.

For the foregoing reasons, the Hearing Examiner concludes that the assessment should be discontinued as of the effective date of this Order.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 12

Witness Hensley admitted that some well sites and other utility property belonged to him as owner or co-owner, rather than the Company. Since this property is an indispensable part of the Company's operation in providing water service, the Company should have control over it. Subsequent to the hearing, witness Hensley agreed through counsel to transfer control over this property to the Company. The Hearing Examiner concludes that it is appropriate for such transfer to be completed within 30 days of the effective date of this Order.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 13

The evidence for this finding of fact comes from the testimony of customers, Company witness Hensley, Public Staff Engineer Lee, and also from Commission files and records. The Commission has ordered the Applicant in its last three general rate case proceedings to make improvements to its water systems. Specific improvements needed are listed in detail in Lee Exhibit 2 filed in the Applicant's last rate increase proceeding, Docket No. W-89, Sub 24. This exhibit, made part of this Order by reference, is a copy of a memorandum dated August 17, 1984, from James P. Adams, an Environmental Engineer with the Division of Health Services, to Arnold Hensley. This memorandum includes an inspection report on each of the Applicant's water systems and lists improvements required to upgrade the system to the Division of Health Services' standards. Several improvements have been made by the Applicant; however, many of the Applicant's water systems are still in need of capital improvements.

In its November 2, 1984, Order, in Docket No. W-89, Sub 24, the Commission established a priority list for the Applicant to make improvements. The Applicant was also required to meet with Andy Lee of the Public Staff, James P. Adams of the Division of Health Services, and Rudy Shaw of the Commission Staff to establish further priorities for making improvements. These parties have met twice since the last rate increase proceeding. Rudy Shaw of the Commission Staff filed memorandums on December 14, 1984, and January 7, 1986, updating the priority list established for the Applicant to make improvements.

The Hearing Examiner concludes that the Applicant should meet again with representatives from the Public Staff, Division of Health Services, and the Commission within 60 days from the effective date of this Order to review the status of improvements and priorities.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 14

The evidence for this finding of fact appears in the testimony of Company President Hensley, Public Staff Engineer Lee, and Public Staff Accountant Hering.

Bulk rates have not been formally approved for either Dick Landry or Craig Bess. Mr. Landry purchases water through a single connection and uses it to service his mobile home park. This usage causes the system to exceed the number of residential connections allowed by the Division of Health Services since each mobile home is considered a residential connection. This violation should be ended by terminating water service to Mr. Landry's mobile home park within 90 days from the effective date of this Order.

The Applicant may continue to provide bulk rate service to Craig Bess for Tablerock Subdivision. However, the present unauthorized rate being applied to Craig Bess of $0.60 per 1,000 gallons is discriminatory. As a result of this Order, other customers will pay $1.50 per 1,000 gallons for usage over 2,000 gallons. There is no basis for this discrimination. Although Mr. Hensley testified that cost of service is lower for a bulk rate customer, he did not quantify how much lower. To the extent a lower cost of service is incurred for bulk rate service, it will be reflected in the fact that the minimum rate of $7.05 for the first 2,000 gallons per month, which is higher than the $1.50 rate of $1.50 per 1,000 gallons, will be charged to all metered residential customers except the bulk rate customers.

IT IS, THEREFORE, ORDERED as follows:

1. That the Applicant, Hensley Enterprises, Inc., is hereby authorized to increase its rates and charges so as to produce additional gross revenues of $25,371 based on test year operations.

2. That the Schedule of Rates, attached hereto as Appendix A, is hereby approved for water service rendered by Hensley Enterprises, Inc., and that said Schedule of Rates is hereby deemed to be filed with the Commission pursuant to G.S. § 62-138.

3. That the Applicant shall stop providing water service to Dick Landry within 90 days of the effective date of this Order.

4. That the Applicant shall file, within 30 days of the date of this Order, copies of documents that give control of all well lots to the Company.

5. That the 15% assessment approved in Docket Nos. W-89, Sub 18; W-89, Sub 20; and W-89, Sub 24, be, and is hereby terminated.

6. That capital improvements are to be made in accordance with the priorities referred to in the Evidence and Conclusions for Finding of Fact No. 13. The Applicant within 60 days after the effective date of this Order shall file for approval by the Commission a Schedule of Capital Improvements for continued upgrading of its systems. In preparing this schedule the Applicant shall seek the assistance of Andy Lee of the Public Staff, James P. Adams of the Division of Health Services, and a member of the Commission Staff.

7. That a copy of the Notice to Customers, attached hereto as Appendix B, shall be mailed or hand delivered to all of the Applicant's customers in conjunction with the next regularly scheduled billing process which shall occur after this Recommended Order becomes effective and final.

ISSUED BY ORDER OF THE COMMISSION.
This the 25th day of February 1987.

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

APPENDIX A

SCHEDULE OF RATES
for
HENSLEY ENTERPRISES, INC.
for
Providing Water Utility Service
in
All its Service Areas in North Carolina

Metered Rates:
First 2,000 gallons per month - $7.05 (minimum charge)
All over 2,000 gallons per month - $1.50/1,000 gallons

Flat Rate: $11.70 per month
Bulk Rate: $1.50 per 1,000 gallons
Tap-on Fee (Connection Charge):
For 3/4" line - $250.00
For other than 3/4" line - Actual cost of making connection

Reconnection Charge:
$ 5.00 for first reconnection
$10.00 for second reconnection
$15.00 for third and all other reconnections

Billing Frequency: monthly, for service in arrears
Bills Due: On billing date
Bills Past Due: 15 days after billing date

Finance Charge for Late Payment:
1% per month on unpaid balance still past due 25 days after billing date

Customer Deposit: 2/12 of estimated annual charge

Issued in Accordance with Authority Granted by the North Carolina Utilities Commission in Docket No. W-89, Sub 28, on this the 25th day of February 1987.

APPENDIX B

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Application of Hensley Enterprises, Inc., Post Office Box 8, Lowell, North Carolina, for Authority to Increase Rates for Water Utility Service in its Service Areas, Gaston County, North Carolina	)	NOTICE TO CUSTOMERS

NOTICE IS HEREBY GIVEN that the North Carolina Utilities Commission has granted Hensley Enterprises, Inc., an increase in its rates and charges for water utility service in its service areas in Gaston County, as shown below.

The Commission also terminated the 15% assessment charge which has been in effect since February 1982.

The Commission ordered that the Company continue to make improvements to its water systems under the supervision of the Divison of Health Services, the Public Staff, and the Commission.

The Applicant's rates and charges are as follows:

Metered Rates:

First 2,000 gallons per month	-	$7.05 (minimum charge)
All over 2,000 gallons per month	-	$1.50/1,000 gallons

Flat Rate: $11.70 per month
Bulk Rate: $1.50 per 1,000 gallons

Tap-on Fee (Connection Charge):

For 3/4" line	-	$250.00
For other than 3/4" line	-	Actual cost of making connection

Reconnection Charge:

$ 5.00 for first reconnection
$10.00 for second reconnection
$15.00 for third and all other reconnections

Billing Frequency: Monthly, for service in arrears
Bills Due: On billing date
Bills Past Due: 15 days after billing date

Finance Charge for Late Payment:

1% per month on unpaid balance still past due 25 days after billing date

Customer Deposit: 2/12 of estimated annual charge

Issued in Accordance with Authority Granted by the North Carolina Utilities Commission in Docket No. W-89, Sub 28, on this the 25th day of February 1987.

DOCKET NO. W-218, SUB 36

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Application by Hydraulics, Ltd., 315-D South Westgate Drive, Greensboro, North Carolina, for Authority to Transfer the Franchise to Provide Water Utility Service in Kynwood Subdivision in Forsyth County, North Carolina, from Clear-Flow Utilities, and for Approval of Rates	)	RECOMMENDED ORDER DENYING TRANSFER AND REQUIRING CLEAR-FLOW UTILITIES TO PROVIDE ADEQUATE SOURCES OF WATER

HEARD: Thursday, April 30, 1987, at 7:00 p.m., Council Chambers, Second Floor, City Hall, 101 North Main Street, Winston-Salem, North Carolina

Wednesday, June 3, 1987, at 10:00 a.m., Commission Hearing Room 2116, Dobbs Building, Raleigh, North Carolina

BEFORE: Rudy Shaw, Hearing Examiner

APPEARANCES:

For the Applicant:

Douglas Dettor, Attorney for Hydraulics, Ltd., Post Office Box 1617 Greensboro, North Carolina 27402

For the Public Staff:

Theodore Brown, Staff Attorney, Public Staff, Legal Division, North Carolina Utilities Commission, Post Office Box 29520, Raleigh, North Carolina 27626-0520

SHAW, HEARING EXAMINER: On July 28, 1986, the above-captioned application was filed with the Commission. On August 27, 1986, the Commission issued an Order Requiring Public Notice stating the matter may be determined without public hearing if no significant protests are received pursuant to public notice. On October 6, 1986, the Public Staff received a protest letter from Lester Development Corporation signed by Thomas Harned, Vice President, Administration. On April 2, 1987, the Public Staff recommended that a hearing be scheduled in conjunction with the hearing on April 30, 1987, in Docket No. W-218, Sub 34. An Order setting hearing for Thursday, April 30, 1987, was issued by the Commission on April 15, 1987. The hearing came on as scheduled. At the end of that hearing, the Public Staff made an oral motion requesting the Hearing Examiner to schedule an additional hearing in Raleigh to take the testimony of Wade McDonald, Assistant Regional Engineer, with the State Division of Health Services, who was unable to attend the hearing on April 30, 1987, and to take the testimony of Thomas Harned who had not been notified of the April 30 hearing. On May 12, 1987, an Order was issued scheduling a further hearing on June 3, 1987, to take this additional testimony. The second hearing came on as scheduled. During this hearing, it was suggested that the

parties work together informally to resolve the issue at hand. As of this date, no satisfactory agreement has been reached by the parties.

Based upon the foregoing, the evidence produced at these hearings, and the entire record in this matter, the Hearing Examiner makes the following:

FINDINGS OF FACT

1. Hydraulics, Ltd., is a public utility under the jurisdiction of the North Carolina Utilities Commission and holds franchises to provide water utility service in several areas in the state.

2. Hydraulics, Ltd., has a water utility franchise to provide service in Greystone Forest Subdivision which was granted by this Commission in Docket No. W-218, Sub 23.

3. Greystone Forest Subdivision is contiguous to Kynwood Subdivision.

4. The water utility franchise for Kynwood Subdivision was granted to Jim Fallon, d/b/a Water Service Company, in Docket No. W-738.

5. The name of Jim Fallon, d/b/a Water Service Company, was changed to Water Service Company of Albemarle, Inc., in Docket No. W-738, Sub 9, and then to Clear-Flow Utilities, Inc., in Docket No. W-738, Sub 13, with the approval of the Utilities Commission. The principal stockholders and operators of these utilities have always been and still are Jim Fallon and wife.

6. The initial franchise granted in Kynwood Subdivision provided for a system containing two wells, a distribution system, pressure tank facilities, and other facilities to serve 89 customers.

7. Hydraulics, Ltd., has experienced pressure problems in Greystone Forest Subdivision which it has corrected by adding a 30,000-gallon storage tank and booster pumps as reflected in Docket No. W-218, Sub 34.

8. The current application involves a request to transfer the franchise for Kynwood Subdivision from Clear-Flow Utilities, Inc., to Hydraulics, Ltd., with ownership of only one of two well lots being transferred, with the idea of interconnecting the Kynwood Subdivision and Greystone Forest Subdivision systems to make up for the loss of one well and well lot in Kynwood Subdivision.

9. Hydraulics, Ltd., and Clear-Flow Utilities, Inc., contend that with the interconnection adequate water will be available to meet the minimum quantity requirements of the State Division of Health Services.

10. The customers of Greystone Forest Subdivision have expressed concern that they may lose the adequate service which they are currently receiving if their system is interconnected with Kynwood Subdivision.

11. Lester Development Corporation has expressed concern that the interconnected system may not have the capacity to serve its remaining undeveloped lots in Kynwood Subdivision.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NO. 1 - 5

The evidence for these findings is found in the records of the Commission and in the record of this proceeding and are uncontested and noncontroversial.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 6

The evidence for this finding is found in the records of the Commission in Docket No. W-738. In this docket, Jim Fallon, d/b/a Water Service Company, subsequently Clear-Flow Utilities, Inc., was granted a franchise to provide water service to 89 customers in Kynwood Subdivision. The application reflects the existence of two wells which were contributed to the utility company by the developer in order to provide service to the entire proposed subdivision. Presumably the developer then recovered the cost of the contributed water system through the sale of lots. This being a reasonable assumption, the lot owners in Kynwood Subdivision have paid for an adequate water system containing two well lots when they purchased their lots.

For this Commission to allow the transfer of the system with only one well lot resulting in a potential loss of per customer water supply, would be an injustice to the customers and lot owners of Kynwood Subdivision.

The Hearing Examiner concludes that the transfer as proposed, with only one well lot, would not be to the benefit of the customers and lot owners in Kynwood Subdivision.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 7

The evidence for this finding is found in the Commission's records in Docket No. W-218, Sub 34, and in the record of two hearings in this proceeding. The customers of Greystone Forest Subdivision have expressed their concerns that the interconnection of the two water systems will cause a drain upon their upgraded facilities, increasing the possibility of future pressure problems. Even though the interconnected water systems may meet the minimum requirements of the State Division of Health Services, it may not be able to meet the needs of the customers. If the interconnected system is expanded beyond 74 connections in Kynwood Subdivision, it may not meet the minimum requirements. The residents of Greystone Forest Subdivision currently have a water system which should meet their needs, and allowing the interconnection to Kynwood Subdivision would only jeopardize the level of service as long as only one well lot is being transferred.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NO. 8 - 11

The evidence supporting these findings is found in the application and records of the entire proceeding in this docket, including the testimonies of customers of Greystone Forest Subdivision, witnesses from Hydraulics, Ltd., Clear-Flow Utilities, Inc., and Lester Development Corporation. The Examiner must conclude that interconnecting the two systems would only 1) jeopardize adequate service to Greystone Forest Subdivision, 2) allow one well lot in Kynwood Subdivision to be separated from the utility property available to the residents of Kynwood Subdivision, and 3) make it unlikely that Lester Development Corporation could develop lots beyond 74 connections without contributing an additional well lot. The Hearing Examiner concludes that

allowing the transfer of only part of the utility property in Kynwood Subdivision, which was contributed to the utility company by the developer, would be unfair to the residents of Kynwood Subdivision and to Lester Development Corporation and is of no benefit to the customers of Greystone Forest Subdivision. The only persons who would benefit would be Jim Fallon and wife, owner of Clear-Flow Utilities, Inc., at the expense of the existing and potential utility customers.

The Hearing Examiner further concludes that given the existing application involving the transfer of only one well lot in Kynwood Subdivision, the application should be denied. Furthermore, in denying the transfer of franchise, the Hearing Examiner recognizes that the system serving Kynwood Subdivision must be made capable of serving the existing 89 lots which is the responsibility of Clear-Flow Utilities, Inc. This may require trading off one of the two existing well lots for another well lot which will produce more water. It may require drilling one of the existing wells deeper or additional storage. If will also require updating of plan approval with the State Division of Health Services, all of which should be the responsibility of Clear-Flow Utilities, Inc.

IT IS, THEREFORE, ORDERED AS FOLLOWS:

1. That the application for authority to transfer the franchise for water utility service in Kynwood Subdivision from Clear-Flow Utilities, Inc., to Hydraulics, Ltd., is hereby denied without prejudice to the Applicant to refile or amend its application to satisfy the concerns expressed herein.

2. That Jim Fallon and wife and Clear-Flow Utilities, Inc., are hereby restrained from liquidating the assets of the utility serving Kynwood Subdivision without prior approval of the Utilities Commission.

3. That Jim Fallon and wife and Clear-Flow Utilities, Inc., shall obtain approval of the State Division of Health Services for the water system plans in Kynwood Subdivision within 90 days of the date of this Order and shall construct the system according to approved plans within 120 days of the date of this Order.

4. The above-mentioned plans must be submitted to the State Division of Health Services within 30 days of the date of this Order and a report submitted to the Commission by Jim Fallon and wife and Clear-Flow Utilities, Inc., indicating that the plans have been submitted.

5. That Jim Fallon and wife and Clear-Flow Utilities, Inc., shall file a report with the Commission within 95 days of the date of this Order indicating that the above-referenced plans have been approved.

6. That Jim Fallon and wife and Clear-Flow Utilities, Inc., shall file a report with the Commission within 125 days of the date of this Order indicating that the system has been constructed according to approved plans.

7. In the event that the provisions of this Order are not met by Jim Fallon and wife and Clear-Flow Utilities, Inc., the Hearing Examiner recommends that the Commission proceed directly to court to see monetary penalties as provided in G.S. § 62-310.

ISSUED BY ORDER OF THE COMMISSION.
This 19th day of August 1987.

NORTH CAROLINA UTILITIES COMMISSION
(SEAL) Gail L. Mount, Deputy Clerk

DOCKET NO. W-883, SUB 3

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Application by Scotsdale Water and Sewer, Inc., Post Office Box 35852, Fayetteville, North Carolina, for Authority to Transfer the Franchise to Provide Water Utility Service in Mayfair, Cloverleaf, and Cresthaven Subdivisions in Cumberland County, North Carolina, from Cliffdale Water Company, John Ludwig, Trustee, and for Approval of Rates	RECOMMENDED ORDER APPROVING TRANSFER

HEARD IN: Council Chambers, City Hall, Corner of Green and Bow Streets, Fayetteville, North Carolina, on Tuesday, April 7, 1987, at 7:00 p.m.

BEFORE: Rudy Shaw, Hearing Examiner

APPEARANCES:

For the Applicant:

Robert F. Page, Crisp, Davis, Schwentker, Page, and Currin; Attorneys at Law, Post Office Drawer 30489, Raleigh, North Carolina 27622

For the Public Staff:

Vickie L. Moir, Staff Attorney, Public Staff, North Carolina Utilities Commission, 439 North Salisbury Street, Raleigh, North Carolina 27626-0520

SHAW, HEARING EXAMINER: This matter was initiated by Scotsdale Water and Sewer, Inc. (Applicant or Company), on December 1, 1986, with the filing of a Motion to Terminate Trusteeship and an application for authority to transfer the water systems owned by Cliffdale Water Company to Scotsdale Water and Sewer, Inc.

By Commission Order issued on December 23, 1986, the Commission required that public notice of the proposal be given to all customers, which notice provided that, if no significant protests were received subsequent to notice, the matter may be determined without a public hearing.

Subsequent to notice being given, protests were received. By Commission Order dated March 5, 1987, the matter was scheduled for hearing at 7:00 p.m., on April 7, 1987, in the City Hall in Fayetteville, North Carolina. Notice of this hearing was properly given as indicated by the Applicant's Certificate of Service filed with the Commission on March 12, 1987.

The matter came on for a hearing as scheduled. Three customers, Joseph R. Neese, John Franklin Ludwig, and William Whitehead, appeared and testified in opposition to the transfer. Carol Clark, daughter of the owner of Cliffdale Water Company, appeared and testified in support of the application. John Thomason, president of Scotsdale Water and Sewer, Inc., and Bill McQueen, an Environmental Health Consultant with Environmental Response and an employee of Scotsdale's Water and Sewer, Inc., also testified in support of the application. John Ludwig, trustee of Cliffdale Water Company, appeared and offered testimony. Jerry Tweed, director of the Water and Sewer Division of the Public Staff, offered testimony in opposition to the proposed termination of trusteeship.

Based on the evidence presented at the hearing, the late filed exhibits, the Recommended Order Granting Rate Increase issued December 6, 1978, in Docket No. W-203, Sub 6, and the Recommended Order Denying Application issued January 16, 1981, in Docket No. W-207, Sub 22, of which the Hearing Examiner takes judicial notice and the entire record in this proceeding, the Hearing Examiner now makes the following

FINDINGS OF FACT

1. Scotsdale Water and Sewer, Inc., is a North Carolina corporation with principal office and place of business located at 524 Varga Drive, Fayetteville, North Carolina 28303.

2. Scotsdale Water and Sewer, Inc., presently owns and operates other water utility franchises in Wrightsboro and Turnpike Estates Subdivisions, Hoke County, North Carolina, and in Belmont Park Subdivision, Cumberland County, North Carolina. In addition, Scotsdale has applications pending for water utility franchises in Scotsdale Subdivision, Cumberland County, North Carolina, and in Legend Hills, Royal Acres, and Colonial Heights Subdivision, Wake County, North Carolina.

3. Cliffdale Water Company is a North Carolina public utility owned by Mrs. W. T. Everleigh, widow of the late W. T. Everleigh. Cliffdale Water Company holds the franchise to provide public utility water service in Mayfair, Cloverleaf, and Cresthaven Subdivisions, Cumberland County, North Carolina. Prior to its being placed in trusteeship, the business affairs of Cliffdale Water Company were being handled by Mrs. Carole Clark of Fayetteville, North Carolina. Mrs. Clark is the daughter of Mrs. W. T. Everleigh.

4. By Order of Cumberland County Superior Court dated March 31, 1978, the water systems owned by Cliffdale Water Company were placed under the control of an emergency operator, Gaddis Autry.

5. By Commission Order issued on December 6, 1978, in Docket No. W-203, Sub 6, the Commission approved a rate increase to the emergency operator and also approved a monthly assessment of $3.00 per month per customer for a three-year period. The Order provided that the assessment money was to be used to pay off a note owed by Cliffdale Water Company and to install meters on each customer.

6. By Order of Cumberland County Superior Court dated December 7, 1979, Gaddis Autry was removed as emergency operator because of ill health, and John Ludwig was appointed as emergency operator. The systems remain under the control of Mr. Ludwig today.

7. The services presently being provided by John Ludwig, as trustee of Cliffdale Water Company, are good.

8. The emergency which led to the original declaration of trusteeship no longer exists. At present, there is no emergency requiring that the facilities of Cliffdale Water Company be operated by a trustee or emergency operator.

9. By its application herein, Scotsdale Water and Sewer, Inc., seeks to acquire the facilities and franchise to provide public utility water service now belonging to Cliffdale Water Company. In addition, Scotsdale seeks termination of the existing trusteeship.

10. The Applicant's proposed purchase contract from Cliffdale Water Company provides for a $12,000 purchase price with a $11,500 note to be paid through monthly payments. The monthly payments will be $300 per month.

11. Scotsdale Water and Sewer, Inc., is ready, willing, and able to provide the water utility services which it proposed to offer to residents of Mayfair, Cloverleaf, and Cresthaven Subdivisions.

12. Scotsdale proposed to charge the same rates now being charged by the trustee, Mr. Ludwig, as established in his general rate case before the Commission.

13. Based upon the foregoing, the Application for Transfer of the Public Utility Certificate from Cliffdale Water Company to Scotsdale Water and Sewer, Inc., should be approved. In addition, appropriate steps should be taken to terminate the existing trusteeship.

14. The amount of earned and accrued but, as yet, unpaid salary described in his testimony by the trustee, Mr. Ludwig, is the responsibility of Scotsdale Water and Sewer, Inc., and Cliffdale Water Company.

15. The $3.00 per month surcharge allowed in the Commission Order of December 6, 1978, in Docket No. W-203, Sub 6, which was to allow the trustee to pay off a note owed by Cliffdale Water Company and to purchase and install meters, should be considered a contribution from the customer and shall not be repaid by the Applicant.

16. Scotsdale will have a zero investment in the water system at the time of transfer.

17. Scotsdale should post a bond in the amount of $10,000.

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

The evidence for these findings of fact is found in the verified application in this docket in the testimony of Company witness Thomason, the testimony of Public Staff witness Tweed, and in the Commission's files in Docket Nos. W-203; W-883; W-883, Sub 1; W-883, Sub 2; and W-883, Sub 4.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 3-6

The evidence for these findings of fact is found in the testimony of Public Staff witness Tweed, in the Commission's files in Docket Nos. W-230; W-203, Sub 1; and W-203, Sub 5, and in the Orders of the Cumberland County Superior Court dated March 31, 1978, and December 17, 1979, in the matter related to Cliffdale Water Company.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 7

The evidence for this finding of fact is contained in the testimony of the trustee, Mr. Ludwig, the testimony of the public witnesses, and the testimony of Public Staff witness Tweed. This finding was not contested by the Applicant. Therefore, the Examiner concludes that the public utility water services heretofore offered to consumers in Mayfair, Cloverleaf, and Cresthaven Subdivisions by the trustee, John Ludwig, were and are good.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 8

The evidence for this finding is contained in the testimonies of Applicant's witnesses Thomason and McQueen and the testimony of Public Staff witness Tweed. In 1978 the Commission found that the facilities and services being offered to the public by Cliffdale Water Company had degenerated to such an extent that there was an imminent danger that water service to the consumers in Mayfair, Cresthaven, and Cloverleaf Subdivisions would be lost. Therefore, the Commission declared an emergency, pursuant to G.S. 62-118, and filed suit in the Superior Court of Cumberland County seeking the appointment of a trustee or emergency operator. In the years which have intervened since the original appointment of trustee, the customers have been assessed for a period of approximately three years for needed system repairs and improvements, rates have been raised on approximately two occasions, and the two trustees have remedied the defects and problems which led up to the original declaration of an emergency condition. As noted in the previous finding of fact and the evidence and conclusions therefor, the services presently being provided by the trustee, John Ludwig, are good. The emergency which led to the original appointment of the trustee no longer exists. Witness Tweed acknowledged in his written testimony and in his remarks on the witness stand that no emergency continued to exist which would justify the continued operation of the trusteeship on an emergency basis. For these reasons, the Hearing Examiner concludes that an emergency as contemplated by G.S. 62-118 no longer exits.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 9-10

The evidence for these findings of fact is found in the verified application, in the testimonies of company witnesses Thomason and Clark, and in the testimony of Public Staff witness Tweed.

EVIDENCE CONCLUSIONS FOR FINDINGS OF FACT NOS. 11-13

The evidence for these findings of fact is contained in the verified application, the testimonies of Applicant's witnesses Thomason and McQueen, the testimony of Public Staff witnesses John Ludwig and Jerry Tweed, and in the Commission's files and records regarding Scotsdale's prior operations in its existing service areas. Witness Thomason, president of Scotsdale, although a relatively newcomer to the water utility business, has compiled a very satisfactory record and reputation for good-quality water utility service in the areas wherein Scotsdale either holds a utility franchise or is otherwise providing day-to-day water utility service. Witness Tweed stated on cross-examination that witness Thomason's administrative, bookkeeping, and office operations were satisfactory. While witness Tweed was unfamiliar with witness Thomason's capabilities as a field operator, the Hearing Examiner takes notice of the fact that witness Thomason has on full-time retainer Bill McQueen, a registered sanitarian who holds water and wastewater plant operator's licenses from the State of North Carolina. The Commission has received very few complaints from customers regarding witness Thomason's water operations.

The major concern raised in the testimony regarding witness Thomason's fitness and ability to operate the water franchise now held by Cliffdale Water Company involved difficulties being experienced in Scotsdale's operation of the sewer utility system located in Scotsdale Subdivision. Based upon relevant Commission files and records with regard thereto, the Hearing Examiner is aware and thus concludes that such problems did not originate with and cannot be attributed to either witness Thomason or the Applicant. The problems regarding sewer operations in Scotsdale Subdivision trace back to approximately 1972. These problems can only be attributed to the present owner of those facilities, W. E. Caviness, d/b/a Touch and Flow Water Company, of Jacksonville, North Carolina. During many of the intervening years, 1972-1986, the water and sewer facilities located at Scotsdale Subdivision were themselves in a trusteeship. Witness Thomason is presently operating the sewer facilities pursuant to an Emergency Order issued by this Commission on January 29, 1987, in Docket No. W-883. None of these difficulties impact on the quality of water utility service being provided to consumers and residents of Scotsdale Subdivision.

John Ludwig, the trustee, testified that on a recent occasion while visiting a friend whose residence was located in Scotsdale Subdivision he took a sample of water from the friend's tap inside the house. The result of that tested showed, according to witness Ludwig, improper readings on both the pH and chlorine. On the other hand, the Hearing Examiner has not been presented with any evidence tending to show that the regular water samples submitted for laboratory analysis by Scotsdale have ever been returned with any deficiencies noted. Witness Thomason specifically stated that all of his water samples had been returned from the state laboratory showing no improprieties and no impurities. In any event, the results of a one-time spot-check of the water from beyond the meter box inside one of the approximately 140 residences

located in Scotsdale Subdivision is simply not entitled to any measurable value on the question of overall quality of water service being provided in Scotsdale Subdivision by the Applicant.

If the Applicant is approved, Scotsdale has requested permission to charge the same rates presently being charged by the trustee. These rates were set by a Commission Order issued in late 1986 in Docket No. W-203, Sub 8. Witness Thomason in direct testimony did indicate that at some future time he would probably have to seek a rate increase for Cliffdale and the other subdivisions wherein he is the franchised water operator. However, this is not a sufficient reason to deny the application. Based on the foregoing, specifically including the Finding of Fact No. 11 that Scotsdale is ready, willing, and able to provide the proposed services and Finding of Fact No. 8 that the emergency which prompted the original establishment of the trusteeship no longer exists, the Hearing Examiner is of the opinion that the proposed application to transfer the utility franchise from Cliffdale Water Company to Scotsdale Water and Sewer, Inc., should be approved, subject to the conditions set forth hereafter, and that the Commission should take such steps as may be required in order to terminate the existing trusteeship.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 14

The evidence for this finding of fact is found in the testimony of Company witness Thomason and in the testimonies of Public Staff witnesses Tweed and Ludwig.

Witness Ludwig stated that, as a result of system difficulties during the period of 1983-1985, he was required to spend approximately $12,500 for various system maintenance, repairs, replacements, and improvement items, including the replacement of a well, the replacement of a storage tank, and the replacement of pumps on various occasions. As stated by witness Ludwig, the 1979-1981 customer assessments having been terminated, the cash flow from the water system itself was not sufficient to pay the parts and labor bills for all of the replacement equipment items as they came due. In 1984, without prior notice to or approval by the Public Staff or the Commission, witness Ludwig borrowed $4,000 from First Citizens Bank and Trust Company in Fayetteville, using his home as collateral security for such loan. Most of this money was apparently paid over to suppliers in connection with the new well and replacement pump which were required in 1984. Subsequently, Mr. Ludwig paid off the principal balance and accrued interest on the note, and First Citizens' Deed of Trust on his house has been cancelled of record. During this period of time, however, witness Ludwig stated that he did not take out of the water system revenues the salary which he had been allowed by prior Commission rate Orders. At one point, witness Ludwig had stated that he had earned or accrued (i.e., not paid to himself) salary in the amount of approximately $6,500. During 1986 and early 1987, witness Ludwig paid himself the current salary which he accrued and, in addition, also paid himself approximately $2,000 of the past-due salary. At the hearing, witness Ludwig stated that he was still owed the sum of $4,600 as earned salary which had not been paid to him.

The Applicant took no position with regard to whether or not witness Ludwig had actually earned salary that had not been paid to him. Instead, the Applicant's position was that, without regard to the merits of the foregoing question, such alleged amount of outstanding salary was not a recorded "debt of

the system" which could be charged to the Applicant. In the Applicant's view, this issue was one to be resolved by Mr. Ludwig, the Public Staff, the customers, and perhaps the Commission. Since Mr. Ludwig has not rendered any services to Scotsdale Water and Sewer, Inc., Scotsdale should not be required to pay over any monies to witness Ludwig as past-due salary or otherwise.

Scotsdale pointed out that witness Ludwig had acted unilaterally in the foregoing matters; that is, witness Ludwig allegedly deferred the payment to himself of his earned salary in order to do other things with the cash revenue flows from the water system, all without prior notice to or approval by either the Public Staff or the Commission. The Applicant demonstrated that other avenues were available to witness Ludwig other than his own unilateral actions, which would have resulted in a debt properly being imposed on the water system. Such debt would then have become a matter of public record of which the Applicant would have had notice prior to filing its application - instead, there was no such notice. Finally, the Applicant pointed out that the Public Staff had been aware of the situation concerning witness Ludwig's salary for some time. Indeed, the Affidavit of witness Tweed in witness Ludwig's last rate increase proceeding (Docket No. W-203, Sub 8) clearly demonstrates that the staff was well aware of the existence of witness Ludwig's allegations. According to the Applicant, the Public Staff made no recommendation in that case concerning a methodology whereby witness Ludwig could or should be allowed to recoup his allegedly earned, but not paid, past salary.

The Public Staff was of the opinion that the monies owed to witness Ludwig were presently a liability of Cliffdale Water Company, and if the transfer were allowed, it should be a liability of Scotsdale Water Company.

Witness Tweed testified that the Public Staff had indeed recognized in the last rate case of Cliffdale Water Company that witness Ludwig had not received all salaries due him. He further testified that the Public Staff had, in a sense, allowed recovery of such salary to the depreciation expense by giving rate-base treatment to the items witness Ludwig had purchased with monies which should have gone to his salary.

The Hearing Examiner agrees with the position of the Public Staff. The salary of witness Ludwig should become a liability of the Applicant. Therefore, the Hearing Examiner concludes that any salary which is owed to witness Ludwig should be paid at the time of the transfer.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 15

The evidence for this finding is found in the Commission Order dated December 6, 1978, in Docket No. W-203, Sub 6, and in the prefiled testimony in Docket No. W-203, Sub 6, of David F. Creasy, past director of the Public Staff Water Division, and in the testimony of Public Staff witness Jerry Tweed.

There are basically four reasons why the Hearing Examiner has ruled that the Applicant should not repay the assessments in this case. The first reason is that in his testimony in the proceeding in Docket No. W-203, Sub 6, dated September 27, 1978, Mr. Creasy testified that:

> "The most reasonable method for obtaining funds to install the meters is through customer assessments on a monthly basis. By

assessing the customers on a monthly basis, the necessary funds will not be accumulated any faster than the emergency operator actually gets the meters installed.

"The customers will be given credit on the books of the company for contributing the amount of the assessments, and such assessments must be refunded to the customers by the owners of the Company if the owners ever seek to resume operation of the water system."

Furthermore, Mr. Creasy testified "that a note of $4,949 owed to Drillers Supply (principal plus accumulated interest) which was incurred for benefit of the water system should be paid by the trustee."

In the Order issued on December 6, 1978, in Docket No. W-203, Sub 6, the Commission found in the Evidence and Conclusions for its Finding of Fact No. 13, that ...:

"The Public Staff recommended a program for obtaining funds to meter the water system, based on a monthly assessment of $3 in addition to the approved rates for utility service. The $3 per month surcharge would result in additional revenues of $552 per month, which would be used to pay off a note owed by Cliffdale Water Company to Drillers Supply in the amount of approximately $4,949 (principal plus accumulated interest). The $552 per month additional revenues would also be used to purchase and install new meters on a tentative schedule as follows:

1st year - install 44 meters
2nd year - install 68 meters
3rd year - install 72 meters

The funds received from the $3 per month surcharge would be accounted for as Customer Contributions, and such contributions must be refunded to the customers by the owners of Cliffdale Water Company prior to their taking over operation of the system from the trustee, if such occurs in the future."

The Hearing Examiner took careful notice that Mr. Creasy in his testimony and the Commission in its Order both indicated that the assessments must be refunded to the customers by the owner of the company (Cliffdale Water Company) if the owners ever seek to resume operation of the water system. However, in this transfer proceeding, the owners of Cliffdale are not seeking to resume operation but to transfer operation and ownership to the Applicant.

The second reason is that if the Applicant is required to repay the assessments, the Applicant would be allowed that investment to its rate base. The Applicant would also be allowed to recover that investment through a depreciative expense which would result in higher rates to the customers.

Granted, the increase in rates would most likely be less than the $3.00 per month refund, but that increase would also most likely continue for a much longer time than the refund.

The third reason for not allowing the refund of the assessment comes from the testimony of witness Tweed. Witness Tweed said that the repayment of the assessment to the customers of $3.00 per month in a three-year period would cause a cash-flow problem to Scotsdale at the present rates.

The final reason for not allowing the refund is that it is the Hearing Examiner's opinion that the meters (which were the main reason for implementing the assessment) have added to the stability and credibility of the water system. If the assessment were not allowed, the system would most likely be on a flat rate; and it is the Hearing Examiner's experience that flat rate systems, in general, tend to give more problems and require more maintenance.

Based on the above, the Hearing Examiner is of the opinion that the assessment should not be repaid.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 16

The evidence for this finding is found in the prefiled testimony of Linda P. Haywood in Docket No. W-203, Sub 8, and the prefiled testimony of Jocelyn M. Perkerson in Docket No. W-201, Sub 27.

Mrs. Haywood found that the net water plant in service, beginning with the inception of the trusteeship in 1978 was $11,895. Mrs. Perkerson found that the net water plant in service since the inception of the water company was ($28,301). Mrs. Perkerson took into consideration all tap-on fees and accumulated depreciation while Mrs. Haywood considered only plant added and contributions received since 1978. The evidence clearly shows that Cliffdale's net investment should be zero, and therefore any transfer price paid by the Applicant to Cliffdale should be considered an acquisitive adjustment and not allowed in determining the proper rate base at the time of transfer.

Therefore, the Hearing Examiner finds and concludes that the Applicant's net investment at the time of transfer should be zero.

EVIDENCE OF CONCLUSIONS FOR FINDING OF FACT NO. 17

Both the Applicant and the Public Staff have agreed that a bond in the amount of $10,000 should be posted in this proceeding as required by § 62-110.3 of the General Statutes.

The Hearing Examiner finds and concludes that a bond of $10,000 should be posted, as a condition of this transfer, within 90 days of this Order..

IT IS, THEREFORE, ORDERED as follows:

1. That the application of Scotsdale Water and Sewer, Inc., for approval of the transfer of the water utility franchise for Mayfair, Cloverleaf, and Cresthaven Subdivisions, Cumberland County, North Carolina, from Cliffdale Water Company be, and the same is, hereby approved.

2. This transfer is conditioned upon the Applicant posting a bond in the amount of $10,000 with the Commission as required by G.S. § 62-110.3, within 90 days from the date of this Order.

3. That the Applicant, Scotsdale Water and Sewer, Inc., be, and the same is hereby, granted a Certificate of Public Convenience and Necessity to provide water utility services in Mayfair, Cloverleaf, and Cresthaven Subdivisions, Cumberland County, North Carolina.

4. That Appendix A, attached hereto, shall constitute the Certificate of Public Convenience and Necessity.

5. That the franchise granted to Cliffdale Water Company in Docket No. W-203, Sub 1, on March 29, 1967, be, and hereby is, cancelled.

6. That the Schedule of Rates, attached hereto as Appendix B, is hereby approved and that said Schedule of Rates is hereby deemed to be filed with the Commission pursuant to G.S. 62-138.

7. That the Commission will promptly take steps designed to terminate the existing trusteeship of Mr. Ludwig.

8. That the transfer shall become effective with the termination of trusteeship by the Superior Court of Cumberland County.

ISSUED BY ORDER OF THE COMMISSION.
This the 14th day of July 1987.

NORTH CAROLINA UTILITIES COMMISSION
(SEAL) Gail L. Mount, Deputy Clerk

APPENDIX A

DOCKET NO. W-833, SUB 3

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION
Know All Men by These Presents, That
SCOTSDALE WATER AND SEWER INC.
P.O. Box 35842
Fayetteville, North Carolina 28303
is hereby granted this
CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY
to provide water utility service
in
MAYFAIR, CLOVERLEAF, AND CRESTHAVEN SUBDIVISIONS
Cumberland County, North Carolina
subject to such orders, rules, and regulations, and conditions as are now or may hereafter be lawfully made by the North Carolina Utilities Commission.

ISSUED BY ORDER OF THE COMMISSION.
This the 14th day of July 1987.

NORTH CAROLINA UTILITIES COMMISSION
(SEAL) Gail L. Mount, Deputy Clerk

APPENDIX B

SCHEDULE OF RATES
for
SCOTSDALE WATER AND SEWER, INC.
for providing water utility service in
MAYFAIR, CLOVERLEAF, AND CRESTHAVEN SUBDIVISIONS
Cumberland County, North Carolina

Usage Charge: (applicable after meter installed)

Up to first 3,000 gallons per month, minimum charge	-	$7.46
All over 3,000 gallons per month, per 1,000 gallons	-	$1.00

Connection Charge

$350.00 (Applies only to new customers where main extension is required.)

Reconnection Charge:

If water service cut off by utility for good cause	-	$4.00
If water service discontinued at customer's request	-	$2.00

Bills Due On billing date
Bills Past Due: 15 days after billing date
Billing Frequency: Shall be monthly for service in arrears
Finance Charge for Late Payment: One percent unpaid balance for bills still overdue 25 days after billing.

Issued in accordance with authority granted by the North Carolina Utilities Commission in Docket No. 883, Sub 3, on this the 14th day of July 1987.

DOCKET NO. W-691, SUB 30

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Show Cause Why the Operating Authority of Glendale Water, Inc., 6932 Fayetteville Road, Raleigh, North Carolina, Should Not Be Revoked in All Its Subdivisions and an Emergency Operator Appointed Pursuant to North Carolina G.S. 62-118	)	ORDER FINDING EMERGENCY

HEARD: Wednesday, March 18, 1987, at 9:30 a.m., Commission Hearing Room, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina

BEFORE: Commissioner J. A. "Chip" Wright, Presiding; Commissioners Robert K. Koger and Sarah Lindsay Tate

APPEARANCES:

For Glendale Water, Inc.

No Appearance

For the Using and Consuming Public:

Paul L. Lassiter and A. W. Turner, Jr., Staff Attorneys, Public Staff--North Carolina Utilities Commission, Post Office Box 29520, Raleigh, North Carolina 27626-0520

Lorinzo Joyner and Lemuel Hinton, Attorney General's Office, Post Office Box 629, Raleigh, North Carolina 27602-0620

For Heater Utilities, Inc.:

William E. Grantmyre, 263 W. Chatham Street, Post Office Box 250, Cary, North Carolina 27511

BY THE COMMISSION: On October 24, 1986, the Public Staff filed a Motion in the above-captioned docket requesting the Commission to issue an Order scheduling a public hearing and requiring Glendale Water, Inc. (hereafter referred to as "Glendale" or "Company"), to appear before the Commission and show cause why (1) its franchises should not be revoked, (2) an emergency operator should not be appointed for Glendale's water systems for failure of the Company to comply with certain Orders of the Commission, and (3) penalties of up to $1,000 per day should not be assessed against Glendale for Glendale's failure to obey Commission Orders, rules, and regulations.

In support of its Motion, the Public Staff alleged that Glendale is in violation of the North Carolina Drinking Water Act, that Glendale has failed to make improvements required by Commission Orders, that Glendale has refused to respond to customer complaints forwarded to the Company by the Public Staff's Consumer Services Division, and that numerous lawsuits have been filed in Wake

County Superior Court against Glendale in the last six months. The Public Staff concluded as follows:

> "Wherefore, the Public Staff submits that an emergency exists in the subdivisions served by Glendale. There is not only a clear danger that Glendale's actions constitute a health hazard, but there is overwhelming evidence that Glendale may be on the brink of insolvency. The Public Staff, therefore, moves that the Commission set a hearing at the earliest possible time and require Glendale Water, Inc., to appear and show cause why its franchise should not be revoked, an emergency operator appointed, and penalties assessed." (emphasis added)

On October 29, 1986, the Commission issued an Order instituting a show cause proceeding in this docket, serving the Order on Glendale by the Sheriff of Wake County, and scheduling a hearing on Monday, November 24, 1986, at 7:00 p.m. Glendale was required to give notice of the hearing to its customers.

The docket came on for hearing as scheduled on Monday, November 24, 1986, at 7:00 p.m. All of the parties, including Glendale, were present and represented by counsel. At this hearing, the Commission heard from the public witnesses, who were customers of the Company. More than 100 customers attended the hearing.

On November 26, 1986, pursuant to stipulation of all of the parties, including Glendale Water, Inc., the Commission issued an Order appointing Heater Utilities, Inc., emergency operator of the public utility water systems owned and operated by Glendale in all of its franchise service areas in Wake County, North Carolina. The Order further provided that the appointment of the emergency operator was to remain effective for 60 days on and after the date of the Order. The public hearing scheduled for Tuesday, November 25, 1986, was continued to January 21, 1987. The Public Staff and the Attorney General were authorized to continue their investigations into the operations of Glendale Water, Inc., in this docket.

By Order of January 16, 1987, the Commission issued an Order continuing the hearing as scheduled for January 21, 1987, to Wednesday, March 18, 1987, and also extending for an additional 60 days, or until March 24, 1987, the Consent Order appointing Heater Utilities, Inc., the emergency operator of the Glendale water systems. This Order was entered with the written consent of Glendale Water, Inc., by and through its President E. Ray Vernon, as well as the other parties to this proceeding. The Public Staff and the Attorney General were required to file any report arising out of their investigations on or before March 3, 1987, and to serve a copy upon Glendale Water, Inc., and its President, Mr. Vernon.

On March 3, 1987, the Public Staff filed its report of its and the Attorney General's investigation into the operations of Glendale Water, Inc.

The matter came on for hearing as scheduled on March 18, 1987. The Public Staff, the Attorney General, and Heater Utilities, Inc., were present and were represented by counsel. No one appeared on behalf of Glendale Water, Inc.

The parties presented the testimony of Andy Lee, an engineer with the Public Staff Water and Sewer Division; Michael C. Maness, a supervisor with the Public Staff Accounting Division; Don Williams, environmental engineer, Water Supply Branch, Division of Health Services; and Jocelyn M. Perkerson, public utilities accountant, Office of the Attorney General. The testimony of the parties related to the report filed March 3, 1987, and to the operations and activities of Glendale Water, Inc.

Upon consideration of the testimony and exhibits presented at the hearings on November 24, 1986, and March 18, 1987, the report and investigations of the Public Staff and the Attorney General filed March 3, 1987, and the entire record in this docket, the Commission makes the following

FINDINGS OF FACT

1. Glendale Water, Inc. ("Glendale"), is a public utility regulated by the Commission pursuant to G.S. Chapter 62 and provides water utility service to approximately 850 customers in 21 subdivisions in Wake County, North Carolina. These subdivision service areas are:

A Country Place
Berkshire Downs
Chari Heights
Belmont
Country Ridge Estates
Crowsdale
Glendale No. 1
Burnside
Lynnhaven
Englewood
Orchard Knolls
Surry Point
Rolling Wood
Squire Estates
Surry Ridge
Swift Ridge
Timberberg Hill
Wesley Woods
Willow Winds
Woodbrook
Woods Creek

Glendale charges rates to its customers that are approved by the Commission.

2. E. Ray Vernon is the President of Glendale and has been in charge of Company operations since late 1984.

3. This proceedings was instituted on October 29, 1986, upon motion of the Public Staff alleging that there was significant evidence that Glendale was providing seriously inadequate service to its customers and was in severe financial straits.

4. Since November 26, 1986, the water systems of Glendale have been under the exclusive operation and control of an emergency operator appointed by the

Commission, Heater Utilities, Inc., ("Heater"), subject to the terms and conditions set forth in an Order of November 26, 1986, ("Consent Order Appointing Emergency Operator") and an Order of January 16, 1987.

5. The Consent Order appointing Heater as emergency operator continues in effect by consent of all the parties, including Glendale, until Tuesday, March 24, 1987.

6. Glendale and its President, E. Ray Vernon, did not appear at the hearing in this docket on March 18, 1987, and have not consented to any further extension of the Consent Order of November 26, 1986.

7. The Public Staff and the Attorney General have undertaken a limited investigation of the recent operations of Glendale, generally covering the period from April 1986 through October 1986. The results of this investigation were set forth in the Report filed on March 3, 1987, the contents of which were presented at the hearing on March 18, 1987.

8. Glendale has failed to install and operate chlorination equipment in its water systems and to provide the continuous disinfection of its water systems as required by G.S. 130A-318, the N.C. Division of Health Services ("DHS"), and the Commission. The lack of proper chlorination existed from at least April 1986 until December 1986, when the emergency operator, Heater Utilities, corrected the problem.

9. The Division of Health Services issued "boil water notices" to customers in several of Glendale's subdivisions in November 1986 after water samples revealed the presence of coliform bacteria. The systems affected by the "boil notice" were:

System	Number of Customers
Swift Ridge	33
Woods Creek	76
Berkshire Downs	101
Lynnhaven-Crowsdale-Englewood-Orchard-Knoll-Surry Point	260
	470

In each of these systems the lack of chlorination probably resulted in the coliform bacteria contamination.

10. The emergency operator, Heater Utilities, has corrected the problem described in Finding No. 9, and as a result the "boil notices" have been rescinded by the Division of Health Services.

11. Glendale has failed to comply with the water monitoring requirements established by State law and the rules and regulations of the Division of Health Services. More specifically, Glendale failed to report monthly coliform sampling results to the Division of Health Services, within the time required by law, for May, June, July, August, and September 1986. When the late-filed samples were submitted to the Division on November 4, 1986, the tests revealed that 12 of Glendale's 14 systems tested positive.

12. Glendale did not inform the Division of Health Services or the customers of the affected systems of the coliform bacteria contamination, as required by State law.

13. Glendale has failed to install iron and manganese removal filters in its water systems as required by the Commission's Order of February 7, 1986, and the DHS.

14. Inspections by the Public Staff in September and October 1986 revealed that Glendale's water systems were in a generally poor condition, reflecting the lack of proper maintenance. The well houses were in poor condition and offered inadequate protection from the elements. Chlorination equipment was either not in place or not in operation.

15. Glendale has been assessed administrative penalties by DHS for violations regarding the operation of its water systems. The violations are as follows:

(1) Failure to report results of required microbiological analyses to the Department of Human Resources within the first 10 days following the end of the required monthly monitoring period for the months of May through September 1986 thereby violating regulation NCAC 10D.1631.

(2) Removed chlorination equipment as required by approved plans and specifications thereby violating regulation 10 NCAC 10D.0906.

(3) Failure to provide continuous disinfection of the drinking water for a community water system thereby violating G.S. 130A-318(a)(1) and 10 NCAC 10D.1002(i).

(4) Failure to report to the Department of Human Resources within 48 hours after exceeding the coliform maximum contaminant level thereby violating 10 NCAC 10D.1631(d).

(5) Failure to install iron and manganese removal equipment as approved by the Division of Health Services thereby violating regulation 10 NCAC 10D.0906.

(6) Failure to adequately construct wells serving a community water system thereby violating 10 NCAC 10D.0906, 10 NCAC 10D.1002, and 10 NCAC 10D.1007.

(7) Failure to have water at a community water system properly monitored for radiological contamination thereby violating regulation 10 NCAC 10D.1627.

(8) Failure to have water at a community water system properly monitored for sodium concentration thereby violating regulation 10 NCAC 10D.1636.

(9) Failure to properly notify the customers of a community water system of maximum contaminant level violation.

The total accumulated penalties to date amount to more than $500,000.

16. Glendale has failed to respond to customer complaints about service or billing problems and has shown no interest in improving its relations with its customers. Glendale has also failed to respond to Public Staff inquiries about customer complaints.

17. Glendale has failed to maintain its accounting records, or adequately document all cash receipts and disbursements, or take other steps necessary to adequately control its cash inflows and outflows, as required by Commission Order of April 12, 1985. (Docket No. W-691, Subs 25, 26, and 27).

18. Glendale was made the object of several lawsuits during 1986; all of the cases decided to date have been in favor of the plaintiffs. A lawsuit filed by the Executor of the Estate of John G. Blankenship, Sr., has resulted in a default judgment of $88,000 in favor of the plaintiffs against Glendale. There is a real likelihood that some of the plaintiffs will institute execution proceedings against the assets of Glendale in the immediate future.

19. Glendale did not take adequate and prudent steps to defend itself against these lawsuits, thereby contributing to the deteriorating financial condition of the Company.

20. Glendale failed to make payments on several outstanding notes on a timely basis, resulting in the offset of its checking account and the loss of $13,000 in working capital.

21. Glendale failed to satisfy the Public Staff and the Attorney General during their investigation that certain payroll and franchise tax liabilities incurred in 1985 and 1986 have been paid. These taxes included Federal withholding and FICA taxes and State withholding and franchise taxes.

22. Glendale's failure to satisfy its outstanding tax liabilities seriously jeopardizes the financial condition of the Company and its ability to provide service to its customers.

23. Glendale failed to adequately cooperate with the Public Staff and the Attorney General during their investigation, although it was required to do so by several Commission Orders and by Commission rules.

24. Since it took over the control and operation of the Glendale systems on November 26, 1986, Heater Utilities, the emergency operator, has done an excellent job in its operation and maintenance of the water systems. Heater's installation of the chlorination equipment in December 1986 resulted in the lifting of the "boil notices" by the DHS in all affected subdivisions.

25. At the hearing on November 24, 1986, the customers of the Glendale systems testified in great detail about the problems experienced with the service of Glendale. The greatest concern was directed at the "boil notices" issued by DHS, since many of the customers have small children. Customers also complained about the frequent loss of water pressure, the staining of fixtures by the water, and the lack of response by Glendale to customer complaints. Customers also voiced concern about the failure of Glendale to notify them of the contaminated water supply and the "boil notices."

26. The above-described failures and omissions constitute an actual and constructive abandonment by Glendale, without the consent of the Commission, of its water utility systems in all of its service areas in Wake County. Such actual and constructive abandonment causes an emergency to exist in these systems, in that there has been an imminent danger of losing water service or the actual loss thereof.

27. The above-described failures and omissions of Glendale have subjected its customers to distress and hardship and has potentially endangered the health and well-being of its customers and their families.

28. Neither Ray Vernon, President of Glendale, nor any other official or representative of the Company, appeared at the hearing in this docket on March 18, 1987, although Mr. Vernon and the Company had notice of the hearing.

29. Heater Utilities, Inc., has agreed to continue serving as emergency operator of the Glendale water systems.

30. Not to continue the appointment of the emergency operator in the Glendale water systems will result in the actual loss of safe, reliable, and adequate water service to the customers therein, thereby resulting in irreparable injury to the customers and their families. There is no other source of water supply available to these customers.

CONCLUSIONS

I.

An emergency exists with respect to the water systems of Glendale Water, Inc., which provides water utility service to more than 20 subdivisions in Wake County, North Carolina. The above-described failures and omissions of Glendale and its management, particularly its President, E. Ray Vernon, constitute an actual and constructive abandonment by Glendale and its management, without the consent of the Commission, of its public utility water systems in all of its service areas. Such actual and constructive abandonment has caused an emergency to exist in these systems, in that there has been an imminent danger of losing water service or the actual loss thereof. G.S. 62-118(b).

The uncontradicted and overwhelming evidence in this proceeding points unequivocally to the failure of Glendale to fulfill its legal obligations under the laws of this State to provide safe, adequate, and reliable water service to its customers. Clearly the most serious of these deficiencies is the failure of Glendale to provide the continuous disinfection of its water supply, as required by law to safeguard public health. G.S. 130A-318. It was the opinion of the Public Staff that the lack of continuous chlorination resulted in the coliform bacteria contamination in several Glendale service areas during the Fall of 1986. As a result of this contamination, the Division of Health Services issued "boil notices" to the residents in these service areas. Not surprisingly, the customers of the Glendale systems who testified in November 1986 cited the contamination issue and the "boil notices" as their greatest concern with Glendale's service.

The emergency operator appointed by the Commission, Heater Utilities, Inc., has corrected the contamination problem since it assumed control and

operation of the Glendale water systems. As a result the "boil notices" have been rescinded by the Division of Health Services.

The other failures and omissions of Glendale have been fully set forth elsewhere in this Order, and the Commission will not repeat them here. The Commission can offer no better summation of the evidence in this proceeding than to quote from the conclusion of the thorough report and investigation of the Public Staff and the Attorney General:

> "The evidence uncovered by our investigation and presented in this report is clear. First, we have shown that the financial condition of the Company is precarious. The combination of the problems of litigation, loss of capital due to early calling of loans, unpaid payroll and franchise taxes, large and long-outstanding accounts payable, and regulatory penalties presents the Company with a severe financial burden. Second, we have shown that the Company has provided inadequate service to its customers. The combination of inadequate facilities, lack of routine and preventive maintenance, failure to maintain continuous chlorination, 'boil notices', and monitoring violations demonstrate that Glendale's customers have not been receiving safe and adequate water service.
>
> "Finally, and most importantly, it is our opinion that the Company's current management has in numerous instances inadequately managed the operations and finances of the Company. The following list summarizes our conclusions as to management problems:
>
> "(1) General failure to improve service in the Company's franchised subdivisions.
>
> "(2) Failure to submit monthly water samples to the Division of Health Services for the 5-month period beginning May, 1986.
>
> "(3) Failure to adequately chlorinate the Company's systems, resulting in Boil Notices in various subdivisions.
>
> "(4) Failure to improve the Company's relations with its customers or respond to Public Staff inquiries about customer complaints.
>
> "(5) Failure to gain approval for an iron removal filter for the Glendale subdivision on a timely basis and failure to install such filter.
>
> "(6) Failure to maintain adequate account records.
>
> "(7) Failure to pay payroll and franchise tax liabilities.
>
> "(8) Failure to make adequate attempts to resolve long-outstanding liabilities, resulting in several lawsuits against the Company.

"(9) Failure to make payments on its outstanding notes on a timely basis, resulting in the offset of its checking account and the loss of $13,000 in working capital.

"(10) Failure to adequately cooperate with investigators in this proceeding.

"(11) Failure of management to address or resolve Company problems while continuing to receive substantial compensation and expense reimbursements.

"The Public Staff is of the opinion that the above-mentioned management problems are specific examples of a general failure by Company management to adequately manage the affairs of Glendale Water, Inc. The Company has provided water service to its customers which has not only been inadequate and unreliable, but also has potentially endangered their health and well-being. Despite some of the highest rates in the State of North Carolina, the Company has failed to improve its services or prevent its financial condition from deteriorating. In fact, it is our opinion that a continuation of the same problems in the future would most likely result in the Company being unable to continue operating. Furthermore, it is our opinion that the interests of the customers would be best served by expeditiously placing into authority a water utility operator who can provide them with the safe, adequate, and reliable service that they are already paying for in their rates."

II.

The Commission should immediately apply to the Superior Court of Wake County, pursuant to G.S. 62-118(b), for the appointment of Heater Utilities, Inc., as the emergency operator of all of the Glendale water systems under the jurisdiction and regulation of the Commission. Because of the lack of consent by Glendale and the imminent possibility of execution proceedings against Glendale, the Commission is of the opinion that the Glendale water systems need the protection of the Superior Court.

Heater Utilities, Inc., which has served as emergency operator under the Orders of November 26, 1986, and January 16, 1987, has agreed to continue to serve as emergency operator. Heater Utilities has done an excellent job in restoring proper service to the Glendale water systems, and the Commission commends Heater Utilities on the manner in which it has performed its duties. Pending the appointment by the Superior Court, Heater shall be authorized to continue as emergency operator pursuant to G.S. 62-116(b).

IT IS, THEREFORE, ORDERED AS FOLLOWS:

1. That an emergency is hereby declared to exist in all of the public utility water systems served by Glendale Water, Inc., under the jurisdiction and regulation of the Commission.

2. That the Commission staff is hereby directed and authorized to apply to the Superior Court of Wake County for the appointment of Heater Utilities,

Inc., as the emergency operator for all of the water systems of Glendale Water, Inc., pursuant to G.S. 62-118(b).

3. That, pending the appointment of the emergency operator by the Superior Court, Heater Utilities, Inc., shall be authorized, pursuant to G.S. 62-116(b), to continue as emergency operator of the Glendale water systems pursuant to the terms and conditions set forth in the Orders of November 26, 1986, and January 16, 1987, all of which are incorporated herein by reference.

ISSUED BY ORDER OF THE COMMISSION.
This the 23rd day of March 1987.

NORTH CAROLINA UTILITIES COMMISSION
Sandra J. Webster, Chief Clerk

(SEAL)

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Piedmont Natural Gas Company, Inc. - Order Granting Authority to Issue and Sell Shares of Common Stock
G-9, Sub 273 (10-13-87) (Errata Order 10-29-87)

Public Service Company of North Carolina, Incorporated - Order Granting Authority to Issue and Sell Senior Unsecured Debentures
G-5, Sub 215 (4-23-87)

Public Service Company of North Carolina, Incorporated - Order Granting Authority to Issue and Sell Shares
G-5, Sub 216 (10-21-87)

Public Service Company of North Carolina, Incorporated - Order Granting Authority to Pay Stock Dividend and Issue and Sell Securities
G-5, Sub 217 (4-23-87)

TARIFFS

Pennsylvania & Southern Gas Company - Order Approving Reduction in Filed Tariff Rates by Pennsylvania & Southern Gas Company (North Carolina Gas Service Division) (cross-referenced - General Orders)
G-3, Sub 141, and M-100, Sub 113 (6-26-87)

MISCELLANEOUS

Lexington Housing Authority - Order Requiring Compliance, Cancelling Show Cause Hearing, and Closing Docket
G-36 (10-30-87)

North Carolina Natural Gas Corporation - Order Approving Refund Plan
G-21, Sub 214 (9-18-87)

Public Service Company of North Carolina, Inc. - Order Approving Revised Rules and Regulations
G-5, Sub 219 (6-24-87)

Public Service Company of North Carolina, Inc. - Order Approving Revised Tariffs for Rate Schedules Nos. 10 Through 47
G-5, Sub 222 (10-15-87)

MOTOR BUSES

APPLICATIONS AMENDED

Happy Travelers Tours, Bobby Gene Turnage, d/b/a - Order Allowing Withdrawal of Application for Good Cause
B-473 (12-7-87)

AUTHORITY GRANTED - COMMON CARRIER

Company	Charter Operations	Docket No.	Date
Brown's Scenic Cruiser, Inc.	Statewide	B-466	5-1-87
Crystal Coast Tours, Inc.	Statewide	B-478	10-6-87
Dove Tours, Inc.	Statewide	B-474	9-29-87
Go Travels, Perry Ray Oxendine, d/b/a	Statewide	B-481	11-9-87
Jessie Hill Tours, Inc.	Statewide	B-465	4-27-87
Interstate America Coach Lines Interstate America Business, Inc., d/b/a	Statewide	B-472	12-14-87
L.U.V. Transportation Company Johnnie B. Potter, d/b/a	Statewide	B-470	8-5-87
Lake Gaston Bus Service Theodore R. Williams, d/b/a	Statewide	B-339, Sub 4	12-2-87
Pri-Arty Coach Lines Artie Ray Campbell, d/b/a	Statewide	B-462	2-3-87
Walnut Cove Coach Line, Inc.	Statewide	B-467	7-24-87
Windsor Square Joint Venture	Statewide	B-476	10-15-87

Mountain Majic Tours, Inc. - Order Granting Common Carrier Authority to Transport Passengers in Charter Operations, Between Points and Places in the Counties of Haywood, Buncombe, Jackson, Transylvania, Henderson, and Madison
B-479 (10-16-87)

AUTHORIZED SUSPENSION

Pirate Explorers Transportation, Inc. - Order Granting Authorized Suspension of Operations - Good Cause Appearing
B-433, Sub 3 (8-7-87)

BROKER'S LICENSE

B J & M Tours, Isabelle A. Johnson, d/b/a - Order Granting Broker's License
B-480 (9-29-87)

Caro-Lan Tours, Inc. - Order Granting Broker's License
B-464 (5-20-87)

Cross Country Tours of N.C., Inc. - Order Granting Broker's License
B-475 (10-27-87)

Hawfields Community Travelers, Linda M. Braxton, d/b/a - Order Cancelling Broker's License
B-391, Sub 1 (2-25-87)

Mike's Travel and Adventures, Michael David Adkins, d/b/a - Order Cancelling Broker's License
B-397, Sub 1 (1-2-87)

Prestige Charters & Tours, John Dallas Myrick, d/b/a - Order Granting Broker's License
B-469 (8-10-87)

Prestige Charters & Tours, John Dallas Myrick, d/b/a - Order Cancelling Broker's License
B-469 (12-23-87)

Ruth Woodall Tours, Ruth Woodall, d/b/a - Order Granting Broker's License
B-443, Sub 1 (6-11-87)

CERTIFICATES CANCELLED

Rockingham-Hamlet Bus Lines, Frank House & Earl B. Ratliff, d/b/a - Order Cancelling Certificate No. B-73, Ceased Operations
B-73, Sub 12 (10-16-87)

DISCONTINUE SERVICE

Trailways Lines, Inc. - Recommended Order Granting Petition to Discontinue Service Between Charlotte and Hickory Through Lincolnton
B-69, Sub 146 (1-29-87)

MOTOR TRUCKS

APPLICATIONS AMENDED

BRTS, Inc. - Order Amending Application, Allowing Withdrawal of Protest, and Cancelling Hearing
T-2824 (7-7-87)

Carolina Couriers, Inc. - Order Amending Application, Allowing Withdrawal of Protest, and Cancelling Hearing
T-2804 (5-7-87)

Courier Services of Statesville, Inc. - Order Amending Application, Allowing Withdrawal of Protest, and Cancelling Hearing
T-2750 (2-17-87)

Curlee Masonry, Inc. - Order Amending Application, Allowing Withdrawal of Protest, and Cancelling Hearing
T-2894 (12-23-87)

Falcon Courier, Inc. - Order Amending Application, Allowing Withdrawal of Protest, and Cancelling Hearing
T-2785 (4-29-87)

Hatchell Oil Company, Inc. - Order Amending Application, Allowing Withdrawal of Protest, and Cancelling Hearing
T-2858 (9-30-87)

Hilco Transport, Inc. - Order Amending Application, Allowing Withdrawal of Protest, and Cancelling Hearing
T-2876 (11-18-87)

Lisk, Howard, Inc. - Order Amending Application, Allowing Withdrawal of Protest, and Granting Temporary Authority
T-1685, Sub 14 (11-18-87)

Piedmont Mobile Home Set-Up & Service, Samuel Wilbur Brummitt, Jr., & Robert Daniel Brummitt, d/b/a - Order Amending Application and Allowing Withdrawal of Protest
T-2891 (12-23-87)

Storr Office Environments, Inc. - Recommended Order Granting Application as Amended
T-2860 (12-16-87)

Swicegood, Donald J. - Order Amending Application, Allowing Withdrawal of Protest and Granting Temporary Authority
T-2465, Sub 2 (12-31-87)

APPLICATIONS DENIED/DISMISSED

Gatlin, Ashton Berry - Recommended Order Dismissing Application for Common Carrier Authority
T-2822 (7-10-87)

John's Repairs, John F. Moylan, d/b/a - Recommended Order Dismissing Application for Common Carrier Authority
T-2820 (7-13-87)

Triad Film Transport Co., Charlie Benson and Rodney F. Cummings, d/b/a - Recommended Order Denying Application for Common Carrier Authority
T-2742, Sub 1 (3-27-87)

APPLICATIONS WITHDRAWN (COMMON OR CONTRACT CARRIER AUTHORITY)

Company	Docket Number	Date
Mitchell Transport, Inc.	T-1252, Sub 1	1-29-87
Widenhouse, A.C., Inc.	T-396, Sub 10	4-27-87

AUTHORITY GRANTED - COMMON CARRIER

A & F Equipment Service Company, Co. - Order Granting Common Carrier Authority to Transport Group 21, General Commodities, Except Commodities in Bulk in Tank Vehicles; and Group 10, Building Materials, Except Materials in Bulk in Tank Vehicles, Statewide
T-2807 (5-20-87) (Name corrected by Errata Order issued May 28, 1987)

Ard's Trucking Company, Incorporated - Order Granting Common Carrier Authority to Transport Group 21, General Commodities, Except Commodities in Bulk, in Tank Vehicles, Statewide
T-2767 (3-12-87) (Errata Order Correcting Name, 3-23-87)

Atlanta Motor Lines, Inc. - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, Except Those Requiring Special Equipment, Between Points in North Carolina
T-2818 (6-9-87)

B & B Movers, J. P. Cauley, Jr., d/b/a - Order Granting Common Carrier Authority to Transport Group 21, Mobile Homes, Statewide
T-2314, Sub 2 (4-24-87)

B & C Trucking Company, Inc. - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, Statewide
T-118, Sub 7 (6-26-87)

BRTS, Inc. - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, Statewide, with Restriction: Transportation of Commodities and Shipments Weighing 200 Pounds or Less
T-2824 (7-29-87)

B & W, James Wallace, d/b/a - Order Granting Common Carrier Authority to Transport Group 21, Mobile Homes, Between all Points and Places in Counties of Scotland, Richmond, and Robeson
T-2850 (10-14-87)

Bales, Narvol Dean - Order Granting Common Carrier Authority to Transport Group 21, Mobile Homes, Modular Homes, and Modular Farm Buildings, Statewide
T-2835 (9-8-87)

Best Cartage, Inc. - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, Except Small Packages Weighing Less than 100 Pounds, Commodities in Bulk and Commodities of Unusual Value, Statewide
T-2214, Sub 2 (4-2-87)

Big B. Trailer Service, Bobby Lee Sills, d/b/a - Order Granting Common Carrier Authority to Transport Group 21, Trailers, Mobile Homes and Prefabricated Housing Units Within a 50-Mile Radius of Roanoke Rapids Within North Carolina
T-2881 (11-23-87)

Bill Mark's Mobile Home Movers, Bill Mark Ormandy, d/b/a - Order Granting Common Carrier Authority to Transport Group 21, Mobile Homes, Statewide
T-2810 (10-2-87)

Bissell, Herbert - Order Granting Common Carrier Authority to Transport Group 21, Mobile Homes, Statewide
T-2719 (4-9-87)

Black Trucking Company, Black Enterprises, Inc., d/b/a - Order Granting Common Carrier Authority to Transport Group 21, General Commodities, with Exceptions, Between and from Points and Places Within Orange and Iredell Counties to and from Points in North Carolina, with Restriction: Transportation of Shipments Weighing Less than 500 Pounds
T-2836 (8-6-87)

Blount Transit, Inc. - Recommended Order Granting Common Carrier Authority to Transport Group 1, General 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; and Group 2, Heavy Commodities Between Points in Designated Counties
T-2631, Sub 1 (6-30-87)

Bob's Mobile Home Moving, Bobby Stephenson, d/b/a - Recommended Order Granting Common Carrier Authority to Transport Group 21, Mobile Homes, Statewide
T-2782 (7-16-87)

Bryd, Franklin Y. - Order Granting Common Carrier Authority to Transport Group 21, Mobile Homes, Statewide
T-2865 (12-18-87)

C & E Transportation Company, Charles C. Fuller and Evelyn E. Fuller, d/b/a - Order Granting Common Carrier Authority to Transport Group 3, Petroleum and Petroleum Products, Liquid, in Bulk in Tank Trucks from Terminals at Wilmington, Greensboro, Charlotte, Apex, Fayetteville, and Selma to Points in Cumberland, Robeson, and Harnett Counties
T-2718 (1-22-87)

C & H Air Service, Ida S. Helms, d/b/a - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, over Irregular Routes Within the Counties of Mecklenburg, Union, Anson, Stanley, Gaston, Cleveland, Lincoln, Rowan, Cabarrus, Catawba, Alexander, and Iredell
T-2791 (4-30-87)

CMM Transportation, Inc. - Order Granting Common Carrier Authority to Transport Group 21, General Commodities, Except Commodities in Bulk in Tank Vehicles, Statewide
T-2871 (11-18-87)

C & O Trucking, Ceola Locklear, d/b/a - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, Group 4, Liquid Refrigerated Products in Bulk, Group 5, Solid Refrigerated Products, Group 6, Agricultural Commodities, and Group 21, Canned Soup and Other Canned Food Goods, Statewide
T-2773 (12-18-87)

Carl Messenger Service, Inc. - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, Except Commodities in Bulk in Tank Vehicles, Statewide, with Restrictions
T-2694 (1-2-87)

Case, C. W., Inc. - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, Statewide
T-2787 (6-1-87)

Charlotte Bus Terminal, Inc. - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, Statewide
T-2783 (4-17-87) (Errata Order Correcting Name on Exhibit B 4-21-87)

C. F. Cloninger Trucking, C. F. Cloninger, d/b/a - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, and Group 21, Modular Houses and Components of Modular Houses in Designated Counties
T-2802 (6-17-87)

Con-Way Southern Express, Inc. - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, Except Commodities in Bulk in Tank Vehicles, Statewide
T-2770 (2-25-87)

D I Trucking, Inc. - Order Granting Common Carrier Authority to Transport Group 21, General Commodities, Except Commodities in Bulk in Tank Vehicles, Statewide
T-2825 (7-24-87)

Danny's Mobile Home Moving Service, Danny A. Whitesides, d/b/a - Order Granting Common Carrier Authority to Transport Group 21, Mobile Homes, Statewide
T-2794 (6-10-87)

Davis Mobile Home Moving, James Lloyd Davis and Rita Roberts Davis - Order Granting Common Carrier Authority to Transport Group 21, New and Used Mobile Homes, Statewide
T-2745 (1-19-87)

Dixon, Frances Maelois - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, Statewide
T-2655 (3-4-87)

Dobson Trucking, Inc. - Order Granting Common Carrier Authority to Transport Group 1, General Commodities; Group 8, Dry Fertilizer and Dry Fertilizer Materials; and Group 14, Dump Truck Operations, Statewide, and to Transport Group 2, Heavy Commodities, Between Points in Surry County on the One Hand and, on the Other, Points in North Carolina
T-2815 (6-29-87)

East Carolina Cartage Company, Inc. - Order Granting Common Carrier Authority to Transport Group 21, General Commodities, Except Commodities in Bulk in Tank Vehicles, Statewide
T-1922, Sub 7 (12-16-87)

Eastern Courier Corporation - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, Except Commodities in Bulk in Tank Vehicles, Statewide
T-1709, Sub 8 (9-18-87)

Edwards Moving Connection, Bobby A. Edwards, d/b/a - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, and Group 18, Household Goods, Statewide
T-2805 (8-11-87)

Executive Couriers, Tim Bennet, Christi Bennet, R. Floyd Green, and Diana Green, d/b/a/ - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, to all Points in Wake, Orange, and Durham Counties
T-2784 (7-1-87)

Express Mobile Home Movers, Greg Oliver, d/b/a - Order Granting Common Carrier Authority to Transport Group 21, Mobile Homes, from Any Point Within Cumberland County to any County in the State and from Any Point Within Any County to Any Point Within Cumberland County
T-2762 (3-12-87)

Faircloth, Henry, Trucking, Henry Faircloth, t/a - Order Granting Common Carrier Authority to Transport Group 21, Steel Reinforcing Rods and Storage Tanks, Cast Iron Manhole Covers and Frames; and Roofing Materials of all Kinds, said Commodities Being Usually Transported in Flat-bed Trucks, to and From all Points and Places Within a Radius of 250 Miles of Goldsboro
T-2799 (5-6-87)

Falcon Courier, Inc. - Order Granting Common Carrier Authority to Transport Group 21, Dry Ice, Lab Specimens, and Related Items, Statewide
T-2785 (7-31-87)

Federal Motor Express, Inc. - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, Statewide
T-678, Sub 5 (1-22-87)

First Express, First Express, Inc., d/b/a - Order Granting Common Carrier Authority to Transport Group 21, General Commodities, Except Commodities in Bulk in Tank Vehicles, Statewide
T-2622, Sub 1 (12-9-87)

Fortson Trucking Company, Dan Randall Leasing Corporation, d/b/a - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, With Exceptions, Statewide
T-2747 (8-13-87)

Fowler, Maylon H., Contract Hauling, Inc. - Order Granting Common Carrier Authority to Transport Group 21, General Commodities, Except Commodities in Bulk in Tank Vehicles; Heavy Commodities; and Cement, in Bulk, Statewide
T-2797 (5-7-87)

G & P Trucking Company, Inc. - Order Granting Common Carrier Authority to Transport Group 21, General Commodities, Except Commodities in Bulk in Tank Vehicles, Statewide
T-2753 (1-22-87)

Goggin Truck Line Co., Inc. - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, Except Commodities in Bulk in Tank Vehicles, Statewide
T-2755 (2-20-87) (Errata Order Correcting Name 2-25-87)

Grant Enterprises, Inc. - Order Granting Common Carrier Authority to Transport Group 21, General Commodities, Except Commodities in Bulk in Tank Vehicles, Statewide
T-2859 (10-9-87)

Graphics Express, Robert Lewis Tarbuck, d/b/a - Order Granting Common Carrier Authority to Transport Group 21, Marketing, Advertising, Printer Materials, and Commodities Used in Connecting Therewith Within the Counties of Orange, Durham, and Wake
T-2873 (11-20-87)

Hartt Transportation Systems - Order Granting Common Carrier Authority to Transport Group 21, General Commodities, Except Commodities in Bulk in Tank Vehicles, Statewide
T-2792 (5-20-87)

Haux Mobile Home Service & Moving, Robert Haux, d/b/a - Order Granting Common Carrier Authority to Transport Group 21, Mobile Homes, to and from Points and Places in Designated Counties, to and from Points and Places in North Carolina
T-2811 (8-17-87)

Holly Farms Poultry Industries, Inc. - Order Granting Common Carrier Authority to Transport Group 1, General Commodities; Group 6, Agricultural Commodities; Group 8, Dry Fertilizer and Dry Fertilizer Materials; Group 10, Building Materials; Group 16, Furniture Factory Goods and Supplies; and Group 17, Textile Mill Goods and Supplies, Statewide
T-1088, Sub 4 (6-12-87)

Hornady Truck Line, Inc. - Order Granting Common Carrier Authority to Transport Group 21, General Commodities, Except Commodities in Bulk in Tank Vehicles, Statewide
T-2788 (6-1-87)

Hough, F.C. (Butch) Trucking, F.C. Hough, d/b/a - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, and Group 21, Empty Storage Trailers, Statewide
T-2709 (3-18-87)

Ideal Towing Service, Howard E. Cox, t/a - Recommended Order Granting Application, in Part, for Common Carrier Authority to Transport Group 2, Mobile Homes, Office Trailers, etc., from Charlotte, Greensboro, and Raleigh to all Points in the State and from all Points in the State to Charlotte, Greensboro, and Raleigh
T-2768 (4-30-87) [See MISCELLANEOUS for Final Order Overruling Exceptions.]

Inman, Gene, Trucking, Inc. - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, Statewide
T-2159, Sub 1 (3-23-87)

J & M Mobile Home Repair Service, Jimmy T. Brown, d/b/a - Recommended Order Granting Application in Part for Common Carrier Authority to Transport Group 21, Mobile Homes, Between all Points and Places Within the Counties of Alexander and Iredell
T-2801 (6-5-87)

J. R.'s Mobile Homes, Inc. - Order Granting Common Carrier Authority to Transport Group 21, Mobile Homes, Statewide
T-2772 (4-2-87)

J & W Service, Jerry Small, d/b/a - Order Granting Common Carrier Authority to Transport Group 21, Construction and Commercial Office Trailers, Storage Containers, and Office Complexes, Limited to eight Feet Wide by 24 Feet or 32 Feet in Length, Statewide
T-2814 (7-29-87)

Jim's Mobile Home Delivery, James D. Hodge, d/b/a - Order Granting Common Carrier Authority to Transport Group 21, Mobile Homes, Statewide
T-2743 (1-7-87)

Jordan Mobile Home Movers, Ronnie Long Jordan, d/b/a - Order Granting Common Carrier Authority to Transport Group 21, Mobile Homes, Statewide
T-2684, Sub 1 (11-23-87)

K R & F Express, Inc. - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, Except Commodities in Bulk, in Tank Vehicles, Statewide
T-2786 (4-29-87)

L & N Trucking, Lillard R. Sexton, 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-2813 (7-16-87)

Lamb's Mobile Home Movers, Sam N. Lamb, Jr., d/b/a - Order Granting Common Carrier Authority to Transport Group 21, Mobile Homes, Between Points in Moore County and to and from Points in North Carolina
T-1729, Sub 4 (7-6-87)

Leggwork Mail Service, Leggwork, Inc., d/b/a - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, Statewide
T-2849 (9-18-87)

Lester Transportation, Incorporated - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, Except Commodities in Bulk in Tank Vehicles, Statewide
T-2752 (2-2-87)

Lewis Contract Carriers, John C. Lewis, Jr., d/b/a - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, Except Commodities in Bulk in Tank Vehicles, Statewide
T-2760 (2-25-87)

Lewis, Lionel Bert - Order Granting Common Carrier Authority to Transport Group 21, Mobile Homes, Porches, and Other Fixtures Relating to Mobile Homes, Statewide
T-2793 (6-4-87)

Liberty Transportation Lines, James F. Wall, d/b/a - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, Except Class A and B Explosives, Household Goods, Commodities in Bulk and Shipments of Less Than 101 pounds, Statewide
T-2837 (8-6-87)

Long Transportation Services, Inc. - Order Granting Common Carrier Authority to Transport Group 18, Household Goods, Statewide
T-2523, Sub 2 (6-26-87)

Lumberton Masonary Company - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, Statewide
T-2518, Sub 4 (3-12-87)

M & P Transfer, Inc. - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, Statewide, with Restrictions: Transportation of Shipments Weighing 100 Pounds or Less, Commercial Papers, Documents, Records and Written Instruments for Banks, Banking Institutions, and Financial Institutions Used in the Business of Banks, Banking Institutions, and Financial Institutions
T-2831 (9-18-87)

Marsh's Trucking Company, Inc. - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, Except Commodities in Bulk, in Tank Vehicles, Statewide
T-2778 (4-24-87)

Mawson & Mawson, Inc. - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, Except Commodities in Bulk in Tank Vehicles, Statewide
T-2764 (3-4-87)

Mid-State Mobile Home Movers, Tony L. Branch, d/b/a - Order Granting Common Carrier Authority to Transport Group 21, Mobile Homes, Within the Following Counties of North Carolina: Burke, Catawba, McDowell, Caldwell, and Avery and from These Counties to Any Point in the State, and From Said Point Back to These Counties
T-2808 (6-5-87)

Mobile Home Movers, Inc. - Order Granting Common Carrier Authority to Transport Group 21, Mobile Homes, Statewide
T-2776 (4-16-87)

Mount Airy Oil Company, Inc. - Order Granting Common Carrier Authority to Transport Group 3, Petroleum and Petroleum Products, Liquid, in Bulk in Tank Trucks, Statewide
T-2829 (8-24-87)

Native American Trucking Company, Inc. - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, Except Commodities in Bulk, Household Goods, Explosives and Other Dangerous Articles, Statewide
T-2803 (6-26-87)

Natron Express, Inc. - Order Granting Common Carrier Authority to Transport Group 1, General Commodities with Exceptions, Statewide
T-2735, Sub 1 (2-25-87)

Neuse Transport, Incorporated - Order Granting Common Carrier Authority to Transport Petroleum and Petroleum Products in Bulk in Tank Vehicles, Statewide
T-2171, Sub 3 (3-3-87)

Nichols, Jackie (Jacky) Neal - Order Granting Common Carrier Authority to Transport Group 21, Mobile Homes, in the Counties of Clay, Cherokee, Swain, and Graham
T-2868 (11-10-87)

Oakridge Transport, Jerry E. Coats and Brenda B. Coats, d/b/a - Order Granting Common Carrier Authority to Transport Group 21, General Commodities, Except Commodities in Bulk in Tank Vehicles, Statewide
T-2885 (12-4-87)

Pamlico Mobile Home Movers, Inc. - Order Granting Common Carrier Authority to Transport Group 1, Mobile Homes, Statewide
T-2741, Sub 1 (4-30-87)

Paramount Express, Inc. - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, Statewide
T-2812 (7-13-87)

Phillips Enterprises, Bob Phillips, d/b/a - Order Granting Common Carrier Authority to Transport Group 21, Manufactured Homes, Buildings, Building Sections, and Office Buildings, Statewide
T-2840 (8-31-87)

Piedmont Grading & Wrecking Company, Inc. - Order Granting Common Carrier Authority to Transport Group 21, General Commodities (Except Commodities in Bulk, in Tank Vehicles), and Group 14, Dump Truck Operations, Statewide
T-2855 (10-27-87)

Piggy-Back & Cartage Service, Oscar Barwick, Jr., d/b/a - Order Granting Common Carrier Authority to Transport Group 21, General Commodities, Except Commodities in Bulk in Tank Vehicles, Statewide
T-2870 (11-10-87)

Pope Transport Company, E. J. Pope & Son, Inc., d/b/a - Final Order Overruling Exceptions and Affirming Recommended Order Granting Common Carrier Authority Issued November 17, 1986
T-2353, Sub 4 (1-7-87)

Porter, John E. - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, Except Commodities in Bulk in Tank Vehicles, Statewide
T-2744 (1-29-87)

Potter, James Luther - Order Granting Common Carrier Authority to Transport Group 21, Mobile Homes, Statewide
T-2775 (4-17-87)

Potter's Mobile Home Service, Donald Ray Potter, d/b/a - Order Granting Common Carrier Authority to Transport Group 13, Motor Vehicles, and Group 21, Mobile Homes, Office Trailers, and Construction Site Office Trailers and Storage Facilities, Statewide
T-2087, Sub 3 (10-14-87)

Reynolds Trucking Company, Inc. - Order Granting Common Carrier Authority to Transport Group 21, Dry Concrete, Cement Mix Powder, Pre-Form Concrete Slabs and Other Materials Used in Road Building/Construction Including Concrete Blocks and Pipes, Precast Box Culverts, Manholes, Bulk Cement and Bulk Fly Ash, Within the Counties of Mecklenburg, Union, Anson, Stanley, Cabarrus, Gaston, Lincoln, Catawba, Iredell, Rowan, Davidson, Randolph, Davie, Guilford, Forsyth, Yadkin, Wilkes, Alexander, Caldwell, Burke, and Cleveland
T-2192, Sub 1 (10-1-87)

Robert Nichols Hauling, Robert Nichols, d/b/a - Order Granting Common Carrier Authority to Transport Group 10, Building Materials, Statewide
T-2795 (5-11-87)

Roberts-Linker, Inc. - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, Statewide
T-2845 (10-21-87)

Roland and Associates Transport Service, Inc. - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, to all Points and Places in Designated Counties
T-2827 (12-3-87)

Rooks Farm Service, Inc. - Order Granting Common Carrier Authority to Transport Group 21, Liquid Fertilizer and Liquid Fertilizer Materials, in Bulk in Tank Trucks, Statewide
T-2727 (1-29-87)

Salem Carriers, Inc. - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, Group 4, Liquid Refrigerated Products in Bulk, Group 5, Solid Refrigerated Products, Group 10, Building Materials, Group 16, Furniture Factory Goods and Supplies, and Group 17, Textile Mill Goods and Supplies, Statewide
T-2263, Sub 3 (12-28-87)

Sam's Mobile Home Service, Samuel Edward Moore, d/b/a - Order Granting Common Carrier Authority to Transport Group 21, Mobile Homes, Within the Counties of Rockingham, Stokes, Guilford, and Forsyth
T-2780 (4-9-87)

Santee Carriers, Inc. - Recommended Order Granting Application as Amended to Transport Group 21, Cement, Between the Facilities of Dixie Cement Company, on the One Hand, and, on the Other, Points in the State
T-1412, Sub 4 (8-27-87)

Scotty's Quick Trips, James Horace Mizelle, d/b/a - Order Granting Common Carrier Authority to Transport Group 15, Retail Store Delivery Service, Between Points and Places in North Carolina
T-2839 (9-24-87)

Seneca Transportation Company, Inc. - Order Granting Common Carrier Authority to Transport Group 21, General Commodities, Except Commodities in Bulk in Tank Vehicles, Statewide
T-2854 (9-29-87)

Small Time Movers, Carpio Enterprises, Inc., d/b/a - Order Granting Common Carrier Authority to Transport Group 18, Household Goods, Statewide
T-2777 (4-30-87)

Sooner Transport Corporation - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, Except Commodities in Bulk in Tank Vehicles, Statewide
T-2790 (5-11-87)

Southeastern Freight Lines, Inc. - Order Granting Common Carrier Authority to Transport Group 21, General Commodities, Except Commodities in Bulk in Tank Vehicles, Statewide
T-2136, Sub 1 (1-22-87)

Southeastern Transport, Division of Southeastern Traffic Service Corp. of North Carolina - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, Statewide
T-2769 (4-7-87)

Southway Trucking Company, Inc. - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, with Restrictions, Statewide
T-2721 (1-7-87)

T & W Mobile Home Movers, Inc. - Order Granting Common Carrier Authority to Transport Group 21, Mobile Homes, Statewide
T-2559, Sub 2 (7-13-87)

Tank Lines, Inc. - Order Granting Common Carrier Authority to Transport Group 21, Cement Products in Bag and Bulk, Between Points and Places East of U. S. Highway 220, Excluding Shipments Originating in Wilmington, or Points and Places Within a 15 Mile Radius Thereof
T-2686, Sub 1 (10-1-87)

Tennessee Cartage Co., Inc. - Order Granting Common Carrier Authority to Transport Group 21, Such Commodities as Are Dealt in by Wholesale and Retail Grocery Stores and Discount and Department Stores, Between Points and Places in North Carolina
T-2737 (3-4-87)

Thomas & Howard of Hickory, Inc. - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, Statewide
T-2864 (12-29-87)

3-C Highway, Inc. - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, Except Commodities in Bulk, Statewide
T-2708 (1-2-87)

Tidewater Fuels, Inc. - Recommended Order Granting Authority to Transport Group 3, Petroleum and Petroleum Products, Liquid, in Bulk, in Tank Vehicles, Statewide
T-2759 (3-20-87)

Tomahawk Trucking, Inc. - Order Granting Common Carrier Authority to Transport Group 21, General Commodities, Except Commodities in Bulk in Tank Trucks, Household Goods, Commodities of Unusual Value, and Those Requiring Special Equipment Because of Size and Handling, Statewide
T-2740 (1-29-87)

Tommy's Transporters, Tommy Cole, d/b/a - Order Granting Common Carrier Authority to Transport Group 21, Mobile Homes, Statewide
T-2879 (11-20-87)

Transus, Inc. - Order Granting Common Carrier Authority to Transport Group 1, General Commodities, Except Commodities in Bulk in Tank Vehicles, Statewide
T-2761 (3-27-87)

Triangle Trailer Rentals, Inc. - Order Granting Common Carrier Authority to Transport Group 21, General Commodities, Except Commodities in Bulk in Tank Vehicles, Statewide
T-2846 (8-1-87)

Trunmire, Major Elihue - Order Granting Common Carrier Authority to Transport Group 21, Mobile Homes Within the Counties of Ashe and Alleghany
T-2730 (4-9-87)

Venture Trucking Company, Inc. - Order Granting Common Carrier Authority to Transport Group 1, General Commodities (Except Classes A and B Explosives, Household Goods, Commodities in Bulk, and Shipments of 101 Pounds or Less if Transported in a Vehicle in Which no one Package Exceeds 100 Pounds), Statewide
T-2821 (11-23-87)

Vickers, C. L., Inc. - Order Granting Common Carrier Authority to Transport Group 21, Scrap Electrolytic Pot Lining, Broken, in Dump Trailers and Equipment, from Stanly County to all Points in the State
T-933, Sub 3 (5-4-87)

Wagoner Trucking Company - Order Granting Common Carrier Authority to Transport Group 21, General Commodities, Except Commodities in Bulk in Tank Vehicles; and Iron and Steel, Statewide
T-2765 (5-4-87)

Walters, James Emory, - Order Granting Common Carrier Authority to Transport Group 21, Mobile Homes, Statewide
T-2623 (6-1-87)

Welch Moving & Storage Co., Inc. - Order Granting Common Carrier Authority to Transport Group 15, Retail Store Delivery, and Group 16, Furniture Factory Goods and Supplies, Statewide
T-950, Sub 5 (5-15-87)

Wendell Transport Corporation - Order Granting Common Carrier Authority to Transport Group 21, Fertilizer and Fertilizer Materials, Liquid or Dry, in Bulk, in Tank Trucks, Between Points and Places in the State; and Group 21, Water, in Bulk, in Tank Trucks Between Points and Places in the State
T-1039, Sub 11 (4-7-87)

Wendell Transport Corporation - Order Granting Common Carrier Authority to Transport Group 21, General Commodities, Except Those of Unusual Value, Commodities in Bulk, in Tank Trucks, Class A and B Explosives, and Commodities Requiring Special Equipment, Statewide
T-1039, Sub 12 (4-7-87)

Woodell Delivery Service, Inc. - Recommended Order Granting Application for Common Carrier Authority to Transport Group 1, General Commodities; Group 15, Retail Delivery Store Services; Group 21, Office Supplies and Equipment Within Counties of Cabarrus, Caldwell, Gaston, Iredell, Lincoln, Mecklenberg, Rowan, Union, Rutherford, and Stanly
T-2843 (9-15-87)

Woodring's Mobile Home Park, Ray Woodring, d/b/a - Order Granting Common Carrier Authority to Transport Group 21, Mobile Homes, Between Points and Places in Designated Counties to and from Points and Places Throughout the State
T-2834 (8-31-87)

AUTHORITY GRANTED - CONTRACT CARRIER

Adams, Thad J., Jr. - Order Granting Contract Carrier Authority to Transport Group 21, Other Specific Commodities (with Specifications) Under Bilateral Contract with Adams Concrete Products Company from its Plants Located in Raleigh, Durham, Rocky Mount, Edenton, Kingston, Fayetteville, and Morrisville to Points and Places Within the State with Transportation on Return Movements, with Restriction Against Cement, Lime, and Mortar in Bulk
T-2751 (1-20-87)

Barrow, David Earl - Order Granting Contract Carrier Authority to Transport Group 21, Other Specific Commodities (with Specifications) Under Bilateral Contract with Adams Concrete Products Company from its Plants Located in Raleigh, Durham, Rocky Mount, Edenton, Kinston, Fayetteville, and Morrisville to Points and Places Within the State with Transportation on Return Movements with Restrictions Against Cement, Lime, and Mortar in Bulk
T-2771 (4-8-87)

Belue Trucking, C. P. Belue, d/b/a - Order Granting Contract Carrier Authority to Transport Group 3, Petroleum and Petroleum Products, in Bulk, in Tank Trucks, Statewide, Under Continuing Contracts with Fletcher Oil Company and J. J. Gouge & Son Oil Company, Inc.
T-2717, Sub 1 (6-10-87)

Belue Trucking, C. P. Belue, d/b/a - Order Granting Contract Carrier Authority to Transport Group 3, Petroleum and Petroleum Products, in Bulk, in Tank Vehicles, Statewide, Under Continuing Contracts with Quality Oil Company and Acme Petroleum and Fuel Company
T-2717, Sub 2 (12-28-87)

Bowman, D. M., Inc. - Order Granting Contract Carrier Authority to Transport Group 1, General Commodities, Statewide; Under a Continuing Contract or Contracts with Hechinger Company
T-2343, Sub 2 (7-24-87)

Builders Transport, Inc. - Order Granting Contract Carrier Authority to Transport Group 21, Metal and Metal Products Used in the Manufacture of Fencing; Between Facilities of Merchants Metals, Inc., in Statesville, North Carolina, and its Vicinity and all Points in North Carolina Under a Bilateral Contract With Merchants Metals, Inc.
T-1638, Sub 6 (7-24-87)

C & O Warehousing Corporation - Order Granting Contract Carrier Authority to Transport Group 1, General Commodities, to Points and Places Within Designated Counties, Under Continuing Contract with Moore Business Forms
T-2809 (7-6-87)

C. S. Transport, Inc. - Order Granting Contract Carrier Authority to Transport Group 21, Commodities in Bulk, Statewide, Under Continuing Contract with LCP Chemicals & Plastics, Inc.
T-2144, Sub 2 (1-29-87)

Dew Transport Company, Dew Oil Company, d/b/a - Order Granting Contract Carrier Authority to Transport Group 21, Liquid Commodities, in Bulk, Statewide, Under Continuing Contracts with Suffolk-Gowen Chemical Company, Kaichem International Corporation, and Holtrachem, Inc.
T-2664, Sub 2 (12-16-87)

Frito-Lay, Inc. - Order Granting Contract Carrier Authority to Transport Group 1, General Commodities, Statewide, Under Continuing Contract with Beam Transport
T-2630 (5-4-87)

General Aviation, Inc. - Order Granting Contract Carrier Authority to Transport Group 1, General Commodities, Statewide, Under Continuing Contract with Freightliner Corporation/Mercedes-Benz Truck Company, Inc.
T-2875 (12-18-87)

Hatchell Oil Company - Order Granting Contract Carrier Authority to Transport Group 3, Petroleum and Petroleum Products, Liquid, in Bulk in Tank Vehicles, Statewide, Under Continuing Contract with Waters Oil Company
T-2858 (12-15-87)

Hilco Transport, Inc. - Order Granting Contract Carrier Authority to Transport Group 3 Petroleum and Petroleum Products, Liquid, in Bulk in Tank Trucks, and Group 21, Asphalt and Asphalt Cutback, in Bulk, Statewide, Under Continuing Contracts with Amoco Oil Company, Thompson-Arthur Paving Division of APAC Carolina, Inc., a Subsidiary of Ashland Oil Company and Central Oil Asphalt Corporation
T-2876 (12-17-87)

Hutchens Trucking Company, Inc. - Order Granting Contract Carrier Authority to Transport Group 1, General Commodities, Statewide, Under Continuing Contract with General Electric Company
T-2798 (5-26-87)

Johnson, Clarence - Order Granting Contract Carrier Authority to Transport Group 21, Other Specific Commodities as Described in Certificate, Under Bilateral Contract with Adams Products Company, with Restriction Against Cement, Lime, and Mortar in Bulk
T-2826 (7-15-87)

Jones, William - Order Granting Contract Carrier Authority to Transport Group 21, Other Specific Commodities (with Specifications) Under Bilateral Contract with Adams Concrete Products Company from its Plants Located in Raleigh, Durham, Rocky Mount, Edenton, Kinston, Fayetteville, and Morrisville to Points and Places Within the State with Transportation on Return Movements with Restrictions Against Cement, Lime, and Mortar in Bulk
T-2617 (1-20-87)

Keystone Freight Corporation - Order Granting Contract Carrier Authority to Transport Group 1, General Commodities, Between all Points in North Carolina Under Continuing Contract with Consolidated Stores International Corporation from or to Its facilities
T-2833 (7-29-87)

Koch Service, Inc. - Order Granting Contract Carrier Authority to Transport Group 21, Commodities in Bulk, Statewide, Under Continuing Contracts with Koch Fuels, Inc., Koch Asphalt Company, Koch Sulphur Products Company, Koch Chemicals Company, and Koch Refining Company
T-2749 (1-22-87)

Merritt Trucking Company, Inc. - Recommended Order Granting Authority to Transport Group 21, Chemicals, in Bulk, Statewide, Under Continuing Contract with Wright Corporation
T-2143, Sub 7 (10-23-87)

A. J. Metler Hauling & Rigging, Inc. - Order Granting Contract Carrier Authority to Transport Group 1, General Commodities, and Group 2, Heavy Commodities, Statewide, Under Continuing Contract with Libbey-Owens-Ford Co.
T-2605, Sub 1 (5-6-87)

Mills, Leroy - Order Granting Contract Carrier Authority to Transport Group 21, Other Specific Commodities (with Specifications) Under Bilateral Contract with Adams Concrete Products Company from its Plants Located in Raleigh, Durham, Rocky Mount, Edenton, Kinston, Fayetteville, and Morrisville to Points and Places Within the State with Transportation on Return Movements with Restrictions Against Cement, Lime, and Mortar in Bulk
T-2748 (1-20-87)

Page's Trucking, L. B. Page and H. F. Page, d/b/a - Recommended Order Granting Contract Carrier Authority to Transport Group 21, Salt Under Continuing Contract with Morton Salt Division of Morton Thiokol, Inc., Between Points in Morehead City and Points in the State
T-2746 (1-14-87)

Phillips, George Womack, II - Order Granting Contract Carrier Authority to Transport Group 21, Other Specific Commodities (with Specifications) Under Bilateral Contract with Adams Concrete Products Company from its Plants Located in Raleigh, Durham, Rocky Mount, Edenton, Kinston, Fayetteville, and Morrisville to Points and Places Within the State with Transportation on Return Movements with Restrictions Against Cement, Lime, and Mortar in Bulk
T-2600 (1-20-87)

Riggs, Robert J., Jr. - Order Granting Contract Carrier Authority to Transport Group 21, Other Specific Commodities as Specified Under Bilateral Contract with Adams Concrete Products Company from Its Plants Located in Raleigh, Durham, Rocky Mount, Edenton, Kinston, Fayetteville, and Morrisville to Points and Places Within the State With Exceptions
T-2758 (2-17-87)

Rodney Spears Trucking, Rodney Spears, d/a/b - Order Granting Contract Carrier Authority to Transport Group 3, Petroleum and Petroleum Products, Liquid, in Bulk in Tank Trucks, Within a 125-Mile Radius of Greensboro, Under Continuing Contract with Tomlinson Oil Company, Inc.
T-2800 (6-5-87)

Ryder Distribution Resources, Inc. - Order Granting Contract Carrier Authority to Transport Group 1, General Commodities in Bulk in Tank Vehicles, Between the Facilities of Black & Decker (US), Inc., at Raleigh, Asheboro, Fayetteville, Tarboro, North Wilkesboro, Greensboro, Henderson, Charlotte, and Wilmington, on the one Hand, and, on the Other, Points in the State Under Continuing Contract with Black and Decker (US), Inc.
T-2302, Sub 3 (11-10-87)

Stewart, Michael T. - Order Granting Contract Carrier Authority to Transport Group 21, Other Specific Commodities, Concrete Pipe, and Related Products Under Bilateral Contract with Adams Products 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 with Restrictions
T-2779 (4-8-87)

Turrentine, Lewis - Order Granting Contract Carrier Authority to Transport Group 21, Other Specific Commodities (See Original Order in Clerk's Office)
T-2862 (11-4-87)

Young Transfer, Young Transfer, Inc. d/b/a/ - Order Granting Contract Carrier Authority to Transport Group 21, Paper Boxes and Pulp Board Boxes and Materials, Equipment and Supplies used in the Manfacturing or Distribution Thereof, Under Continuing Contract with Atlantic Coast Carton Company, Statewide
T-182, Sub 7 (10-7-87)

AUTHORIZED SUSPENSION

Company	Certificate	Reason
American Distribution Systems, Inc. T-1758, Sub 3 (4-30-87)	C-173	Good Cause
E & B Corp. T-1560, Sub 2 (12-1-87)	C-998	Good Cause
Ed's Used Cars, Walter Edward Radford, d/b/a T-2613, Sub 1 (3-18-87)	C-1385	for One Year
Graebel/North Carolina Movers, Inc. T-2333, Sub 1 (1-29-87)	C-1256	Good Cause
Herman, Ray L. T-1823, Sub 5 (11-9-87)	C-1074	for One Year
The Highland Company, Highland Trucking, Inc. T-2319, Sub 1 (4-30-87)	C-1322	Sale/Transfer
Hill Top Transport, Inc. T-1057, Sub 11 (10-22-87)	P-127	for One Year

ORDERS AND DECISIONS LISTED

Interstate Carriers, Inc. T-2287, Sub 3	C-896	Good Cause
Kallam Transfer Co., Inc. T-1811, Sub 3 (10-12-87)	C-1063	Good Cause
North State Transport, Frank E. Dills and Wesley M. Dills, d/b/a T-2677, Sub 2 (2-20-87)	P-523	for One Year
Piedmont Mobile Home Movers, Inc. T-1943, Sub 3 (1-15-87)	C-961	Illness
Riverside Transportation Company, Inc. T-1866, Sub 6 (7-27-87)	G-1084	for Three Months
Rorer, Russell D. T-1693, Sub 1	C-1039	for One Year
Rowan Freight Co., Inc. T-2142, Sub 3 (2-6-87)	C-1171	for One Year
Rupard, C. B., & Sons, Inc. T-2228, Sub 1 (2-6-87)	C-1204	for One Year
Specialty Courier, Inc. T-2628, Sub 1 (1-8-87)	C-1401	Ceased Operations
Tidewater Transit Co., Inc. T-380, Sub 22 (1-14-87)	C-317, (1 & 2)	To Sell
Weathers Brothers Moving and Storage Co., Inc. T-788, Sub 2 (8-11-87)	C-572	Good Cause
Wingate Trucking Co., Inc. T-2184, Sub 3 (3-31-87)	C-1190	Sale and Transfer

CERTIFICATES/PERMITS CANCELLED

Ceased Operations

Company and Certificate No.	Docket Number	Date
Aluminum Distribution Company (P-391)	T-2156, Sub 1	4-21-87
Dependable Feed Service, Inc. (C-1136)	T-1951, Sub 5	11-9-87
Granville House, Incorporated (Portion of C-858)	T-390, Sub 11	1-15-87
Jennings Trout Farm (P-438)	T-2355, Sub 1	3-20-87
King, Neb, Inc. (P-266)	T-1737, Sub 2	9-30-87
Mid-State Oil Company (C-80)	T-1869, Sub 3	9-16-87
Sampson, Charles T., Trucking Co., Charles T. Sampson, d/b/a (C-1444)	T-1444, Sub 1	8-24-87

Stone, Roy, Transfer Corporation (P-488)	T-2481, Sub 2	6-18-87
Transport Source, Inc. (P-468)	T-2447, Sub 2	5-26-87
Tultex Transportation, Incorporated (P-408)	T-2216, Sub 2	4-30-87
Waco Drivers Service, Inc. (P-330)	T-1994, Sub 7	4-9-87

Termination of Liability/Cargo Insurance Coverage

Company and Certificate No.	Docket Number	Date
Action Freight Lines, Inc.	T-1999, Sub 3	6-23-87
Cardel Corporation	T-2445, Sub 2	9-17-87
Carolina Tank Lines, Inc.	T-83, Sub 8	6-26-87
*Order Rescinding Order Cancelling Authority		7-13-87
Cauthen Gin & Bag Company	T-343, Sub 9	1-19-87
*Order Rescinding Order Cancelling Authority		2-6-87
Douglas & Bess, Inc.	T-1635, Sub 2	4-24-87
*Order Rescinding Order Cancelling Authority		5-15-87
E-B Trucking Company, Incorporated	T-798, Sub 6	4-1-87
Faulkner, John, Motors, Inc.	T-2336, Sub 1	7-29-87
Franks Mobile Home Movers, Earl F. Tuck, d/b/a	T-1918, Sub 1	1-9-87
*Order Rescinding Order Cancelling Authority		2-16-87
North American Transfer & Storage of Asheville, Inc.	T-1956, Sub 6	4-29-87
Harvel's, Cliff, Moving Company	T-1912, Sub 2	5-21-87
*Order Rescinding Order Cancelling Authority		6-9-87
Neptune World-Wide Moving, Neptune World-Wide Moving of N.C., Inc., d/b/a	T-1427, Sub 1	8-20-87
Shaw, A. L. & Sons Trucking Company, Inc.	T-2442, Sub 3	8-20-87
*Order Rescinding Order Cancelling Authority		9-30-87
Stuart Transportation Corporation	T-2250, Sub 1	7-8-87
Triple S Trucking Company, Inc.	T-2687, Sub 1	8-20-87
Whitley, Abe, Moving & Storage, Inc.	T-1762, Sub 2	6-26-87
*Order Rescinding Order Cancelling Authority		7-9-87
Whitley, Abe, Moving & Storage, Inc.	T-1762, Sub 2	9-17-87

Adams, Ricky Joe - Order Cancelling Permit No. P-452 - Good Cause Appearing
T-2392, Sub 1 (8-13-87)

Cotton Growers Warehouses, Inc. - Order Cancelling Certificate No. C-952 - Good Cause Appearing
T-1419, Sub 2 (5-26-87)

Culberson Motor Lines, Inc. - Recommended Order Cancelling Operating Authority Certificate No. C-949 - Good Cause Appearing
T-1414, Sub 7 (11-10-87)

Houser Trucking, Harvey Venus Houser, d/b/a - Recommended Order Cancelling Operating Authority for Certificate No. C-1411 - Termination of Cargo Insurance Coverage
T-2562, Sub 1 (12-22-87)

McLean Trucking Company - Order Cancelling Certificate No. C-264 - Bankruptcy
T-106, Sub 11 (9-4-87)

Merritt Trucking Company, Inc. - Order Cancelling a Portion of Permit No. CP74 - Upon Request
T-2143, Sub 8 (9-3-87)

Village Homes of the Pamlico, Inc. - Recommended Order Cancelling Operating Authority for Certificate No. 1047 - Termination of Cargo Insurance Coverage
T-1679, Sub 8 (10-23-87) (Order Rescinding Order Cancelling Authority 12-7-87)

INCORPORATIONS AND TRANSFERS

Bass Mobile Home Moving, Inc. - Order Approving Incorporation from Bass Mobile Home Moving for Certificate No. 878
T-1958, Sub 2 (1-8-87)

Broglin Delivery Service, Inc. - Order Approving Incorporation from Wayne Marcus Broglin, d/b/a Broglin Delivery Service for Certificate No. P-242
T-2100, Sub 1 (2-4-87)

Hudson Properties, Inc. - Order Approving Incorporation
T-2556, Sub 2 (1-23-87)

Liberty Transportation Lines, Inc. - Order Approving Incorporation and Transfer Certificate No. C-1535
T-2837, Sub 1 (9-16-87)

No-Name Movers, Inc. - Order Approving Incorporation of Certificate No. C-601 from Charles Allen Calhoun, d/b/a No-Name Movers
T-2601, Sub 1 (4-16-87)

Phillips Mobile Home Movers, Inc. - Order Approving Incorporation of Certificate No. C-1542 from Bob Phillips, d/b/a Phillips Enterprises
T-2840, Sub 1 (9-30-87)

MERGERS

Tidewater Transit Co., Inc. - Order Approving Merger with Tappan Carriers, Inc., Holder of Certificate No. C-134
T-380, Sub 22 (2-10-87)

Wingate/Taylor Maid Transportation, Inc. - Order Approving Merger with Wingate Trucking Co., Inc., Holder of Certificate No. C-1190
T-2692, Sub 2 (10-22-87)

NAME CHANGE/TRADE NAME

American Freight System of North Carolina, Inc. - Order Approving Name Change from USA Eastern, Inc.
T-2578, Sub 1 (12-31-87)

B & R Transportation Service, BRTS, Inc., d/b/a - Order Approving Name Change from BRTS, Inc.
T-2824, Sub 1 (9-24-87)

Coley's Welding Service, Ira G. Coley, d/a/b - Order Approving Name Change from Coley's Welding Service, Inc.
T-2119, Sub 1 (4-30-87)

D & I Trucking, Inc. - Order Approving Name Change from D I Trucking, Inc.
T-2825 (10-8-87)

Douglas and Sons, Inc. - Order Approving Name Change from Douglas & Bess, Inc.
T-1635, Sub 3 (5-19-87)

Glosson Freightways, Inc. - Order Approving Name Change from Glosson Enterprises, Inc., for Certificate No. C-1191
T-2203, Sub 3 (10-27-87)

Harris Transport Company - Order Approving Name Change from Dick Harris & Son Trucking Co., Inc.
T-2633, Sub 3 (12-7-87)

Harvey, L., & Son Company - Order Approving Name Change from L. Harvey & Son, Inc., for Certificate No. C-1555
T-2878, Sub 1 (12-1-87)

Hedrick, Sanford M., Jr. - Order Approving Name Change from Hedrick Trucking Company, Inc.
T-2583, Sub 2 (9-24-87)

Holly Farms Foods, Incorporated - Order Approving Name Change from Holly Farms Poultry Industries, Inc.
T-1088, Sub 5 (12-22-87)

Ideal Towing Service, Inc. - Order Approving Name Change from Howard E. Cox, t/a Ideal Towing Service
T-2768, Sub 1 (12-28-87)

M & M Transport, M. K. Poythress Trucking Co., Inc., d/b/a - Order Approving Name Change from Michael Keith Poythress, d/b/a Poythress Trucking Company
T-2448, Sub 3 (2-3-87)

Mustang Transportation, Inc. - Order Approving Name Change from 3-C Highway, Inc.
T-2708, Sub 1 (8-31-87)

Raleigh Delivery Service Division of The News & Observer Publishing Company - Order Approving Name Change from Raleigh Delivery Service, Inc.
T-1443, Sub 4 (2-2-87)

Ryder Distribution Resources, Inc. - Order Approving Name Change from DPD, Inc., and that Permit No. P-423 Be Amended Accordingly
T-2302, Sub 2 (5-11-87)

Ryder Temperature Controlled Carriage, Inc. - Order Approving Name Change from Tennessee Cartage Company, Inc.
T-2737, Sub 1 (7-31-87)

S & H Mobile Home Movers, James Dan Smith, d/b/a - Order Approving Name Change from James Dan Smith and Richard Bryan Ward, d/b/a S & H Mobile Home Movers
T-1914, Sub 1 (2-23-87)

Southeastern Freight Lines, Inc. - Order Approving Name Change from Southeastern Freight Lines for Certificate No. C-303
T-2136, Sub 2 (1-6-87)

Southeastern Transport, Inc. - Order Approving Name Change from Southeastern Traffic Service Corp., for Certificate No. C-1494
T-2769, Sub 1 (10-27-87)

TNT, Pilot, Inc. - Order Approving Name Change from Pilot Freight Carriers, Inc., for Certificate No. C-1146
T-192, Sub 9 (5-11-87)

Ward's Mobile Home Service, Wilma Jean Ward, t/a - Order Approving Name Change from Etchell Ward, t/a Ward Mobile Home Service
T-2544, Sub 1 (1-20-87)

RATES - MOTOR COMMON CARRIERS

Motor Common Carriers - Order Granting Increase in Rates and Charges by Amending Class and Commodity Rates
T-825, Sub 297 (1-13-87)

Motor Common Carriers - Order Granting Increase of 15% on Rates and Charges on the Transportation of Household Goods in North Carolina
T-825, Sub 298 (4-15-87)

Motor Common Carriers - Order Granting Increase in Rates and Charges by Restructuring Class Rates
T-825, Sub 299 (6-1-87)

RESCINDING ORDERS CANCELLING AUTHORITY

Company and Certificate No.	Docket Number	Date
Milovitz Mobile Home Moving William Ray Milovitz, d/b/a	T-1853, Sub 5	1-28-87
Herman Stewart	T-2402, Sub 1	2-23-87

SALES AND TRANSFERS/CHANGE OF CONTROL

Blue Ridge Transfer Co., Inc. - Order Approving Sales and Transfer of Certificate No. C-87 from Valley Transfer, Inc.
T-1897, Sub 2 (11-18-87)

Builders Transport, Inc. - Order Approving Sale and Transfer of Permit No. P-385 from Dedicated Fleet, Inc.
T-1638, Sub 7 (9-18-87)

Douglas and Sons, Inc. - Order Approving Sales and Transfer of Permit No. P-240 from J. W. Douglas
T-1635, Sub 4 (7-23-87)

Embers Express Trucking Company, Inc. - Order Approving Sale and Transfer of Certificate No. C-1322 from Highland Trucking, Inc., d/b/a The Highland Company
T-2319, Sub 1 (5-22-87)

Gilbert Transfer Company - Order Approving Authority to Acquire Control of Gilbert Transfer Company, Holder of Permit No. P-68, by Stock Transfer from Samuel Moore Gilbert to David Everidge Gilbert
T-703, Sub 5 (6-23-87)

Harvey, L., & Son, Inc. - Order Approving Sale and Transfer of a Portion of Certificate No. C-317 from Tidewater Transit Co., Inc.
T-2878 (10-22-87)

Hildebran Freight Brokers, Inc. - Order Approving Sale and Transfer of Certificate No. C-1353 from Highland Transport, Inc.
T-2857 (9-18-87)

J.E.D. Transport, Inc. - Order Approving Sale and Transfer of Certificate No. C-889 from Southern Hobgood Transport, Inc.
T-2817 (5-22-87)

Lamb's Mobile Home Movers, William David Lamb, d/b/a - Order Approving Sale and Transfer of Certificate No. C-899 from Sam N. Lamb, Jr., d/b/a Lamb's Mobile Home Movers
T-1729, Sub 5 (8-19-87)

Leaseway Customized Transport, Inc. - Order Approving Sale and Transfer of Certificate No. P-328 from LDF, Inc.
T-2226, Sub 2 (10-22-87)

Metro Air-Land Express, Inc. - Recommended Order Approving Sale and Transfer of Certificate No. C-536 from Mid-State Delivery Service, Inc.
T-2712 (5-20-87)

PAC Transport, Inc. - Order Approving Sale and Transfer of Certificate No. C-161 from East Carolina Oil Transport, Inc.
T-2816 (5-22-87)

Pierce Mobile Home Service, Alton Pierce, d/b/a - Order Approving Sale and Transfer of Certificate No. C-1382 from Hudson Properties, Inc.
T-2852 (9-18-87)

Postmasters, Inc. - Recommended Order Granting Application to Purchase Certificate No. C-1113 from Pick-Up & Delivery Service, Inc.
T-2683, Sub 1 (1-20-87)

Ricks/Kelly Mobile Home Moving Service, Roy Strathmore Kelly, III, d/b/a - Order Approving Sale and Transfer of Certificate No. C-945 from Walter Graham Ricks, Jr., d/b/a Ricks Trailer Park
T-2883 (11-18-87)

Service Recovery Corporation - Order Approving Sale and Transfer of Certificate No. C-1292 from Hamrick Mobile Homes, Inc.
T-1752, Sub 4 (5-26-87)

Spinco, Inc. - Order Approving Sale and Transfer of Certificate No. C-352 Issued to Southern Spindle and Flyer Company, Inc.
T-2781 (3-23-87)

Standard Trucking Company and Star Freight, Inc. - Order Approving Transfer of Certificate Nos. C-356 and C-1374 by Stock Transfer from Triad Carriers, Inc. to Standard Holding Corporation
T-325, Sub 5, and T-2581, Sub 1 (9-29-87) (cross-referenced)

Star Freight, Inc., and Standard Trucking Company - Order Approving Transfer of C-356 and C-1374 by Stock Transfer from Triad Carriers, Inc., to Standard Holding Corporation
T-2581, Sub 1, and T-325, Sub 5 (9-29-87) (cross-referenced)

SECURITIES

Freight Shuttle, Inc. - Order Approving Transfer of Stock in Certificate No. C-896 from G. D. McManus and D. W. Gilliam to McGil Specialized Carriers, Inc.
T-2532, Sub 2 (5-22-87)

MISCELLANEOUS

Crete Carrier Corporation - Order Granting Request to Self-Insure
T-1900, Sub 1 (7-28-87)

Ideal Towing Service, Howard E. Cox, t/a - Final Order Overruling Exceptions and Affirming Recommended Order Granting Common Carrier Authority
T-2768 (6-9-87) (HEARD BEFORE SIX COMMISSIONERS)

Leon Mack Nixon, Nixon Trucking, d/b/a - Order Approving Authority to Lease a Portion of Certificate No. C-259 from J. D. McCotter, Sr.
T-2866 (10-22-87)

Pamlico Mobile Home Movers, Inc. - Order Rescinding Order Approving Sale and Transfer of Certificate No. C-1387 Issued to Stanley Howard Chambers, d/b/a Chambers Mobile Home Movers
T-2741 (1-29-87)

Triad Film Transport Co., Charlie Benson & Rodney F. Cummings, d/b/a - Final Order Ruling on Exceptions and Granting Application, in Part
T-2742, Sub 1 (5-19-87)

Wendell Transport Corporation - Order Closing Docket Without Prejudice
T-1287, Sub 43 (12-31-87)

RAILROADS

AGENCY STATIONS

Southern Railway Company - Recommended Order Granting Petitions to Close the Agency Stations Located at Newton, Marion, Morganton, and Old Fort and Restructure Its Western North Carolina Freight Agency Operations
R-29, Subs 607 - 612 (4-13-87)

Southern Railway Company - Order Granting Petition to Reduce the Agency Service from a Six-Day Per Week to a Five-Day Per Week Assignment at Elizabeth City
R-29, Sub 648 (6-11-87)

MOBILE AGENCY AND NONAGENCY STATIONS

Atlantic and East Carolina Railroad Company and Camp Lejune Railroad Company - Order Granting Petition to Close the Agency Station at Havelock and to Add Havelock and the Non-Agency Stations of Cherry Point, Newport, Kellum, Camp Lejune, Hawkside, and Camp Lejune Junction (all Presently Governed by the Havelock Agency) to Those Non-Agency Stations Governed by the Agency at New Bern
R-29, Sub 687 (11-20-87)

CSX Transportation, Inc. - Order Granting Authority to Reassign Abbottsburg, Bladenboro, Clarkton, and Rosindale, from the Chadbourn Mobile Agency to the Fayetteville Mobile Agency No. 2
R-71, Sub 151 (7-2-87)

CSX Transportation, Inc. - Order Granting Application to Consolidate Two Mobile Agencies Based at Hamlet into One Mobile Agency Based at Hamlet
R-71, Sub 152 (6-26-87) (Errata Order 7-16-87)

CSX Transportation, Inc. - Order Granting Application to Include Wilson in the Rocky Mount No. 2 Mobile Agency at Rocky Mount and to Change the Status of Kenly to a Non-Agency Station
R-71, Sub 156 (12-4-87)

Seaboard System Railroad, Inc. - Recommended Order Granting Application to Relocate the Henderson Mobile Agency to Raleigh as Raleigh Mobile Agency #2 and to Include Henderson and the Nonagency Station of Middleburg in the Service Area of the Relocated Mobile Agency on a Permanent Basis and Closing Docket
R-71, Sub 138 (4-1-87)

Southern Railway Company - Order Granting Petition to Close the Agency Station at Kinston and to Add Kinston and The Nonagency Stations of LaGrange, Falling Creek, Hines Junction, and East Kinston to Mobile Agency Route SOU-NC-12 at Goldsboro
R-29, Sub 651 (6-11-87)

Southern Railway Company - Order Granting Petition to Abandon the Nonagency Station of Buffalo and Remove the Station from the Open and Prepay Station List
R-29, Sub 659 (5-28-87)

Southern Railway Company - Order Granting Petition to Abandon the Nonagency Station of Glen Alpine and Remove the Station from the Open and Prepay Station List
R-29, Sub 666 (6-18-87)

Southern Railway Company - Recommended Order Granting Petition to Close Agency Stations at Elkin and Mocksville, Add Non-Agency Stations at Rural Hall, and Abolish Mobile Agency Route SOU-NC-4 and Revise Mobile Agency Route SOU-NC-6
R-29, Sub 673-676 (11-24-87)

Winston-Salem Southbound Railway Company - Order Granting Petition to Abandon the Team Track and Nonagency Station at Newsom
R-35, Sub 14 (8-21-87)

SIDE TRACKS AND TEAM TRACKS - Order Granting Petition/Authority to Retire and Remove Track

CSX TRANSPORTATION, INC.

Docket Number	Date	Track	Town
R-71, Sub 153	9-16-87	Track No. 3	Middleburg
R-71, Sub 154	9-16-87	Team Track	Manly
R-71, Sub 157	12-21-87	Team Track	Black Creek

CAROLINA AND NORTHWESTERN RAILWAY COMPANY, a Subsidiary of Southern Railway System

Docket Number	Date	Track	Town
R-29, Sub 644	3-5-87	Unused Industrial Lead Track North & East of Wilson Street	Framville
R-15, Sub 18	5-6-87	Track No. 27-5L	Spray

NORTH CAROLINA RAILROAD COMPANY, Southern Railway System as Lessee

Docket Number	Date	Track	Town
R-29, Sub 597	10-13-87	357-10	Concord

SOUTHERN RAILWAY COMPANY (NORTH CAROLINA RAILROAD COMPANY)

Docket Number	Date	Track	Town
R-29, Sub 516	3-27-87	S-36-1	Buffalo
R-29, Sub 528	9-4-87	50-6	Conover
R-29, Sub 556	3-25-87	30-3	Mooresville
R-29, Sub 580	4-7-87	111-2	Lenior
R-29, Sub 593	4-10-87	284-7 and 284-8	Greensboro
R-29, Sub 613	1-2-87	Depot Building	Gastonia
R-29, Sub 615	4-7-87	110-3	Lenoir
R-29, Sub 619	1-21-87	45-2	Sylva
R-29, Sub 624	2-5-87	2-16	Charlotte
R-29, Sub 625	3-16-87	Track Serving Hancock Bonded Warehouse	Butner

R-29, Sub 627	5-8-87	Serving Salisbury Crafts	Salisbury
R-29, Sub 628	2-4-87	Formerly Serving Ideal Brick Company	Slocomb
R-29, Sub 630	2-4-87	285-13 and 285-12	Greensboro
R-29, Sub 632	2-4-87	153-3	Shelby
R-29, Sub 633	1-8-87	Depot Building	Star
R-29, Sub 634	3-18-87	Track Formerly Serving Wilson Ice & Coal Company	Wilson
R-29, Sub 635	4-7-87	Formerly Serving Projection Products, Inc.	Newton
R-29, Sub 636	2-5-87	Formerly Serving Hancock Bonded Warehouse Corp.	Henderson
R-29, Sub 637	2-5-87	177-4	Forest City
R-29, Sub 638	2-4-87	149-1	Patterson Springs
R-29, Sub 639	1-20-87	Formerly Serving Glu-Gas Co., Inc.	Patterson Springs
R-29, Sub 643	2-12-87	58-2 (Milepost H-57)	Durham
R-29, Sub 645	3-4-87	6 Unused Depot Tracks 14-3, 14-4, 14-5, 14-7 14-8, and 14-9	Henderson
R-29, Sub 650	4-7-87	Portion of Track Formerly Serving John Umstead Hospital	Butner
R-29, Sub 652	9-21-87	Formerly Serving REA Construction Company	Juneau
R-29, Sub 653	4-17-87	277-4 (Pomona Foundry)	Rudd
R-29, Sub 654	4-2-87	27-4,	Kinston
R-29, Sub 655	4-16-87	260-9	Reidsville
R-29, Sub 658	5-11-87	Formerly Serving Morehead Builders Supply	Morehead City
R-29, Sub 660	6-4-87	20-9	Hendersonville
R-29, Sub 661	10-1-87	1-4	Craggy
R-29, Sub 663	6-30-87	Portion of No. 180-1	Forest City
R-29, Sub 664	7-14-87	10-1	Arden
R-29, Sub 665	7-1-87	Portion of No. 18-1	Guthrie
R-29, Sub 667	8-3-87	Portion of No. S-139.14	Asheville
R-29, Sub 669	8-28-87	169-5	Selma
R-29, Sub 670	10-13-87	2-1, Mile Post W-1.8	Asheville
R-29, Sub 672	7-28-87	6-5, Mile Post R-2.6	Charlotte
R-29, Sub 672	7-29-87	4-10, Mile Post R-3.7	Charlotte
R-29, Sub 672	7-30-87	1-17, Mile Post R-0.7	Charlotte
R-29, Sub 672	7-30-87	2-3, Mile Post R-1.2	Charlotte
R-29, Sub 672	8-10-87	1-14	Charlotte
R-29, Sub 672	8-18-87	6-6, Mile Post R-4.2	Charlotte
R-29, Sub 672	8-18-87	376-63	Charlotte
R-29, Sub 672	8-18-87	1-15, Mile Post R-0.9	Charlotte
R-29, Sub 672	8-19-87	367-41	Charlotte
R-29, Sub 672	8-19-87	3-5, Mile Post R-2.1	Charlotte
R-29, Sub 672	8-19-87	2-17, Mile Post R-1.1	Charlotte
R-29, Sub 672	8-19-87	2-10, Mile Post R-2.0	Charlotte
R-29, Sub 672	8-19-87	376-37, Mile Post 376	Charlotte
R-29, Sub 672	8-25-87	4-7, Mile Post R-3.7	Charlotte
R-29, Sub 672	8-25-87	2-2, Mile Post R-1.9	Charlotte

R-29, Sub 672	8-25-87	3-3, Mile Post R-2.8	Charlotte
R-29, Sub 677	10-13-87	28-5	Waynesville
R-29, Sub 678	11-30-87	Portion of Track Formerly Serving Twin States Distributing Company	Charlotte
R-29, Sub 679	10-2-87	56-7, 56-4	Oxford
R-29, Sub 685	11-9-87	4-1	Asheville

Southern Railway Company - Order Allowing Withdrawal of Petition to Retire and Remove a Track at Andrews
R-29, Sub 560 (6-17-87)

MISCELLANEOUS

Southern Railway Company - Order Granting Petition to Receive Waiver of Rule R3-3(a) to Permit a Five-Day per Week Operation of the Freight Agency at Lenoir
R-29, Sub 640 (3-3--87)

TELEPHONE

APPLICATIONS WITHDRAWN OR DISMISSED

American Paging, Inc. (of North Carolina) - Order Dismissing Application
P-158 (1-30-87)

CERTIFICATES

Cellular Services of Asheville, Asheville Metronet, Inc. d/b/a - Recommended Order Granting Certificate to Resell Cellular Service, Approving Initial Rates, Charges, and Regulations to Serve the Asheville MSA, and Approving Tariffs as Amended
P-186 (9-29-87)

Fayetteville Cellular Telephone Company Limited Partnership - Recommended Order Granting Certificate to Provide Retail and Wholesale Cellular Radio Communications Service and Approving Initial Tariffs
P-181 (4-16-87)

Fayetteville, North Carolina MSA, Limited Partnership - Recommended Order Granting Certificate to Provide Cellular Mobile Telephone Services to the Fayetteville, North Carolina, Metropolitan Statistical Area
P-179 (4-16-87) (Adopting Recommended Order of April 16, 1987 4-21-87)

Mid-Atlantic Telephone Service - Order Granting Certificate to Provide Intrastate Long-Distance Telecommunications Services in North Carolina on a Resale Basis
P-176 (3-4-87)

United States Cellular Telephone Company (Asheville) - Recommended Order Granting Certificate to Provide Retail and Wholesale Cellular Radio Communications Service and Approving Tariffs
P-182 (5-26-87)

Wynn-Hill, Inc. - Recommended Order Granting Certificate to Provide Intrastate Interexchange Resell Telecommunications Services
P-184 (7-6-87)

COMPLAINTS

ALLTEL Carolina, Inc. - Order Closing Docket in Complaint of North Carolina Farm Bureau Federation
P-118, Sub 43 (1-26-87)

Carolina Metronet, Inc. - Order Closing Docket in Complaint of Frank W. McDowell, CDP
P-153, Sub 5 (6-9-87)

Carolina Telephone and Telegraph Company - Recommended Order Resolving Complaint of Kinston Office Supply Company and Closing Docket
P-7, Sub 714 (10-29-87)

Central Telephone Company - Recommended Order Announcing Orange County Emergency Telephone Number for Timberlake Residents in Complaint of Joan B. Gamwell and Closing Docket
P-10, Sub 429 (12-9-87)

General Telephone Company of the South, Central Telephone Company, and AT&T Communications of the Southern States, Inc. - Order Allowing Voluntary Dismissal of Complaint of Orange County Board of Commissions Without Prejudice and Cancelling Hearing
P-89, Sub 23 (9-2-87)

General Telephone Company of the Southeast - Order Accepting Settlement in Complaint of Norman C. Glenn, d/b/a Glenn's Garbage Service, and Closing Docket
P-19, Sub 213 (7-8-87)

Lexington Telephone Company - Order Accepting Report and Closing Docket in Complaint of Wynn-Hill, Inc., on July 1, 1987
P-31, Sub 116 (6-9-87)

Lexington Telephone Company - Order Closing Docket in Complaint of Wynn-Hill, Inc.
P-31, Sub 116 (7-9-87)

Lexington Telephone Company - Order Closing Docket in Complaint of Connie Hartley
P-31, Sub 118 (12-31-87)

Mebane Home Telephone Company - Order Accepting Agreement of the Parties with Respect to Telephone Service in Complaint of Robert Sartin
P-35, Sub 81 (4-16-87)

North State Telephone Company and Southern Bell Telephone and Telegraph Company - Order Dismissing Complaint of Ms. Sherri M. Fields and Closing Docket
P-89, Sub 29 (6-9-87)

Phone America - Order Closing Docket in Complaint of John T. Wabich, d/b/a Office Products Systems, Inc.
P-166, Sub 2 (9-4-87)

Southern Bell Telephone and Telegraph Company and BellSouth Advertising and Publishing Corporation - Order Requiring Payment of Yellow Pages Ad Over a 12-Month Period in Complaint of The Boulevard Florist, Inc.
P-89, Sub 24 (5-29-87)

Southern Bell Telephone and Telegraph Company and Lexington Telephone Company - Order Closing Docket in Complaint of W. H. Beard, President, Archdale Construction Company
P-89, Sub 25 (3-2-87)

Southern Bell Telephone and Telegraph Company and BellSouth Advertising and Publishing Corporation - Order Allowing Withdrawal of Complaint of Daniel Longenecker, MSN, RN, CS, Triad Nursing Consultation, and Closing Docket
P-89, Sub 31 (8-28-87)

Southern Bell Telephone and Telegraph Company - Order Placing Docket in Complaint of Ms. Betty W. Weatherby on Inactive Status
P-55, Sub 872 (3-13-87)

Southern Bell Telephone and Telegraph Company - Recommended Order Denying Complaint of Thomas R. Woodson, d/b/a Mid-Atlantic Telephone Company
P-55, Sub 873 (4-9-87)

Southern Bell Telephone and Telegraph Company - Order Closing Docket in Complaint of Benjie Byrd and Ken Zipin, d/b/a TIW Sysops
P-55, Sub 878 (2-17-87)

Southern Bell Telephone and Telegraph Company - Order Ruling on Public Staff Petition in Complaint of the Public Staff - North Carolina Utilities Commission
P-55, Sub 886 (5-20-87)

Southern Bell Telephone and Telegraph Company and Bell South Advertising and Publishing Company - Order Closing Docket in Complaint of Sylvia N. Stuart, d/b/a Balloon-A-Grams
P-89, Sub 27 (4-24-87)

Southern Bell Telephone and Telegraph Company and Carolina Telephone and Telegraph Company - Order Reaffirming Orders of July 7 and September 29, 1987, and Closing Docket in Complaint of William Earl Ormond
P-89, Sub 30 (10-27-87)

Telamarketing of Fayetteville - Order Closing Docket in Complaint of Wellons Reality, Inc.
P-164, Sub 2 (4-24-87)

U. S. Sprint Telecommunications - Order Closing Docket in Complaint of Gail Lashock
P-175, Sub 2 (6-23-87)

EXTENDED AREA SERVICE (EAS)

Barnardsville Telephone Company, Inc. - Order Approving Implementation of EAS in Buncombe County Including Barnardsville (Commissioner Tate dissents.)
P-75, Sub 33, and P-75, Sub 34 (3-12-87)

Carolina Telephone and Telegraph Company - Order Requiring Customer Poll for Extended Area Service Between Pittsboro and Chapel Hill
P-7, Sub 709 (3-27-87)

Carolina Telephone and Telegraph Company - Order Approving Extended Area Service Between Pittsboro and Chapel Hill (Commissioner Tate and Commissioner Wright dissent. Commissioner Redman did not participate.)
P-7, Sub 709 (6-12-87)

Carolina Telephone and Telegraph Company - Order Approving Implementation of Extended Area Service Between Fuquay-Varina, Apex and Cary
P-7, Sub 711 (12-14-87)

Communications Properties Associates - Order Approving Extension of Service Area to Include a Contiguous Area
P-172, Sub 3 (12-4-87)

Southern Bell Telephone and Telegraph Company - Order Authorizing EAS Poll of Its Iredell County Subscribers (Commissioner Tate and Commissioner Wright dissent.)
P-55, Sub 859 (3-11-87)

Southern Bell Telephone and Telegraph Company - Order Authorizing Implementation of Extended Area Service Between RDU and Durham and RDU and Chapel Hill in Conformity with Provisions of the Order Previously Entered in This Docket on January 21, 1987 (Commissioner Tate dissents.)
P-55, Sub 879 (3-25-87) (Errata Correcting Docket Number 3-27-87)

MERGERS

Joint Application of Communications Satellite Corporation and Contel Corporation and Continental Telephone Company of North Carolina, Inc. - Order Approving Merger of Continental Telephone Company of North Carolina, Inc., Through Parent Corporation Merger
P-128, Sub 15 (1-20-87)

NAME CHANGE

TelaMarketing Communications of the Piedmont - Order Granting Authority to Change Name to Tri-Tel Communications Effective December 28, 1987
P-163, Sub 3 (12-3-87)

ORDERS AND DECISIONS LISTED

RATES

AT&T Communications of the Southern States, Inc. - Order Allowing AT&T Communications of the Southern States, Inc., to Reduce InterLATA MTS Rates Effective July 1, 1987 (cross-referenced - General Orders)
P-140, Sub 15, and M-100, Sub 113 (6-29-87)

General Telephone Company of the South - Order Granting General Telephone Company of the South's Motion to Modify Commission Order Granting Partial Increase in Rates and Requiring Service Improvements
P-19, Sub 207 (3-16-87)

General Telephone Company of the South - Order Approving Rate Increase to Adjust Its Rates and Charges Applicable to Intrastate Telephone Service in North Carolina
P-19, Sub 207 (9-24-87)

Southern Bell Telephone and Telegraph Company - Order Authorizing E911 Service in Cleveland County ($0.42 per month for 18 months)
P-55, Sub 859 (8-19-87)

SALES AND TRANSFERS

Business Telecom, Inc. - Order Transferring Assets and Operating Authority from Discount Watts Lines, Inc.
P-165, Sub 5 (7-20-87)

E-Z Page, Inc. - Order Transferring Operating Rights from Coastal Communications, Inc.
P-187 (10-8-87)

Fayetteville Metronet, Inc. - Order Transferring Assets and Operating Authority from Fayetteville Cellular Telephone Company Limited Partnership d/b/a Cellular One From C-TAC I, Inc.
P-181, Sub 1 (11-4-87)

SouthernNet Services, Inc. - Order Transferring Assets and Operating Authority from Tel/Man, Inc., d/b/a Tel/Amco
P-156, Sub 5 (2-13-87)

SECURITIES

Carolina Telephone and Telegraph Company - Order Allowing Transfer of Directory Related Assets and Holding Request for Contract Approval in Abeyance
P-7, Sub 713 (5-20-87)

Citizens Telephone Company - Order Granting Authority to Borrow Funds from the Rural Telephone Bank
P-12, Sub 84 (9-3-87)

General Telephone Company of the South - Order Granting Authority to Issue and Sell First Mortgage Bonds and/or Promissory Notes and Common Stock
P-19, Sub 214 (8-6-87)

Mebane Home Telephone Company - Order Approving Load from the Rural Telephone Bank
P-35, Sub 82 (8-6-87)

The Concord Telephone Company - Order Granting Authority to Declare and Make a Common Stock Distribution
P-16, Sub 154 (5-15-87)

Telecommunications Systems, Inc. - Order Approving Stock Transfer from Its Shareholders to SouthernNet, Inc.
P-133, Sub 3 (4-17-87)

SPECIAL CERTIFICATES

Docket Number	Date	Company
SC-131	1-7-87	Eastern Distributing Company, Inc.
SC-132	1-15-87	Purcell Enterprises (Donald R. Purcell)
SC-133	1-15-87	Public Telephone Company of Greensboro
SC-134	1-15-87	Nadine H. Fee, d/b/a Bessemer Village Laundromat, Inc.
SC-135	1-21-87	Dan C. Austin
SC-136	1-21-87	Ronald L. O'Bryant
SC-137	1-26-87	Telephone Network Services, Inc.
SC-138	1-26-87	Steven T. Bullard
SC-139	2-4-87	Springer-Eubank Oil Company
SC-140	2-4-87	Joseph A. Mueller
SC-141	2-4-87	Hi-Tech Auto - Dominick Matarese
SC-142	2-16-87	F. W. Hildebrand, t/a Putt Putt Golf and Games
SC-143	2-16-87	Robert Henley Mitchell
SC-144	2-17-87	Silance Service Center - Isiac Silance
SC-145	2-17-87	Hazen Glenn Lancaster
SC-146	2-17-87	Tarheel Triad Girl Scout Council, Inc.
SC-147	2-26-87	Emro Marketing Company
SC-148	2-26-87	Steve R. Waters
SC-149	3-4-87	The Nicholas Restaurant
SC-150	3-4-87	Quality Laundry & Cleaners
SC-151	3-4-87	West Davidson High
SC-152	3-11-87	South Little League Inc.
SC-154	3-11-87	Parker LP Gas Company
SC-155	3-18-87	Fevzi D. Akbay
SC-156	3-18-87	William S. Lancaster
SC-157	3-18-87	Robert L. Whitman, Jr.
SC-158	3-18-87	Vanguard Supreme
SC-159	3-26-87	Hauser Vending Co., Inc.
SC-160	3-26-87	Charles Godfrey
SC-161	3-26-87	James G. Monahan II
SC-162	3-26-87	Carolina Pay Telephones, Inc. (Name changed 5-28-87)
SC-163	3-26-87	Dew Oil Company
SC-164	4-7-87	Network International Marketing Company (NIMCO)
SC-165	4-7-87	Call Center Communications, Inc.
SC-166	4-14-87	Gary L. Crumpler, d/b/a Consolidated Payphones
SC-167	4-14-87	3100 Associates

SC-168	4-23-87	Thomas E. Augustine (NASCO) - The Corporation
SC-169	4-23-87	Payphone of Davidson County
SC-170	4-23-87	Northside Exxon
SC-171	4-28-87	Barnacle Bill's Inc.
SC-172	4-28-87	Triangle Telephone Company
SC-173	4-28-87	Hardee's Food Systems, Inc.
SC-174	5-5-87	Michael Karaman
SC-175	5-5-87	Zip Communications
SC-176	5-5-87	Coy Doby Exxon
SC-177	5-5-87	College Hill Sundries
SC-178	5-5-87	Sav-Way Food Stores
SC-179	5-12-87	John F. Vitt
SC-180	5-12-87	Wilbert Darrell Lewis
SC-181	5-12-87	Seneca T. Ferry
SC-182	5-12-87	Casey Jones
SC-183	5-20-87	The Pepper Mill Restaurant
SC-184	5-20-87	Ossipee Ski Lodge
SC-185	5-20-87	Truck and Bus Center
SC-186	5-20-87	Southern General Inc.
SC-187	5-28-87	Mitchell's Hairstyling Academy
SC-191	6-11-87	Kentucky Derby Hosiery Company
SC-192	6-17-87	Wooten Oil Company
SC-193	6-17-87	Rouse-Watson, Inc.
SC-194	6-17-87	Journigan's Food Stores, Inc.
SC-195	6-17-87	Elaine Jones McLeod
SC-196	7-1-87	William E. Baldwin
SC-197	7-8-87	Neon, Inc./Dreams
SC-198	7-8-87	J. A. Davis
SC-199	7-8-87	Our Town Phone Directory, Inc.
SC-200	7-21-87	U-Fill'Er-Up, Inc./Lube World/Business Fuels
SC-201	7-21-87	Jered Vending
SC-202	7-21-87	Gary F. Huelter
SC-203	7-30-87	Advanced Telecom, Inc.
SC-204	7-30-87	Ester Communications
SC-205	7-30-87	Honey's Restaurant
SC-206	8-4-87	Terry Piper
SC-207	8-4-87	Gurner D. Baines
SC-208	8-20-87	J. D. Hughes, Jr.
SC-209	8-31-87	K. L. Peterson Marketing, Inc. (Errata Order - 8-28-87)
SC-210	8-28-87	Robert D. Foy
SC-211	8-28-87	Hill-Crest Golf Club, Inc.
SC-212	9-1-87	M and S Inc.
SC-213	9-1-87	ROHI Marketing, Inc.
SC-214	9-1-87	Danagail Telecommunications
SC-215	9-15-87	Linn Corriher
SC-216	9-15-87	North Star Entertainment, Inc.
SC-217	9-15-87	Service Distributor Company
SC-218	9-15-87	Chowan College
SC-219	9-15-87	Turner Oil Company of Wilson, Inc.
SC-220	9-15-87	L. H. Cannon, Jr.
SC-221	9-25-87	Papagayo Restaurant
SC-222	9-25-87	Greenville Express Car Wash

SC-223	9-28-87	Ronald R. Stephens
SC-224	9-28-87	Advanced Payphone Systems
SC-225	10-7-87	Greentree Inn
SC-226	10-7-87	David Chin
SC-227	10-7-87	Villane, Inc.
SC-228	10-7-87	Rawls & Winstead, Inc.
SC-229	10-7-87	Rigby's Inc.
SC-230	10-7-87	U.S. Pay Phone Company, Inc.
SC-231	10-7-87	Performance, Inc.
SC-232	10-7-87	Park's Grocery, Marshall Parks d/b/a
SC-233	10-14-87	E. James Parker, Jr.
SC-234	10-13-87	William B. Edwards
SC-235	10-13-87	Chris J. Peterson
SC-236	10-13-87	Fast Brothers, Inc.
SC-237	10-21-87	Three Winks Grocery
SC-238	10-21-87	Ted Mull
SC-239	10-21-87	Sam Parham
SC-240	10-21-87	Devane & Associates
SC-241	10-28-87	Johnny Worrell, Jr.
SC-242	10-28-87	CBM Communication
SC-243	10-28-87	Cargocare Transportation Company, Inc.
SC-246	11-10-87	Planters Oil Company
SC-247	11-10-87	Just Seven Numbers Communications, Inc.
SC-248	11-10-87	Commercial Oil Company
SC-249	11-10-87	Ronco, Inc.
SC-250	11-17-87	Edwin P. McKnight
SC-251	11-17-87	Bruning Enterprises, Inc., d/b/a Quik Shop-Gas Stop
SC-252	11-17-87	John W. Beach, Jr.
SC-253	11-25-87	Mc. C's Car Wash
SC-254	11-25-87	Miscue Lounge/Bobby G. Langley
SC-255	11-25-87	Aurora Mini Mart
SC-256	12-8-87	Marcus A. Crowder
SC-257	12-8-87	Propst Brothers Distributors, Inc.
SC-258	12-16-87	Thomas D. Varner
SC-259	12-16-87	The Country Cubbard, Inc.
SC-260	12-16-87	Judi Warlick
SC-261	12-16-87	Lacy H. Davis
SC-262	12-16-87	Terry Simon
SC-263	12-28-87	Carowinds

TARIFFS

AT&T Communications of the Southern States, Inc. - Order Approving Tariffs as Modified, Effective May 1, 1987 (cross-referenced - General Orders) P-140, Sub 9, and P-100, Sub 86 (4-23-87)

Business Telecom, Inc. - Order Cancelling Tariff for DWL and TMC-ENC P-165 and P-165, Subs 1 and 5 (9-2-87)

Heins Telephone Company - Order Approving Tariffs and Notice to Customers P-26, Sub 93 (3-3-87)

Southern Bell Telephone and Telegraph Company - Order Approving Tariff Filing
P-55, Sub 882 (3-26-87)

MISCELLANEOUS

ALLTEL Carolina, Inc. - Order Approving Loan from the Rural Telephone Bank
P-118, Sub 46 (12-23-87)

Carolina Telephone Long Distance, Inc. - Order Requiring Daily Direct Reporting
P-183 (9-16-87)

Centel Cellular Telephone - Order Cancelling Hearing in Application to Add an Unlimited Airtime Usage Plan to Its Offerings and Closing Docket
P-150, Sub 4 (8-28-87)

Central Telephone Company - Order Closing Docket
P-10, Sub 428 (9-15-87)

Communications Properties Associates - Order Approving Discontinuance of Manual Mobile Service and Establishing Rates for Automatic Dial Service in Durham
P-172, Sub 4 (11-25-87)

MCI Telecommunications Corporation - Order Closing Docket
P-141, Sub 6 (6-9-87)

Southern Bell Telephone and Telegraph Company - Order Approving Service for Bald Head Island
P-55, Sub 718 (3-6-87)

Southern Bell Telephone and Telegraph Company - Order Authorizing Implementation of Enhanced Emergency 911 Service in Iredell County and Billing Affected Subscribers the Monthly Charges to Cover the Nonrecurring Charges Associated with the Service
P-55, Sub 859 (5-6-87)

Southern Bell Telephone and Telegraph Company - Order Authorizing Enhanced Emergency 911 Service, Rowan County (Commissioners Tate and Wright, dissenting)
P-55, Sub 859 (7-31-87)

Southern Bell Telephone and Telegraph Company - Order Authorizing Enhanced Emergency 911 Service, Cleveland County (Commissioner Tate, dissenting; Commissioner Wright did not participate.)
P-55, Sub 859 (8-5-87)

Southern Bell Telephone and Telegraph Company - Order Authorizing Enhanced Emergency 911 Service, Buncombe County and Billing Affected Subscribers the Monthly Charges to Cover the Nonrecurring Charges Associated with the Service as Requested
P-55, Sub 859 (11-10-87)

TelaMarketing Communications, Inc. - Order Closing Docket (No Activity for Over Two Years)
P-138 (3-4-87)

Tel-Amco, Inc. - Order Closing Docket (Rendering Moot the Recommended Order issued July 5, 1984)
P-137 (3-2-87)

WATER AND SEWER

APPLICATIONS WITHDRAWN

CCMPH Utility Company, Inc. - Order Allowing Withdrawal of Application and Closing Docket
W-927 (8-26-87)

C.V.T.P., Inc. - Order Allowing Withdrawal of Application and Closing Docket
W-894 (3-25-87)

Carolina Water Service, Inc., of North Carolina and Brandywine Bay Utility Company - Order Amending Application and Withdrawing the Motion to Amend
W-354, Sub 60; W-354, Sub 43; and W-693, Sub 4 (3-9-87)

Emerald Village Water System, O. D. Baldwin, d/b/a - Order Withdrawing Application for Authority to Transfer Franchise to Provide Water Utility Service in Emerald Village Subdivision, Wake County, and Closing Docket
W-184, Sub 4 (12-1-87)

Fairview Water System, W. A. Weston, Jr., and W. K. Shaw, d/b/a - Order Allowing Withdrawal of Application and Closing Docket
W-902, Sub 1 (7-21-87)

Gallagher Trails Enterprises - Order Allowing Withdrawal of Application and Closing Docket
W-603, Sub 3 (11-10-87)

Havelock Development Corporation - Order Allowing Withdrawal of Application to Increase Rates for Water Utility Service in Westbrooke Subdivision, Craven County, and Closing Docket
W-223, Sub 5 (4-8-87)

Miller, R. B., Jr. - Order Allowing Withdrawal of Application, Cancelling Hearing, Closing Docket, and Requiring Public Notice
W-493, Sub 2 (3-25-87)

Mountains Utility Company - Order Allowing Withdrawal of Amended Application to Increase Rates for Water and Sewer Service in Fairfield Mountains Development, Rutherford County
W-808, Sub 2 (7-27-87)

R.O.E. Water Utility Company - Order Withdrawing Application to Increase Rates for Water Utility Service in Rolling Oaks Estates Subdivision, Buncombe County, and Closing Docket
W-820, Sub 1 (10-1-87)

Tarheel Utility Management, Inc. - Order Withdrawing Application and Closing Docket
W-827 (10-26-87) Errata Order (10-29-87)

AUTHORIZED ABANDONMENT OR SUSPENSION

Waverly Mills, Inc. - Order Granting Suspension of Franchise for Term of One Year
W-734 (3-4-87)

Waverly Mills, Inc. - Order Granting Suspension of Franchise to Furnish Water and Sewer Service in East Laurinburg, Scotland County, for Term of One Year
W-734, Sub 1 (9-1-87)

CANCELLATIONS

Hefner Builders, Inc. - Order Authorizing Transfer of Water Utility System to Owner Exempt from Regulation and Cancelling Franchise
W-480, Sub 1 (8-4-87)

Hendrix Development Company, Inc. - Order Authorizing Transfer of Water Utility System to Owner Exempt from Regulation and Cancelling Franchise
W-616, Sub 1 (8-14-87)

M & S Corporation - Order Allowing Discontinuance of Water Service in Old South Subdivision, Cabarrus County, and Cancelling Franchise
W-625, Sub 3 (6-23-87)

CERTIFICATES

Alpha Utilities, Inc. - Order Granting Franchise to Furnish Water Service in Myrtlewood Subdivision, Wake County, and Approving Rates
W-862, Sub 2 (4-14-87)

B & C Development, Inc. - Recommended Order Granting Temporary Operating Authority to Furnish Water Service in Ocean Aire Estates Subdivision, Brunswick County, and Approving Rates
W-924 (12-9-87)

Blue Farm Water System, A. P. Johnson and J. H. Wright, d/b/a - Recommended Order Granting Franchise to Furnish Water Service in Blue Farm Subdivision, Moore County, and Approving Rates
W-926 (11-24-87)

Burnett Construction Company, Inc. - Recommended Order Granting Franchise to Furnish Water and Sewer Service in Faires Farm Subdivision, Mecklenburg County, and Approving Rates
W-892 (1-7-87)

Burnett Construction Company, Inc. - Order Granting Franchise to Furnish Water Service in Brightmoor and Ashley Creek Subdivisions, Mecklenburg County, and Approving Rates
W-892, Sub 1 (3-24-87)

CAC Utilities, Inc. - Order Granting Franchise to Furnish Sewer Service in Yates Mill Run and Briarwood Farms Phase II Subdivisions, Wake County, and Approving Rates
W-812, Sub 4 (2-11-87)

C & W Water Service - Recommended Order Granting Franchise to Furnish Water Service in Meadowcreek Estates Subdivision, Rowan County, and Approving Rates
W-901 (3-6-87)

Campen Carolina Corporation - Recommended Order Approving Franchise to Furnish Water and Sewer Service in Clearview Valley Subdivision, Henderson County, and Approving Rates
W-911 (4-15-87)

Carolina Water Service, Inc. - Order Granting Franchise to Furnish Water and Sewer Service in Corolla Light Development, Currituck County, and Approving Rates
W-354, Sub 47 (4-8-87)

Carolina Water Service, Inc., of North Carolina - Errata Order to Order Issued on October 14, 1986 (attaching Appendix A to Certificate)
W-354, Sub 53 (2-23-87)

Carolina Water Service, Inc., of North Carolina - Order Granting Franchise to Furnish Sewer Service in Spooners Creek Subdivision, Carteret County, and Approving Rates
W-354, Sub 59 (5-20-87)

Clearwater Utilities, Inc. - Order Granting Franchise to Furnish Water Service in Sandy Trail Subdivision, Wake County, and Approving Rates
W-846, Sub 4 (3-31-87)

Coastal Carolina Utilities, Inc. - Recommended Order Granting Franchise to Provide Water and Sewer Service in Quail Woods Subdivision, New Hanover County, and Approving Rates
W-917 (4-23-87)

Compass Utilities - Recommended Order Granting Franchise to Provide Water and Sewer Service in River Landings and Riverbend at Lakeside Subdivisions, Wake County
W-885, Sub 1 (12-30-87)

Cumberland Water Company - Order Granting Franchise to Provide Water Service in Tunbridge Subdivision, Cumberland County, and Approving Rates
W-169, Sub 20 (2-16-87)

Dees and Tyndall, Inc. - Recommended Order Granting Franchise to Provide Sewer Service in Maplewood Subdivision, Wayne County, and Approving Rates
W-923 (9-4-87)

Elk River Development Corporation - Order Granting Franchise to Provide Water and Sewer Utility Service in Elk River Development, Avery County, and Approving Rates
W-803, Sub 1 (9-17-87)

Etowah Sewer Company - Recommended Order Granting Franchise to Provide Sewer Service in Etowah Valley, Henderson County, and Approving Rates
W-933 (12-30-87)

Fearrington Utilities, Fitch Creations, Inc., d/b/a - Order Granting Franchise to Furnish Sewer Service in Fearrington Subdivision, Chatham County, and Approving Rates
W-661, Sub 3 (5-28-87)

Fisher Utilities, Inc. - Order Granting Franchise to Furnish Water Service in Briarwood Farms Subdivision, Wake County, and Approving Rates
W-365, Sub 28 (2-11-87)

Goss Utilities, Inc. - Order Granting Franchise to Furnish Water Service in Lake Ridge Aero Park Subdivision in Durham County and Timberlake Acres Mobile Home Park, Person County, and Approving Rates
W-457, Sub 7 (4-22-87)

Hasty Water Utilities, Inc. - Order Granting Franchise to Furnish Water Service in Park Ridge and Holly Brook Subdivisions, Wake County, and Approving Rates
W-736, Sub 29 (3-5-87)

Hasty Water Utilities, Inc. - Order Granting Franchise to Furnish Water Service in Lake Spring Subdivision, Wake County, and Southills Subdivision, Section II, Johnston County, and Approving Rates
W-736, Sub 31 (4-14-87)

Hasty Water Utilities, Inc. - Order Granting Franchise to Furnish Water Service in Cottonwoods and Jones Dairy Farm Subdivision, Wake County, and Approving Rates
W-736, Sub 32 (4-22-87)

Hasty Water Utilities, Inc. - Order Granting Franchise to Furnish Water Service in Sweetbriar Subdivision, Franklin County, and Myatt Mill Farms Subdivision, Wake County, and Approving Rates
W-736, Sub 33 (4-22-87)

Hasty Water Utilities, Inc. - Order Granting Franchise to Furnish Water Utility Service in Wetherburn Woods and Buxton Subdivisions, Wake County, and Approving Rates
W-736, Sub 34 (7-2-87)

Holiday City Mobile Home Park, Corbin Construction Company, d/b/a - Recommended Order Approving Franchise to Furnish Water and Sewer Service in Holiday City Mobile Home Park, Onslow County, and Approving Rates
W-913 (4-30-87)

Horse Shoe Sewer Company - Recommended Order Granting Franchise to Furnish Sewer Service in Hunter's Glen Subdivision, Henderson County, and Approving Rates
W-916 (8-14-87) (Second Order Requiring Further Notice and Extending Time for Protests 12-2-87)

Hyland Hills Development Group - Recommended Order Granting Franchise to Furnish Water Service in Hyland Hills Subdivision, Moore County, and Approving Rates
W-920 (6-16-87)

Johnston-Wake Utilities, Inc. - Recommended Order Granting Franchise to Furnish Water in Stephanie Woods and Heather Downs Subdivisions, Johnston County, and Approving Rates
W-906 (2-27-87)

Jones Dairy Farm Corporation - Recommended Order Granting Franchise to Furnish Sewer Service in Jones Dairy Farm Subdivision, Wake County, and Approving Rates
W-898 (2-4-87)

Kenmure Utility, Kenmure Properties, Ltd., d/b/a - Recommended Order Granting Franchise to Furnish Sewer Service in Kenmure Subdivision, Henderson County, and Approving Rates
W-904 (2-6-87)

Little, C. F., Construction, Inc. - Recommended Order Granting Franchise to Furnish Water Service in Camelot Subdivision, Cabarrus County, and Approving Rates
W-921 (7-13-87)

Mid South Water Systems, Inc. - Order Granting Franchise to Furnish Sewer Service in Herronwood Subdivision, Iredell County, and Approving Rates
W-720, Sub 59 (3-17-87)

Mid South Water Systems, Inc. - Order Granting Franchise to Furnish Water Service in Shelton Subdivision, Mecklenburg County, and Approving Rates
W-720, Sub 60 (5-28-87)

Mid South Water Systems, Inc. - Order Granting Franchise to Furnish Water and Sewer Service in Ashe Plantation Subdivision, Mecklenburg County, and Approving Rates
W-720, Sub 62 (3-31-87)

Mid South Water Systems, Inc. - Order Granting Franchise to Furnish Sewer Service in Harbor Estates Subdivision, Mecklenburg County, and Approving Rates
W-720, Sub 63 (8-13-87)

North State Utilities, Inc. - Order Granting Franchise to Furnish Sewer Service in Manchester Subdivision, Wake County, and Approving Rates
W-848, Sub 5 (4-22-87)

North Topsail Water and Sewer, Inc. - Recommended Order Granting Franchise to Furnish Sewer Utility Service in Stone Bay, Escoba Bay, and Four Corners Subdivisions, Onslow County, and Approving Rates
W-754, Sub 5 (10-9-87)

Pied Piper Resort, Inc. - Recommended Order Granting Franchise to Furnish Water Service in Piper Village, Sierra Village, and Piper Hamlet Subdivisions, Cherokee County, Approving Rates, and Requiring Service Improvements
W-893 (1-26-87)

Pinnacle, Inc. - Recommended Order Granting Franchise to Furnish Water Service in Knotty Pines Subdivision, Harnett County, and Approving Rates
W-922 (8-17-87)

Rayco Utilities, Inc. - Recommended Order Approving Franchise to Furnish Water and Sewer Service in Penman Heights Subdivision in Randolph County and Sewer Service in Graystone Forest Subdivision, Forsyth County, and Approving Rates
W-899, Sub 1 (1-12-87)

Rayco Utilities, Inc. - Order Granting Franchise to Furnish Sewer Service in Forest Ridge Subdivision, Forsyth County, and Approving Rates
W-899, Sub 2 (4-22-87)

River Hills Sanitation Service, Richard L. Goodman, d/b/a - Recommended Order Granting Franchise to Furnish Sewer Service in River Hills Subdivision, Cabarrus County, and Approving Rates
W-912 (5-11-87)

Rivercreek Utility Company, Ronnie G. Stroud, d/b/a - Recommended Order Granting Franchise to Furnish Water Service in Rivercreek Subdivision, Pitt County, and Approving Rates
W-930 (12-16-87)

Sea Isle Hills Water System, Donald F. Lang and Ralph G. Reed, Jr., d/b/a - Recommended Order Granting Franchise to Furnish Water Service in Sea Isle Hills Subdivision, Dare County, and Approving Rates
W-900 (4-17-87)

Scotsdale Water & Sewer, Inc. - Order Granting Franchise to Furnish Water Service in Turnpike Estates Subdivision, Hoke County, and Approving Rates
W-883, Sub 2 (3-5-87)

Smith, R. Wiley - Order Granting Franchise to Furnish Water Service in Dogwood Knolls Subdivision, Buncombe County, and Approving Rates
W-792, Sub 1 (3-31-87)

T. H. Turner Farms, Inc. - Order Granting Franchise to Furnish Water Service in Turner Farms Subdivision, Section III and IV, Wake County, and Approving Rates
W-687, Sub 1 (10-16-87)

Turner Farms Water Systems, T. H. Turner Farms, Inc., d/b/a - Order Granting Franchise to Furnish Water Service in Turner Farms Subdivision, Section V, Wake County, and Approving Rates
W-687, Sub 3 (9-1-87)

Twin Lake Properties - Recommended Order Granting Franchise to Furnish Water Service in Twin Lake Farm Subdivision, Wake County, and Approving Rates
W-914 (4-14-87)

Vander Water Company, Inc. - Recommended Order Granting Franchise to Furnish Water Service in Tanglewood South Subdivision, Cumberland County, and Approving Rates
W-488, Sub 3 (8-14-87)

Webb Creek Water and Sewage, Inc. - Recommended Order Granting Franchise to Furnish Sewer Service in South Queen's Creek Subdivision, Onslow County, and Approving Rates
W-864 (1-14-87)

Wright, Lee and Delores - Recommended Order Granting Franchise to Furnish Water Service in Turner Drive, Enochville Area, and Wright Beaver Road Service Areas, Rowan County, and Approving Rates
W-909 and W-909, Sub 1 (4-14-87) (Recommended Order on Reconsideration 8-20-87)

Zoe Developing Company, Inc. - Recommended Order Granting Certificate to Furnish Water Service in Weatherstone Subdivision, Cabarrus County, and Setting Initial Rates
W-895 (1-16-87) (Recommended Order on Reconsideration 2-25-87)

COMPLAINTS

Brookwood Water Corporation - Order Dismissing Complaint of Irving & Associates, General Contractors, Inc.
W-177, Sub 24 (5-8-87)

Carolina Water Service, Inc. - Order Closing Docket in Complaint of D. A. Palumbo
W-354, Sub 45 (2-17-87)

Carolina Water Service, Inc., of North Carolina - Order Closing Docket in Complaint of Ms. Rebecca R. Wallace
W-354, Sub 57 (5-8-87)

Clear-Flow Utilities of Greensboro - Order Closing Dockets in Complaints of Gail Withers, Chairperson, Walnut Tree Community Action Committee, and Lynn C. Riddle
W-738, Subs 12 and 15 (2-24-87)

Clear Flow Utilities, Inc. - Order Closing Docket in Complaint of Graystone Forest Homeowners' Association
W-738, Sub 19 (4-8-87)

Cook, L. V., Water Supply - Order Closing Docket in Complaint of Charles A. Parkhurst
W-540, Sub 4 (2-10-87)

Cowan Valley Estates Water System (B.T. Greene, Emergency Operator) - Order Closing Docket in Complaint of Don Livingston
W-829, Sub 2 (4-23-87)

Crestview Water Systems - Recommended Order Dismissing Complaint of Mrs. Cynthia Russell, Russell Properties
W-325, Sub 5 (7-16-87)

G & G, Inc. - Order Cancelling Temporary Operating Authority in Complaint of John F. Padgett and wife, Bernice R. Padgett, and James R. Early and wife, Nel T. Earley, and Closing Docket
W-797 and W-797, Sub 1 (12-14-87)

Hasty Water Utilities, Inc. - Order Accepting Settlement in Complaint of Anthony F. Motola and Closing Docket
W-736, Sub 35 (11-12-87)

Hensley Enterprises, Inc. - Order Closing Docket in Complaint of Larry Thompson
W-89, Sub 27 (10-15-87)

Hydraulics, Ltd. - Order Closing Docket in Complaint of Jamil H. Khan
W-218, Sub 37 (2-9-87)

Hydraulics, Ltd. - Order Closing Docket in Complaint of Hage Construction Co., Inc.
W-218, Sub 41 (9-4-87)

Mercer Environmental Corporation - Order Closing Docket in Complaint of Paul Fleshman
W-198, Sub 21 (10-15-87)

Mid South Water Systems - Order Closing Docket in Complaint of Jean M. Hirsch
W-720, Sub 70 (9-10-87)

Mid South Water Systems - Recommended Order Requiring Improvements in Complaint of John K. Addu
W-720, Sub 65 (11-3-87)

North Topsail Water and Sewer Company - Order Closing Docket in Complaint of Peyton Weldon Hall
W-754, Sub 4 (4-24-87)

North Topsail Water and Sewer Company - Recommended Order in Complaint of Peyton Weldon Hall (Complaint Reinstated)
W-754, Sub 4 (8-21-87)

Pinehurst Water & Sewer Company - Order Closing Docket in Complaint of Bonnie and Robert Israel
W-6, Sub 12 (1-26-87)

Rayco Utilities, Inc. - Recommended Order in Complaint of Thomas F. O'Steen
W-899, Sub 4 (10-14-87)

Rayco Utilities, Inc. - Final Order in Complaint of Thomas F. O'Steen
W-899, Sub 4 (12-15-87)

Riverbend Water System, Inc. - Recommended Order in Complaint of Gilbert C. Unger
W-390, Sub 5 (2-25-87)

DECLARING UTILITY STATUS

Company	Docket Number	Date
Baytree Waterfront Properties, Inc.	W-938	12-28-87
Coastal Carolina Utilities, Inc.	W-917, Sub 1	11-12-87
Deerfield Shores Utility Company, Inc., Gene McClung, d/b/a	W-925	7-17-87
Etowah Sewer Company	W-933	12-17-87
Fearrington Utilities, Fitch Creations, Inc., d/b/a	W-661, Sub 3	3-12-87
Harrco Utility Corporation	W-796, Sub 1	11-12-87
Horse Shoe Sewer Company	W-916	4-8-87
Maplewood Sewer Service, Inc.	W-923	6-2-87
Mid South Water Systems, Inc. (Water and Sewer Service - Ashe Plantation Subdivision, Mecklenburg County)	W-720, Sub 62	2-25-87
Mid South Water Systems, Inc.	W-720, Sub 67	8-20-87
Mountain View Water System (Recommended Order) (and Instituting Abandonment Proceeding)	W-928	9-29-87
Neuse Crossing Utility Corporation	W-937	12-15-87
North State Utilities, Inc.	W-848, Sub 6	10-14-87
North State Utilities, Inc.	W-848, Sub 7	10-14-87
North State Utilities, Inc.	W-848, Sub 8	10-14-87
Oyster Bay Utilities, Inc. (Pender County)	W-831, Sub 1	5-1-87
Scientific Water and Sewage, Inc.	W-176, Sub 21	12-8-87
Tarheel Utility Management, Inc.	W-827, Sub 2	6-30-87

DISCONTINUANCE OF SERVICE -

Coggins Construction Company, Oakmont Water Company, t/a - Order Approving Discontinuance of Water Service in Oakmont Subdivision, Wake County, and to Allow Service to Be Provided by the City of Raleigh and Cancelling Certificate
W-533, Sub 2 (4-8-87)

Economy Finance Company of Concord - Order Granting Discontinuance of Water Service in Maple Drive Subdivision, Cabarrus County, and Allowing Service to Be Provided by the Water and Sewer District of Cabarrus County
W-528, Sub 1 (2-11-87)

Foreman Water Supply, J. D. Foreman, d/b/a - Order Authorizing Discontinuance of Water Service in Lincoln Heights and Sunset Drive Service Areas, Rowan County
W-77, Sub 6 (3-31-87)

Hydraulics, Ltd. - Order Authorizing Discontinuance of Water Service in Ridgeway Courts Subdivision, Rockingham County, for Jerry Hanks
W-218, Sub 42 (12-8-87)

Mid South Water Systems, Inc. - Order (Discontinuance of Water Service in Kentwood Park, Southwood, and Colony, Cabarrus County, with Special Arrangements for Those Customers in Colony Subdivision Residing in Rowan County)
W-720, Sub 57 (3-12-87)

River Run Development, Gilbert Lett, d/b/a - Order Authorizing Discontinuance of Water Service in River Run Subdivision, Lee County
W-884, Sub 1 (1-20-87)

NAME CHANGE

Mid South Water Systems, Inc. - Order Granting Subdivision Name Change from Providence Road West Subdivision to Wyndham Subdivision, Mecklenburg County
W-720, Sub 40 (9-17-87)

Webb Creek Water and Sewage, Inc. - Order Granting Subdivision Name Change from South Queen's Creek Subdivision to Fox Trace Subdivision, Onslow County
W-864, Sub 2 (9-4-87)

RATES

Alpha Utilities, Inc. - Order Granting Rate Increase for Water Service in Altice Subdivision, Wake County, and Requiring Public Notice
W-862, Sub 3 (12-15-87)

Clearwater Utilities, Inc. - Order Granting Rate Increase for Water Service in Heather Glen Subdivision, Durham County, and Requiring Public Notice
W-846, Sub 5 (8-11-87)

Coral Park Community Well, Mrs. Frances Houser, d/b/a - Order Approving Rate Increase, Cancelling Hearing, and Requiring Public Notice
W-717, Sub 1 (1-20-87)

Corriher Water Service, Inc. - Recommended Order Granting Partial Rate Increase for Water Service in all of Its Service Areas in North Carolina
W-233, Sub 13 (9-28-87)

Cowan Valley Estates Water System - Order Approving Rates for Water Service in Cowan Valley Estates, Jackson County, and New Emergency Operator
W-829 (10-28-87)

Cregg Bess, Inc. - Recommended Order Granting Partial Rate Increase for Water Service in all of Its Service Areas, Gaston County, and Requiring Improvements
W-281, Sub 6 (8-18-87)

Crescent Utilities, Inc. - Recommended Order Granting Partial Rate Increase for Sewer Service in All Its Service Areas, Alamance County
W-850, Sub 1 (12-7-87)

Elk River Development Corporation - Order Approving Final Tap on Fees, Clarifying Order, and Cancelling Hearing
W-803, Sub 1 (12-3-87)

Hamlet, Jackson Water Company - Recommended Order Granting Partial Rate Increase for Water Utility Service in all its Service Areas in North Carolina and Requiring Improvements
W-575, Sub 2 (11-18-87)

Havelock Development Corporation - Recommended Order Approving Final Rates for Water Utility Service in Westbrooke Subdivision, Craven County, and Requiring Public Notice
W-223, Sub 6 (9-9-87)

Honeycutt Water Systems - Order Granting Partial Rate Increase for Water Service in Glennburn, Knollwood, and Wimbledon Acres Subdivisions, Gaston County, and Requiring Improvements
W-472, Sub 4 (2-23-87)

Laurel Hill Water Company, Z.V. Pate, d/b/a - Order Granting Partial Rate Increase for Water Service in Laurel Hill Subdivision, Scotland County, and Requiring Improvements
W-67, Sub 6 (2-23-87)

MAM Water and Sewer Corporation - Order Approving Rates for Sewer Service in Its Service Areas in Durham County, Establishing General Rate Case, Suspending Rates, Scheduling Hearing and Requiring Public Notice, and Approving Interim Rates
W-772, Sub 1 (10-1-87)

Mercer Environmental Corporation - Order Approving Rates for Water Service in all of Its Service Areas Served by Water Purchased from Onslow County
W-198, Sub 22 (6-23-87)

Mobile Hill Estates Water System - Recommended Order Granting Partial Increase in Rates for Water Utility Services in Mobile Hill Estates Subdivision, Wake County
W-224, Sub 4 (11-3-87)

Montclair Water Company, Inc. - Recommended Order Approving Rates for Sewer and Street Lighting Service in all Its Service Areas in North Carolina
W-173, Sub 17 (10-5-87)

Powder Horn Mountain Utilities, Inc. - Recommended Order Granting Partial Increase in Rates for Water Service in Powder Horn Mountain Subdivision, Watauga County, and Requiring Improvements
W-478, Sub 1 (11-24-87)

Ridgecrest Baptist Conference Center - Order Granting Rate Increase for Water Service in Ridgecrest Baptist Conference Center, Buncombe County
W-71, Sub 5 (4-22-87)

Rolling Hills Mobile Home Park, Walls Construction Company, Inc., d/b/a - Recommended Order Granting Initial Rates for Water Service in Rolling Hills Subdivision, Gaston County
W-903 (6-10-87)

Ruff Water Company, Inc. - Recommended Order Granting Partial Rate Increase for Water Service in Its Service Areas, Gaston County, and Requiring Service Improvements
W-435, Sub 7 (9-28-87) Errata Order (10-6-87)

Scientific Water and Sewage, Inc. - Order Approving Rates by Passing Through to Its Customers an Increase in Cost of Purchased Water from Onslow County
W-176, Sub 20 (6-23-87)

Scotsdale Water and Sewer, Inc. - Order Approving Interim Emergency Rates, Allowing Public Staff Time to File Response, and Requiring Public Notice
W-883 (1-29-87)

Sentry Utilities, Inc. - Recommended Order Approving Rate Increase for Sewer Utility Service in Hickory Grove Subdivision, Onslow County
W-811, Sub 2 (10-5-87)

Smith, R. Wiley - Recommended Order Granting Rate Increase for Water Utility Service in Dogwood Knolls Subdivision, Buncombe County
W-792, Sub 2 (10-7-87)

Spring Hill Water Corporation - Recommended Order Granting Partial Rate Increase for Water Service in Spring Hill Subdivision, Scotland County, Subject to Rescission
W-247, Sub 2 (8-31-87)

Vander Water Company, Inc. - Recommended Order Granting Partial Rate Increase for Water Service in all Its Service Areas, Cumberland County
W-488, Sub 4 (8-14-87)

SALES AND TRANSFERS

Campbell, J. C., Electric, Jonathan Campbell, d/b/a - Order Approving Transfer of Franchise to Furnish Water Service in Perrytown Subdivision, Bertie County, from Leroy J. Evans and Approving Rate Increase
W-910 (3-24-87)

Carolina Water Service, Inc., of North Carolina - Order Approving Transfer of Franchise to Provide Water Service in Chapel Hills Subdivision, Watauga County, from Taylor and Lyons, Inc., d/b/a Chapel Hills Utility Company, and Approving Rates
W-354, Sub 38 (3-24-87)

Carolina Water Service, Inc., of North Carolina - Order Approving Transfer of Franchise to Provide Water and Sewer Service in Hound Ears Subdivision, Watuaga County, from Elk River Development Corporation, and Approving Rates
W-354, Sub 55 (2-11-87)

Carolina Water Service, Inc., of North Carolina - Order Approving Transfer of Franchise to Provide Water Service in Bogue View Shores Subdivision, Carteret County, from F & H Water Company and Approving Rates
W-354, Sub 58 (5-20-87)

D & W Water Systems - Recommended Order Granting Transfer of Franchise for Water Service in Pineview and Amy Acres Subdivisions, Gaston County, from Lucius Ratchford, and Approving Rates
W-929 (11-25-87)

Forest Hills Water System, James W. Partin and Worth Winebarger, d/b/a - Recommended Order Allowing Transfer of Water Service in Forest Hills Subdivision, Surry County, from Yadkin Water Corporation, and Approving Rates
W-935 (12-30-87)

Franklinville Waste Treatment Company - Recommended Order Granting Transfer of Franchise for Sewer Service in Franklinville, Randolph County, from Randolph Mills, Inc., and Approving Rates
W-905 (4-22-87)

Heater Utilities, Inc. - Order Allowing Transfer of the Water Utility System Serving Hidden Valley and Hidden Valley North Subdivisions, Wake County, to the City of Raleigh and Cancelling Franchise
W-274, Sub 39 (4-14-87)

Hydraulics, Ltd. - Order Approving Transfer of Franchise to Provide Water Service in Chatham and Polks Landing Subdivisions, Chatham County, from Fearrington Utilities, and Approving Rates
W-218, Sub 40 (6-19-87)

Jackson Utility Company - Order Approving Control of Jackson Utility Company to Be Changed Through Stock Transfer and Merger to Fairfield Communities, Inc.
W-448, Sub 3 (3-24-87)

MRM Properties, Inc., Melmount Water Company, d/b/a - Order Allowing Transfer of Water System in Melrose Mountain Subdivision, Polk County, from Melmount Water Company and Cancelling Franchise
W-711, Sub 1 (12-8-87)

Mid South Water Systems, Inc. - Order Approving Transfer of Franchise to Furnish Water Service in Pleasant Lane Extension, Catawba County, from Sandy Pines Corporation and Approving Rates
W-720, sub 48 (1-20-87)

Mountain Lifestyles Development Company, The Mountain Group, d/b/a - Recommended Order Approving Proposal to Transfer Water System to the Town of Seven Devils
W-752, Sub 4 (1-13-87)

Mountain Lifestyles Development Company, Operation of the Mountain Group, d/b/a - Order Approving Transfer in Providing Water and Sewer Service in the Town of Seven Devils
W-752, Sub 4 (12-21-87)

Mountains Utility Company, Inc. - Order Approving Control of Mountains Utility Company, Inc., to Be Changed Through Stock Transfer and Merger to Fairfield Communities, Inc.
W-808, Sub 1 (3-24-87)

North Crest Water System, Inc. - Order Allowing Transfer of Franchises for Providing Water Service in North Crest Heights Subdivision in Alamance County from North Crest Water System, Inc., to Ossipee Sanitary District
W-496, Sub 2 (10-12-87)

Rayco Utilities, Inc. - Recommended Order Approving Transfers of Franchises for Providing Water and/or Sewer Service in Six Service Areas in Stokes, Randolph, and Rowan Counties from Clear Flow Utilities, Inc.
W-899 (1-12-87)

Rayco Utilities, Inc. - Recommended Order Granting Transfer of Franchise to Provide Water Service in Weatherston Subdivision, Cabarrus County, from Zoe Developing Company, Inc., and Approving Rates
W-899, Sub 3 (8-25-87)

Riverbend Water System, Inc., Albert Rudisill, Owner - Recommended Order Approving Transfer of 100% of Its Stock to Ronald L. Hardegree and Geraldine M. Hardegree
W-390, Sub 6 (10-7-87)

Scotsdale Water and Sewer, Inc. - Order Approving Transfer of Franchise to Provide Water Service in Belmont Park Subdivision, Cumberland County, from E. H. Phillips, d/b/a Belmont Park Water Company, Inc., and Approving Rates
W-883, Sub 4 (4-8-87)

Scotsdale Water and Sewer, Inc. - Order Allowing Transfer of Franchise to Provide Water Utility Service in Colonial Heights Extension-Krandon Street Section and Middlecreek Estates Subdivisions, Wake County, from J & H Water Company and Approving Rates
W-883, Sub 5 (11-18-87)

Shade Tree Acres Water System, Jim L. Shuping, d/b/a - Order Approving Transfer of Franchise for Water Service in Shade Tree Acres Subdivision, Rowan County, from Banks Bost, d/b/a Shade Tree Acres Water System, and Approving Increased Rates
W-907 (4-22-87)

T-Square Water, Inc. - Recommended Order Granting Transfer of Water Utility Franchise to Provide Service in Grandview Subdivision, Forsyth County, from Grandview Water Company, Inc., to T-Square Water, Inc., and Approving Rates
W-918 (6-25-87)

Wastewater Services, Inc. (a Texas Corporation) - Order Approving Transfer of the Franchise to Provide Water and Sewer Service in Buffalo Meadows Subdivision, Ashe County, from Wastewater Services, Inc. (a North Carolina Corporation), Cancelling Franchise of Wastewater Services, Inc. (a Texas Corporation), and Approving Rates
W-869, Sub 1 (9-29-87)

Wright, Lee and Delores - Order Approving Transfer of the Franchise to Provide Water Utility Service in Meadowcreek Estates Subdivision, Rowan County, from C and W Water Service, and for Approval of Rates
W-909, Sub 2 (11-2-87)

SECURITIES

Heater Utilities, Inc. - Order Approving Common Stock Transfer to Minnesota Power and Light Company
W-724, Sub 40 (7-8-87)

Hydraulics, Ltd. - Order Approving Common Stock Transfer from Rachel Bainbridge to Manuel L. Perkins
W-218, Sub 33 (9-9-87)

Little, C. F., Construction Company, Inc. - Order Relieving Company of Bonding Requirement
W-921 (8-18-87)

TARIFFS

Carolina Water Service, Inc. - Order Approving Tariff Change
W-354, Sub 60 (7-14-87)

Cregg Bess, Inc. - Order Amending Tariff and Requiring Public Notice in Tablerock Subdivision
W-281, Sub 7 (3-18-87)

Hasty Water Utilities, Inc. - Order Approving Tariff Change
W-736, Sub 30 (3-24-87)

Hydraulics, Ltd. - Order Amending Tariff
W-218, Sub 38 (1-21-87)

Quality Water Supplies, Inc., and Cape Fear Utilities, Inc. - Order Approving Tariff Change
W-225, Sub 16, and W-279, Sub 14 (3-31-87)

TEMPORARY OPERATING AUTHORITY

Mid South Water Systems - Order Granting Temporary Operating Authority and Approving Interim Rates
W-720, Sub 61 (2-24-87)

Poplar Terrace Mobile Home Park, Charley Williams d/b/a - Order Granting Temporary Operating Authority to Furnish Water and Sewer Service in Poplar Terrace Mobile Home Park, Buncombe County, and Approving Rates
W-775, Sub 1 (7-14-87)

Vander Water Company, Inc. - Order Granting Temporary Operating Authority to Furnish Water Service in Tanglewood South Subdivision, Cumberland County, and Approving Rates
W-488, Sub 3 (3-24-87)

MISCELLANEOUS

Bailey's Utilities, Inc., and Glendale Water, Inc. - Order Closing the Following Dockets Due to Inactivity Over a Year
W-365, Subs 15, 21, and 23; W-786, Subs 2 and 3; and W-691, Sub 28 (2-24-87) (cross-referenced)

C & L Utilities, Inc. - Order Amending Tariff
W-535, Sub 6 (11-18-87)

Clear Flow Utilities, Inc. - Order Appointing Emergency Operator for Ridgeway Courts Water System, Rockingham County
W-738, Sub 20 (1-19-87)

Coastal Plains Utility Company - Order Approving Contract and Connection Fees for a 13-Lot Extension in Greenview Ranches Subdivision, New Hanover County
W-215, Sub 9 (9-29-87)

Duke Power Company - Order Approving Revised Water Department Service Regulation No. 3, Leaf F, and Tariffs
W-94, Sub 13 (6-23-87)

Gallagher Trails, Inc. - Order Approving Change in Organizational Structure from a Corporation to a Limited Partnership
W-603, Sub 2 (8-21-87)

Glendale Water, Inc., and Bailey's Utilities, Inc. - Order Closing the Following Dockets Due to Inactivity Over a Year
W-691, Sub 28; W-365, Subs 15, 21, and 23; W-786, Subs 2 and 3 (2-24-87) (cross-referenced)

Jackson Utility Company - Recommended Order Approving Meter Installations
W-448, Sub 2 (12-23-87)

Jones Plumbing Company - Order Closing Docket in Application for a Certificate of Public Convenience and Necessity as the Need no Longer Exists
W-908 (3-24-87)

Mid South Water Systems, Inc. - Recommended Order Recommending Discharge of Emergency Operator for the Meadowview Subdivision, Union County, on August 1, 1987
W-356, Sub 2 (6-12-87)

Pisgah View Subdivision, Haywood County - Recommended Order Closing Docket on Public Utility Status of Water System
W-874 (2-17-87)

R.O.E. Water Utility Company, Jack B. Jenkins and Ernest L. McCombs, d/b/a - Order Requiring Compliance with Order of June 25, 1985, and Specifically Requiring Connection to the Asheville City Water System by a Six-Inch Connector Line
W-820 (3-2-87)

ORDERS AND DECISIONS LISTED

Suburban Heights Water System - Recommended Order by Consent Appointing Emergency Operator Pursuant to G.S. 62-118(b)
W-394, Sub 3 (9-3-87)

Triad Utilities, Inc. - Order Closing Docket in Application to Transfer Franchise to Provide Water Service in Chatham and Polks Landing Subdivisions, Chatham County, from Fearrington Utilities, a North Carolina Partnership
W-802 (6-19-87)